



EUROPEAN PARLIAMENT

2009 - 2014

Plenary sitting

A7-9999/2011

5.10.2011

REPORT

on modernisation of public procurement
(2011/2048(INI))

Committee on the Internal Market and Consumer Protection

Rapporteur: Heide Rühle

CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION	3
EXPLANATORY STATEMENT.....	15
OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE	19
OPINION OF THE COMMITTEE ON BUDGETARY CONTROL.....	24
OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS.....	28
OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY	33
OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY	38
OPINION OF THE COMMITTEE ON REGIONAL DEVELOPMENT	43

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on modernisation of public procurement (2011/2048(INI))

The European Parliament,

- having regard to Directives 2004/18/EC and 2004/17/EC on procedures for the award of public contracts¹ and Directive 2007/66/EC on review procedures concerning the award of public contracts²,
- having regard to Council Decision 2010/48 on the Conclusion of the United Nations Convention on the Rights of Persons with Disabilities³, which entered into force on 22 January 2011 and which identifies public procurement directives as ‘Community acts which refer to matters governed by the Convention’,
- having regard to the WTO Agreement on Government Procurement of 15 April 1994,
- having regard to the Charter of Fundamental Rights of the European Union and especially Article 26 thereof (integration of persons with disabilities),
- having regard to its resolution of 12 May 2011 on equal access to public sector markets in the EU and in third countries⁴,
- having regard to the Commission Green Paper on the modernisation of EU public procurement policy (COM(2011)0015),
- having regard to the Commission Green Paper on expanding the use of e-procurement in the EU (COM(2010)0571),
- having regard to its resolution of 6 April 2011 on a single market for enterprises and growth⁵,
- having regard to its resolution of 18 May 2010 on new developments in public procurement⁶,
- having regard to its resolution of 3 February 2009 entitled ‘Pre-commercial procurement: driving innovation to ensure sustainable high-quality public services in Europe’⁷,
- having regard to the Commission Communication ‘Smart Regulation in the European Union’ (COM(2010)0543),
- having regard to the Commission Communication ‘Towards a Single Market Act. For a

¹ OJ L 134, 30.4.2004, p. 1.

² OJ L 335, 20.12.2007, p. 31.

³ OJ L 23, 27.1.2010, p. 35.

⁴ Texts adopted, P7_TA(2011)0233.

⁵ Texts adopted, P7_TA(2011)0146.

⁶ Texts adopted, P7_TA(2010)0173.

⁷ OJ C 67E, 18.3.2010, p. 10.

highly competitive social market economy. 50 proposals for improving our work, business and exchanges with one another' (COM(2010)0608),

- having regard to Professor Mario Monti's report of 9 May 2010 on 'A new strategy for the single market',
 - having regard to Commission staff working document SEC(2010)1214,
 - having regard to the report on 'Evaluation of SMEs' access to public procurement markets in the EU'¹,
 - having regard to the Commission Communication 'Public procurement for a better environment' (COM(2008)0400),
 - having regard to the Commission Communication 'Think Small First – a “Small Business Act” for Europe' (COM(2008)0394),
 - having regard to the Commission Communication 'Europe 2020 Flagship Initiative. Innovation Union' (COM(2010)0546),
 - having regard to the opinion of the Committee of the Regions of 11-12 May 2011 on the Green Paper on 'The modernisation of EU public procurement policy – towards a more efficient European market',
 - having regard to the opinion of the European Economic and Social Committee of 13 July 2011 on the Green Paper on 'The modernisation of EU public procurement policy – towards a more efficient European market',
 - having regard to the opinion of the European Economic and Social Committee of 13 July 2011 on the Green Paper on expanding the use of e-procurement in the EU,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on International Trade, the Committee on Budgetary Control, the Committee on Employment and Social Affairs, the Committee on Environment, Public Health and Food Safety, the Committee on Industry, Research and Energy and the Committee on Regional Development (A7-0000/2011),
- A. whereas a properly functioning EU public procurement market is a key driver of growth and a cornerstone of the single market, and is, furthermore, fundamental to stimulating competition and innovation and to addressing fast-emerging environmental and social public-policy challenges, as well as quality-of-work issues including adequate pay, equality, social cohesion and inclusion, while achieving optimal value for citizens, businesses and taxpayers;
- B. whereas European public procurement rules have contributed substantially to increased transparency and equal treatment, to combating corruption and to professionalising the

¹ http://ec.europa.eu/enterprise/policies/sme/business-environment/files/smes_access_to_public_procurement_final_report_2010_en.pdf

procurement process;

- C. whereas the current economic climate makes it more important than ever to ensure optimal efficiency in public spending, whilst limiting costs borne by businesses as much as possible, and a better functioning procurement market would help achieve these two objectives;
1. Welcomes the Commission Green Paper and the broad consultation process as a starting point for the revision of the Public Procurement Directives, in compliance with the provisions of the Treaty of Lisbon and the case-law of the European Court of Justice (ECJ), and in line with the revised state aid rules;
 2. Points out that, although the revision of the EU procurement directives in 2004 led to useful further development of the single market for public procurement, there is a need – some years after the transposition of Directives 2004/17 and 2004/18 into national law – to assess whether optimisation and clarification of the directives will be necessary in order to address shortcomings that have become evident in practice; emphasises that many stakeholders see public procurement rules as highly complex, leading to costly and burdensome administrative compliance procedures; deplores the frequent cases of inadequate transposition of the rules into national legislation, and the insufficiency of training measures; calls on the Commission to propose a significant simplification and consolidation of the rules, while further clarifying them where necessary; stresses furthermore that the increased use of ICT must now play a major role in reducing administration and costs, and that the various European initiatives on e-procurement and e-commerce should accordingly be aligned with the reform of the procurement rules;
 3. Calls for an explicit statement in the directives that they do not prevent any country from complying with ILO Convention C94; calls on the Commission to encourage all Member States to comply with that Convention; stresses that the effective functioning of sustainable public procurement requires clear and unambiguous EU rules precisely defining the framework of Member States' legislation and implementation;

First task: improving legal clarity

4. Asks for clarification of the scope of the directives; notes that the main purpose of public procurement is the purchase of goods, works and services by public authorities to accommodate the needs of their citizens and ensure effective use of public funds; points out that there must be a direct benefit for the contracting authority in order for a procedure to qualify as public procurement;
5. Calls for clarification of the definitions in the directives – for example the definition of a 'body governed by public law' – in line with the case-law of the ECJ and without reducing the scope of EU public procurement rules;
6. Recalls its resolution of May 2010 on recent developments in public procurement, which took note of the ECJ case-law and took the view that public-public cooperation was not subject to public procurement rules as long as the following criteria were met: that the purpose of the partnership was the provision of a public-service task conferred on all the public authorities concerned; that the task was carried out solely by the public authorities

concerned, i.e. without the involvement of private capital; and the activity involved was essentially performed on behalf of the public authorities concerned; underlines the fact that transferring tasks between public sector organisations is a matter for the Member States' internal administrative organisation and is not subject to procurement rules; takes the view that these clarifications should be codified in the procurement directives;

7. Emphasises the exclusion of service concessions from the scope of European procurement rules; reiterates that due account must be taken both of the complexity of the procedures and of the differences between Member States in terms of legal culture and practice with regard to service concessions; takes the view that the process of defining the term 'service concession' and establishing the legal framework governing such concessions has evolved as a result of the 2004 public procurement directives and the CJEU's supplementary case-law; insists that any proposal for a legal act dealing with service concessions would be justified only with a view to remedying distortions in the functioning of the internal market; points out that such distortions have not hitherto been identified, and that a legal act on service concessions is therefore unnecessary if it is not geared to an identifiable improvement in the functioning of the internal market;
8. Emphasises that the current classification of A and B service categories should be maintained in so far as 'lighter' provisions for B services have their justification in the characteristics of that category as mainly locally or regionally provided services; calls on the Commission to develop tools that make it easier for local and regional authorities to decide to which category specific contract tasks belong;
9. Observes, in this context, that the application of procurement law to the provision of personal social services is often not the best way of ensuring optimum results for the users of the services in question; calls for recognition under European law of tried and tested Member State procedures based on the principle that all providers able to comply with the conditions previously laid down by law should, irrespective of their legal form, be permitted to provide services, provided that account is taken of the general principles of equal treatment, transparency and non-discrimination;
10. Emphasises that the introduction of new rules for public procurement markets below the EU thresholds should be avoided, as it may jeopardise legal certainty established at national level;
11. Calls on the Commission to align the Remedies Directive with the new public procurement framework which will emerge following the current review, and to carry out this exercise in parallel to the main legislative proposal, in order to ensure consistency;
12. Stresses the Commission's responsibility for monitoring the correct transposition of EU directives in the Member States;

Second task: developing the full potential of public procurement – best value for money

13. Takes the view that, in order to develop the full potential of public procurement, the criterion of lowest price should no longer be the determining one for the award of contracts, and that it should, in general, be replaced by the criterion of most economically advantageous tender, in terms of economic, social and environmental benefits – taking

into account the entire life-cycle costs of the relevant goods, services or works; stresses that this would not exclude the lowest price as a decisive criterion in the case of highly standardised goods or services; asks the Commission to develop, in close cooperation with the Member States, a methodology for the calculation of life-cycle costs on a broad and non-obligatory basis; stresses that supporting the criterion of 'maximum economic benefit' would foster innovation and efforts to achieve the best quality and value, i.e. to comply with the requirements of the Europe 2020 strategy; stresses that this is particularly relevant in relation to public procurement of goods that have an impact on consumers' health – in the food sector, for example – where quality and production methods play an important role; emphasises that public procurement rules should be flexible enough to ensure that passive consumers, for example in hospitals, care facilities for the elderly, schools and kindergartens, have equal access to healthy, value-for-money food, rather than merely the cheapest available option;

