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DRAFT REPORT

on new developments in public procurement
(2009/2175(INI))

Committee on the Internal Market and Consumer Protection

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on new developments in public procurement (2009/2175(INI))

The European Parliament,

- having regard to the Treaty establishing the European Community, with particular reference to the changes introduced by the Lisbon Reform Treaty,
- having regard to Directives 2004/18/EC and 2004/17/EC on procedures for the award of public contracts and Directive 2007/66/EC on review procedures concerning the award of public contracts,
- having regard to the Commission Communication of 19 November 2009 entitled 'Mobilising private and public investment for recovery and long-term structural change: developing Public-Private Partnerships' (COM(2009)0615),
- having regard to the Commission Communication of 5 May 2009 entitled 'Contributing to Sustainable Development: the role of Fair Trade and non-governmental trade-related sustainability assurance schemes' (COM(2009)0215),
- having regard to the Commission Communication of 16 July 2008 entitled 'Public procurement for a better environment' (COM(2008)0400),
- having regard to the Commission interpretative communication of 5 February 2008 on the application of Community law on Public Procurement and Concessions to Institutionalised Public-Private Partnerships (IPPP) (C(2007)6661),
- having regard to the Commission Staff Working Document entitled 'European Code of Best Practices facilitating access by SMEs to public procurement contracts' (SEC(2008)2193),
- having regard to the Commission interpretative communication of 1 August 2006 on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (OJ C 179, 1.8.2006, p. 2),
- having regard to the following judgments of the Court of Justice of the European Union (CJEU):
 - of 19 April 2007 in Case C-295/05, Tragsa,
 - of 18 December 2007 in Case C-532/03, Irish rescue services,
 - of 13 November 2008 in Case C-324/07, Coditel Brabant,
 - of 9 June 2009 in Case C-480/06, Stadtwerke Hamburg,
 - of 10 September 2009 in Case C-206/08, Eurawasser,

- of 9 October 2009 in Case C-573/07, Sea Srl,
 - of 15 October 2009 in Case C-196/08, Acoset,
 - of 15 October 2009 in Case C-275/08, Datenzentrale BW,
 - having regard to the final submission by Advocate-General Paolo Mengozzi of 17 November 2009 in Case C-451/08,
 - having regard to the following studies:
 - 'Evaluation of Public Procurement Directives Market/2004/10/D Final Report', Europe Economics of 15 September 2006,
 - 'The Institutional Impacts of EU Legislation on Local and Regional Governments, A Case Study of the 1999/31/EC Landfill Waste and 2004/18/EC Public Procurement Directives', European Institute of Public Administration (EIPA) of September 2009,
 - having regard to its resolution of 3 February 2009 on pre-commercial procurement: driving innovation to secure sustainable high-quality public services in Europe¹,
 - having regard to its resolution of 20 June 2007 on specific problems in the transposition and implementation of public procurement legislation and its relation to the Lisbon Agenda²,
 - having regard to its resolution of 26 October 2006 on public-private partnerships and Community law on public procurement and concessions³,
 - 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 and the Committee on Regional Development (A7-0000/2010),
- A. whereas the economic and financial market crisis has highlighted the vital economic importance of public procurement, and at the same time made it clear that the public authorities can perform their tasks properly in the public interest only if they can count on the requisite legal certainty in this area and if procurement procedures are not too complex,
- B. whereas the 2004 revision of the public procurement directives was intended to simplify and modernise the relevant procedures, make them more flexible and establish greater legal certainty,

¹ Texts adopted, P6_Ta(2009)0037.

² OJ C 146E, 12.6.2008, p. 227.

³ OJ C 313E, 20.12.2006, p. 447.

