

April 2006

UNICE POSITION ON PUBLIC PROCUREMENT THRESHOLDS

UNICE has always underlined the key role of public procurement in achieving the single market goals. As has been pointed out; “with an annual turnover or volume of 1,500 billion euros or 16 % of the EU’s annual GDP” public procurement clearly has a role to play in achieving the single market and Lisbon strategy goals.

This position paper is submitted as a contribution to the debate on the thresholds which has been ongoing since the 2003 directives were defined.

The opening up of public procurement markets of EU Member States was considered one of the key elements of the 1993 single market strategy. Since then however experience indicates that – in terms of the absolute number of contracts awarded – maybe as much as 95 % of all public works, supply and service procurements have remained below the EU thresholds.

For example in Germany, the most comprehensive analysis of public procurement practice¹ has demonstrated that only 1% of public works contracts awarded by public entities were covered by EC law. This means that 99% of such contracts did not reach the thresholds. In terms of public supply and services contracts about 5% of such contracts were shown to be covered by EC law leaving around 95% below the relevant thresholds. In Sweden a parliamentary investigation in 1999 estimated total public procurement at 23 % of GNP % (50 % of value in services, 25 % in public works and 20 % in supplies). The Swedish public procurement supervisory authority at that time estimated that 20 % of the total value was directly affected by the directives.

The likelihood of this situation being mirrored in other EU and EEA countries is significant. This begs the question of whether the goals set out in 1993 (of liberalising national public procurement markets) have been achieved to the extent that was envisaged at the time. Is a possible 5% of contracts a satisfactory level of performance?

What needs to be considered now is what actions (if any) are required to deal with this situation

In our opinion a number of possible options are available. They include:

- a lowering of applicable threshold values as a means of further opening up public procurement markets and as a means of ensuring that EU enforcement mechanisms are made more widely available;
- introduction of lighter regime rules below the thresholds at the national level (if rules below the thresholds do not already exist);

¹ Wegweiser GmbH, Statistische Analyse der öffentlichen Auftragsvergaben Deutschlands, Berlin 2004.

- extending the right of independent litigation in infringement cases, to e.g. business federations, as a means of avoiding the natural reluctance by many individual companies to avail themselves of existing remedies in such cases;
- improving government supervision of procuring authorities;
- closing loopholes in the rules on remedies
- introducing supplementary sanctions in cases of grave misconduct by procuring authorities;
- increased training efforts for the staff of procuring authorities.

While not advocating any one particular course of action over another, we hope that in showing that an issue exists and outlining these options we might stimulate debate. We believe that discussion on this issue is both necessary and a constructive contribution to achieving world-class procurement in Europe.