14. Recognises that public procurement, if used effectively, could be a real driver in promoting quality jobs, wages and conditions as well as equality, in developing skills and training, in promoting environmental policies, and in providing incentives for research and innovation; calls on the Commission to encourage governments and contracting authorities to increase the use of sustainable public procurement, supporting and promoting high-quality employment and providing quality services and goods in Europe; invites the Commission to scrutinise how public procurement has contributed to achieving the EU's wider goals and to outline what should be done to improve these objectives in the future;
15. Recalls that pre-commercial procurement is an underused tool, which can drive innovation in public procurement and make a significant contribution to identifying and establishing lead markets and improving SME access to public procurement; considers furthermore that the proposed model of risk and benefit (IPR) sharing in pre-commercial procurement requires both legal clarification and simplification in order to enable regular and effective use of this tool by procurement practitioners; accordingly, calls on the Commission to propose an adaptation of the relevant procurement or state aid rules as part of the overall revision exercise, in order to boost the take-up of pre-commercial procurement;
16. Notes the importance of standards for public procurement, in that they can help public procurers to meet their policy objectives in an effective and transparent way; calls, in that regard, for the development of a regularly updated database of standards, especially in relation to environmental and social criteria, to be made available to public authorities, in order to ensure that procurers, when drawing up tenders, have access to appropriate guidance and a clear set of rules so that they can easily verify their compliance with relevant standards;
17. Calls for increased reliance on non-discriminatory and open standards in public procurement, in the interests of the simplification and innovation objectives, particularly in the areas of accessibility, ICT, and the environment;
18. Underlines the fact that whether or not a product or service has been sustainably produced is rightly considered to be a characteristic of the product, which can be used as a criterion for comparison with products or services that have not been sustainably produced, so as to enable contracting authorities to control the environmental and social impact of contracts

awarded by them in a transparent way but at the same time not to weaken the necessary link to the subject matter of the contract; points out the need to clarify the scope for including requirements relating to the production process in the technical specifications for all types of contract, where relevant and proportionate; points to the Wienstrom case, which has become the classic example of how and why production characteristics can be categorised as technical specifications;

19. Underlines the need to strengthen the sustainability dimension of public procurement by allowing it to be integrated at each stage of the procurement process (i.e. ability test, technical specifications, contract performance clauses);
20. Points out that, in response to increased awareness of the environmental and climate impact of goods, works and services, procurement authorities should include environmental costs in their assessment of the 'most economically advantageous offer' and their calculation of life-cycle costs; stresses in this connection that, if criteria which are not procurement-related are taken into account, this should be done on a voluntary basis and the decision to use such criteria must be reserved for the public authorities, or the decision-making bodies behind them which possess direct democratic legitimacy, following an individual policy-making procedure on the spot; urges the Commission to clarify the concepts of 'local supplier' and 'locally produced';
21. Notes that the text of the directives needs to be more specific in terms of improving access for people with disabilities;
22. Considers that the current provisions on subcontracting should be strengthened, as the use of several levels of subcontracting can cause problems in terms of compliance with collective agreements, working conditions and health and safety standards; suggests therefore that the public authorities be informed of all details relating to the use of subcontractors before a contract is concluded; asks the Commission to assess, with an eye to the future review of the directives, whether further rules on the award of subcontracts are needed, for example on the establishment of a chain of responsibility, specifically to avoid SME subcontractors being subject to conditions worse than those applicable to the main contractor awarded the public contract;
23. Recognises the role the EU can play in facilitating the development of successful public-private partnerships (PPPs) by promoting fair competition and sharing best practice across Member States in relation to social and employment policies; notes, however, that major disparities exist between Member States in terms of the legal and procedural requirements applying in this area; calls, accordingly, on the Commission to clarify the concept of PPPs, in particular as regards how the parties will bear shared risks and meet their financial obligations;
24. Calls on the Commission to reassess the appropriate level of thresholds for supply and services contracts, and if necessary raise them, so as facilitate access to public procurement by, amongst others, not-for-profit and social-economy operators and SMEs; asks that very careful consideration be given to the legally binding requirements of the WTO Agreement on Government Procurement; emphasises that, given the difficulties which already exist in negotiations on the issue of access to public procurement, it should also be borne in mind that raising thresholds in Europe could easily lead to further complications for EU trade policy; considers further that aligning these thresholds to the

already harmonised thresholds of the Utilities Contracts (2004/17/EC) and Defence Procurement (2009/81/EC) Directives would deliver the highest level of simplification and clarity for contracting authorities and suppliers alike;

25. Emphasises that any extension of the EU procurement rules into the area of ‘what to buy’ would represent a significant change to the current regime and should be carefully assessed; doubts that this would contribute to simplifying and streamlining, and fears rather that it would lead to more complicated rules, with many exemptions, which would be difficult to administer in practice – procurement directives being procedural (‘how to buy’) guidelines that should not be supplemented with provisions on ‘what to buy’;

Third task: simplifying the rules and allowing more flexible procedures

26. Points out that the directives are often perceived as too detailed and that they have become increasingly technical and complex, while at the same time the legal risk of non-compliance has increased considerably for contracting authorities and suppliers alike; notes that the fear of challenge leads to a risk-averse approach, which stifles innovation and sustainable development, resulting far too often in contracting authorities opting for the cheapest price rather than the best value; asks for more space for negotiation and communication, combined with measures to assure transparency and to prevent abuse and discrimination, and urges that market consultation be explicitly allowed as a possible first step;
27. Notes that public procurement policy should, in the first instance, ensure the effective use of funds by the Member States, achieve optimum results in terms of public procurement through the application of clear, transparent and flexible procedures, and allow European businesses to compete on an equal footing throughout the Union;
28. Advocates, when European public procurement law is being revised, clear, simple and flexible rules, reducing the level of detail and making procurement procedures simpler, less cumbersome, cheaper, more open to SMEs and more conducive to investment; sees a need, therefore, for greater reliance on the general principles of transparency, equal treatment and non-discrimination; considers that simplification of the rules on public procurement would make it possible to reduce the risk of error and to pay greater heed to the needs of small contracting authorities;
29. Advocates assessing whether wider use of the negotiated procedure with prior EU-wide publication might be allowed, beyond that provided for in the current directives, so that contracting authorities and economic operators can communicate better, and supply and demand can be coordinated effectively; takes the view that, if any extension of the scope of the negotiated procedure is envisaged, further safeguards against abuse should be introduced – e.g. an obligation on contracting authorities to establish, for any bidder at the outset, at least some minimum conditions regarding the performance of the procedure, in line with what is sound practice in private procurement – as well as requirements for written documentation;
30. Calls on the Commission to review the current approaches to the qualification of suppliers (particularly framework agreements, dynamic purchasing systems and the use of qualification systems by utilities procurers), so that any new approaches to qualification

reduce costs and timescales, are attractive for both contracting authorities and economic operators and lead to the best possible outcomes;

31. Reiterates its insistence on the systematic admission of alternative bids (or variants), as they are crucial to promoting and disseminating innovative solutions; stresses that specifications referring to performance and functional requirements and the express admission of variants give tenderers the opportunity to propose innovative solutions, particularly in highly innovative sectors such as ICT; asks also that all avenues – both legislative and non-legislative – be explored to ensure that public procurement is more engaged in promoting innovation in Europe;
32. Calls on the Commission to introduce clarifications into the regulatory framework on public procurement, particularly in relation to the contract execution phase (e.g. on ‘substantial modification’ of a contract in force, on changes concerning the contractor and on the termination of contracts);
33. Considers it regrettable that tenderers have only limited opportunities to rectify omissions in their bids; asks the Commission, therefore, to elaborate on what omissions may be rectified by bidders, what additional adjustments are allowed and how to guarantee transparency and equal treatment;
34. Points out the contracting authorities should be able to benefit from previous experience with a tenderer on the basis of an official evaluation report; recommends setting a time limit for exclusions, which should guarantee transparency and objectivity; points out the need for legislative clarification in Directives 2004/17/EC and 2004/18/EC stating that a bidder found guilty of a misconduct in a previous procurement procedure can regain reliability after having substantially proved that he has undergone an effective ‘self-cleaning’ procedure; considers that such a clarification would foster anti-corruption mechanisms by underpinning incentives to accelerate the elimination of corrupt practices, and would remove serious legal uncertainties;
35. Regrets the Green Paper’s failure to mention shortcomings, the lack of expertise and knowledge about procurement and the inadequacy of public procurement strategies; stresses the importance of promoting professionalism and guaranteeing objectivity on the part of both contracting authorities and market operators, particularly by supporting the development of targeted training programmes; recommends setting up a network of centres of excellence within the existing national frameworks, and promoting exchanges of information and good practices between Member States; also encourages umbrella organisations, at both national and EU level, to take shared responsibility for making relevant information available and to facilitate exchanges of information between their members throughout Europe; stresses the importance of clear and readily comprehensible manuals for both contracting authorities and tenderers; finds it regrettable that the documents ‘Buying green! A handbook on environmental public procurement’ and ‘Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement’, published in 2005 and 2010 respectively, are not sufficiently useful in this respect;
36. Observes that only 1.4% of contracts are awarded to undertakings from another Member State; stresses that professionalisation and better training of those who award contracts, and of tenderers, would foster EU-wide competition and exploit more fully the advantages

of an internal market for public contracts;

