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**Action plan for the implementation of the legal framework for electronic public
procurement**

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1. INTRODUCTION

This Communication proposes an Action Plan for the implementation of the new legal framework for electronic public procurement adopted in April 2004 as part of the legislative package of Procurement Directives, 2004/18/EC and 2004/17/EC. These provide a coherent framework for conducting procurement electronically in an open, transparent and non-discriminatory way, establish rules for tendering electronically and fix the conditions for modern purchasing techniques based on electronic means of communication.

If online procurement is generalised, it can save governments up to 5% on expenditure and up to 50-80% on transaction costs for both buyers and suppliers. While it is difficult to quantify competition and efficiency benefits for the EU as a whole, greater competition and efficiency in public procurement markets can impact - directly and indirectly - on the whole economy and play an important role in achieving the Lisbon objectives.

However, the inappropriate introduction of e-procurement carries high risks of market fragmentation. The legal, technical and organisational barriers that may result from procurement online are one of the greatest challenges for policy makers.

The consultations as part of the impact assessment conducted by the Commission¹ confirm the need for an Action Plan. Member States, candidate countries and businesses are ready to participate in it. Building upon existing efforts to modernise European public procurement markets and to make these more open and competitive, the Commission proposes measures along three axes:

- *Ensure a well functioning Internal Market when public procurement is conducted electronically;*
- *Achieve greater efficiency in procurement and improve governance;*
- *Work towards an international framework for electronic public procurement.*

2. OBJECTIVES AND ACTION

2.1. Ensure a well functioning Internal Market in electronic public procurement

2.1.1. *Implement the legal framework correctly and on time*

Member States are required to implement the new legal framework by 31 January 2006, but slippages cannot be excluded. Early adoption of the new e-procurement provisions is essential to avoid barriers to and distortion of competition. It is also very important for the rapid development and the effective use of e-procurement by economic operators. Member States should deploy all efforts to comply with the Directives' deadline.

Erroneous or divergent interpretation of the new rules can create barriers to cross-border trade and ultimately fragment the market. The Commission will monitor transposition closely and encourage appropriate exchanges with the Member States at the draft stage in order to facilitate understanding of the legal framework. It will issue an interpretative document on the

¹ SEC (2004)1639, Extended Impact Assessment for an Action Plan on electronic public procurement, Commission staff working document

legal requirements for e-procurement. At the same, time training demonstrators simulating the new electronic environment will be available to support initiation of administrations and businesses.

- **1st quarter 2005** The Commission issues an interpretative document on the new rules on electronic public procurement
- **1st quarter 2005** The Commission makes online training demonstrators available, allowing contracting authorities and economic operators to familiarise with the new e-procurement provisions and tools
- **2005** The Commission provides appropriate assistance to Member States in transposing the new legal provisions

2.1.2. *Complete the legal framework by the appropriate basic tools*

Of all notices sent for publication on TED², 90 % are still in paper form. The standard forms established by Directive 2001/78/EC have slightly improved the situation. Their processing however still implicates high costs, delaying publication and increasing risks of errors.

The new Directives do not provide for an all electronic notification system; this would not be feasible in the short run given the different levels of development and penetration of electronic means in the Member States. Instead, a phased approach has been chosen. The Commission will adopt in early 2005 a Regulation on standard forms adjusting the existing forms to the elements introduced by the new Directives, e.g. e-auctions, dynamic purchasing systems and buyer profiles. By the end of 2006, the Commission will propose a new generation of structured electronic standard forms to allow for the electronic collection, processing and dissemination of all procurement notices covered by the Directives. This new generation should facilitate the automatic production of summaries in all official EU languages, and should be easy to integrate into all operational e-procurement systems. The establishment of an electronic directory of EU public purchasers should also be considered.

The new Directives make the use of the Common Procurement Vocabulary (CPV), introduced by Regulation 2195/2002/EC, mandatory. Electronic public procurement creates new possibilities for using the CPV, e.g. structuring and analysing procurement expenditure, or the compilation of statistics. Revision of the CPV is under way to adjust it for use in a fully electronic environment. To this end, a study was launched to which Member States and interested parties will be invited to actively contribute. If successfully completed it should lead to a world class international classification model for public procurement contracts.

