



European Economic and Social Committee

INT/554
e-Procurement

Brussels, 13 July 2011

OPINION
of the
European Economic and Social Committee
on the
Green Paper on expanding the use of e-Procurement in the EU
COM(2010) 571 final

Rapporteur: **Mr Farrugia**

On 18 October 2010 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the EU, on the

Green Paper on expanding the use of e-Procurement in the EU
COM(2010) 571 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 13 July), the European Economic and Social Committee adopted the following opinion by 110 votes to 1 with 4 abstentions.

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1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) welcomes the European Commission's (EC) Green Paper on e-Procurement and the Green Paper on the EU public procurement policy.

1.2 The EESC is of the opinion that the:

- a) implementation of an inter-European e-procurement framework is a cornerstone for the proper functioning of commerce within the internal market given the importance of public procurement vis-à-vis the GDP of each Member State; and
- b) deployment of e-procurement up to local public administration level is to be considered as an important policy instrument as e-procurement:
 - reduces cost for business and public administration;
 - results in a streamlined procurement process, particularly if e-procurement instruments such as e-Auction and Dynamic Purchasing are selected leading to faster decision making;
 - results in greater transparency and reduces real and perceived malfeasance in procurement;
 - is a vehicle to the further attainment of an information society.

1.3 The EESC is of the opinion that a review of the e-procurement framework cannot be carried out independently of a review of the legal framework for public procurement. e-procurement

is a channel that enables public procurement policy to be carried out more efficiently, effectively and economically. The EESC concludes that it is important that there is cohesion and a joint-up approach is adopted in this regard.

- 1.4 The EESC recognises that implementation of e-procurement across Member States has not met expectations set out in the 2004 Action Plan. Be that as it may, the EESC recognises that best practice examples exist. One such best practice is the holistic implementation approach to e-procurement adopted by Portugal – which merits commendation.
- 1.5 The EESC concludes that the multi-pronged approach whereby every Member State adopted its own time-frame vis-à-vis e-procurement implementation failed to meet the desired results and instead led to further distancing from the desired objective of an agreed unified system. The EESC recommends that it is now of paramount importance for the EC, through the Directorate for Internal Markets and Services together with the Directorate for the Information Society, to adopt strong and effective leadership (similar to that adopted with the e-Europe Agenda) to achieve an integrated, inter-operable, and business/technology standardised e-procurement framework across Member States. This would ensure that while no activity by any individual Member State is affected that further endangers the achievement of the desirable target, action is actually implemented that furthers the implementation process over an agreed time-frame of an approved cohesion approach. The EESC intends however to place the emphasis on the need to establish practical e-procurement frameworks geared to specific sectors, particularly in the social economy and social services sectors. Services subject to public procurement in these sectors are often complex, involving specific, one-of-a-kind features and so some freedom of action is necessary, even in e-procurement.
- 1.6 The EESC recommends that an implementation monitoring mechanism is introduced to review progress, barriers, corrective action et al with regards to the introduction of e-procurement within Member States.
- 1.7 The EESC adds that the EC, in stewarding e-procurement implementation, should encourage Member States to seek innovative solutions to overcome business procedures and language issues.
- 1.8 The Commission, in tandem with assuming a leadership role, should act as a "champion" by adopting e-procurement across its institutions.
- 1.9 The EESC reinforces the importance of e-procurement as a vehicle to spur pan-European commerce within the internal market for large as well as Small Medium Enterprises (SME) and micro enterprises. The EESC underlines that business processes and technology should spur commerce in the internal market rather than by design act as trade barriers.
- 1.10 The EESC underlines that SMEs and micro-enterprises are the backbone of entrepreneurship in the EU. It is imperative that the work resulting from the review of the public procurement

and the e-procurement frameworks respectively is directed to unleash SMEs and micro-enterprises ability to compete in an e-procurement environment. The EESC recommends that:

- all calls for public procurement in Member States - below as well as above the threshold - are published in the portal of the national contracting authority;
- SMEs are assisted either through direct capacity building initiatives, setting up of e-procurement Facilitating Support Centres by national, regional contracting authorities or constituted bodies representing SMEs through national and EU financing – to ensure that SMEs and micro-enterprises embrace and leverage e-procurement.

