



European Economic and Social Committee

INT/834
Public procurement package

OPINION

European Economic and Social Committee

**Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions –
Making public procurement work in and for Europe**

[COM(2017) 572 final]

**Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions –
Helping investment through a voluntary ex-ante assessment of the procurement aspects for large infrastructure projects**

[COM(2017) 573 final]

Commission Recommendation of 3 October 2017 on the professionalisation of public procurement – Building an architecture for the professionalisation of public procurement

[C(2017) 6654 final – SWD(2017) 327 final]

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Consultation	European Commission, 17/11/2017
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	24/01/2018
Adopted at plenary	14/02/2018
Plenary session No	532
Outcome of vote (for/against/abstentions)	107/1/1

1. **Conclusions and recommendations**

1.1 The European Economic and Social Committee (EESC) firmly believes that the system of public procurement in the internal market must be transparent, open and competitive if it is not only to ensure efficient public expenditure, but also to provide high quality goods and services for Europeans, by developing a genuine **European culture of innovative, smart, sustainable and socially responsible procurement**.

1.1.1 In this regard, the EESC recommends promoting the use of the "most economically advantageous tender" as the selection criterion, in particular in the case of intellectual services.

1.2 The Committee welcomes the new public procurement package and stresses the need to:

- promote quality and innovation in public procurement;
- include environmental and social aspects; and
- make public procurement smarter and more efficient.

1.3 The Committee would stress the importance of making smart use of public procurement to help tackle global challenges such as climate change, resource scarcity, inequality and the ageing society. This approach supports social policies, accelerates the transition to more sustainable and competitive supply chains and business models, and can facilitate access for SMEs and social economy enterprises.

1.3.1 The EESC considers it important to foster an increasingly open attitude among the Member States towards voluntary prior assessment mechanisms for large-scale infrastructure projects.

1.3.2 The Committee points to the need to make the new voluntary ex ante assessment mechanism attractive, by awarding the contracting authority a certificate of conformity. The EESC supports increasing the professionalism of all stakeholders here and increasing the participation of social enterprises, with a view to combating fraud and corruption by stepping up the digital transformation of procurement.

1.4 The Committee particularly welcomes the efforts to increase the access of SMEs and social economy enterprises to public procurement markets and points out that there are still many obstacles to their full participation; it recommends that chambers and/or professional bodies play a role here in providing protection and support.

1.4.1 Social and environmental aspects have become crucial in the requirements of public procurement, and the EESC emphasises their value and usefulness. It recommends including specific social and environmental content in all national and EU training programmes.

1.4.2 A campaign should be launched promoting the inclusion of technical and regulatory standards – in the environmental (ISO 14000), social (ISO 26000, SA8000:2014, and relevant ILO

conventions¹), and management and production quality (UNI 11648:2016 on project managers and ISO 9000) fields – or similar technical quality requirements under national legislation in tender specifications. Small businesses should be helped to achieve those standards through the European Social Fund.

- 1.5 The EESC believes it is essential to strive for a high degree of professionalism within contracting authorities and give clear recognition to any new skills acquired; they should be equipped with a common European framework for technical and IT expertise that would enable a common approach throughout the European internal market.
- 1.6 The EESC considers that it would have been preferable for the Commission to adopt a directive rather than a recommendation in order to provide an effective, consistent framework for the professionalisation of public procurement.
- 1.7 The Committee believes that a public electronic register of contracts needs to be established, inter alia to both widen out the potential pool of interested companies and better assess the efficiency and integrity of the procurement process.
- 1.8 In the Committee's view, strong EU action is vital to improve access to third-country public procurement markets on the basis of reciprocity and on an equal footing with domestic companies, including for businesses in the accession countries and the partner countries of the EU's neighbourhood policy.
- 1.9 The EESC considers that the European Commission's country-specific recommendations should be accompanied by a strong boost to training measures, aimed at access to programmes and Structural Funds, and technical and regulatory digitisation standards, with the adoption, at EU level, of a code of procurement ethics.
- 1.10 The EESC recommends promoting the inclusion and use of social measures as strategic instruments for promoting advanced policies in this area.
- 1.11 The EESC recommends that consideration be given to adopting a common set of rules, as a "28th system", for cross-border procurement, which contracting authorities could adopt voluntarily, with the guarantee that the same procedures would apply throughout the European Economic Area.

