



**COUNCIL OF EUROPEAN MUNICIPALITIES AND REGIONS
CONSEIL DES COMMUNES ET REGIONS D'EUROPE**

5.1 B

CEMR

**Over-reliance on
Public Procurement as a Policy
Instrument**

Brussels, January 2010

BACKGROUND

CEMR observes that in recent years, the instrument of public procurement has been increasingly chosen by the European Commission to address policy objectives in the area of environment, energy, social policy, innovation, etc.

This development is furthermore accompanied by infringement cases at the European Court of Justice (ECJ) and jurisprudence in some Member States, which place significant interpretations on public procurement rules.

The approach of the European Commission appears to be un-coordinated and finds its expression in both legislative and 'soft' measures. It creates a very complex environment, which leads to confusion and legal uncertainty amongst procurement professionals and politicians at local and regional level.

CEMR welcomes the European Parliament's own-initiative report on new developments in public procurement currently under preparation and wishes to propose an evaluation of the achievements and shortcomings of the EU public procurement directives in the form of a wide consultation with the relevant actors.

With the present paper, CEMR wishes to address relevant questions of public procurement from local and regional governments' perspective. CEMR wants to address these issues and also offering some avenues for solutions. To provide evidence to our arguments, this paper is accompanied by an extensive list of EU initiatives affecting the public procurement activities of local and regional authorities

CEMR expresses its view on further aspects, mainly in relation to legal questions in the area of public procurement, in its 'European charter on local and regional services of general interest', published in April 2009.¹

¹ Available in English, French and German at: http://www.ccre.org/publications_en.htm

Key messages of CEMR

1. Stop over-use of public procurement for policy objectives

Public procurement should not be overly used as a policy instrument on EU-level – solutions can also be realised via enterprise and industry policies

2. Better coordination within the EU Commission

The different initiatives of the European Commission should be better coordinated and always conform to the legal basis outlined in the public procurement directives

3. Respect for local and regional self-government: ‘freedom to procure’

The principle of local and regional self-government is to be respected. EU actions in relation to sustainable, socially responsible, innovative procurement etc. need to remain voluntary and allow local and regional authorities to determine their own purchasing priorities, in reflection of the new Lisbon Treaty provisions

4. Shift from ‘value for money’ to legal certainty

New EU initiatives have led suppliers and public procurers to increase their focus on legal certainty, choosing procedures that minimise the legal threat rather than procedures that maximise ‘value for money’

5. Competitive dialogue procedure adds to administrative costs

Detailed procedures, and in particular the ban on dialogue between procuring authority and potential tenderers before the tender procedure is opened, leads to higher transaction costs for both, the public authority and the bidder

6. No mandatory public tendering for public-public cooperation

Inter-communal or other public-public cooperation arrangements are not subject to public tendering procedures. Recent ECJ rulings provided clarification on this issue and do not necessitate further legislative measures.

7. Impact on local and regional government

Local and regional government as opposed to central government does the major part of public procurement investment; therefore any EU initiative should assess its impact on local and regional authorities, which in turn should be consulted in a consistent and structured way

8. Need to further build procurement capacity and transfer of knowledge

There is a need for training and education, exchange of experience and good practices of persons dealing with public procurement to better understand and apply the complex European rules

Summary of recommendations

A) Coordination of Procurement Policy Initiatives across the Commission

- The European Commission should take stock of the wide range of different procurement initiatives that place requirements on local & regional authorities and undertake an evaluation exercise to coordinate and consolidate the number of existing procurement initiatives.
- The total financial and administrative burden that these initiatives collectively impose on public bodies should be assessed and reported. Such a report should include the issue of a rise in challenges against public sector contracts and other recent developments.