Fourth task: improving access for SMEs

37. Emphasises that ready access to public procurement for SMEs, which are the driving force of the European economy, is crucial to maintaining employment and to sustainable development, innovation and growth; stresses that simplifying the procedures and administrative formalities, as well as creating SME-friendly strategies and implementing the code of good practice, will facilitate SMEs' access to public contracts and enable them to participate on a more equal and fairer footing; believes that providing simplified, equal and fair access to public procurement for all economic operators would result in a better use of taxpayers' money; points out that SMEs do not generally have significant specialised administrative capacity, and that it is thus essential to minimise the administrative burden imposed on them;
38. Points out that selection criteria on financial standing, e.g. in relation to company turnover, should be proportional to the character of a given contract; warns the Commission and the Member States, when adopting flexible and user-friendly instruments, not to create any new barriers for SMEs and to take account of their interests as a matter of priority; asks the Commission, with the aim of improving access to public procurement procedures and improving their transparency, particularly for the benefit of smaller contracting authorities and tenderers, to modernise the Tenders Electronic Daily (TED) website to make it more accessible by improving its appeal and user-friendliness, with particular attention to search criteria and the quality and detail of the summary translations for each tender; recommends that TED should offer an alert service for users, to inform them when new tenders of interest are published;
39. Asks the Commission to secure the inclusion in the Government Procurement Agreement of a clause allowing the EU to give preference to European producers, especially SMEs, in the award of certain public procurement contracts, along the lines of such clauses already applied by other states parties to that agreement;
40. Asks the Commission to increase awareness of the importance of splitting contracts into lots, and to consider the implementation of the 'apply or explain' principle, whereby rules on matters such as division into lots must be complied with, or the failure to comply explained;
41. Points out that contracting authorities should take greater advantage of the possibilities of dividing public contracts into lots, thus giving SMEs a better chance, in qualitative and quantitative terms, of participating in public procurement, and improving the level of competition; encourages SMEs to make use of joint procurement and contract pooling, which would allow them to make economies of scale in areas such as logistics and transport; encourages public authorities to be flexible when considering these modern and voluntary forms of arrangement; calls on the Commission to investigate all the possibilities for encouraging the temporary or permanent grouping of SMEs and small businesses in order to enable them to take part in invitations to tender that are not split into lots, without having to operate as subcontractors; asks the Commission, in this regard, to examine in particular the current practice of subcontracting to SMEs – often on conditions inferior to those applicable to the main contractor – of parts of contracts not split into lots,

which are too big to enable SMEs to participate in the procurement procedure;

42. Proposes that self-declarations be allowed where feasible, and that original documents be requested only from the shortlisted candidates or the successful tenderer, whilst avoiding any delays or market distortions caused by incorrect declarations; asks the Commission to promote the option of an 'electronic procurement passport' accepted by all Member States and proving that the economic operator fulfils the conditions required under EU legislation on public contracts; underlines the point that a European pre-qualification system should be a helpful instrument if it is kept simple, cheap and easily accessible for SMEs;

Fifth task: ensuring sound procedures and avoiding unfair advantages

43. Calls on the Commission, with a view to fighting corruption in public procurement, to promote more efficient reporting practices, including exchanges of information between Member States on the exclusion of unsound bidders; invites the Commission to provide for clear rules on protection of whistleblowers, following the recommendations in Resolution 1729(2010) of the Parliamentary Assembly of the Council of Europe¹, to enhance the transparency of contracts funded with EU money and to promote educational action both at institutional level and among the general public;
44. Notes that certain Member States already apply efficient public procurement award procedures that ensure transparency and the proper use of taxpayers' money; asks the Commission to study Member States' good practices in this field and identify the most effective principles for public procurement in the EU;
45. Points out that combating corruption and favouritism is one objective of the directives; underlines the fact that Member States face different challenges in this area and that a more elaborate European approach carries the risk of undermining efforts to streamline and simplify the rules, and of creating new bureaucracy; points out that the principles of transparency and competition are key in combating corruption; asks for a common approach on 'self-cleaning' measures to avoid market distortion and ensure legal certainty for economic operators and contracting authorities alike;
46. Takes the view that, since public contracts concern public funds, they should be transparent and open to public scrutiny; asks the Commission for clarification with a view to ensuring legal certainty for local and other public authorities and enabling them to inform citizens of their contractual obligations;
47. Calls on the Commission to assess the problems associated with exceptionally low bids and to propose appropriate solutions; recommends that contracting authorities provide, in the event of abnormally low bids being received, for early and sufficient information to other bidders, in order to allow them to assess whether there is ground for initiating a review procedure; asks for greater consistency between the EU's common external trade policy and the practices in Member States where exceptionally low bids are accepted;

Sixth task: expanding the use of e-procurement

¹ Resolution 1729(2010) of the Parliamentary Assembly of the Council of Europe on the protection of whistleblowers, text adopted 29 April 2010.

48. Welcomes the Commission Green Paper on expanding the use of e-procurement; points out that the e-procurement action plan has failed to achieve its goal and that more political leadership at all levels of government – including EU level – is needed in order to maintain and accelerate the transition to e-procurement; wants to ensure that at least 50% of both the EU institutions' and the Member States' public procurement operations are carried out electronically, in line with the commitment made by the Member State governments at the ministerial conference on e-government in Manchester in 2005;
49. Underlines the fact that the Commission has a unique role to play in promoting progress on standardisation and infrastructure issues – e-signatures and time-stamps, for example, need a commonly agreed format for security purposes; asks the Commission to develop the common standards in question; emphasises that onerous technical requirements for bidder authentication can act as barriers to operators; stresses, in this context, the need to develop a standardised system for e-signature; calls on the Member States to make available a validation service for certificates issued by certification service providers under their supervision;
50. Underlines the fact that, to ensure interoperability of different systems and avoid vendor lock-in, open standards and technology neutrality must be observed; asks the Commission to assure real interoperability between the different e-procurement platforms that already exist in Member States, making more use of results obtained by EU initiatives such as PEPPOL and e-CERTIS;
51. Points out that any legislative proposals to expand and simplify the use of e-procurement should be integrated into the review of the main public procurement directives and should be in line with the scope and with general public procurement rules such as obligations linked to thresholds;
52. Underlines the point that e-procurement can drive simplification of the entire procurement process, introducing efficiencies that will lead to significant cost and time savings for both businesses and public administrations, and increasing transparency and accessibility; notes that the electronic awarding of contracts, in particular, opens up new avenues for modernising administration in the field of public contracts; reiterates that e-procurement should be less costly, more expedient and more transparent than conventional public procurement procedures; believes, however, that there is still room for improvement and that more should be done in terms of access to reliable, comparable and objective information and statistical data; calls on the Commission and the Member States to encourage cross-border use of e-procurement;
53. Points out that legislation is not the only key to promoting change; asks the Commission, therefore, to explore new ways to exchange experiences, share best practices and transfer knowledge across borders among local and regional actors; highlights the strong need to further enhance the capacity and understanding of staff dealing with e-procurement and – through national and/or EU incentives to secure a 'level playing field' between SMEs and large enterprises – to assist SMEs in building their knowledge and capacity; welcomes the Connecting Europe Facility as a new instrument to boost cross border e-procurement, thus allowing the digital single market to develop;
54. Welcomes the announcement in the Commission's 'eGovernment Action Plan 2011-2015' that the *epractice.eu* platform is to be developed into an effective tool for the exchange of

experience and information among Member States and e-government practitioners, and urges that its scope be extended to local and regional practitioners;

55. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

This year marks the 40th anniversary of European public procurement law. The entry into force on 26 July 1971 of Council Directive 71/305/EEC concerning the coordination of procedures for the award of public works contracts is an event seldom recalled. The Commission Green Paper on the modernisation of EU public procurement policy mentions the directive only once. Nonetheless, the anniversary offers an occasion for taking stock and examining where European public procurement policy has succeeded and where it has failed.

On the plus side: European public procurement law has been crucial in making public procurement more transparent and in combating corruption and nepotism; it has encouraged greater professionalism on the part of public contracting authorities; and it has been a contributory factor in reducing prices – although in this respect one of its negative effects is also apparent. The complaint has been aired in numerous studies and opinions that prices have fallen at the expense of quality and innovation, as well as the sustainability of products and services – too little account having been taken of their entire life-cycle costs.

By contrast, other costs have risen: a disproportionate emphasis on legal considerations has led to increased transaction costs, with considerable expense incurred for external consultancy services. Another unintended consequence has been to reinforce the tendency among public contracting authorities, where any legal uncertainty is present, to rely on bureaucratic procedures, with the result that they have avoided risks and, when in doubt, have awarded contracts to the tenderers offering the cheapest products or services rather than the most innovative or simply the best. This is a particularly problematic development in times of economic crisis when public budgets are squeezed.

If the Commission intends, by means of this revision, to make European public procurement law simpler and more flexible, that is to be welcomed. It is clear from the Green Paper, however, that there are certain contradictions in its approach. On the one hand, the range and detail of the 114 questions give the impression that the aim is to introduce micro-regulation of public procurement. On the other hand, many of the questions – and the suggestions put forward – are contradictory. For example, imposing quotas or binding targets could be at odds with the stated aim of simplifying public procurement procedures and creating greater legal certainty: it could have the effect of encouraging further red tape as well as legalisation in the negative sense of that term.

The rapporteur's position is that any revision of the public procurement directives should proceed from the recognition that there is now considerable experience with EU public procurement law in Europe: whereas, in the early days, strictly formalised procedures were necessary in order to bring a certain degree of professionalism to public procurement practice and to accustom the contracting authorities to the principles of transparency, non-discrimination and competition, these things are nowadays common practice. What is required today is a slimming-down of public procurement law to refocus it on the core task of guaranteeing transparency and non-discrimination and safeguarding competition.

Legal clarity and certainty

Obviously the revision must be conducted with care: tried and tested practice – including not only the division of the relevant provisions into two directives and the distinctions between service, works and supply contracts but also the classification into A and B services – should not be called into question. The predominantly local nature of the B services justifies the existence of special provisions in their regard. There are, however, grey areas in relation to various types of financial service, and clearer provision is needed, too, with regard to the classification of emergency services.

There are numerous other legal grey areas that have repeatedly been the subject of complaints and litigation. Public procurement is a field particularly rife with litigation, and the revision should, inter alia, help to dismantle the existing ‘litigation culture’ and to create greater legal certainty. Only in this way can the potential of public procurement be more effectively and straightforwardly harnessed to promote the innovative and sustainable economic development that is so particularly important in times of economic crisis, with high levels of national debt.

For example, with regard to the directives’ scope, it should be made clear that the field to which they apply is that of public procurement – a concept defined, according to the most recent ECJ rulings, by the existence of a direct benefit to the contracting authority; that public-public cooperation as defined by the ECJ is not subject to public procurement rules; and that service concessions also fall outside their scope.

Should the Commission propose separate legislation for service concessions, such legislation should, in accordance with the most recent ECJ case-law, be confined to the bare essentials; its field of application should be defined in a manner consistent with the Services Directive; and it should be considered by Parliament alongside the revision of the public procurement directives, in order to avoid any further fragmentation of the law and to ensure consistency. Clarification with regard to legal certainty for public-private partnerships is a further matter that should be dealt with as part of the same process.