- **In early 2005** The Commission adopts new Standard Forms taking account of new procedures and the use of electronic means of communication.
- **By early 2006** The Commission presents proposals for revising the Common Procurement Vocabulary based on the results of the review study currently under way
- **By end 2006** the Commission presents a blueprint for a fully electronic system for the collection and publication of procurement notices on TED
- **By end 2007** Member States implement fully electronic systems at national level including appropriate tools for automated collection and publishing in TED

² 'Tenders Electronic Daily', the EU official website which publishes all notices covered by the Procurement Directives.

2.1.3. *Remove / prevent barriers in carrying public procurement procedures electronically*

Barriers businesses fear most in cross-border tendering are inappropriate design of tendering systems and incompatible IT standards. Diversity and incompatibility of technical solutions can render suppliers' access to e-procurement systems impossible or discourage their participation because of additional difficulties or increased costs. Barriers may exist in terms of functional as well as technical characteristics.

In moving procurement online Member States should at all stages be guided by the basic concept that means of communication and tools used in electronic public procurement systems be non-discriminatory, generally available and interoperable and by no means restrict economic operators' access to the tendering procedure.

To prevent the emergence of e-barriers, Member States should use the results of the Commission's functional requirements analysis undertaken by IDA³ when drafting legislation and designing e-procurement systems. The results of the project will be validated by the Commission and the Member States in light of the interpretative document to be issued by the Commission in 2005.

To build up confidence in e-procurement, the development of compliance verification schemes should be promoted. The Commission strongly recommends that Member States, in accordance with the Directives, introduce or maintain voluntary accreditation schemes to ascertain that e-procurement systems conform to the requirements of the Directives. A European scheme which would build on and integrate national schemes would seem desirable to ensure the smooth functioning of the Internal Market. The Commission and Member States should examine through a feasibility study the development of such a *TRUST* (Transparent Reliable Unhindered Secure Tendering) scheme based on the functional requirements.

Some horizontal problems also threaten to negatively affect the functioning of the Internal Market and the initiation of e-procurement. Potential difficulties relate to the use of advanced electronic signatures, in particular signatures based on a qualified certificate and which are created by a secure-signature-creation device (hereafter 'qualified signatures').

The new Directives do not define which type of e-signature should be used in electronic tendering. Thus Member States - who have different legal signature concepts - may choose the level they require in conformity with the e-signatures Directive 1999/93/EC. However, the Directives oblige any public purchaser in the EU to effectively recognize, receive and process tenders submitted, if required, with a qualified signature and their accompanying certificates, regardless of their origin within the EU or their technical characteristics, and even when they contain documents of different origins (i.e., from a consortium of suppliers) and possibly bear signatures of different levels from different sources (i.e., from different national authorities).

This makes e-procurement the first sector in which businesses use qualified signatures in transactions with public authorities in a Member State other than their home country. The existing significant differences between qualified signatures as required by some Member States should therefore be reason for great concern. The interoperability problems detected

³ 'Interchange of data between administrations' programme

despite the existence of standards⁴, and the absence of a mature European market for this type of signatures pose a real and possibly persistent obstacle to cross-border e-procurement⁵.

A project called Bridge/Gateway CA was launched under the IDA programme in 2002 to address the issue of recognition and trust of electronic certificates issued by different Certification Authorities (CAs) in the framework of exchanging secure e-mails and signatures between different national administrations. The results of the Bridge/Gateway CA Pilot, including recommendations on technical, organisational and operational aspects of such operational schemes, should be available by mid-2005. Although addressing some issues related to e-procurement, it would not, however, be enough to resolve the problems described above before the 2006 deadline. Building on the current efforts, Member States and the Commission, hearing industry's views, should work together on an operational project to rapidly find a solution based on the mutual recognition principle. At this stage, the Commission would favour a solution to test and promote solutions enabling cross-border use of qualified signatures. Any solution identified should be easy to generalise also in other fields of activity. In the meantime, the Commission recommends that Member States examine any appropriate transitional measures, e.g., confirmation in paper form for tenderers whose electronic signature does not correspond to the required one.