1.11 The EESC recommends that e-procurement architecture should be interoperable and based on open standards and open source software.

2. **Introduction**

2.1 On 18 October 2010, the European Commission issued a Green Paper entitled "On Expanding the Use of e-Procurement in the EU"¹. The Green Paper was accompanied by a Commission staff working document entitled "Evaluation of the 2004 Action Plan for Electronic Public Procurement"².

2.2 The Green Paper is a first step towards the establishment of an inter-connected e-procurement infrastructure as part of the Commission's Digital Agenda. The Paper reviews the success and issues related to e-procurement implementation amongst Member States (MS). It poses policy issues with regard to the calibration of Community action directed to support the deployment of e-Procurement by national, regional and local public administration.

2.3 In 2005, EU ministers set the target that by 2010 at least 50% of public procurement will be carried out electronically. However, according to the Commission less than 5% of the Member States' procurement budgets is awarded through e-procurement.

2.4 The e-Procurement Green Paper was followed by the publication on 27 January of a Green Paper entitled "On the modernisation of EU public procurement policy: Towards a more efficient European Procurement Market"³. The Committee is currently focusing on this particular issue as well as on e-invoicing and will ultimately adopt a package of three interrelated opinions.

¹ COM(2010) 571 final.

² SEC(2010) 1214 final.

³ COM(2011) 15 final on which the EESC is currently drafting an opinion; rapporteur: J. van Iersel, co-rapporteur: M.A. Cabra de Luna.

3. **European Economic and Social Committee's response to policy questions raised in the Green Paper**

This is the response of the EESC to the policy questions raised in the Green Paper.

3.1 **Question 1.** The EESC ranks the challenges listed in the Green Paper as follows:

3.1.1 Public procurement is, at times, controversial – resulting in allegations of corruption and malfeasance – and given that e-procurement is a new process certain administrative entities may have hesitated to embrace it. The lack of political will may be one cause but there are other potentially contributory factors, such as the up-take of digital technologies in the Member States and the complex procedure for e-procurement in some sectors.

3.1.2 Where e-procurement was introduced, the EESC concludes that, at times, contracting authorities placed more onerous technical requirements that were not present within the traditional process.

For example, at times access to e-procurement portals demand an advanced electronic signature – a signature supported by a digital certificate – to be able to access tender publications, download tender documents, etc.

3.1.3 The approach adopted allows Member States to create their own and unique e-procurement ICT platforms.

Interoperability on an entity level, let alone across Member States, can only be achieved if standards are set and adhered to. This did not take place – as each Member State adopted its own authentication mechanism.

The landscape is dominated by a fragmented approach across the Member States. This renders it difficult for **national electronic solutions** to be recognised **across Member States**. Member States should be guided by guidelines and standards issued in this regard by the Commission's working group on inter-operability.

3.1.4 An inter-EU e-procurement network demands a **standardised approach** at the ICT architecture layer⁴ and **the business process layer**⁵.

Member States apply different business processes in the traditional procurement framework. Business processes need to be standardised.

⁴ An ICT architecture is a blueprint for systematically and completely defining the current ICT (baseline) and / or desired (target) framework directed to achieve optimal performances on the basis of efficiency, standards, scalability, inter-operability, coherency; open environment, etc.

⁵ For example, certain contracting authorities require tedious procedures, such as supplying authorised translations, certified, with an apostil.

- 3.1.5 With the benefit of hindsight, the EESC concludes that the tolerance by the Directorate for Internal Markets and Services and the Directorate for the Information Society of a **multi-speed transition** to e-procurement implementation resulted in a plethora of approaches at regional and local levels within Member States.