- C. whereas the Lisbon Reform Treaty has for the first time incorporated into European Union primary law an acknowledgement of the right to regional and local self-government, consolidated the concept of subsidiarity and granted both the national parliaments and the Committee of the Regions the right to bring actions before the CJEU,

General remarks

1. Deplores the fact that the aims of the 2004 revision of the public procurement directives have not yet been achieved; expresses the hope, however, that the most recent judgments handed down by the CJEU will help to resolve the outstanding legal issues and that the number of appeal procedures will fall;
2. Deplores, further, the fact that, in particular as a result of the plethora of soft law proposals put forward by the Commission and Commission departments and of the interpretation of the relevant legal provisions by European courts, the interaction between European, national and regional law has given rise to a complicated and confusing set of rules which is creating, in particular for smaller local authorities and for small and medium-sized undertakings, serious legal problems which they can no longer overcome without incurring substantial administrative costs or seeking external legal advice; urges the Commission to remedy this situation and, as part of the Better Lawmaking initiative, to examine the impact of soft law proposals and assess them in the light of the principles of subsidiarity and proportionality;
3. Emphasises that European initiatives in the area of public procurement must be coordinated more effectively in order not to jeopardise consistency with the public procurement directives and create legal problems for those applying the rules; calls, therefore, for compulsory coordination measures within the Commission, including a uniform Internet presence, with a view to making the relevant legal provisions more transparent and more user friendly;
4. Criticises the lack of transparency regarding the composition and results of the work of the internal Commission advisory committee on public procurement and calls on the Commission to take steps to ensure that both this committee and the planned new committee on public-private partnerships have a balanced composition and work in a transparent manner;
5. Calls on the Commission, when reviewing the public procurement directives, to take account of the opinions expressed in this report; expects that review to be carried out with the full involvement of all stakeholders, but warns that it regards a revision of the directives at this juncture as premature; when such a revision is carried out at a later date, however, advocates that it should also encompass the directive on review procedures concerning public contracts, in order to prevent any further fragmentation of public procurement law; takes the view that the practical impact of that directive cannot yet be assessed, as it has not been transposed in all the Member States;

Specific remarks

6. Points out that the Lisbon Reform Treaty, which came into force on 1 December 2009, incorporates for the first time into European Union primary law an acknowledgement of the right to regional and local self-government (Article 4(2) of the Treaty on European Union); emphasises that in several judgments the CJEU has invoked the right to local self-government and made it clear that the 'possibility for public authorities to use their own resources to perform the public-interest tasks conferred on them may be exercised in cooperation with other public authorities' (judgment in Case C-324/07); draws attention, further, to the judgment of the Grand Chamber of the CJEU of 9 June 2009 in Case C-480/06, which found, further, that Community law does not require public authorities to use any particular legal form in order to carry out jointly their public service tasks; accordingly, regards public-public partnerships, such as cooperation agreements between local authorities and national cooperation, as falling outside the scope of the public procurement directives, provided that the following criteria are all met:
 - the purpose of the partnership is the joint provision of a public-service task conferred on all local authorities,
 - the task is carried out solely by the public authorities, i.e. without the involvement of private individuals or undertakings,
 - and the activity involved is essentially performed on behalf of the public authorities concerned;
7. Points out that in its judgment of 10 September 2009 in Case C-573/07 the CJEU found that the mere possibility of the opening-up of the capital of a previously publicly-owned company to private investors may not be taken into consideration as a factor making competitive tendering a requirement unless there exists, at the time the contract is awarded, a real prospect in the short term of such an opening-up; notes that the law in this area is now sufficiently clear; calls on the Commission and the Member States to provide information about the legal implications of these judgments and expects that in future no further appeal procedures will be brought in these areas;
8. Points out that service concessions within the meaning of Article 1(3b) of Directive 2004/17/EC and Article 4 of Directive 2004/18/EC are contracts in connection with which 'the consideration for the provision of services consists either solely in the right to exploit the work or in this right together with payment'; emphasises that service concessions were excluded from the scope of the public procurement directives in order to offer contracting authorities and contractors a greater degree of flexibility; points out that in several judgments the CJEU has confirmed that service concessions are not covered by those directives, but rather by the general principles laid down in the Treaty on the Functioning of the European Union (ban on discrimination, principle of equal treatment and transparency) and that it must remain open to public contracting authorities to ensure the provision of services by way of a concession if they consider that to be the best method of providing the public service in question, even if the risk linked to such an operation is limited, but that limited risk is

transferred in full to the concession holder (judgment in Case C-206/08 of 10 September 2009, points 72-75);