Lack of generalised and interoperable e-ordering and e-invoicing tools across the Internal Market also creates obstacles to the equal participation of suppliers in cross-border procurement. At present, these types of transactions are little used in practice and on an optional basis only. The Commission will continue monitoring the situation while solutions are being sought in the framework of standardisation activities undertaken by the EU.

- **In 2005** Member States and the Commission test, refine and validate the results of the IDA common functional requirements for e-procurement systems, based on the 2004 IDA study on common functional requirements
- **Early 2006** Member States review whether all operational e-procurement systems have been adjusted to the requirements of the Directives
- **By mid-2005** Member States introduce national accreditation schemes to verify compliance of electronic tendering systems with the legal framework
- **By end 2005** Member States and Commission consider through a feasibility study whether to introduce a European compliance verification scheme
- **In 2005-2006** The Commission proposes an action under the IDABC programme to help Member States coordinate implementing the use of advanced qualified signatures to resolve interoperability problems⁶
- **By 31 January 2006** Member States apply, if required by national law, interoperable qualified electronic signatures

⁴ Pursuant to Directive 1999/93/EC, technical standards have been promulgated within ETSI ESI and CEN/ISSS e-Sign Workshop.

⁵ For a detailed analysis see "The legal and market aspects of electronic signatures", Study for the European Commission, Interdisciplinary Centre for Law and Information Technology, CUL, Leuven, Oct. 2003.

⁶ The European Parliament and the Council formally adopted on 21 April 2004 Decision 2004/387/EC establishing the new IDABC Programme. Building on the achievements of the preceding IDA programme its aim is to identify, support and promote the development of interoperable pan-European e-Government services as of 2005.

2.1.4. Detect and address interoperability problems over time

In light of the above, it is clear that interoperability problems are persisting or may still emerge. Some have already been detected and appropriate actions have already been induced; others should be discovered through the gap analysis on interoperability needs in e-procurement currently carried out by CEN/ISSS⁷. However, interoperability should remain a constant concern. Technical and operational developments make it necessary to continuously revise and improve existing systems covering all stages of the purchasing cycle. Standards in the area are market-driven. Relevant input from RTD projects in the area of e-government should also be considered. Governments must follow and work on interoperable solutions through dialogue between the different parties involved either at national or European level and trail developments in business-to-business (B2B) electronic commerce in order to avoid driving a wedge between private and public procurement markets.

The Commission will continue to monitor the situation with respect to the emergence of interoperability problems in the Internal Market and in international trade and, if appropriate, consider issuing standardisation mandates. It would be desirable to continue current work in the IDA e-Procurement workshop and to continue monitoring developments so as to share information on specifications and good practices.

- **By 1st quarter of 2005** CEN/ISSS completes gap analysis on interoperability needs for effective electronic public procurement
- **2005-2007** The Commission proposes to continue activities on electronic public procurement under the IDABC programme for exchange and discussion on interoperability issues and monitoring of Member States developments
- **2005-2007** The Commission and Member States promote standardisation activities at European level and liaise with international standardisation bodies

2.2. Achieve greater efficiency in procurement, improve governance and competitiveness

2.2.1. Increase efficiency of public procurement and improve governance

Moving public sector procurement online requires legal, institutional and organisational changes at many levels. Member States will have to decide on the type and scope of purchases to computerise, the policies to implement, the systems and tools to use and the level of administrations involved. The risks of failure are not negligible. It is therefore essential to plan and monitor these efforts.