2. Background and current situation

- 2.1 Public procurement provides a huge potential market for innovative products and services if used in a strategic way to stimulate the economy and unlock investment – in particular via the Investment Plan for Europe –, improve productivity and inclusion and respond to the structural and infrastructural changes needed to promote innovation and growth.

¹ ILO Core Conventions, ILO Convention 155 (Occupational Safety and Health) and ILO Conventions 131, 1 and 102.

- 2.2 Public procurement accounts for a substantial part of public purchasing and investment in Europe's economy: every year, public authorities in the EU spend around 19% of GDP on the purchase of services, works and supplies.
- 2.2.1 Unfortunately, 55% of procurement procedures use lowest price as the award criterion and thus do not pay particular heed to quality, sustainability, innovation and social inclusion.
- 2.3 Nine out of ten large-scale infrastructure projects do not go according to plan, either concerning the budget and/or the time-frame, and cost overruns of up to 50% are common².
- 2.4 The regulatory framework for public procurement has traditionally looked rather complex and multi-faceted; the institutional set-up is also extremely fragmented, given that it is managed by a whole range of players at central, regional and sectoral levels, whose tasks and functions are not always clearly demarcated.
- 2.5 The management of purchasing and infrastructural investment processes requires public administrations at all levels to have particularly developed expertise, whereas they generally have a range of shortcomings, such as: differing abilities as regards planning and identifying appropriate tools and resources in good time; a lack of professionalism within contracting authorities; the multitude of public administrations involved in each area of expenditure; the lack of structured collection of supporting information, with non-standardised databases administered by a range of players which often have different levels of data quality and reliability.
- 2.6 This complexity was not fully resolved by the 2014 public procurement package.
- 2.7 The uptake of digital tools to support public procurement is slow in the EU: only four countries had gone digital by 2016³. Clearly, more use needs to be made of new technologies to simplify and accelerate procurement procedures.

3. **The Commission's proposals**

- 3.1 The package presented by the Commission contains four main strands:
- 3.1.1 **identifying priority areas** for improvement – to develop a strategic approach to procurement policies, focusing on six priorities;
- 3.1.2 **voluntary ex ante assessment of large infrastructure projects** – a helpdesk is to be established – along with notification and information-exchange mechanisms – in order to provide assistance at an early stage regarding projects with an estimated value of over EUR 250 million and projects of high importance for the Member State concerned, with a value above EUR 500 million;

²

http://ec.europa.eu/smart-regulation/roadmaps/docs/2017_grow_046_ex_ante_voluntary_assesment_en.pdf.

³

COM(2017) 572 final, section 2.

3.1.3 **a recommendation on the professionalisation of administrations and public buyers** to ensure that they have the business skills, technical knowledge and procedural understanding needed to comply with the rules, and ensure high levels of innovation and sustainability and the best value for money, including in terms of social responsibility;

3.1.4 **guidance on boosting innovation through the procurement of goods and services.**

4. **General comments**

4.1 The Committee welcomes the new public procurement package and would underline the points it made previously on the need to promote "quality and innovation in public procurement, reducing unnecessary bureaucracy, including environmental and social aspects, protecting jobs and working conditions as well as persons with disabilities and other disadvantaged groups", and encouraging, alongside the most economically advantageous tender, the possibility in the case of intellectual services of a single tender, considered the best, even if not cheaper.

4.2 The use of environmental and social criteria would "encourage smarter and more efficient public procurement, highlighting the need for greater professionalisation, increasing the participation of SMEs, including social economy enterprises, combating favouritism, fraud and corruption, and promoting European cross-border contracts in public procurement"⁴.