If e-procurement implementation at a national and cross-border level should be a strategic objective, the EESC recommends that implementation should be given higher priority by the European Commission and this should be backed by stronger and more effective monitoring mechanism based on preventive and corrective measures as is the case in other e-government policy areas.

- 3.2 **Question 2.** The EESC recognises the following challenges:

- 3.2.1 Political and administrative leadership for e-procurement implementation. Although discussed above, the EESC identifies it as a specific issue.

Benchmarks carried out by the EU on e-government readiness show that most Member States adopted strong leadership to position themselves at the fore front of e-government services. Focus, primarily, is directed towards G2C services and traditional G2B.

A 5% relative take up of e-procurement across the EU – which is a G2B service – shows that innovative G2B activity was absent – other than in countries such as Portugal – even when the literature demonstrates that the implementation of this channel results in cost savings, greater transparency, etc. For example, a Portuguese study compared the best bids for public works by 50 public hospitals in 2009 using traditional procurement methods and 2010 using e-procurement. The study shows cost reductions of 18% achieved in 2010 due to the increase in competitiveness generated by e-Procurement. The Green Paper highlights examples of savings that range from 10% to 45% on projects covering billions of Euros. These are savings of hundreds of millions that could be used in the provision of additional services to the community⁶.

The EESC adds that in such a strategic initiative the EC should have championed e-procurement by introducing by the end of the e-Procurement Action Plan an e-procurement platform for all Commission directorates and agencies.

- 3.2.2 Moving towards a technical inter-operable environment. This is discussed in 3.1.

The decision to standardise the authentication mechanism to an appropriate level of security, today, cannot be taken in isolation of the investment made by Member States in

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For further examples see page 5 of the Green Paper on expanding the use of e-Procurement in the EU, SEC(2010) 1214, http://ec.europa.eu/internal_market/consultations/docs/2010/e-procurement/green-paper_en.pdf.

authentication mechanisms at both national and / or service level.

Member States have already invested in partial or full (Portugal for example) e-procurement systems that may be tied to national or contracting entity authentication mechanisms.

Under the circumstances, the EESC recommends that any approach to streamline Member States onto a standardised inter-EU authentication mechanism should be based on the principle that the selected mechanism is designed to reflect the level of risks that need to be addressed across the e-procurement value chain.

3.3 **Question 3.**

The EESC agrees that national public administration and contracting authorities should be incentivised to introduce an e-procurement framework. The EESC re-emphasises that the multi-speed strategy adopted by the Commission should no longer be pursued. The EESC is of the opinion that the experience since 2005 and the poor results achieved in the absence of an effective monitoring mechanism should now cause the Commission to agree with Member States on compliance with agreed e-procurement strategies. The EESC intends however to place the emphasis on the fact that the Member States should design appropriate balanced frameworks for specific sectors, more specifically in the social economy and social services sector. Services subject to public procurement in these sectors are often complex, involving specific, one-of-a-kind features and so some freedom of action is necessary, even in e-procurement.

With regards to incentives directed to propel enterprise to use e-procurement, the EESC raises the following issues:

- a) Uptake of e-government services, including e-procurement, is dependent on ease of use. Unnecessary use of complex technologies such as PKI drives organisations against uptake and use. The inter-EU e-procurement framework design must avoid unnecessary technological over-engineering.
- b) SMEs are the entrepreneurial backbone of EU enterprise. The Commission as well as Member States should not assume that SMEs have the same capacity, resources and technology access as large enterprises.

With regards to b) above the EESC recommends that the Commission should finance initiatives across Member States directed to:

- securing access to technology which could be provided through technology hubs provided by competent authorities responsible for enterprise policy or constituted bodies representing SMEs;

- undertaking knowledge and capacity building initiatives directed at SMEs backed by advisory services provided by constituted bodies responsible for SMEs through national and EU incentives;
- undertaking use of e-procurement and skills training including the provision of training tools such as Computer Based Training through the setting up of e-procurement Facilitating Support Centres.