9. Notes the Commission Communication of 19 November 2009 on the development of public-private partnerships and awaits the relevant impact assessment with great interest; emphasises that due account must be taken of both the complexity of the procedures and the differences in legal culture and practice between the Member States with regard to service concessions, and doubts, therefore, whether a proposal for a legal act dealing with service concessions would have any added value; takes the view that with the 2004 public procurement directives and the supplementary case-law of the CJEU the process of defining the term 'service concession' and establishing the legal framework governing such concessions has been completed;
10. Welcomes the legal clarification of the conditions under which procurement law applies to institutionalised public-private partnerships, in particular given the great importance which the Commission, in its communication of 19 November 2009, attaches to such partnerships in connection with the combating of climate change, the promotion of renewable forms of energy and sustainable transport; points out that the public procurement directives always apply if a task is to be conferred on an undertaking which is privately owned even to a very small extent; emphasises, however, that both the Commission, in its communication of 5 February 2008, and the CJEU, in its judgment of 15 October 2009 in Case C-196/08, have made it clear that no double competitive tendering procedure is required in connection with the award of contracts to and the conferral of certain tasks on newly-established public-private partnerships, but that all the following criteria must be met before a concession can be awarded without competitive tendering to a mixed public-private undertaking specially established for that purpose:
 - the private participant must be selected by means of a public procedure, following a review of the financial, technical, operational and administrative requirements and the characteristics of the tender in the light of the particular service to be provided;
 - the mixed public-private undertaking must retain the same corporate purpose throughout the duration of the concession. According to the CJEU, any material change to that corporate purpose or to the task to be performed would necessitate the launching of a new competitive tendering procedure;

takes the view, therefore, that the matter of the application of procurement law to institutionalised public-private partnerships has been settled and calls on the Commission and the Member States to issue statements to that effect;

11. Looks forward with great interest to the CJEU judgment in Case C-451/08 and hopes that it will clarify the issues still under dispute in the area of town planning; endorses the opinion delivered by the Advocate-General of the CJEU in this case on 17 November 2009 to the effect that 'the broad and ambitious aims of the directive must be borne in mind when interpreting the Directive but it should not be assumed that, by appealing to the purpose of the measure, its scope can be extended indefinitely' (point 35); otherwise there would be a danger that 'all town planning activities would be

subject to the Directive since, by definition, provisions on the possible execution of building works substantially alter the value of the land in question' (point 36);

12. Points out that it is a party to the action brought before the CJEU against the Commission interpretative communication of 1 August 2006 on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives and expects a prompt ruling;
13. Draws attention to the great importance of public procurement for climate protection, energy efficiency, the environment and innovation and reiterates that public authorities should be encouraged and put in a position to base public procurement on ecological, social and other criteria; welcomes the practical assistance given to public authorities and other public bodies in connection with sustainable procurement and urges the Commission and the Member States to organise training courses and campaigns to raise awareness of this issue; supports the idea of a transparent process, involving the Member States, to develop the relevant criteria further; points out that in the area of social criteria in particular such a process offers good prospects for improvements;
14. Calls for the development of a database so that the criteria on which the various labels are based can be used for public procurement purposes; calls on the Commission to put forward initiatives at European and international level with a view to the gradual harmonisation of labels and the criteria on which they are based; expects the Member States to be fully involved in this process; draws attention, at the same time, to the negative impact which a market fragmented by the existence of so many regional, national, European and international labels has on innovation and research;
15. Emphasises the lack of clarity in the area of socially responsible public procurement and calls on the Commission to provide assistance in the form of manuals; in that connection, draws attention to the changes in the legal framework brought about by the Lisbon Reform Treaty and the Charter of Fundamental Rights and looks to the Commission to implement the relevant provisions in an appropriate manner; emphasises the underlying problem that social criteria relate to the manufacturing process, so that their impact is generally indiscernible in the final product, and that globalised production systems and complex supply chains make compliance with the criteria difficult to monitor; expects, therefore, precise, verifiable criteria and a database containing product-specific criteria to be developed for the area of socially responsible public procurement as well; draws attention to the problems contracting authorities have, and the costs they incur, in verifying compliance with criteria and calls on the Commission to offer suitable assistance and to promote instruments which can be used to certify the reliability of supply chains;
16. Instructs its President to forward this resolution to the Council and Commission.

EXPLANATORY STATEMENT

Total annual expenditure on the public procurement of goods and services in the European Union amounts to EUR 1500 billion, or more than 16% of EU GDP¹. International public procurement accounts for a mere 3% of that figure, however. The main purpose of public procurement is the cost-effective purchase of goods and services with a view to the performance of public-service tasks.