B) Respect for Local & Regional Decision-making: “Freedom to Procure”

- Respect of local and regional self-government and their right to assign the delivery of a service to a company they own or control without mandatory public tendering procedure.
- The application of the public procurement rules should respect the full discretion of local and regional authorities on setting priorities of selection criteria.
- The European Commission should lead and coordinate initiatives aiming at further clarifying and guidance on green and social elements in relation to the application of public procurement rules.
- On specific policy objectives, priority should be given to ‘real’ policy solutions at the relevant source, such as encouraging enterprise and industry to produce greener products.

C) Inter-Communal and Public-Public Cooperation

- Recognition of the relevant ECJ rulings that all forms of public-public cooperation are legally allowed without public tendering procedure provided that a public sector body or bodies award the task to another public sector body without any private partner being involved.
- This applies for cooperation between local bodies in an institutionalised way (e.g. the German Zweckverband or the French or Belgian intercommunalité), or on a contractual basis (non-institutionalised cooperation).

D) Better Involvement of Local and Regional Government in the Application of Public Procurement Rules

- With the Lisbon Treaty entering into force, the European Commission should recognise and acknowledge local and regional self-government and the application of the subsidiarity and proportionality principles by developing a structured system of pre-legislative consultation to local and regional bodies that uses both physical and electronic methods.
- The European Commission to assess the impact of legislative and non-legislative initiatives on local and regional government using a consistent and pre-determined methodology to assess these impacts.
- Participation of local and regional representatives in the consultative committee on public procurement and in a future Internal Market Forum.
- In drafting new initiatives, whether binding or non-binding, the Commission should take a bottom-up approach, taking into account the existing initiatives and experience on national, regional and local level.

E) Need to further build Procurement Capacity and Transfer Knowledge

- Greater efforts could be made through EU mechanisms like the PROGRESS programme to boost the skills and capacity of public procurement practitioners.
- The Commission to explore new ways to exchange experiences and transfer procurement knowledge across the EU. International peer reviews, where small teams of procurement experts from one region review the activities of another EU region, may help with this process.
- Work experience for Commission officials at local and regional level as part of their professional training.
- Commission officials explaining public procurement rules to local and regional authorities in the Member States.

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I. General Comments

A) Benefits of an EU approach to public procurement policy

1. Undoubtedly, Europe's local and regional authorities see benefits in a coordinated approach to public procurement policy at EU level. They support joint actions in relation to sustainable, socially responsible and innovative procurement, as long as it remains voluntary and the local or regional authorities have the right to determine their own purchasing priorities.
2. In principle, benefits of an EU approach include:
 - More developed and competitive markets offering a greater choice of providers, leading in turn to potentially lower costs or better quality;
 - A focus on transparency helps to combat corruption and fraud;
 - Possibilities to exchange experiences cross-border;
 - Ability to tackle common challenges such as climate change, increase of energy efficiency, reduction of CO₂ emissions, innovation etc.

B) Local and Regional Governments' Experience with European Public Procurement Rules

3. Local and regional government choose the instrument of public procurement, where appropriate and possible, to pursue policy objectives. They also have an interest in achieving good quality of products and services for the public money they spend.
4. Despite the benefits outlined above, the implementation of EU procurement rules poses significant administrative costs to local and regional authorities because it takes time and resources to adapt to each new EU initiative, even if savings might be realised in the longer term.
5. In general, local and regional governments as well as companies complain about the detailed procedures and increased bureaucracy now involved with running procurements. Some CEMR members have done calculations on the transaction costs, which provide evidence that the costs are in general very high on both sides, the public purchaser and the private bidder.
6. The situation seems to be particularly difficult for SMEs, which still do not sufficiently benefit from public tender procedures. Since they are the backbone of the economy in Europe and relevant for employment at regional and local level, it should be ensured that enterprises of all sizes could participate in public procurement procedures.
7. Experience shows that the ban on dialogue between the procuring authority and the potential tenders leads to an increase in costs. The procuring authority is unable to negotiate the price, which means that both the costs related to the tender process itself (specification of criteria) as well as the tenders received have become more expensive in comparison to a situation where access to negotiation was permitted under some form.