3.4 **Question 4.** Contracting authorities are government entities and are subject to the Government's policy. Member States should provide the appropriate stewardship to their respective contracting authorities to design and introduce e-procurement. This may necessitate that Member States place e-procurement implementation strategies within their respective Enterprise and National ICT strategies – setting out incremental milestones that are to be achieved within a specific time frame⁷.

The issue is should e-procurement be the only channel to participate in public procurement? The EESC is of the opinion that to the extent possible Member States should place e-procurement as the primary channel for public procurement – subject, however, to intelligent design that reflects the particular needs of certain sectors. This applies particularly to social services, which are particularly complex as regards procurement. E-procurement for services must be designed taking the need to be met as the starting point, and factoring in the specific characteristics of the service in question.

In this regard, strategies to introduce e-procurement should also be complemented by capacity building and skills up-grading of public officers in public entities as well as easily accessible e-Procurement Facilitating Support Centres available to SMEs.

3.5 **Question 5.** The undertaking of e-Auctions shows that electronic procedures for some procurement is already provided for under Directives 2004/17 and 2004/18 – should these instruments be selected.

The EESC is in favour of a procurement instrument such as e-Auction. By its very nature, it demands an e-procurement framework subject, however, to the creation of a framework supporting SMEs, as discussed in 3.3 above, and to the framework being used only when and where appropriate.

Undertaking capacity building to build the necessary supporting framework cannot be emphasised enough as this will secure an e-commerce "level playing field" between SMEs and Non Government Organisations on the one hand and large enterprises on the other.

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Best practice examples in the EU exist and include Italy, Portugal, Denmark, Austria, United Kingdom.

The EESC underlines the danger of a "digital divide" - which will create "unfair" competition as SMEs and NGOs may be disadvantaged in participating in public procurement because of a "technological" barrier.

- 3.6 **Question 6.** The EESC believes that public procurement should primarily be channelled through e-procurement subject to the condition that the design of the procurement reflects the specific features and complex needs characteristic of certain sectors – such as "B" services procurement provision.

Be that as it may, a level playing field, however, can only be secured if SMEs and NGOs have the capacity to operate in a B2G environment. This may not be the case today and capacity building by the EC and Member States should be channelled in this regard.

- 3.7 **Question 7.** Unnecessary and disproportionate barriers to cross-border participation with regards to e-procurement will stem from, primarily, the following challenges:

- authentication mechanism,
- business processes,
- language,
- willingness to open up local market to competition.

The EESC suggests that the EC designs and adopts an agreed action plan complemented by an implementation monitoring system directed to ensure that such barriers are overcome.

- 3.8 **Question 8.** Withholding visible notification of below the threshold tenders from the e-procurement framework is likely to limit cross border participation in an e-procurement Internal Market to primarily large enterprise.

It is pertinent to underline that the visibility of below the threshold public procurement opportunities across the Single Market is important to SMEs and micro-enterprises as too often specifications set in such tenders fall within the skill, organisational and financial capacity of such enterprise. Thus, the participation of cross border commerce through below the threshold public e-procurement by SMEs and micro enterprises will strengthen the Single Market.

Given that the e-procurement framework consists of various steps ranging from e-notification to e-invoicing the EESC recommends that the EU e-procurement policy should establish that all calls for procurement – below and above thresholds – should be visibly lodged in a Single Market as well as a national central portal supported by an e-notification service.

- 3.9 **Question 9.** The EESC is of the opinion that the legislative framework for e-procurement is comprehensive. Failure stems from lack of implementation will.

- 3.10 **Question 10.** Too often solutions are driven by technical architecture as against business process. The level of security applied should reflect the degree of risk faced and investment in the security framework adopted should be balanced against the said risk.

The security bias adopted in the design of authentication mechanism of e-procurement is one based on advanced electronic signatures. Advanced electronic signatures, however, are expensive to attain – in terms of setting up, cost of digital certificates, etc.

The question arises: should e-procurement be de facto tied to an advanced electronic signature authentication mechanism?