Public authorities are not typical market participants, however; since they manage public funds they bear a particular responsibility. Wherever possible, public procurement should make a contribution to meeting the major challenges facing society: the global economic and financial crisis, climate change and the ever worsening crisis of poverty in the countries of the South.

There is no doubt that public contracting authorities are benefiting from the European internal market and its rules: larger markets create more choice, which can lead to lower costs and better quality; greater transparency helps to fight corruption and fraud; cross-border cooperation creates new possibilities for action and offers the chance of new experiences. But there are drawbacks as well: in many Member States regional and local authorities are the largest public contracting authorities and, against the background of the current economic crisis, it is precisely their experiences which are highlighting the way the European public procurement directives are reducing the scope for action and making the process of awarding contracts slower and more costly.

Contractors as well, in particular small and medium-sized undertakings, are suffering under the burden of red tape and legal uncertainty. Many studies have been drawn up showing just how costs are increasing and procedures are becoming lengthier, although they cannot be dealt with in detail in this report.

Legal uncertainties

There are various reasons for this development. The aim of the 2004 revision of the public procurement directives was to simplify and modernise the procedures for the award of public contracts and make them more flexible; that aim has not been achieved, however.

On the one hand, some provisions of the directives themselves are not sufficiently clear: political disagreements in the Council and Parliament resulted in compromises on wording, loopholes and inconsistencies in the texts.

On the other, the transposition process in the Member States proved to be a time-consuming one, the transposed versions often contained more stringent provisions, additional criteria were incorporated, whilst some provision designed to increase flexibility were left out: In short, the letter of the law changed during transposition.

Legal uncertainties have led to a plethora of appeal procedures and national and European court cases. Attempts have been made, through the case-law of the CJEU and by means of Commission soft law proposals, to close the legal loopholes, an approach which has merely added to the confusion.

¹ International Monetary Fund figures for 2006, nominal EU GDP on the basis of the October 2007 exchange rate: US\$ 14 609 840 million, even if a tiny proportion is spent on defence goods.

All this has left us with a complex set of rules which are creating serious legal problems, primarily for smaller local authorities, but also for small and medium-sized undertakings, problems which they can no longer solve without incurring additional costs or seeking external legal advice. Legal uncertainties or the threat of legal action have brought important procurement projects to a halt and there is hardly another area in which so many legal disputes have flared up. The incorrect application of the rules governing procurement is one of the most common causes of errors in the disbursement of resources under the European Structural Funds.

The main areas of legal dispute concern public-public partnerships, town planning (including the construction of social housing) and service concessions. However, there is also uncertainty surrounding public-private partnerships, the procurement of fair-trade products, the application of the public procurement directives to contracts whose value falls below the relevant thresholds and the scope for taking account of social criteria, such as equal pay, gender equality, compliance with wage agreements and the provision of jobs for the long-term unemployed and young people with poor skills or qualifications.

Inadequate coordination within the Commission

There is also a lack of coordination within the Commission. Many Commission departments have 'discovered' public procurement as a means of achieving objectives for which the European Union would otherwise lack the financial resources or the legislative competence. It of course makes sense to encourage contracting authorities to engage in ecologically and socially responsible procurement and to foster research and innovation. However, the many initiatives which have resulted do not make for legal clarity and are undermining efforts to achieve what is in itself a worthwhile objective. A plethora of soft law measures has merely added to the legal inconsistencies.

When developing soft law, the Commission should consider whether its proposals are consistent with the proportionality principle and their practical implications at local level. The most recent study produced by the European Institute of Public Administration (EIPA), 'The Institutional Impacts of EU Legislation on Local and Regional Governments, A Case Study of the 1999/31/EC Landfill Waste and 2004/18/EC Public Procurement Directives', criticises the extensive use of soft law: 'using soft law to regulate very important aspects of the Directive is another important shortcoming: it is not possible to foresee the institutional impact of soft law'. In keeping with the aims of the Better Lawmaking initiative, the impact of soft law should also be studied and the issue of compliance with the subsidiarity and proportionality principles reviewed (shortened impact assessment).