4.3 The Committee would particularly stress the importance of making smart use of public procurement to help tackle global challenges such as climate change, resource scarcity and the ageing society. This approach supports social policies, accelerates the transition to more sustainable and competitive supply chains and business models and can facilitate SMEs' access to procurement opportunities.

4.4 The EESC considers it important to foster, on a voluntary basis, an increasingly open attitude among the Member States towards:

- ensuring a wider uptake of strategic public procurement, with voluntary ex ante assessment mechanisms for large-scale infrastructure projects;
- developing the systematic exchange of best practice in strategic procurement; and
- promoting up-to-date guidance on green, social and innovative procurement.

4.5 The EESC believes it is essential to strive for a high degree of professionalism within contracting authorities – with certification of mandatory minimum requirements – and equip them with a common European framework for technical and IT expertise that would enable a common approach throughout the European internal market on the basis of a single centre of expertise and an interactive database.

⁴ [OJ C 191, 29.6.2012, p. 84.](#)

- 4.5.1 Given the huge importance that social and environmental considerations have acquired in public procurement and the value, as well as the guarantee, that compliance with these aspects can entail for the achievement of the objectives of social inclusion and social and environmental sustainability, the EESC proposes and recommends that all training programmes aimed at increasing the professionalism of staff involved in public procurement include specific content on social and environmental legislation and, in particular, on the social and environmental aspects provided for in the legislation on public procurement.
- 4.5.2 The inclusion of those aspects responds to the new challenges of making full use of the potential to make a strategic contribution to cross-cutting policy objectives and societal values such as innovation, social inclusion and economic and environmental sustainability.
- 4.5.3 The EESC therefore points to the need to ensure strict compliance with such measures, where they are binding, and to promote a wider uptake of these measures where they are optional for contracting authorities. The EESC strongly calls for a campaign promoting the inclusion of technical and regulatory standards – in the environmental (ISO 14000) and social (ISO 26000, SA8000:2014, eight ILO Core Conventions, ILO Convention 155 (Occupational Safety and Health), ILO Conventions 131, 1, and 102) fields and in the management and production field (UNI 11648:2016 on project managers and ISO 9000 on production quality). In the application of these standards and the technical specifications of new-generation calls for tender, substantial support must be given to SMEs and social economy enterprises, so as to prevent their exclusion and alleviate their costs.
- 4.5.4 The integration of innovation criteria requires – especially in large-scale infrastructure projects – a common strategic vision to purchase products on the basis of both cost-effectiveness quality-based criteria and the most economically advantageous tenders, taking an approach which may include social, environmental and other criteria such as those regarding the circular economy.
- 4.5.5 Similarly, given that the Member States make very little use of the possibilities offered by public contracts to establish social criteria and measures as strategic instruments to promote sustainable social policy objectives, the Committee proposes and recommends vigorously promoting the inclusion and use of such social criteria and measures supported by EU public procurement law.
- 4.5.6 The Committee particularly welcomes the efforts to increase access to public procurement markets for SMEs and social economy enterprises and points out that there are still many obstacles to their participation.
- 4.5.7 The EESC believes that more emphasis should be placed on removing these barriers, including by strengthening the remedy system. In this respect, it would be useful and necessary to encourage and empower chambers and/or professional bodies to resolve collective disputes involving smaller companies.
- 4.5.8 A public electronic register of contracts should be established, inter alia to widen out the potential pool of interested companies and to better assess the efficiency and integrity of the procurement process.