8. Similar problems appear in relation to the Structural Funds, where the specifications of materials or services would be needed for defining and budgeting projects, which is, however, not admitted by the public procurement rules.
9. We welcome the fact that the European Commission within the framework of simplification and better regulation takes steps to reduce the administrative burden in a number of policy areas (e.g. the financial regulation) and would like the Commission to extend its better regulation activities to cover public procurement policy.
10. We also observe that an increasingly litigious culture has arisen between suppliers and the public sector. Procurement professionals have to spend a significant proportion of their time attempting to resolve legal issues, and responding to challenges from the private sector.
11. It has become the almost automatic response of some losing bidders to challenge the award of a contract, even if the grounds are insubstantial. In Sweden for example about 1,500 public procurement cases were brought before the administrative court in 2007. In the Netherlands similar research for 1999 – 2006 into 474 cases brought before the national courts shows that 56% of the rulings favoured the procuring bodies while companies won 35% of the time.
12. New EU initiatives, such as the remedies directives and the competitive dialogue procedure, are believed to be fuelling this rise in litigious culture, especially when they are combined with freedom of information laws. As already stated in the European Commission's evaluation about the former public procurement directives in 2006, the focus of the suppliers is increased towards "ensuring legal security, choosing procedures that minimised the legal threat rather than procedures that maximised value for money".² Dealing with these legal issues takes procurement professionals away from their core tasks, to the detriment of the Union as a whole.
13. CEMR therefore deems it important, especially in these times of economic downturn that the European Commission in particular acknowledges and responds to the following issues and recommendations.
14. The European Institute of Public Administration (EIPA) recently published a study on "the institutional impacts of EU legislation on local and regional governments", and looked particularly at the 2004/18/EC Public Procurement Directive. The results and conclusions of this study should be seriously considered and be reflected in the evaluation and subsequent recast of the Procurement Directives.
15. Cross-border procurements are currently limited to a small proportion of procurements overall. There is little reliable data available and the 2006 study recommends "further investigations into public sector import penetration", since its analysis was based on figures from 2000.³ Such an analysis should be part of a future evaluation.

² "Evaluation of Public Procurement Directives" Final Report (Markt/2004/10/D), p. 132

³ Same document, page 130

II. Specific Aspects of European Public Procurement Rules

A) Coordination of Procurement Policy Initiatives across the Commission

16. CEMR believes that there is a need for better coordination of different EU initiatives affecting public procurement. We are worried that public procurement policy is being used as a 'quick fix' policy tool in too many spheres of activity and that individual initiatives, some mandatory, some voluntary, and some creating de facto rules, add to an already complex legal framework, and are likely to cancel each other out.
17. Legislative initiatives affecting, or soon to affect, procurement include:
 - The main procurement directives, including competitive dialogue procedure, eAuctions, framework agreements, e-procurement, etc
 - Procurement of clean vehicles
 - Revision of energy labelling Directive
 - Revision of late payments Directive
 - European Parliament's own initiative report calling for new equalities obligations in procurement.
18. 'Soft law' initiatives include:
 - Guidelines on: advertising low value contracts; public private partnerships; embedding social considerations into procurement
 - Green public procurement criteria & targets
 - 'Lead markets' initiative, and 'pre-commercial procurement' (using procurement to promote research and innovation)
 - EU Small Business Act, which steers procurement towards SME friendly policies i.e. smaller contracts, more time to prepare bids, prompt payment etc.
19. In addition to these, local and regional authorities have to respond to various national, regional, and local procurement initiatives, as well as being mindful of Treaty principles, and the evolving case law of the European Court of Justice.
20. All these requirements placed on public procurement are occurring at times of economic downturn and there is a challenge to create sufficient political will to deviate from the best value choice.
21. CEMR calls for a more coherent approach. We note five different Directorate Generals in the European Commission, in Annex, which have lead responsibilities for different procurement initiatives. We call on the Commission to either centralise all procurement legislation in one department or ensure a clear definition of roles and responsibilities among each relevant department.
22. We believe that 'thematic' approaches, or issues specific approaches, such as social procurement, green procurement, pre-commercial procurement, energy-saving procurement, vehicle procurement, SME friendly procurement, equalities procurement etc, are often not embedded in and sometimes even in conflict with

the general nature and structure of the legislation laid down in the main public procurement Directive (2004/18).