Greater efficiency will depend on the degree of automation in the field of public procurement as a whole, although a phased development of e-procurement is most likely to maximise benefits for both the public and the private sector. The Commission invites all Member States to transpose into national law all aspects of the legislative package in a comprehensive manner. Governments should, however, be able to modulate and adjust implementation of the new electronic tools and techniques over time. In particular, they should pay attention to potential excessive or abusive centralisation of purchases, inappropriate use of electronic auctions and preferences for closed purchasing systems (e.g. framework agreements) over open systems. Such practices may cancel out the benefits from increased efficiency.

To optimise benefits, Member States should establish national plans to be complemented by individual plans especially for their most powerful buyers. Setting uniform targets and ways

⁷ Centre Européen de Normalisation/Workshop on Information Society Standardisation Systems

for generalising e-procurement would not be expedient, as conditions in each Member State vary considerably. The Commission should assist Member States in this exercise where appropriate and facilitate the dissemination and sharing out of information. It will also monitor developments through appropriate indicators using data from the TED database. The Public Procurement Network established in Copenhagen in January 2003 could provide a forum for the exchange between Member States.

Increased efficiency depends also on the automation of certain types of transactions such as invoices, orders and payments. Today at an early stage, their development is likely to pick-up driven by standardisation and automation of financial and budget systems. Following a mandate from the Commission, CEN/ISSS has assessed standards requirements and is finalising detailed guidance material on the implementation of Directive 115/EC/2001 on electronic invoices. In addition, IDA is running a project for developing XML schemas for e-procurement, including e-invoicing and e-ordering. Efforts in this area should be pursued in view of achieving interoperable solutions.

National policies can hardly be developed in the appropriate quality without a detailed picture of procurement markets. Existing statistical information is mostly incomplete and data collection mechanisms are poorly organised. E-procurement presents the opportunity to remedy this situation. The Commission will mobilise the Advisory Committee on Public Contracts (ACPC) and the Working Group on Statistical Information to fully exploit the introduction of e-procurement new technologies.

- **By end 2005** Each Member State prepares a national plan for introducing electronic public procurement setting measurable performance targets, taking account of the specific national needs
- **By end 2005** Each Member State encourages preparation of similar plans by individual national buyers and to coordinate and monitor their implementation
- **In 2005-2006** The Commission continues monitoring work on e-invoices by CEN/ISSS and proposes the continuation of XML activities undertaken in 2003-2004 on e-invoices and e-ordering under IDABC
- **By end 2006** Member States set up efficient electronic systems for the collection and processing of statistical procurement data

2.2.2. *Increase competitiveness of public procurement markets across the EU*

The Commission's online consultation of businesses identified transparency as a major aspect of computerisation of public procurement, together with confidence in the fairness of awarding procedures. Electronic means offer more transparency as they allow for easy and timely dissemination of contract information and reduce opportunities and incentives for fraud. They can also improve the quality of government procurement management, including monitoring and decision-making. Practices for disseminating contract related information may differ among Member State as well as requirements for traceability and auditing of e-procurement operations. The Public Procurement Network could play an active role in exchanging information and practices on those issues. The Commission could support a benchmarking exercise with a view to compare and measure performances.

The majority of businesses consider that online procurement should require less effort than traditional procedures. National administrative provisions and guidelines regulating procurement procedures have been conceived with a view to the handling of operations in paper form. Electronic means offer new opportunities to streamline procedures and save

suppliers time and money. Success depends on the degree of transformation of off-line practices to fully fledged online services. This requires re-thinking the service provided and re-engineering the different processes.

To generalise e-procurement, it is important that all steps are taken to reduce the regulatory burden. Standardising and restructuring business documents as well as more uniform tendering documents should help automating certain purchase routines and allow both sides to concentrate on the substance of the purchase.

A typical example of red tape concerns the numerous certificates and business documents required. These are rarely available in electronic form. Additionally, they need to be usable and acceptable across borders. The Commission and Member States should analyse and compare results achieved in this area at national level in the framework of the ACPC with a view to agreeing in early 2006 on a common set of electronic certificates, at least for some of those most frequently required. E-procurement would be an excellent test base for the development of such e-government services. The Commission will propose this line of action to Member States.