- 4.5.9 It would also be important to launch pilot projects to boost the participation of SMEs through business intermediaries and innovation brokers, as well as EU pilot training projects for professionalising European SMEs aimed at improving the language and procedural skills of small companies in central purchasing bodies.
- 4.6 The EESC strongly supports the promotion of joint cross-border public procurement, particularly for innovative projects and transnational infrastructure networks. The participation of small businesses here should be boosted through business intermediaries and innovation brokers, and high levels of quality should be required in subcontracting, though this should only be used to a limited extent.
- 4.7 The Committee stresses the importance of strong EU action to improve access to third-country public procurement markets on the basis of reciprocity and on an equal footing with domestic companies, including for businesses in the accession countries and the partner countries of the EU's neighbourhood policy; it advocates appropriate clauses to this end in bilateral and multilateral free trade agreements.
- 4.8 The EESC is in favour of establishing a publicly accessible EU register of contracts, which would be fully interoperable with national registers, in order to increase transparency with regard to contracts awarded and modifications thereto, while fully safeguarding sensitive and personal data; the digital transformation should be harnessed here, with the introduction in 2018 of mandatory e-procurement.
- 4.9 The Committee reiterates the importance of structured dialogue with civil society on the basis of the availability of open and transparent data in order to create better analytics for needs-driven policy-making and warning systems to signal and tackle corruption, including through better use of project financing.
- 4.10 A user-friendly information exchange mechanism should be developed as a knowledge management tool to be used by national authorities and contracting authorities for sharing best practices, mutual learning from experiences and creating an EU platform on various aspects related to the projects.
- 4.10.1 Training of contracting authority members should be markedly increased.

5. The partnership between the European Commission, national and regional authorities and businesses: the ex ante mechanism

- 5.1 The EESC feels that the new ex ante mechanism proposed by the Commission may constitute a useful tool if it is kept flexible and voluntary and if it allows for its three components to be used in isolation:
- a helpdesk;
 - a notification mechanism for infrastructure projects with a value exceeding EUR 500 million; and

- an information exchange mechanism.

These components must be easy to use, and it must be possible to use them independently for each project, with due regard to the confidentiality requirements.

- 5.2 The EESC deems it important that the standard notification form remain simple and streamlined and that the electronic procedure ensure the confidentiality of sensitive information.
- 5.3 The EESC believes that the helpdesk system should be structured in the form of a network of sub-helpdesks at national/regional level to ensure that the assistance is provided locally, building on networks such as BC-Net and Solvit.
- 5.4 The information exchange mechanism should provide an interactive database that is user-friendly and designed on the basis of user needs, with a special steering and oversight committee comprising representatives of the contracting authorities and Member States' businesses.
- 5.5 With regard to the ex ante assessment mechanism, the Committee stresses the need to make it attractive by means of a certificate of conformity, which would result from the Commission's assessment.

6. An architecture for the professionalisation of public procurement

- 6.1 The EESC can fully support the Commission's recommendation to the Member States. However, to provide an effective, consistent framework for the professionalisation of public procurement, it would have preferred the Commission adopt a directive rather than a simple non-binding recommendation.
- 6.2 To ensure that these recommendations are properly followed up, the Committee would advocate the following:
 - 6.2.1 a pilot joint-training initiative to develop the professionalism of the various public and private players involved in the procurement process, starting with the cross-border players, not least to establish the capabilities and skills that every public procurement professional should possess;
 - 6.2.2 mandate CEN-CENELEC-ETSI to develop technical and regulatory standards for digitising procurement to ensure transparency, accessibility and full interoperability;
 - 6.2.3 rapidly roll out pilot projects to boost the participation of SMEs and social economy enterprises through business intermediaries and innovation brokers;
 - 6.2.4 give procurement practitioners access to the Justice programme 2014-2020 as regards the judicial training aspect, including language training on legal terminology, with a view to fostering a common legal and judicial culture in procurement and mutual learning;

- 6.2.5 incorporate joint professionalisation measures within the programming strands of the Structural Funds, in particular the Social Fund, for procurement practitioners at national, regional and local levels;
 - 6.2.6 launch 300 EU scholarships for relevant courses in the European Institute of Public Administration in Maastricht and in the Academy of European Law in Trier;
 - 6.2.7 adoption of a code of procurement ethics by procurement practitioners at EU level as part of a dialogue with civil society, with the aim, inter alia, of ensuring compliance with high social and environmental standards.
- 6.3 The EESC would like to see consideration given to an additional single set of rules for large trans-European procurement, which contracting authorities would be free to adopt as a "28th system", with equal conditions and procedures throughout the single market.

Brussels, 14 February 2018

Georges Dassis

The president of the European Economic and Social Committee