Innovation and sustainable procurement

The rapporteur warmly welcomes the Commission’s efforts to involve public contracting authorities more effectively in the pursuit of general social aims, but points out that the public procurement directives themselves are the main impediment here. Given the major economic problems that public contracting authorities face, there will be little change so long as the criterion of the lowest price carries the same weight in the directives as that of the most economically advantageous tender. Change will come about only if it is stipulated that contracts are to be awarded to the most economically advantageous tender (for example, using the ‘apply or explain’ principle) and if the criteria for selecting what is most economically advantageous are made easier to implement.

Procurement should therefore be geared to the criterion of the most economically advantageous tender, taking into account the entire life-cycle costs of the relevant goods, works or services, and the Commission is specifically asked in this regard to develop a methodology for working out life-cycle costs – one that is wider-ranging than the current energy-efficiency-focused methodology, and addresses all sustainability issues.

It ought to be made clear, too, that there is a place in technical specifications for criteria based on sustainable and ethically responsible production. There is no legal basis for excluding such

criteria: in fact, in the *Wienstrom*¹ case, the ECJ ruling made clear that, in the context of sustainable procurement, production processes are of critical importance.

Any revision should also clarify those issues in relation to which a one-sided interpretation of public procurement law may be at odds with the general social aims set out in both the EU Treaties and the Europe 2020 strategy. It should examine, for example, whether a public contracting authority (such as a hospital) buying in food products may opt to use regional produce to minimise its environmental footprint.

Simplifying the rules and allowing more flexible procedures

Simplifying the European public procurement rules and improving access to flexible procedures will help to promote sustainable and innovative procurement. In this regard, the rapporteur suggests a number of possibilities, including systematic market monitoring, better use of the negotiated procedure with prior announcement and additional complementary measures to improve transparency, and the systematic admission of alternative bids, with bids being considered particularly from a sustainable development standpoint. The option of reference to performance and functional requirements, as opposed to detailed technical specifications, is more likely to lead to innovative and environment friendly procurement outcomes. It must be made easier to adjust tender documents or correct mistakes in them – subject, of course, to appropriate safeguards to ensure that procedures are transparent and properly supervised.

Furthermore, the revision must include discussion about adjustment of the threshold values. Many of the opinions received refer to this question, which is, in any case, a subject of much controversy, and it would be useful to organise an additional hearing to consider it.

These matters notwithstanding, the rapporteur also makes the point that the legal side of public procurement should not be overestimated. The Commission also needs to offer more support on the practical side: e.g. by organising exchanges of experience, developing procedures and methods of proven worth and supporting training programmes in the Member States. The training in question should not only be directed at local contracting authorities but should also involve political decision makers and other stakeholders, notably NGOs that provide social services. There is scope here to benefit from experience in France where such a model is being tried out.

Access for small and medium-sized undertakings (SMEs)

The rapporteur highlighted the importance of this issue in the report she produced last year on ‘new developments in public procurement’, in which she also recommended various tools for improving SME access. There are many hurdles for SMEs in accessing public contracts: inter alia, the implementation of the Small Business Act is unsatisfactory in many Member States.

The rapporteur therefore proposes a number of measures. Some of these aim to reduce SMEs’ transaction costs: under the ‘once only’ principle, for example, at the end of the contract award process, original documents would be required only from successful tenderers; another such step would be to develop a standardised ‘procurement passport’ in the form of an

¹ ECJ, Case C-448/01, *EVN AG and Wienstrom GmbH v. Republic of Austria*, 4 December 2003, European Court Reports (2003) I-14527.

electronic registration system storing relevant certification documents. Such systems already exist in certain Member States.

On another front, the practice of splitting contracts into lots should be more strongly encouraged and more loudly demanded: the ‘apply or explain’ procedure could be implemented here and could further transparency.

The position of SMEs would also be strengthened by putting the focus on the most economically advantageous tender, by greater acceptance of alternative bids, by increased use of the negotiated procedure and, in general, by simplification of the public procurement rules and steps to make them more flexible.

e-procurement

Regrettably, the action plan to develop electronic procurement throughout Europe has not achieved its target. Fifty percent of contract award procedures were to have been conducted electronically by 2010, but current rates of recourse to e-procurement are barely 5%. Only a few countries – Portugal, for example – have been successful in this respect. The rapporteur therefore welcomes the Green Paper on expanding the use of e-procurement, and calls on the Commission to assume more political responsibility in this area and to incorporate the provisions needed for the development of e-procurement in the EU into the revision of the public procurement directives.

1.9.2011

OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE

for the Committee on the Internal Market and Consumer Protection

on modernisation of public procurement
(2011/2048(INI))

Draftsman of the opinion: Kader Arif

SUGGESTIONS

The Committee on International Trade calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Calls for the States Parties to the Agreement on Government Procurement (GPA) to conclude the reform of that agreement as rapidly as possible to encourage greater fairness and transparency at international level by combating corruption more effectively while respecting the multi-functional nature of procurement policies; calls on those States to keep their reservations – be they territorial or sector-specific – within reasonable bounds when ratifying the future agreement; regrets, however, that none of the major emerging economies is yet a signatory of the GPA; calls on those countries to participate in the current revision process and afterwards to swiftly conclude and ratify the future agreement;
2. Stresses the need to turn the EU's trade policy into a genuine vehicle for sustainable development and the creation of more and better jobs; calls on the Commission to pursue a trade policy consistent with a strong, job-creating industrial policy; maintains that the EU's trading partners have to be subject to rules and ensure that these are complied with, given that failure in that regard would constitute a violation of international obligations and severely impair the operation of the single market;
3. Recalls that the GPA, which must continue to be the principal instrument for the regulation of public procurement at international level, provides for special and differential treatment for developing countries; calls for the Commission to observe that principle in its bilateral relations with those countries;
4. Stresses that, in a context of increased international competition, European undertakings

stand out through their capacity for innovation, the high technology they develop and the quality of the social and environmental standards they apply; calls for the Commission to encourage the recognition within the GPA not just of the price criterion, but of additional criteria related to the subject matter in the award of public procurement contracts, in particular as regards the ability to improve safety at work; calls on the Commission to apply additional criteria of that kind when negotiating free trade agreements with non-GPA countries, taking into account the level of development of the other parties concerned when selecting and defining those criteria; considers that better rules on public procurement would make for the creation of more high quality jobs, support for European industrial policy and the promotion of sustainable environmental and social development;

5. Calls on the Commission to broaden European directives to incorporate the provisions set out in ILO Convention 94 (the Labour Clauses (Public Contracts) Convention), the object of which is to promote socially responsible public procurement by requiring tenderers and contractors to match pay rates and other working conditions in force at local level, as laid down by collective agreements or national legislation;
6. Stresses that public procurement is a suitable economic policy instrument to achieve short-, medium- and long-term goals pertaining to ecologically sustainable development and can also promote high social standards globally; calls on the Commission to make provision in trade agreements for targeted incentives to businesses in order to make public procurement more socially and environmentally friendly and conducive to innovation;
7. Points out to the Commission that, although Directives 2004/17/EC and 2004/18/EC provide a certain leeway for the inclusion of social, environmental and sustainability standards as long as they are directly related to the contract, modernisation of the present legislation should strive to expand this leeway and reduce limitations in order to better utilise possible public procurement synergies to achieve objectives in other relevant policy areas;
8. Points out the need to increase the effectiveness of public spending as regards its positive influence on the social and ecological engagement of national and international enterprises and to seize the opportunity to make European and global trade more socially minded and environmentally sound through responsible procurement;
9. Points out that employment, decent work, adherence to labour laws and social rules, accessibility, fair trade, respect for human rights and social commitment can be influenced and promoted by companies if they offer high standards when responding to calls for bids in public procurement; calls on the Commission, therefore, to consider and introduce the appropriate legislative space through the modernisation of public procurement agreements;
10. Asks the Commission to secure the inclusion in the GPA of a clause allowing the EU to give preference to European producers, especially SMEs, in the award of certain public procurement contracts along the lines of such clauses already applied by other States Parties to that agreement;
11. Considers that the existing regulations on public contracts are too complex and may be practically infeasible for smaller clients and SMEs, thus constituting a non-tariff barrier to trade; calls on the Commission, therefore, to adapt to the needs of small clients and those

of SMEs in its proposed legislation on the modernisation of public procurement in order to increase their participation in public procurement and international trade; hopes also that the administrative procedure will be simplified through the use of information technologies, especially in the form of online open tendering procedures; urges the Commission to consider the social value of SMEs in the modernisation of public procurement and to adopt specific measures to promote their participation in public procurement and to strengthen their competitive position;

12. Urges the Commission to simplify Directives 2004/17/EC and 2004/18/EC, to streamline the procurement process, to reduce the level of detail of the regulations and to reduce administrative burdens, thereby improving the business environment for European clients and enterprises and for EU trading partners, guaranteeing fair competition and increasing the efficiency and effectiveness of European public procurement; therefore emphasises the need to improve the business environment for SMEs by adapting thresholds, reducing the administrative burden and increasing the scope for action;
13. Considers it essential to have a clear picture of the foreign undertakings operating on European soil, especially when their activities enjoy strong State support from abroad; is concerned about the possible circumvention of internal market rules by foreign undertakings establishing a subsidiary in the EU or acquiring European undertakings; therefore calls for the Commission to set up a body responsible for conducting advance reviews of foreign investments along the lines of the CFIUS in the US;
14. Considers that the European market cannot on a unilateral basis be open to third-country operators and calls for the Commission to come forward with proposals for an effective instrument on the one hand to encourage compliance with the principle of greater reciprocity vis-à-vis States – members of the GPA or otherwise – which do not at present provide equivalent access to European operators and, on the other hand, to guarantee fair competition and a level playing field worldwide;
15. Calls on the Commission to take a firmer line in bilateral negotiations with industrialised countries in order to secure better market access and greater reciprocity where public procurement is concerned; maintains that real market access should not be restricted by non-tariff barriers, and calls on the Commission to pay particular heed to that point when conducting negotiations at international level;
16. Points out that public procurement chapters in EU trade agreements constitute internationally binding agreements and calls on the Commission, therefore, to ensure that the content of these chapters does not contradict current efforts to modernise public procurement legislation in the European Union, including the revision of thresholds for calls for tender;
17. Believes that advancing the interests of EU businesses abroad requires judicious selection of policy instruments and objectives and that, in the context of difficult economic times, any moves towards protectionism are unlikely to help Europe's economic recovery;
18. Considers that where offences have been committed by the Mafia or other organised criminals, conviction by a judgment having the force of res judicata in one Member State should constitute grounds for excluding the European or non-European firms implicated from opening tendering procedures in all EU Member States;