The use of e-catalogues is another major issue. Their deployment is important in particular for involving small and medium-sized enterprises (SMEs) in public procurement. Current applications make it possible for enterprises to present their products and services to contracting entities at reasonable cost, time and effort. Lack of uniform specifications and standards for e-catalogues means that there is a risk of IT applications on the market not meeting requirements of the public sector. Work to prepare framework standards for cataloguing is under way in a specific CEN/ISSS workshop. Building upon the IDA functional requirements project, the use of e-catalogues in dynamic purchasing systems and e-procurement framework agreements could be further studied and tested.

Finally, businesses expect e-procurement to increase contract opportunities, facilitate cross-border market access and make procurement procedures faster and cheaper. Public e-procurement represents a great potential for SMEs. In order to encourage those SMEs interested in public contracts, Member States have every interest to promote standard e-procurement systems based on existing and simple technologies and to tailor contract opportunities so as to not exclude SMEs.

- **2nd half 2005** The Commission considers proposing services for the electronic supply of business information and certificates in public procurement for implementation under the IDABC programme
- **In 2005-2006** Member States and the Commission agree on a common set of frequently required electronic certificates for use in e-procurement procedures
- **In 2005** The Commission proposes launching a study on e-catalogues in dynamic purchasing systems and electronic framework agreements using work by CEN/ISSS under the IDABC programme
- **In 2005** The Public Procurement Network launches a benchmark exercise on transparency, auditing and traceability of e-procurement systems
- **In 2006** The Public Procurement Network organises workshops to promote exchanges on tender document standardisation
- **2005-2007** Member States launch and support specific awareness campaigns and training programmes targeted at SMEs at national and regional level

2.3. Work towards an international framework for electronic public procurement

While e-procurement develops worldwide, the existing international agreements do not regulate its use. Legal and technical choices in e-procurement systems may reduce procurement opportunities for EU businesses in third countries, as well as restrict access of third country suppliers to the EU market. The Commission will monitor developments to ensure that implementation of the new EU procurement regime fully respects the international obligations of the Union, while accordingly taking initiatives to adapt international disciplines. It will also follow attentively current and future international standardisation initiatives.

The Commission will also consider any adjustments necessary and the feasibility of e-procurement in the context of the EU's external aid instruments. It already cooperates closely with international bodies such as the World Bank to ensure that execution of purchases financed by these in third countries does not hinder EU suppliers. Finally, it will take all appropriate measures aimed at sharing EU experiences and achievements with developing countries.

- **In 2005** The Commission pursues negotiations on the review of the Government Procurement Agreement (GPA)
- **In 2007** The Commission takes initiatives in the GPA to progress towards utilisation of a single common nomenclature for the classification of procurement goods and services
- **In 2005-2007** The Commission promotes the activities of and liaises with international standardisation bodies and fora to avoid emergence of technological interoperability barriers at international level
- **In 2005-2007** The Commission cooperates with the Multilateral Development Banks (MDBs) network in view of co-ordinating technical assistance to third countries supporting re-organising and computerising their public procurement regimes
- **In 2005** The Commission considers any adjustments necessary and the feasibility of e-procurement in the context of the EU's external aid instruments

3. IMPLEMENTATION OF E-PROCUREMENT ACTION PLAN AND MONITORING

In the long run, computerising public procurement practices will impact on the way in which national public purchasing practices are organised. Successful implementation of e-procurement may require changing administrative practices, not only those directly linked to the procurement process, but also indirectly, such as budgetary reviews. The sooner such reforms are implemented, the better for Europe's citizens and businesses. The Commission considers that the Action Plan measures provide the best possible blend in order to fully exploit the potential benefits from moving public procurement online while minimising risks. Candidate countries will be closely associated with the implementation of the Action Plan.

The Commission assisted by the Advisory Committee for Public Contracts will monitor overall progress. By end of 2007, the Commission will review the situation and report on the results achieved; it will propose at any time, if need be, corrective action or additional measures.