

EUROPEAN ECONOMIC AREA  
STANDING COMMITTEE  
OF THE EFTA STATES

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Brussels

**WORKING GROUP ON PUBLIC PROCUREMENT**

**Comments by the EFTA Working Group on the Commission Green Paper  
“Public Procurement in the European Union: Exploring the way forward”**

**I INTRODUCTION**

1. The EFTA/EEA States welcome the Commission’s Green Paper “Public Procurement in the European Union: Exploring the way forward”. In our opinion the Green Paper provides a good basis for much needed discussion on the application and practical functioning of the legislative framework in the public procurement field. It is recalled that the objective of the public procurement policy in the European Economic Area (EEA) is to achieve fair and open competition for public contracts in order to allow suppliers to obtain the full benefits from the single market and contracting authorities to choose from a more competitive and wider range of bids.

2. As an introductory remark we would like to mention a particular concern of the EFTA/EEA States, which relates to the apparent lack of knowledge about the EEA Agreement in the EU Member Countries. In the field of public procurement this leads to additional difficulties for suppliers originating in the EFTA/EEA States. Therefore, we would like to stress the applicability of the EEA Agreement and request the Commission to include this fact in their general information activity on public procurement matters.

3. Both Norway and Iceland have transposed the directives on public procurement in a faithful manner taking due account of the need to secure transparency. Furthermore, both of these countries have placed emphasis on the proper application of the directives to achieve the objectives. Indeed, both countries have experienced economic improvements in the procurement undertaken by the entities covered by the directives. National competition has increased and prices have, in general, been reduced. Furthermore, they have experienced a growing awareness with regard to public procurement in the local and regional governments<sup>1</sup>. With regard to Liechtenstein, the directives only became binding as of 1 January 1996, and therefore experience is limited.

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<sup>1</sup> With regard to Norway this has been documented in a report from NORUT Samfunnsforskning in 1996 “Offentlige anskaffelser på anbud - virkninger og erfaringer med EØS-regelverket for offentlige anskaffelser.

4. Consequently, taking account of the efforts undertaken by both Norway and Iceland to comply fully with the directives on public procurement, the EFTA/EEA countries would like to stress the importance of full compliance with the rules by all parties to the EEA Agreement to avoid distortion of competition in this field.

5. The EFTA/EEA States' comments on the content of the Green Paper are given below. In addition, national comments from the EFTA/EEA countries are enclosed.

## **II APPLICATION OF THE PUBLIC PROCUREMENT RULES**

6. The EFTA/EEA States would, as a general observation, stress that the Green Paper should be regarded as a point of departure in identifying obstacles to the proper functioning of public procurement in the EEA and that more evaluation efforts are needed. The public procurement regime in the EEA faces a dynamic reality, and as a consequence, needs to be kept under constant evaluation.

7. The EFTA/EEA States agree that the legal framework for public procurement in the EEA should as a general rule remain unchanged to ensure legal stability. However, this general principle should not preclude the possibility of making changes in order that it is adapted to the changing environment. For instance, the EFTA/EEA countries are of the opinion that the legal framework could be reviewed to allow for simplifications and clarifications. However, such amendments must not lead to less transparency and increased possibilities to distort competition. Furthermore, in a longer perspective, consolidation and harmonisation of the directives should be considered. In the present situation, there are inexplicable differences between the directives which cause problems when transposing them into national law.

8. The EFTA/EEA countries often encounter questions regarding the understanding of the provisions of the directives. Therefore, the EFTA/EEA countries would like the Commission to use more resources on clarifying and disseminating information about such issues.

9. Efficient surveillance and enforcement is necessary for the functioning of the public procurement markets. Therefore, it is important that the remedies directives be properly transposed and efficiently applied. The threat incurred by procuring entities of being sued for damages by bidders who claim that they have been discriminated against, must be real enough to dissuade them from distorting competition. It is evident that the reaction of suppliers provides the best guarantees that the contracting entities practise open and competitive tendering. The introduction of an independent supervisory authority in the EU Member States and in the EFTA/EEA States could possibly lead to a more effective enforcement of the rules, but it is the EFTA/EEA States' opinion that such a measure must be left to the countries themselves to decide in line with the principle of subsidiarity. Furthermore, the EFTA/EEA States believe that the Treaty of the European Community and the EEA Agreement give the Commission and ESA sufficient power to carry out their surveillance tasks with regard to public procurement.