Unfortunately there has thus far been a lack of political balance to the Commission's implementation of European public procurement law. Whilst many initiatives have been taken and many manuals and guidelines are available in the area of ecologically responsible and energy-efficient procurement, the Commission's most recent communication on socially responsible procurement dates back to 2000, i.e. prior to the revision of the public procurement directives. In the legally particularly complex field of fair trade procurement, only one communication has thus far been issued, and no guidelines or manuals. This could be misconstrued as an indirect reflection of the Commission's priorities.

Your rapporteur is therefore calling for better coordination of public procurement policy among the various Commission departments involved and the development of a joint, public strategy on public procurement, including a uniform web presence, with a view to making the law more transparent.

More initiatives would also be welcome in the areas of the organisation of exchanges of

experience, the development of proven practices and methods and support for training courses in the Member States. Moreover, such training courses should not be aimed solely at local contracting authorities, but should also encompass political decision-makers and other individuals and bodies, in particular NGOs, which provide social services. Here, the experience gained with this model in France, where it is currently being tested, could prove instructive.

The report also criticises the lack of transparency regarding the composition and results of the work of the internal Commission advisory committee on public procurement and calls on the Commission to take steps to ensure that both this committee and the planned new committee on public-private partnerships have a balanced composition and work in a transparent manner;

Legal clarification by the CJEU of the situation regarding public-public partnerships

The entry into force of the Lisbon Treaty has changed the legal position, above all by strengthening the role of local and regional authorities. For the first time an acknowledgment of the 'right to regional and local self-government' has been incorporated into European Union primary law (Article 4(2) TEU):

'The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government'.

Article 1 of the new Protocol on services of general interest (No 26) likewise emphasises the following:

'the essential role and the wide discretion of national regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users'.

In a number of judgments handed down prior to the entry into force of the new Treaty the CJEU had invoked the right to local self-government and made it clear that the 'possibility for public authorities to use their own resources to perform the public-interest tasks conferred on them may be exercised in cooperation with other public authorities' (Case C-480/06, *Stadtwerke Hamburg*). In this way the CJEU has confirmed local authorities' margin for discretion and strengthened local self-government. However, the judgments do not constitute a blank cheque justifying all forms of cooperation between local authorities. The CJEU regards public-public partnerships, such as cooperation agreements between local authorities and national cooperation, as falling outside the scope of the public procurement directives if they meet the following criteria:

1. the purpose of the partnership is the joint provision of a public-service task conferred on all local authorities,
2. the task is carried out solely by public authorities, i.e. without the involvement of private individuals or undertakings,
3. and the activity involved is essentially performed on behalf of the public authorities concerned.

The CJEU has also confirmed that the mere possibility of a public-public partnership being opened up to private investors does not invalidate the exclusion of such partnerships from the scope of the public procurement directives if there is no real prospect of such a step being

taken at the time when the contract is awarded.

A controversial area of public procurement law has thus been adequately clarified. One consequence of this ruling must be that the Commission refrains from bringing Treaty infringement proceedings against Member States in this area and, together with Parliament and stakeholders, begins the work of consolidating the CJEU case-law. This report is intended as the first contribution to that process.

Clarification of the legal situation regarding service concessions

The revised public procurement directives take the new step of defining service concessions as contracts in connection with which 'the consideration for the provision of services consists either solely in the right to exploit the work or in this right together with payment'. The Community legislator explicitly excluded service concessions from the scope of the directives, with a view to offering contracting authorities and contractors a greater degree of flexibility and to taking account of the differing legal cultures and traditions in the Member States, an approach confirmed by the CJEU in its recent judgment of 10 September 2009 in Case C-206/08, *Eurawasser*. Service concessions are not covered by the public procurement directives, but only by the less stringent regime of the EU Treaties. In that judgment, the CJEU also defined the criterion of transfer of economic risk more precisely. In its view, the right to award a service concession for water supply services is not invalidated by the fact that supply contracts are governed by by-laws stipulating compulsory connection and compulsory use of the service. The economic risk justifying the conclusion of a service concession may also be limited. The CJEU has confirmed that it must remain open to public contracting authorities to ensure the provision of services by way of a concession if they consider that to be the best method of ensuring the public service in question. In so doing it has clarified the situation in another area which frequently gives rise to legal disputes.