19. Considers, given that large businesses, their subsidiaries, and their supply chains play a key role in international trade, that corporate social and environmental responsibility should become an aspect to be taken into account in the EU's trade agreements;

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	31.8.2011
Result of final vote	+: 23 -: 2 0: 2
Members present for the final vote	William (The Earl of) Dartmouth, Kader Arif, David Campbell Bannerman, Daniel Caspary, Yannick Jadot, Metin Kazak, Bernd Lange, David Martin, Vital Moreira, Paul Murphy, Franck Proust, Godelieve Quisthoudt-Rowohl, Niccolò Rinaldi, Helmut Scholz, Peter Šťastný, Robert Sturdy, Gianluca Susta, Keith Taylor, Paweł Zalewski
Substitute(s) present for the final vote	Catherine Bearder, George Sabin Cutaş, Mário David, Albert Deß, Salvatore Iacolino, Maria Eleni Koppa, Elisabeth Köstinger, Marietje Schaake
Substitute(s) under Rule 187(2) present for the final vote	Roger Helmer, Patrice Tirolien

14.7.2011

OPINION OF THE COMMITTEE ON BUDGETARY CONTROL

for the Committee on the Internal Market and Consumer Protection

on modernisation of public procurement
(2011/2048(INI))

Rapporteur: Bart Staes

SUGGESTIONS

The Committee on Budgetary Control calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Stresses that, in the context of spending EU funds, correct application of procurement rules in the Member States is of primary importance for the protection of EU taxpayers' interest; recalls that public expenditure on works, goods and services accounts for roughly 19 % of EU GDP (2009) and almost a fifth of this expenditure falls within the scope of the EU directives on public procurement (approximately EUR 420 billion or 3.6 % of EU GDP), as stated in the 2011 Communication from the Commission on Fighting corruption in the EU¹; recalls that, according to the European Court of Auditors², the non-respect of public procurement rules alone accounts for 43 % of all quantifiable errors and accounts for approximately three quarters of the estimated error rate in cohesion spending;
2. Calls on the Commission to carry out the necessary analysis of rules stemming from EU case law in order to clarify the legal framework and give more legal security to all parties;
3. Urges the Commission to propose adequate rules to prevent corruption and favouritism without delay and to establish a level playing field for all participants in procurement procedures; calls on the Commission to introduce common definitions of 'conflict of

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, 'Fighting Corruption in the EU' (COM(2011) 308).

² Annual Report of the Court of Auditors on the implementation of the budget concerning the financial year 2009, together with the institutions' replies, OJ C 303, 9.11.2010, p 1.

interest' and 'grave professional misconduct' in public procurement and to take all necessary measures in order to preclude corruption by bid rigging;

4. Stresses that public procurement reform should result in more efficient public spending, ensure public funds are used efficiently and optimise procurement results, by applying clear, transparent and flexible procedures that will allow bidders throughout the European Union to compete on an equal footing;
5. Calls on the Commission, with a view to fighting corruption in public procurement, to promote more efficient reporting practices, including exchanges of information between Member States on the exclusion of unsound bidders; invites the Commission to provide for clear rules on protection of whistleblowers, following the recommendations in Resolution 1729(2010) of the Parliamentary Assembly of the Council of Europe¹, to enhance the transparency of contracts funded with EU money and to promote educational actions both at institutional and general public level;
6. Stresses the importance of education for the contracting authorities and of information dissemination campaigns in the area of applicable public procurement rules as an important tool in ensuring informed participation in procedures and avoiding errors; suggests setting up a central helpdesk in each Member State that would pay particular attention to SMEs;
7. Calls on the Commission to introduce clarifications into the regulatory framework on public procurement, particularly regarding the contract execution phase (e.g. on 'substantial modification' of a contract in force, on changes concerning the contractor and on the termination of contracts);
8. Calls on the Commission to promote sustainable public procurement contracts that comply with social, environmental and fair trade criteria by obliging the Member States to include relevant requirements to that effect in contract documents;
9. Notes that e-procurement improves accessibility, transparency, efficiency and competitiveness; calls on the Commission and the Member States to encourage cross-border use of e-procurement;
10. Notes that certain Member States already apply efficient public procurement award procedures that ensure transparency and the proper use of taxpayers' money; asks the Commission to study Member States' good practices in this field and identify the most effective principles for public procurement in the EU;
11. Invites the Commission to review the existing qualitative selection criteria by adding to the balance sheets, as proof of the economic operator's economic and financial standing, cashflow statements, which represent a viable feature of financial soundness.
12. Calls the Commission to put forward ways of simplifying the procurement process and reducing the administrative burden on bidders in order to improve SMEs' chances of accessing public contracts, as emphasised in Parliament's report on the Small Business Act (2008/2237(INI)); stresses that this will also reduce the risk of administrative errors;

¹ Resolution 1729(2010) of the Parliamentary Assembly of the Council of Europe on the protection of whistleblowers, text adopted 29 April 2010.

suggests working with a central or regional register or passport in order to reduce the administrative burden for SMEs caused by the requirements at the selection stage;

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	13.7.2011
Result of final vote	+: 23 -: 0 0: 0
Members present for the final vote	Jean-Pierre Audy, Inés Ayala Sender, Zigmantas Balčytis, Andrea Cozzolino, Tamás Deutsch, Martin Ehrenhauser, Jens Geier, Gerben-Jan Gerbrandy, Ingeborg Gräßle, Iliana Ivanova, Bogusław Liberadzki, Monica Luisa Macovei, Aldo Patriciello, Crescenzo Rivellini, Paul Rübig, Theodoros Skylakakis, Bart Staes, Søren Bo Søndergaard
Substitute(s) present for the final vote	Thijs Berman, Zuzana Brzobohatá, Derk Jan Eppink, Christofer Fjellner, Marian-Jean Marinescu, Jan Mulder

18.7.2011

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on the Internal Market and Consumer Protection

on modernisation of public procurement
(2011/2048(INI))

Rapporteur: Julie Girling

SUGGESTIONS

The Committee on Employment and Social Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Notes that public procurement accounts for approximately 17 % of the EU's GDP and is a key market-based instrument geared to the needs of society which, in addition to meeting other objectives, can play a role in fostering sustainable employment, working conditions, innovation particularly for businesses, above all SMEs, promoting social inclusion, and addressing the employment needs of vulnerable and disadvantaged social groups, and can make an important contribution towards meeting the EU 2020 targets; stresses, furthermore, the important role that public procurement can play in promoting a European social model based on quality jobs, equal opportunities, non-discrimination and social inclusion; emphasises, at the same time, that the application of procurement law to the provision of personal social services is often not the best way of ensuring optimum results for the users of the services in question;
2. Points out that current EU procurement law already allows for social aspects to be taken into account when public contracts are awarded; notes, however, that the practical application of the provisions in question needs to be clarified;
3. Supports maintaining the current classification of A- and B-service categories, the latter for subject matters with no cross-border competition or of a nature that makes EU public procurement inappropriate, for example health care and social services;
4. Recognises that public authorities spend over 16% of Europe's GDP and therefore must be encouraged to provide a stronger commitment in driving solutions for social innovation and employment market opportunities with this spend, in particular by delivering more

efficient public services;

5. Supports the encouragement of social procurement within the field of goods, e.g. by using fair trade criteria;
6. Recognises the significance of the Government Procurement Agreement (GPA), which might limit the scope of any legislative adjustments at EU level, as a number of procedural requirements originate directly from GPA, but stresses that public procurement rules are, in certain areas, even more restrictive than under GPA; calls on the Commission, whilst observing the relevant principles in force (competition, transparency, non-discrimination, efficiency), to seek more simplicity and flexibility in the rules so as to facilitate and foster social procurement;
7. Stresses that advances in EU public procurement legislation could help better define certain basic concepts and notions so as to provide the awarding authorities, companies and, therefore, workers with greater legal certainty;
8. Calls on the Commission formally to recognise other modalities for the selection of providers, such as 'in-house' and 'service concession' methods, and explicitly to accord equal value to all options for the contracting and financing of social services of general interest (SSGI);
9. Insists that the directive should encourage and explicitly allow contracting authorities to refer to horizontal policy objectives;
10. Recognises that contracting authorities have an important role in using their purchasing power to procure goods and services with higher 'societal' value; underlines that social procurement can make an important contribution to the achievement of the EU 2020 targets and that it should be promoted in accordance with the principles of competition, transparency, non-discrimination and cost-effectiveness, and respecting the needs of SMEs; calls, accordingly, on contracting authorities to assess the social risks and the impact of their own activities and of the supply chain; calls on the Commission to foster the development of contact points for environmentally responsible public procurement within the individual Member States, with a view to developing socially responsible procurement practices and providing stakeholders with specialised legal advice;
11. Underlines that any revision of the Directives must reflect the provisions of the Lisbon Treaty, in terms of commitments to full employment, a social market economy, and the responsibilities relating to quality public services and the freedom of public authorities and Member States to decide on the financing, organisation and delivery of public services;
12. Calls on the Commission to encourage contracting authorities and relevant agencies at national level to involve socio-economic and voluntary organisations more closely in the initial design of procurement procedures, with a view to ensuring that greater account is taken of societal issues during the process of drawing up tender documents;
13. Stresses the importance of closer cooperation and better communication between all stakeholders, with a view to promoting responsible and socially sustainable cooperation between purchasers and suppliers; calls on the Commission to step up information and

communication campaigns on the benefits afforded by socially responsible procurement through the dissemination of good practice across the Member States;