### **III IMPROVING THE ACCESS TO PUBLIC PROCUREMENT**

10. With regard to improving the access to public procurement, the EFTA/EEA States believe that several measures are needed. Better information is perhaps the most efficient tool to make purchasers comply with the directives. In this respect, it is of particular importance for the EFTA/EEA countries that the EU countries are made aware of the fact that suppliers originating in the EFTA/EEA countries compete on an equal footing with their European counterparts. There is a need for written guidelines (Vademecum) that could give assistance in the application of the public procurement rules. Such guidelines would be most helpful in the day-to-day work with public procurement, both within the national governments, the contracting entities and the suppliers. Furthermore, it would be useful to have an easily accessible compilation of the court rulings which have a bearing on public procurement.

11. Training and information are measures that have been used extensively in Norway and Iceland to improve the competence of persons responsible for procurement in contracting entities. The supply side has also benefited from such measures. This activity has proved useful and efficient and the EFTA/EEA States believe that there is need for an intensified effort in this field. Without a proper understanding of the objective of the directives by the persons responsible for this activity, there will always be room for misunderstandings and motivational problems. This can result in a lack of motivation and understanding which eventually can lead to a negative attitude towards the public procurement rules.

12. The EFTA/EEA States would like to stress the importance of using electronic means to improve the accessibility of the public procurement markets. We support the Commission's work in this field and, in particular, we find the development of the pilot projects under SIMAP of interest. In the longer term, the EFTA/EEA States would like to see a fully developed electronic tendering system which is easily accessible and user friendly. The present situation which is characterised by a substantial daily volume of the Supplement of the Official Journal (over 300 pages) is making life difficult for potential tenderers. However, the Tenders Electronic Daily (TED) database is a useful tool which to some extent relieves the situation. To make full use of the electronic means, the EFTA/EEA States would like to stress the importance of the Common Procurement Vocabulary (CPV) which will improve the efficiency of publishing the notices, improve the transparency of the notices and thereby the access to the market. Therefore, the CPV should be made obligatory as soon as its coverage is sufficient with regard to services and the quality and level of detail is acceptable.

13. The development and use of European standards and technical specifications are also important. One of the major impediments against cross-border trade is the use of national standards and technical specifications and the lack of mutual recognition. Unfortunately, the development of new European standards is only progressing slowly due to a heavy workload in the European Standardisation bodies (CEN, CENELEC, ETSI). Furthermore, the development of national standards is still significant within the parties to the EEA Agreement. Therefore, the situation in this field is at present unacceptable, and increased efforts to speed up the work at European level are needed.

#### **IV PUBLIC PROCUREMENT AND OTHER COMMUNITY POLICIES**

14. With regard to the use of public procurement to promote other Community policies, the EFTA/EEA States would like support measures which could improve the access of Small and Medium sized Enterprises (SMEs) to public markets. In particular, the EFTA/EEA States consider that increased access for these enterprises could be achieved by, i.a.:

- simplification of the forms which are used for notifications,
- improving the access to TED by making it available on the Internet and,
- focusing on the importance of the Periodic Indicative Notices (PINs) which make information available at an early stage. This will increase the SMEs possibility to enter into strategic alliances/partnerships to meet the demand of the contracting entities.

15. Furthermore, the EFTA/EEA States would support increased consideration of environmental issues in public procurement. Public authorities are increasingly taking into account environmental considerations when procuring. Therefore, more effort should be devoted to the issue of clarifying the possibility to take environmental considerations into account in public procurement without distorting competition. Consequently, the EFTA/EEA States would support the preparation of a Communication by the Commission on this particular issue.

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