Clarification of the situation regarding public-private partnerships

The Commission and the CJEU have clarified the situation in other areas as well. Both the Commission, in its 2008 communication on public-private partnerships, and the CJEU, in its judgment of 15 October 2009 in Case C-196/08, *Acoset*, have made it clear that no double competitive tendering procedure is required in connection with the award of contracts to and the conferral of certain tasks on newly-established public-private partnerships, but that all the following criteria must be met before a concession can be awarded without competitive tendering to a mixed public-private undertaking specially established for that purpose:

- The private participant must be selected by means of a public procedure, following a review of the financial, technical, operational and administrative requirements and the characteristics of the tender in the light of the particular service to be provided.
- The mixed public-private undertaking must retain the same corporate purpose throughout the duration of the concession. According to the CJEU, any material change to that corporate purpose or to the task to be performed would necessitate the launching of a new competitive tendering procedure.

The legal situation regarding public-private partnerships is thus also sufficiently clear.

Town planning

This is not the case in all areas, however. The area of town planning is particularly problematical at the moment: an unwarrantedly strict interpretation by German courts in particular of the CJEU judgment in Case C-220/05, *Roanne*, has served to extend the scope of

the public procurement directives to areas they were never intended to encompass. However, local authorities must be able to sell plots of land subject to conditions (for example, a stipulation that the plots in question should be built on within two years) without being required to open up the procedure to Europe-wide competitive tendering. If not, *'one may have to accept the hypothesis, however absurd, that all town planning activities are subject to the directive since, by definition, provisions on the possible execution of building works substantially alter the value of the land in question'* (quote from the final submission made to the CJEU by Advocate-General Paolo Mengozzi on 17 November 2009).

The public procurement directives were never intended to cover such cases and it is to be hoped that the CJEU will agree with the Advocate-General.

Sustainable and innovative procurement

Whilst there are many instruments (the GPP Toolkit, the 'Procura+Campaign' or 'TopTen Pro') available to help public authorities and other public bodies in the area of ecologically sustainable procurement, and whilst, in the area of innovative procurement, the Commission has issued communications on pre-commercial public procurement and on a lead market initiative for Europe, no such steps have been taken in the area of socially responsible procurement, even though the Lisbon Reform Treaty has confirmed the importance of a social Europe. In particular the new Article 3(3) of the Treaty on European Union and the now legally binding Charter of Fundamental Rights have broadened the European Union's aims from the purely economic to include binding social objectives. This must also be reflected in the action the Commission takes.

The area of socially responsible procurement in particular suffers from two problems: social criteria chiefly relate to the manufacturing process, so that their impact is generally indiscernible in the final product, and globalised production systems and complex supply chains make compliance with criteria more difficult to monitor. The situation is made even more complex and confusing by the fact that self-issued certificates must be accepted in tendering procedures, in order not to breach the ban on discrimination. Checking the veracity of such certificates is beyond the scope of most public contracting authorities. In addition to drafting a manual, the Commission should therefore also consider developing precise, verifiable criteria and/or developing a database containing product-specific criteria. The establishment of a European body with the task of drawing up and checking compliance with criteria for specific product groups and, if necessary, providing extra-judicial arbitration on complaints should also be considered.

Review of the public procurement directives

In general it would be welcome if the Commission, when carrying out its proposed review of the public procurement directives, were to take account of the points raised in this report and, at the same time, address the legal and practical shortcomings in the way the directives have been transposed into national law and the legal uncertainties surrounding the application of public procurement law. It would also be useful to clarify where and how the European Union can contribute to administrative simplification in this area, although such a process can only be carried out on the basis of an objective analysis of the existing problems involving all stakeholders - something which is urgently needed.

However, your rapporteur warns against any move to revise the public procurement directives at this juncture - that would be premature for a variety of reasons. Firstly, the directive on review procedures concerning the award of public contracts should certainly be included in any revision, in order to prevent any further fragmentation of public procurement law.

However, that directive has not yet been transposed in all the Member States and its practical impact on public procurement cannot yet be assessed. Secondly, the Member States are currently facing a serious economic and financial crisis whose implications for local authorities are as yet largely unforeseeable and which will certainly worsen over the next few years. Changing the legal basis for public procurement at such a time would only create further uncertainty and lead to delays in tender procedures - to the detriment of all concerned.