14. Underlines the importance of training the staff of contracting authorities and individual operators, on the one hand, and including skills and training requirements, such as apprenticeship, traineeships and adult learning schemes, in contracting specifications as a long-term strategy, on the other; stresses, however, that these latter actions must be directly linked to the subject matter of the contract and be proportionate and economically advantageous;
15. Notes that the text of the directives needs to be more specific in terms of improving access for persons with disabilities;
16. Notes that SMEs, which, according to estimates, are awarded between 31 % and 38 % of all public contracts in terms of value, are the backbone of the EU economy and have a huge potential for job creation, growth and innovation and that greater access to procurement markets can assist SMEs in unlocking this potential through, for example, less stringent requirements, reducing administrative burdens and offering greater technical and legal advice during the drafting of tenders; urges Member States, therefore, to take more action to encourage compliance with the European Code of Best Practices, which endeavours to ensure fair competition and proper accessibility for SMEs; urges the Commission to assess the need, as a matter of urgency, for legislative measures at European level to ensure that contracting authorities make the most of the economic and innovative potential of SMEs;
17. Stresses that the European public procurement market is more open than the markets of the EU's international partners and that, as a result, European companies cannot compete with third-country companies on a level playing field and continue to have difficulties in gaining access to third-country markets; calls on the Commission to ensure reciprocity in the opening of markets and access to public procurement contracts, both in Europe and elsewhere, in accordance with agreements between the EU and third countries;
18. Recognises the valuable role of e-procurement in reducing administrative burdens such as transaction costs particularly for SMEs; stresses, in this context, that the use of e-procurement should be further stimulated and that entrepreneurs and employees receive the relevant training;
19. Underlines, in particular, the fact that a change in procurement practices should seek to simplify procurement rules, make them more flexible and minimise the requirements companies must meet to take part in procurement procedures, so as to facilitate economically and socially innovative public procurement with a view to promoting innovation and creating better job opportunities; stresses that, under existing EU procurement legislation, suitable instruments for that purpose are already available (performance requirements and the principle of Most Economically Advantageous Tender (MEAT)), calls on the Commission to keep up the pressure for instruments of this kind, such as total life-cycle cost appraisal, to be used and to look into additional possible means of promoting social innovation; stresses that the importance of social and ecological criteria in the procurement process must be considerably enhanced and that the 'lowest price' criterion must play a subordinate role in the contract award procedure;

20. Stresses that socially responsible public procurement helps to improve compliance with community values and meet community requirements because it takes account of the needs of all users, including those with disabilities and those with a different ethnic background;
21. Advocates amending the current legal framework for public procurement to reflect also the particular nature of social services;
22. Stresses the importance of ensuring that greater flexibility does not result in less accountability of both contracting authorities and tenderers with negative effects for employment opportunities;
23. Stresses that the promotion of some priorities in the area of social and employment policies by means of public procurement can increase the risk of subjective decision making and can make such decisions difficult to reverse;
24. Recognises the role the EU can play in facilitating the development of successful public-private partnerships (PPPs) by promoting fair competition and sharing best practice across Member States in relation to social and employment policies; notes, however, that major disparities exist between Member States in terms of the legal and procedural requirements applying in this area; calls, accordingly, on the Commission to clarify the concept of PPPs, in particular as regards how the parties will bear shared risks and meet their financial obligations;
25. Recognises that public procurement, if used effectively, could be a real driver to promoting quality jobs, wages and conditions, equality, developing skills, training, promoting environmental policies, and providing incentives for research and innovation;
26. Regrets that the Green Paper does not use the opportunity to assess actual implementation of Article 1(4) of Directive 96/71/EC concerning the posting of workers¹ and its impact on access to the EU procurement market by companies from non-EU countries;
27. Calls on the Commission in light of the ongoing review to publish a practical and clear user manual for contracting authorities which includes case studies of where social procurement has been successful;
28. Calls for the costs that companies incur in tendering for a public procurement contract to be minimised, with a view to making companies more competitive and boosting employment;
29. Advocates greater flexibility and rapidity in public procurement procedures in order to enable companies to be more competitive and thus create more jobs;

¹ Judgment of the Court of Justice of 3 April 2008 in Case C-346/06 [2008] ECR I-01989 (Dirk Rüffert v Land Niedersachsen).

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	13.7.2011
Result of final vote	+: 28 -: 17 0: 4
Members present for the final vote	Regina Bastos, Edit Bauer, Pervenche Berès, Mara Bizzotto, Philippe Boulland, David Casa, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Sergio Gaetano Cofferati, Frédéric Daerden, Karima Delli, Proinsias De Rossa, Frank Engel, Sari Essayah, Ilda Figueiredo, Thomas Händel, Roger Helmer, Nadja Hirsch, Stephen Hughes, Danuta Jazłowiecka, Martin Kastler, Ádám Kósa, Jean Lambert, Patrick Le Hyaric, Olle Ludvigsson, Elizabeth Lynne, Thomas Mann, Elisabeth Morin-Chartier, Csaba Öry, Siiri Oviir, Rovana Plumb, Sylvana Rapti, Licia Ronzulli, Elisabeth Schroedter, Joanna Katarzyna Skrzydlewska, Jutta Steinruck
Substitute(s) present for the final vote	Georges Bach, Raffaele Baldassarre, Jürgen Creutzmann, Kinga Göncz, Teresa Jiménez-Becerril Barrio, Evelyn Regner, Csaba Sógor, Emilie Turunen, Peter van Dalen, Cecilia Wikström
Substitute(s) under Rule 187(2) present for the final vote	Ashley Fox, Marit Paulsen

20.7.2011

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY

for the Committee on the Internal Market and Consumer Protection

on modernisation of public procurement
(2011/2048(INI))

Rapporteur: Åsa Westlund

SUGGESTIONS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

General aspects

1. Welcomes the fact that the Commission regards public procurement as an important component in the transition to a sustainable economy and achieving the targets of the EU 2020 Strategy; stresses the responsibility of Member States to ensure that public procurement policies support the work to reach these targets and welcomes the Commission's giving greater attention to the needs of small contracting authorities;
2. Notes that EU public sector consumption accounts annually for approximately 17 % of the EU's gross domestic product; reiterates the potential of the public authorities' purchasing power in promoting common goals, and underlines the importance of therefore making use of the possibility of including determinants other than price, such as environmental and social factors, in public procurement procedures; believes that harmful production and consumption patterns might be reduced through public procurement;
3. Welcomes the widespread desire of local, regional and national authorities to award contracts that support sustainable development, including resource and energy efficiency, wider use of renewable energies and combating climate change; notes that there is much evidence to show that the directive and its implementation are making this more difficult and that ambiguities in current public procurement rules have given rise to misunderstandings and differing interpretations relating to the inclusion of environmental

sustainability criteria in contracts; underlines that the EU Treaties require legislation to be designed to foster, rather than inhibit or obstruct, the ability of Member States and local and regional authorities to promote environmental protection and sustainable development objectives;

4. Maintains that the Directives should encourage and explicitly allow contracting authorities to refer to horizontal policy objectives, such as sustainable development criteria, in the subject matters of tenders;
5. Advocates the inclusion of environmental considerations, as well as other relevant aspects contributing to sustainable development, in all relevant public procurement contracts; stresses that the Public Procurement Directive should be amended to make it clearer that it is both desirable and possible for contracting authorities to:
 - impose environmental conditions in the technical specifications and take account of environmental impact at the award stage,
 - impose social standards, for example in order to promote the integration of people with disabilities into the labour market, and safety at work standards,
 - impose welfare conditions for farm animals, as well as conditions for transport of live animals where relevant,
 - stipulate that the above conditions must likewise apply to subcontracting;
6. Is of the opinion that eco-label criteria developed for services should be prioritised; stresses that, when purchasing and hiring energy-using equipment, contracting authorities should use criteria equivalent to energy and eco-label standards for quantifying the overall energy savings;
7. Notes in particular the need to clarify that it is possible to impose environmental, ecosystem, social and animal protection conditions which are stricter than the common EU rules; calls for an explicit statement in the directive that it does not prevent any country from complying with ILO Convention No 94, and stresses that effective functioning of green public procurement requires clear and unambiguous EU rules precisely defining the framework of Member States' legislation and implementation;
8. Prefers to encourage and facilitate sustainable procurement by public operators rather than setting mandatory quotas; still considers that the greatest obstacle to more environmentally friendly public procurement is not so much a lack of willingness as unawareness of the possibilities and unclear and inflexible legislation;
9. Calls on the EU institutions to use sustainability as a standard criterion in public procurement;
10. Expresses its concern at the ineffective implementation of the EU's voluntary Green Public Procurement (GPP) instrument;

Life cycle

11. Firmly believes that the directive should be amended to make it clearer that it is both

possible and desirable to take account of the environmental impact of the subject of the contract throughout its entire life cycle, including the whole production process and its conditions all through to consumption, in view of the statistics on wastage associated to upstream activities; in order to provide contracting authorities with appropriate information concerning the application of environmental and/or other sustainable aspects, the Commission should provide them with a methodology to calculate life-cycle costs;

12. Stresses that public authorities should be encouraged and advised to set environmental conditions for tenders from the outset and calls for the legislation to be amended to ensure that as a rule contracts are awarded on the basis of the most economically advantageous tender, including the entire life-cycle cost, taking into account the cost of environmental pollution where possible;
13. Stresses that taking greater account of the environment in public procurement creates much potential for savings, since it means taking greater account of the life-cycle cost;
14. Stresses how important it is for the Member States and the Commission to promote the development of international climate and environmental standards based on life-cycle thinking, thus both facilitating environmentally friendly procurement for the public sector and making it easier for businesses to compete for contracts in different countries;