23. It appears as if the European Commission has no visible overall framework or strategy to guide the wide range of public procurement initiatives emanating from different Directorate Generals.
24. Whilst individual initiatives may be accompanied by an impact assessment, we also note to our regret that there is no overall assessment of the collective impact that these initiatives have on local and regional authorities. However, when the procurement directives were adopted, impact assessments were not yet undertaken and thus, their impact on the local and regional level was not seriously assessed.

Recommendations:

- The European Commission should take stock of the wide range of different procurement initiatives that place requirements on local & regional authorities and undertake an evaluation exercise to coordinate and consolidate the number of existing procurement initiatives.
- The total financial and administrative burden that these initiatives collectively impose on public bodies should be assessed and reported. Such a report should include the issue of a rise in challenges against public sector contracts and other recent developments.

B) Respect for Local & Regional Decision-making: “Freedom to Procure”

25. The principle of local and regional self-government is an essential cornerstone of Europe’s multi-level governance system and is explicitly recognised in the Treaty of Lisbon as part of the national identities of the member States, which the European Union is committed to respect. The Protocol on Services of General Interest states the ‘wide discretion’ of local and regional authorities how they provide, commission and organise such services. It is essential to recognise the right of local and regional governments to assign the provision of a service to a company they own or control (“in-house”) without mandatory requirement of a public tender procedure.⁴
26. Therefore we note with concern that the European Commission, Directorate General Competition, seems to favour a narrow interpretation of European competition rules concerning exclusive rights granted to local authorities. Such an approach risks reducing the room for manoeuvre provided in the public procurement directives and in the jurisdiction of the ECJ.
27. By making some measures mandatory and some voluntary, the Commission is creating an implicit hierarchy of procurement criteria – it is saying, for example, that saving energy, or procuring clean vehicles, is more important than say social goals, promoting innovation, or SME friendly policies. However, decisions on which criteria to prioritise in procurements should always remain the choice of local and regional authorities and not subject to a hierarchy of differing approaches imposed at EU level.

⁴ Further details on this issue are laid down in CEMR’s Charter on local and regional services of general interest, article 4

28. In all new procurement initiatives the Commission should recognise and acknowledge a new “freedom to procure” principle for local and regional authorities. This would be in line with the “freedom to contract” rights enjoyed by businesses.
29. The need for full discretion at local & regional level, whether on price issues, green issues, energy issues, social issues, innovation issues etc, is important to ensure the best solutions are procured for citizens. There is concern that a lack of respect for local and regional decision-making leads to a tendency to propose mandatory requirements when voluntary approaches would suffice. The Green Public Procurement Communication for example mentioned the possibility of a Directive introducing binding obligations, which would not in our view be appropriate.
30. Concerning green and social elements, the procurement rules are the basis of all legislative and soft law initiatives, which leave room for local and regional authorities to take into account green and social elements in their procurement process, while preserving their freedom to procure within the legal framework of the procurement directives. There has been insufficient evidence that this approach should not work, as there are many initiatives at local and regional level across the EU. Any initiative on green and social elements should therefore be conform to the legal basis outlined in the public procurement directives.
31. However, much remains to be done in relation to 'technical' questions concerning green and social elements. Here, the European Commission needs to play a leading role when it comes to drafting of criteria, the prioritisation of product groups etc. So far, this is very underdeveloped and governments throughout the EU are looking for solutions how to shape their procurement process taking into account green and social elements without breaching procurement rules. Questions related to this issue are such as how to make an objective and factual approach towards green and social? What is green? What is social? Criteria are one element, but not the only element. There is a role for the policy Directorates General and a role for the Commission to coordinate the separate initiatives.
32. Furthermore, instead of imposing new obligations on public procurement, the Commission should pay greater attention to solutions, which can also be realised via enterprise and industry policies. For example clean vehicles, and energy savings can be achieved through stronger requirements on manufacturers rather than requirements on public bodies.