The EESC is of the opinion that there should be more debate on the risks to e-procurement by the Commission and Member States before a decision is made that the authentication mechanism to e-procurement should be tied to advanced electronic signatures.

It is pertinent to note that a debit or credit card – which if lost or stolen render a person open to financial risk – is subject to a 4 number pin. The EESC poses the following questions:

- Do all of the stages on the e-procurement value chain need advanced electronic signature authentication? Is this level of security necessary to enter the Portal, view information on tenders and enable e- or m-services such as notification *et al* required?
- If it is not required, should the authentication mechanism be two tiered: simple registration for those processes on the value chain that are in the public domain under the traditional business process and a higher level of authentication for the submission of a bid or participation in an e-Auction?
- If a two tier authentication mechanism is adopted does it so follow that the higher level of authentication is based on an advanced electronic signature or should a less complex but secure authentication mechanism be adopted?
- Should the authentication mechanism be on the basis of a strong alpha numeric password together with a strong numeric pin number; or should it include the above, together with a unique password generated by a token similar to access to e-banking?

The EESC is of the opinion that whilst a secure mechanism has to be in place with regards to e-procurement the solution must be commensurate to the risk and as least complex to implement as possible.

In the event that the decision would be that the advanced qualified certificates should be the best security model for e-procurement, the EESC proposes that work in this regard is based

on the Virtual Company Dossier (VCD) that the Pan European Public Procurement Online (PEPPOL) is undertaking⁸.

The EESC recognises that current Directive provides that equivalents to certificates should be recognised by Contracting Authorities. The fact is that in practice it is often difficult to find the equivalents and some Member States require tedious procedures, such as supplying authorised translations, certified, with apostille, or requiring originals only. This is cumbersome and expensive, not only for enterprises, but also for Contracting Authorities.

- 3.11 **Question 11.** With regards to language, real barriers exist. There can be no inter-EU e-procurement framework without the ability to "communicate" a tender issued across the 27 Member States. On the other hand, the translation of a tender document by a national contracting authority in the official EU languages let alone all languages of the 27 Member States to make a tender accessible to enterprises in all Member States is unwieldy, expensive and would bog down the public procurement.

It is important that enterprises or individuals seeking to tender are aware of what tenders are available and this information should be available without any barrier to language. It would then be up to the enquiring enterprise, large, small, medium or micro, to seek further information through the facilitating support centres as proposed in this opinion and whether to go into further expense into more detailed translations beyond what is obtainable through the use of the proposed language tools.

A potential solution could be the development by the Commission of an on-line Procurement Translation tool that is specifically designed and tailored for the technical language of tender documents – that is with special attention to how technical words as "may", "mandatory", etc. are translated correctly with no nuances that could lead to misinterpretation.

However, this instrument must be used only for extremely simple procurement and insofar as clarity is guaranteed, so that it does not result in a heavier administrative burden devoid of any real interest for either the contracting authority or for the tenderer.

- 3.12 **Question 12.** The EESC recommends that the Commission should influence Member States to build e-procurement frameworks on "Open" standards.

The EESC recommends that the Commission encourage Member States to utilise the open e-PRIOR solution which the Commission has made available as free, open source components for integration in any e-procurement solution under design.

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<http://www.peppol.eu/>

- 3.13 **Question 13.** The EESC recommends that the Commission should encourage and increase the provision of open source solutions for integration into existing or developing e-procurement systems.
- 3.14 **Question 14.** The EESC agrees that the EC should continue to develop its suite of applications such as e-PRIOR solutions and render these available for use by Member States.
- 3.15 **Question 15.** As discussed the EC and Member States must undertake sustained capacity building initiatives that will support SMEs to gear up for B2G e-commerce. The issue of "language" is a far more difficult hurdle for SMEs to overcome if they are to participate in inter-EU e-procurement.

Brussels, 13 July 2011.

The President
of the
European Economic and Social Committee

Staffan Nilsson