Relations with business

15. Emphasises that there should be a link between environmental criteria and the subject matter of the contract so as to avoid competition distortions and legal uncertainty, which would hinder certain enterprises, namely SMEs, from participating in public procurement procedures;
16. Stresses how important it is for Member States to involve SMEs and encourage them to apply for public procurement contracts; is of the opinion that innovative SMEs are likely to come up with new ways of addressing environmental considerations in public procurement;
17. Recommends that, if the item or service which is the subject of the procurement can be obtained locally, the procedure should, in line with the principle of proximity, be opened to local enterprises (primarily SMEs), thereby also reducing the environmental burden caused by the procurement (e.g. carbon dioxide emissions);
18. Stresses that it is possible, through public procurement and by subsidising environmentally friendly logistics solutions, to reduce the number of journeys, the need for transport by car, and CO₂ emissions;
19. Considers that the heightened concern regarding the environmental and climate impacts of products and activities requires reconsideration of the possibility of favouring local suppliers; in this context, calls for re-examination of the thresholds and considers that sustainability should prevail over a narrow interpretation of internal market rules;
20. Stresses the link between environmentally friendly procurement and the promotion of innovations; stresses that this is even clearer when one combines environmental conditions in technical specifications with giving higher scores at the award stage to

tenders which meet certain cutting-edge environmental conditions and green solutions;

Procedural aspects

21. Considers post-audits and follow-ups of the fulfilment of the procurement very important; points out that contracting authorities should be able to impose penalties for failing to deliver on sustainable and/or environmental objectives in accordance with the criteria indicated in the tender, including in the case of subcontracting;
22. Firmly believes that increased use of the negotiated procedure would promote both innovation and sustainable solutions, provided that proper guarantees are in place in order to avoid any abuse;
23. Underlines the fact that whether or not a product or service has been sustainably produced is rightly considered as a characteristic of the product; points out that the scope for including requirements regarding the production process in the technical specifications for all types of contracts should be clarified in order to enable contracting authorities to control the environmental and social impact of contracts awarded by them;
24. Considers that the 'lowest price' award criterion should only be used if it can be justified on the grounds that environmental and/or other sustainability requirements are irrelevant to this specific case, or that strict environmental and/or social conditions have been imposed in the technical specifications; notes, however, that responsibility for the final decision should remain with the contracting entity;

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	13.7.2011
Result of final vote	+: 49 -: 0 0: 1
Members present for the final vote	Kriton Arsenis, Sophie Auconie, Pilar Ayuso, Paolo Bartolozzi, Sandrine Bélier, Nessa Childers, Bairbre de Brún, Esther de Lange, Anne Delvaux, Bas Eickhout, Edite Estrela, Karl-Heinz Florenz, Elisabetta Gardini, Gerben-Jan Gerbrandy, Julie Girling, Françoise Grossetête, Satu Hassi, Jolanta Emilia Hibner, Karin Kadenbach, Christa Klaß, Jo Leinen, Corinne Lepage, Peter Liese, Linda McAvan, Miroslav Ouzký, Antonyia Parvanova, Andres Perello Rodriguez, Sirpa Pietikäinen, Mario Pirillo, Pavel Poc, Vittorio Prodi, Frédérique Ries, Anna Rosbach, Dagmar Roth-Behrendt, Horst Schnellhardt, Richard Seeber, Salvatore Tatarella, Åsa Westlund, Glenis Willmott, Sabine Wils
Substitute(s) present for the final vote	Matthias Groote, Romana Jordan Cizelj, Riikka Manner, Marisa Matias, James Nicholson, Alojz Peterle, Michèle Rivasi, Crescenzo Rivellini, Giommara Uggias
Substitute(s) under Rule 187(2) present for the final vote	Lorenzo Fontana

19.7.2011

OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

for the Committee on the Internal Market and Consumer Protection

on modernisation of public procurement
(2011/2048(INI))

Rapporteur: Konrad Szymański

SUGGESTIONS

The Committee on Industry, Research and Energy calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas a well functioning procurement market is of essential importance in order to foster the single market, stimulate innovation, promote a high level of environmental and climate protection, as well as social inclusion, throughout the EU and achieve optimal value for public authorities, citizens, business and taxpayers,
 1. Appeals to the Commission to present a thorough and in-depth revision of the existing public procurement directives, which should simplify procedures, increase flexibility, transparency and legal certainty for all parties to procurement, and reduce errors in the transposition of EU law into national law as well as the risk of unfair trade practices; it should therefore avoid frequent reforms in the future, as they are the main reason for participants' facing high costs and administrative burdens, which significantly and disproportionately narrow SME access to public contracts;
 2. Calls for public procurement to be anchored in the 'think small first' principle, and appeals to Member States to implement fully the European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts; draws attention to the fact that simplification of procedures is crucial to achieving that aim; also calls on the Commission to accompany revised legislation with non-legislative initiatives such as a platform for the exchange of best practice between Member States, as some are already applying public procurement procedures which ensure effective use of taxpayers' money;
 3. Notes that the objective of this revision should be to return to the original purpose of public procurement, i.e. ensuring effective use of funds by the Member States and

competition in the market, in order to achieve optimum results; believes that criteria should be applied which are clearer, simpler and more flexible and transparent, in order to encourage SMEs to participate in public procurement; calls, furthermore, on the Commission to explore options for strengthening the dialogue between public procurers and potential bidders, thus making this part of the procurement process;

4. Urges the Commission to prioritise the de-bureaucratisation and simplification of the various procedures for public procurement, both reducing the overall number of procedures and streamlining processes in the respective procedures; believes open competitions should remain the cornerstone of public procurement but that they should be simplified, in particular by allowing greater use of functionality-based award criteria, instead of overly detailed technical specifications, thus leaving it to the potential suppliers to define the specific methods, material, technologies etc. to be used; believes, furthermore, that administrative burdens could be reduced by allowing more simultaneous assessment of selection and award criteria and by allowing flexibility with regard to shortcomings in compliance with format requirements, e.g. allowing bidders to submit missing forms at a later date; notes that SMEs in particular suffer from a lack of flexibility, being disqualified for minor and non-intentional procedural errors;
5. Calls on the Commission and the Member States to take the necessary measures, including the introduction of specific provisions in the future public procurement directive, to ensure that at least 50% of both the EU institutions' and the Member States' public procurement operations are carried out electronically, in line with the commitment made by the Member State governments at the ministerial conference on e-government in Manchester in 2005;
6. Welcomes the use of e-procurement, which will play a positive role in reducing the cost and increasing the accessibility of procurement procedures; calls, therefore, for any legislative proposals to expand and simplify the use of e-procurement to be integrated into the planned review of the main public procurement directives; underlines the importance of open standards and technology neutrality in order to ensure the interoperability of different systems and avoid vendor lock-in; calls on the Commission to ensure genuine interoperability between the various platforms for e-procurement already in place in Member States;
7. Notes that the majority of public contracts are granted to companies from the same Member States as the contracting authorities, and calls for the establishment of a truly EU-wide public procurement market;
8. Urges the Commission, furthermore, to conduct a survey across the 27 Member States to assess the rate of cross-border bids, with a view to evaluating the pertinence of current thresholds and potentially raising them to make cross-border bidding more attractive;
9. Recognises that the current distinction between A and B services is out of date, as some of the B services, e.g. water and rail transport, recruitment and security services, are clearly of cross-border interest; invites the Commission, therefore, to revise the annexes to the directives as part of its reform of public procurement rules; believes, however, that core social services should remain a B service, exempt from EU public procurement rules;
10. Emphasises that public procurement must play a key role as a driver of innovation, in

particular in the field of energy efficiency and other policy areas identified in the EU 2020 strategy, and that it can stimulate the market for sustainable products and services; supports the steps taken towards ensuring that these factors are taken into account by public authorities in their contract-awarding criteria; stresses, however, that it is important to pay due attention to the extra administrative costs this may entail for businesses and public authorities, and that it should be preceded by proper impact assessments, as well as individual SME tests, to avoid excessive red tape;

11. Notes that introducing mandatory prescriptions for innovation, or excessively detailed technical specifications on, for example, the energy performance of the subject of a public contract, carries the risk of restricting competition and limiting choice for contracting authorities;
12. Endorses the conclusions of the European Council of 4 February 2011 calling on Member States to include energy efficiency standards in public procurement as of 1 January 2012; recognises that the up-front cost of energy-efficient and sustainable products or services may initially appear to conflict with current public procurement rules concerning the use of the 'most economical price' criterion in the award of contracts, but stresses that it is offset by lower operating and maintenance or disposal costs; recommends application of the 'economically most advantageous' principle, including not only price but also quality aspects and life-cycle costs, in order to foster more innovative solutions;
13. Believes that future EU public procurement legislation should reinforce existing provisions which require the mandatory use of energy efficiency criteria when deciding on the award of a public contract, without hampering the rules on free competition; insists that such an approach will stimulate innovation and the diversification of supply;
14. Calls on the Commission to propose clear energy efficiency criteria for public procurement technical specifications;
15. Notes that any 'best available technology' (BAT) and energy efficiency requirements must be subject to a cost/benefit analysis based on depreciation;
16. Calls on the Commission to establish rules, based on existing best practice, whereby contracting authorities can measure total costs in relation to the energy-saving potential of a given product or service, i.e. by applying the 'life-cycle costs' approach when choosing the most economically advantageous bid; recommends, therefore, that the Commission follow the model of Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles, which enables public authorities to use, as an evaluation criterion in public procurement procedures, the total cost generated by vehicle use over a normal use period, rather than merely the original purchase price;
17. Welcomes the initiative taken by some Member States to support innovation through pre-commercial procurement, where contracts are offered that develop solutions to specific challenges identified by public services; notes that excessive demands and technical prescriptions in the public procurement process may produce excessive administration, thus hampering innovation; believes public procurement should focus instead on function and end results;
18. Highlights the fact that the specific issue of safeguarding equal treatment and fair

competition on public procurement markets in the EU and in third countries needs more political attention, especially in the light of current problems regarding access to public-sector markets in third countries, slow progress in negotiations on the revision of the WTO Government Procurement Agreement (GPA) and the obvious reluctance of many third countries to join the GPA;