Recommendations:

- Respect of local and regional self-government and their right to assign the delivery of a service to a company they own or control without mandatory public tendering procedure.
- The application of the public procurement rules should respect the full discretion of local and regional authorities on setting priorities of selection criteria.
- The European Commission should lead and coordinate initiatives aiming at further clarifying and guidance on green and social elements in relation to the application of public procurement rules.
- On specific policy objectives, priority should be given to ‘real’ policy solutions at the relevant source, such as encouraging enterprise and industry to produce greener products.

C) Inter-Communal and Public-Public Cooperation

33. Inter-communal cooperation or other public-public cooperation arrangements have come under the scrutiny of the European Commission and the European Courts, who argue that the assignment of a service to another public body, or inter-communal company, needs in many cases to be subject to an EU tendering procedure.
34. The CEMR has expressed its view on this question in its 'European charter on local and regional services of general interest', published in April 2009,⁵ to ensure that such arrangements continue to be lawful.
35. The European Court of Justice has recently⁶ issued rulings that clarified that there is no mandatory requirement for inter-communal cooperation to be tendered, provided certain conditions – as CEMR argues in its charter – are met. The jurisprudence of the ECJ is clear to such an extent that we do not need any new legislative measures.

Recommendation:

- Recognition of the relevant ECJ rulings that all forms of public-public cooperation are legally allowed without public tendering procedure provided that a public sector body or bodies award the task to another public sector body without any private partner being involved.
- This applies for cooperation between local bodies in an institutionalised way (e.g. the German Zweckverband or the French or Belgium intercommunalité), or on a contractual basis (non-institutionalised cooperation).

D) Better Involvement of Local and Regional Government in the Application of Public Procurement Rules

36. The Treaty of Lisbon acknowledges the national identities of the Member States and their fundamental structures, inclusive of regional and local self-government. In addition to that recognition, the Protocol on the application of the principles of Subsidiarity and Proportionality states that the Commission should assess the financial and administrative impact of new legislative acts. With the entering into force of the Treaty on 1 December 2009, these provisions are to be applied and we wish to express our expectation that the Commission services will respect them accordingly.
37. Currently, the European Commission (Directorate General Internal Market) consults Member States, industry and businesses on public procurement in two consultative committees. The involvement of local and regional government in the relevant committee would be an appropriate means to implement the Lisbon Treaty provisions. Therefore in order to implement the pre-legislative Consultation provisions of the new Protocol we call on the European Commission to devise early in its new mandate a system of structured consultation to local and regional authorities using both physical and electronic means.

⁵ Available in English, French and German at: http://www.ccre.org/publications_en.htm

⁶ European Commission vs Stadtreinigung Hamburg (C-480/06), Coditel Brabant (C-324/07) and Sea Srl vs Comune di Ponte Nossola (C-573/07)

38. For medium term policy dialogue we also welcome the recent initiative of DG MARKT to establish a new “Single Market Informal Dialogue Group”, which aims to further improve DG MARKT's consultation and dialogue with stakeholders at an early stage of the policy process. CEMR as one of the invited stakeholders intend to play an active and constructive role in this group.
39. The Internal Market Scoreboard, published by the European Commission biannually, monitors the transposition and implementation of internal market rules. Its latest edition from June 2009 devoted particular attention to the effective application of public procurement rules and gives an overview of the situation in the EU and the Member States.
40. This years Scoreboard was followed by Recommendations from the Commission on measures to improve the functioning of the Single Market. We wish to highlight that the major part of public procurement investment is realised by local and regional authorities as opposed to central government.
41. We welcome the invitation to the Member States to ensure coordination with regional and local authorities in particular in relation to public procurement and support the proposal from the lead Committee in the European Parliament to organise an annual Internal Market Forum with all stakeholders to discuss the transposition, application and enforcement of internal market legislation.
42. CEMR wants to express the interest of local and regional government to participate in and to actively provide input to such a Forum. We believe that early communication and better cooperation with all relevant actors can help to achieve better results. A dialogue involving all stakeholders, private and public, could be very beneficial to both the Commission and to stakeholders involved.

