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28th October 2004**UNICE Comments on the Commission's proposal*****Buying green!******A handbook on environmental public procurement*****UNICE APPRECIATES THE COMMISSION PROPOSAL**

UNICE acknowledges the timely publication of the Commission's handbook "Buying green! – A handbook on environmental public procurement" and very much appreciates the opportunity offered to contribute to the discussion on this document.

UNICE appreciates this informative approach and notes that the document has been closely linked to the case law of the European Court of Justice and to the EC directives on public procurement. UNICE supports the structure of this handbook. It is shaped along the lines of established procurement procedure and for the most part explains the possibilities offered by the EC public procurement directives in a practical way.

ENVIRONMENTAL CRITERIA AND PUBLIC PROCUREMENT

UNICE appreciates and underlines the overall approach of the handbook. The overall approach of the handbook is that it adheres to the principle of the procurement directives and requires that environmental considerations should, at all times be linked to the subject matter of the contract and be non-discriminatory, transparent and protect equal treatment of suppliers. In taking into account environmental considerations the object of the contract concerned shall be precisely defined, the technical specifications and the contractual parameters for the product/work/ service shall be drawn up at the beginning of the procurement procedure.

If environmental criteria are to play a role in awarding the contract, they and the relative weighting given to each of them should be specified and published by the contracting authorities in order to enable tenderers be aware of them when preparing their tenders. In doing so, all award criteria shall meet the conditions laid down by the ECJ in its ruling on the Concordia Bus Finland case (C-513/99).

Industry takes the view that environmental considerations not related to the object of the contract should not be taken into account. Consequently, industry cannot agree with allowing for any environmental considerations related to the transportation of the product to the site, the right to demand a minimum percentage of recycled or reused content or other clauses related to the supply of goods.

Such considerations are alien to public procurement, dilute the reference to economic effectiveness in terms of the best value for money, and moreover, conceal the danger of

manipulating the award of the contract. The handbook carries the implication that those seeking to interfere in such a way may well lack the knowledge and experience to understand the consequences of the decisions.

MORE CLARIFICATION IS REQUIRED

It is also evident that there needs to be a clearer and broader distinction in this handbook between the end product, the raw materials and components used in it and the production process itself. The directives make no mention of raw materials or components. The handbook should be explicit about what is allowed and what is not. For instance in 3.4.1 purchasers are encouraged to "indicate the range of materials you would prefer" and "to give an indicative list of hazardous substances that it does not wish to be present in the products". This is not the manner in which environmental considerations should be taken into account.

Additionally, Industry believes that contract performance clauses should not be permitted especially with regard to transportation. Clarification is, in general required with regards to the legal grounds for the extensive interpretation that the commission has made in this respect given that there is little mention of such clauses in the text of the directives.

It is also true that while some of the cited examples may be relevant and appropriate in their details, however, the policies from which they have been collected are causing doubts in our view. In some cases the same policy could be used to demonstrate the opposite to what is intended. Industry believes that there is a risk that purchasers will see the mentioning of such policies as a sign of general approval by the Commission, and consequently apply such policies indiscriminately. It is important therefore that the examples provided be furnished with the necessary caveats.

FINAL THOUGHTS

For the overall assessment of the relevance of the handbook in theory and practice it is important to stress from industry's point of view the indicative nature of the document (for the Commission services) as well as the fact that it cannot be considered to be binding in any way. As stated in the introductory remarks, the handbook is subject to the evolution of Commission practice and the case law of the European Court of Justice.

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