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	12.7.2011
Result of final vote	+: 47 -: 0 0: 2
Members present for the final vote	Jean-Pierre Audy, Zigmantas Balčytis, Ivo Belet, Bendt Bendtsen, Jan Březina, Maria Da Graça Carvalho, Giles Chichester, Lena Ek, Ioan Enciu, Vicky Ford, Gaston Franco, Adam Gierek, Norbert Glante, Fiona Hall, Romana Jordan Cizelj, Krišjānis Kariņš, Lena Kolarska-Bobińska, Philippe Lamberts, Bogdan Kazimierz Marcinkiewicz, Marisa Matias, Jaroslav Paška, Miloslav Ransdorf, Vladimír Remek, Herbert Reul, Teresa Riera Madurell, Michèle Rivasi, Jens Rohde, Paul Rübig, Francisco Sosa Wagner, Konrad Szymański, Britta Thomsen, Patrizia Toia, Evžen Tošenovský, Ioannis A. Tsoukalas, Claude Turmes, Vladimir Urutchev, Kathleen Van Brempt, Alejo Vidal-Quadras, Henri Weber
Substitute(s) present for the final vote	Antonio Cancian, Rachida Dati, Francesco De Angelis, Françoise Grossetête, Cristina Gutiérrez-Cortines, Jolanta Emilia Hibner, Holger Krahmer, Bernd Lange, Mario Pirillo, Silvia-Adriana Țicău

13.7.2011

OPINION OF THE COMMITTEE ON REGIONAL DEVELOPMENT

for the Committee on the Internal Market and Consumer Protection

on modernisation of public procurement
(2011/2048(INI))

Rapporteur: Ramona Nicole Mănescu

SUGGESTIONS

The Committee on Regional Development calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Takes the view that transparent and credible public procurement practices play a particularly important role in the efficiency of public spending and also in the impact of public investment on the economy, particularly on sustainable growth and innovation; believes that price should not be, as it has been until now, a criterion influencing the quality of the services procured and points out in that connection that public procurement should not follow the lowest price principle but should take into account the sustainable and economically most advantageous tender, including life-cycle cost; calls on the Commission to examine whether the criterion of the most economically advantageous tender may be applied to certain contracts and sectors;
2. Takes the view that in order to harmonise the legal framework on public procurement, the Commission needs to propose to the Member States a single standardised model;
3. Takes the view, given that public investment is being progressively decentralised, with two thirds being carried out by sub-national governments, that local and regional contracting authorities should be given the leading role in the review of EU public procurement rules, a process which should give them increased autonomy and flexibility to procure what they consider appropriate for their needs;
4. Notes that the public procurement regime is highly complex, in particular for small local authorities and SMEs; considers that a simplified procedural framework for relatively small contract awards for smaller local and regional contracting authorities would help to

reduce administrative burdens precisely in those areas where they might be disproportionate; calls on the Commission to examine to what extent simplified procurement rules might be applied in the case of small public contracting authorities; recalls, however, that a simplified procedural framework such as this must not compromise the need for transparency and sound financial management;

5. Calls for broader access to clear information concerning EU rules on public procurement for representatives, civil servants and experts at the local, regional and national levels and for close cooperation between all these actors;
6. Recalls that SMEs have a huge potential for job creation, growth and innovation; takes the view that in order to derive maximum benefit from the economic and innovative potential of SMEs in the context of procurement procedures, SMEs should be encouraged to participate in public procurement procedures organised by local and regional authorities; believes it is desirable for tender procedures to be optimised with a view to the participation of SMEs on an equal opportunities basis, especially at the selection phase, which has proved to be marked by the greatest obstacles to their participation in public tenders, and calls therefore for additional measures to be introduced in order to foster SME participation in public procurement;
7. Considers it essential to create tools to increase cross-border cooperation at the level of public procurement, on a basis of appropriate access for SMEs to cross-border procedures with a view to maintaining employment levels and so as, for example, to increase spending efficiency in the implementation of programmes funded by cohesion policy instruments; believes that in the context of cross-border public procurement it is also necessary to clarify the aspects relating to intellectual property law;
8. Takes the view that the objective of the further development of EU procurement law must be to make procurement procedures simultaneously simpler, cheaper and more SME- and investment-friendly; observes that the revision of procedures must meet the needs of cost reduction, legal certainty and simplification of public procurement rules; takes the view that this process, together with that of harmonisation, must be based on an assessment of the impact of any changes on local and regional authorities, as well as on SMEs, in order to avoid imposing excessive burdens on the competent authorities;
9. Calls on the Commission and the Member States to conduct training and awareness-raising campaigns and to engage in consultation targeted at regional and local authorities and SMEs, and also to involve other interested parties, in order to ensure there is informed participation in public procurement and reduce the frequency of errors and to develop the required expertise among the contracting authorities of local and regional authorities in order to implement innovative procurement; recommends also that the Member States, in the context of the operational programmes for technical assistance, consider including training or exchanges of experience in the field of public procurement;
10. Calls on the Commission to promote the deployment of a credible 'procurement passport' electronic registration system, valid for a given period, which could help reduce the administrative burden for SMEs in procurement procedures;
11. Notes that cutting the cost of procedures entails reducing the strict formalisation of European procurement law in favour of greater efficiency and economy (best value for

money), and more room for manoeuvre for public contracting authorities;

12. Believes that public-private partnerships (PPPs) are vital if the EU is to make the necessary investments in certain fields; calls on the Commission to take all necessary steps to remove the obstacles and establish a consistent framework for the use of PPPs, on the basis of rules that can apply to both public procurement procedures and the Structural Funds; recommends that the Member States introduce greater flexibility into their legislative framework and ensure consistency of legislation, so that PPPs can operate with maximum efficiency;
13. Asks the Commission to investigate and effectively address the serious failures to comply with public procurement rules repeatedly identified by the Court of Auditors in the implementation of projects under the ERDF and the Cohesion Fund, which account for 43 % of all quantifiable errors according to the Court's Report for 2009 and to take account of the fact that they are due mainly to the complexity of public procurement procedures, the lack of consistency between them and those on which the use of the Structural Funds and Cohesion Fund is based and the incorrect implementation of EU legislation into national law; stresses the need for legal clarification of the directives in order to avoid further failures in applying the public procurement rules; endorses the Commission's measures aimed at cooperating with the Member States and regional and local authorities in reviewing legislation on public procurement in order to simplify it and reduce the risk of errors and ensure more efficient use of structural funds;
14. Considers that Europe's untapped potential to stimulate innovation by means of public procurement is enormous, and calls on the Commission to devise a flexible strategy to enable contracting authorities to employ innovation-friendly tendering procedures through which industry can be encouraged to find new and advanced solutions;
15. Asks the Commission to simplify the procedural framework as a whole by avoiding exceptions and derogations to be applied by contracting authorities and to clarify the uncertainties expressed by the latter on awards below the thresholds of the directives, especially by providing further guidance to help contracting authorities in assessing the existence or not of a certain cross-border interest in specific cases; believes it is necessary to strike a balance between the desire to simplify procedures and the need to ensure fair competition in public contracts and obtain the best possible results; takes the view that the threshold values for public service and supply contracts should be raised;
16. Calls on the Commission to develop a best practice guide for pre-commercial procurement, including a handbook of practical examples of how innovative procurement can be done under procurement rules, in order to help smaller local and regional authorities to understand the process and to see how it can benefit them;
17. Considers it vital for innovation and growth in Europe's regions that emphasis be placed on the role of e-public procurement, operating on a transparent basis, easily accessible to smaller local and regional applicants with a single contact point, and with the results of selection procedures published on line; calls, therefore, on the Member States to give priority to electronic forms of public procurement, in order to ensure transparent procedures;
18. Notes that public contracting authorities make insufficient use of the competitive dialogue

and dynamic purchasing systems because of the complexity involved, and consequently calls on the Commission to examine to what extent these types of procedure could be made more pragmatic and to what extent the dialogue procedure could be used not only for particularly complex contracts but also for regular procurement procedures;

19. Takes the view that, in order to avoid loss to the Community's finances arising from delays and to increase the absorption rate for the Structural Funds, it is necessary to ensure the support of public authorities in their role as contracting authorities; is in favour of the application of accelerated procedures on a larger scale, since the possibility of a shorter deadline helps to speed up the procurement procedure and make the process as a whole more flexible, in order not to jeopardise the projects;

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	12.7.2011
Result of final vote	+: 44 -: 2 0: 0
Members present for the final vote	François Alfonsi, Luís Paulo Alves, Charalampos Angourakis, Catherine Bearder, Victor Boştinaru, Zuzana Brzobohatá, John Bufton, Alain Cadec, Francesco De Angelis, Tamás Deutsch, Rosa Estaràs Ferragut, Elie Hoarau, Brice Hortefeux, Danuta Maria Hübner, Juozas Imbrasas, María Irigoyen Pérez, Seán Kelly, Mojca Kleva, Petru Constantin Luhan, Elżbieta Katarzyna Łukacijewska, Riikka Manner, Iosif Matula, Erminia Mazzoni, Miroslav Mikolášik, Lambert van Nistelrooij, Franz Obermayr, Jan Olbrycht, Markus Pieper, Monika Smolková, Georgios Stavrakakis, Nuno Teixeira, Michael Theurer, Michail Tremopoulos, Oldřich Vlasák, Kerstin Westphal, Hermann Winkler, Joachim Zeller
Substitute(s) present for the final vote	Andrea Cozzolino, Karima Delli, Ivars Godmanis, Karin Kadenbach, Marek Henryk Migalski, Vilja Savisaar-Toomast, Elisabeth Schroedter, Derek Vaughan
Substitute(s) under Rule 187(2) present for the final vote	Norica Nicolai

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	26.9.2011
Result of final vote	+: 35 -: 0 0: 0
Members present for the final vote	Pablo Arias Echeverría, Adam Bielan, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia De Campos, Jürgen Creutzmann, Cornelis de Jong, Evelyne Gebhardt, Mikael Gustafsson, Małgorzata Handzlik, Malcolm Harbour, Philippe Juvin, Sandra Kalniete, Edvard Kožušník, Kurt Lechner, Toine Manders, Phil Prendergast, Mitro Repo, Heide Rühle, Christel Schaldemose, Andreas Schwab, Emilie Turunen, Bernadette Vergnaud, Barbara Weiler
Substitute(s) present for the final vote	Pascal Canfin, Frank Engel, Marielle Gallo, Anna Hedh, María Irigoyen Pérez, Othmar Karas, Constance Le Grip, Antonyia Parvanova, Sylvana Rapti, Olle Schmidt, Kyriacos Triantaphyllides, Anja Weisgerber