Recommendations:

- With the Lisbon Treaty entering into force, the European Commission should recognise and acknowledge local and regional self-government and the application of the subsidiarity and proportionality principles by developing a structured system of pre-legislative consultation to local and regional bodies that uses both physical and electronic methods.
- The European Commission to assess the impact of legislative and non-legislative initiatives on local and regional government using a consistent and pre-determined methodology to assess these impacts.
- Participation of local and regional representatives in the consultative committee on public procurement and in a future Internal Market Forum.
- In drafting new initiatives, whether binding or non-binding, the Commission should take a bottom-up approach, taking into account the existing initiatives and experience on national, regional and local level.

E) Need to further build Procurement Capacity and Transfer Knowledge

43. There is a need to further build the capacity of procurement functions within public bodies. This issue is only being tackled in a small part by current EU programmes such as the programme PROGRESS. Our concern is that the capacity now needed to meaningfully implement the full range of national and EU procurement requirements does not match the capacity which currently exists in local and regional authorities.
44. We welcome the Commission Recommendation on measures to improve the functioning of the Single Market and to organise training and conferences about the transposition of European legislation. We also welcome the European Parliament's opinion, stressing the need for proper training and education of civil servants (see paragraph 38).
45. The European Commission could provide support to a platform for the exchange of experience, best practices and knowledge in the field of procurement. epractice.eu is a good model. We note for example that the European Investment Bank is also undertaking a new programme of activities to exchange expertise in public-private partnerships across the EU. The creation of a new web platform should be a bottom-up process in which the Commission works together with local, regional, and national stakeholders
46. Regional and local authorities often have valuable experience in application of procurement rules. However, many initiatives follow a top-down approach, while not taking aboard the practical experience of local and regional authorities. Therefore, the European Commission in cooperation with the Member States should establish forms to share knowledge and experience.
47. We welcome the conclusions of the last meeting of the 'High Level Group on Local and Regional Governance' (composed of government representatives) organised under the Swedish Presidency in October 2009, which confirm the need for closer and better cooperation between the Member States and regional and local government.
48. Furthermore, the European Commission could introduce a training programme for its officials so that they better understand the challenges of implementing the many different elements of public procurement in local and regional administrations. Such experience programmes exist already in the Agricultural ('Harvest Experience') and Enterprise and Industry ('Enterprise Experience') policy areas, where the experience so far seems to be very positive. CEMR and its members would offer their assistance in organising such a programme and help to place EU officials in local and regional authorities.
49. The DG MARKT's 'going local' programme, where Commission officials visit local and regional authorities in Member States to explain procurement rules, has showed positive results and should be further promoted and continued.

Recommendations:

- Greater efforts could be made through EU mechanisms like the PROGRESS programme to boost the skills and capacity of public procurement practitioners.

- The Commission to explore new ways to exchange experiences and transfer procurement knowledge across the EU. International peer reviews, where small teams of procurement experts from one region review the activities of another EU region, may help with this process.
- Work experience for Commission officials at local and regional level as part of their professional training.
- Commission officials explaining public procurement rules to local and regional authorities in the Member States.

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Annex – List of recent EU public procurement initiatives affecting local and regional authorities 2006-2010

EU public procurement initiative	Implementation	Lead DG
1. Guidelines on social issues in public procurement contracts – expected Autumn 2009. Will provide an impetus to public bodies to address social issues (such as excluded groups) through public contracts.	Voluntary	Employment, social affairs, equal opportunities
2. Green public procurement communication , proposals published 16/7/08. Proposes common ‘green’ product and service specifications for inclusion in local authority tender documents. Also sets a target for 50% of procurements nationally to meet these ‘green’ standards by 2010.	Voluntary (currently)	Environment
3. Public procurement of clean vehicles Directive 2009/33/EC published on 23 April 2009 (OJ L 120) requires public authorities to take into account energy and environmental impacts when purchasing road transport vehicles	Mandatory (but several ways to comply are possible)	Energy & Transport
4. Recast of energy labelling directive – brings in new mandatory public procurement requirements on the energy class of appliances which public authorities must buy.	Mandatory	Energy & Transport
5. Energy star requirements for office equipment – affects the type of office equipment public bodies can purchase.	Mandatory (for EU institutions and central government only).	Energy & Transport
6. Pre-commercial procurement of innovation. Published 14/12/2007, asks public authorities to consider how procurement can be used as a tool to promote innovation and involve public bodies in closer links with research and development activities.	Voluntary	Infosoc/ Enterprise & Industry
7. lead markets initiative – Mobilises public authorities to act as lead customers in certain markets by promoting the use of innovation-friendly procurement practices	Voluntary	Enterprise & Industry
8. Interpretative communication on Joint Ventures / “Institutional” Public Private Partnerships , published 5/2/08. Provides guidance on the application of public procurement rules to joint venture PPP arrangements.	Voluntary (but creates de facto rules).	Internal Market
9. Remedies directive , came into force 10/1/08. Gives unsuccessful bidders new rights to challenge a public contract, and requires local authorities to embed a 10 day ‘cooling off’ period in which the award of a public contract can be challenged.	Mandatory	Internal Market
10. Revision of late payments directive , published 8 April 2009. Allows for suppliers to fine public authorities 5% of invoice value plus interest for undisputed payments made more than 30 days after receipt of invoice (payment is an important part of the public procurement cycle).	Mandatory (cannot waive the right to 5% fine in contract)	Enterprise & Industry
11. Interpretative communication on advertising and transparency in low value contracts , published 1/08/2006. Steers local authorities towards advertising low value contracts on the web or via a web-portal as the best way of ensuring compliance.	Voluntary (but creates de facto rules)	Internal Market

12. Consolidated Public Procurement Directives , came into force in UK Jan 2006. Added new purchasing tools such as electronic auctions, competitive dialogue procedure & framework agreements, as well as making it easier to conduct 'green' and socially responsible procurements.	Mandatory	Internal Market
13. European Parliament report would place new mandatory duties on public procurement as regards equalities (currently awaiting final decision in Council).	EP has asked for mandatory	Employment, social affairs, equal opportunities
14. Possible Communication on Concessions, possibly in 2010/11. May bring in new rules and requirements for the awarding of concession arrangements, to bring concessions more in line with public procurements.	Possible mandatory	Internal Market
15. Possible Directive on Green Public Procurement (as announced in Green public procurement communication , proposals published 16/7/08).	Possible mandatory	Environment
16. EU Small Business Act – steers local & regional authorities towards SME friendly procurement policies (smaller contracts, more time to prepare bids, prompt payment etc). Local Procurement?	Voluntary	DG Enterprise & Industry
17. Fair Trade COM (2009) 215 – Contributing to Sustainable Development: The role of Fair Trade and nongovernmental trade-related sustainability assurance schemes	Voluntary	Employment, social affairs, equal opportunities (?)
18. Evolving ECJ case law on a range of procurement topics.	Not applicable	All
19. Commission Staff Working Paper: Internal Market Scoreboard No 19 (published 17.7.2009) with a supplement on public procurement	Not applicable	Internal Market
20. Commission Recommendation on measures to improve the functioning of the single market (published 29.6.2009)	Recommendations	Internal Market