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**EVALUATION OF THE EU ACTION PLAN FOR E-PROCUREMENT
(2004-2008)**

FIRST RESULTS OF THE DATA GATHERING EXERCISE

(ONLINE STAKEHOLDER SURVEY AND TED DATA)

WORKING PAPER

EPWG/2009/01

Advisory Committee on Public Contracts

e-Procurement Working Group

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1. BACKGROUND ON THE EVALUATION OF THE ACTION PLAN

The Commission is currently preparing an evaluation of the 2004 Action Plan for e-procurement. This evaluation will:

- (1) Take stock of progress across the EU in shifting from traditional procurement to e-procurement; understand better the factors that influence the speed of transition;
- (2) Describe the principal arrangements and structures that have been put in place at national level to support e-procurement (and identify examples of 'best practice');
- (3) Evaluate the relevance and effectiveness of the measures foreseen in the 2004 Action Plan and describe progress in creating the legal and technical conditions for the introduction of inter-operable e-procurement systems;
- (4) Provide a basis for identifying any further action that might be needed – in particular at EU level – to create an environment that is supportive of e-procurement, and to ensure that tenderers are able to participate in electronic procedures across the single market;
- (5) Identify monitoring requirements to facilitate the assessment of future policy action in this area.

Due to the short reference period (2004-2008) and certain limitations in the available data sets, the present evaluation exercise has more of an interim character. In the fast moving IT environment, the idea is to make use of the current window of opportunity following the adoption of the new legal framework, during which new e-procurement systems and tools are being developed and implemented. On the basis of the interim evaluation the Commission will follow up discussions with interested parties in order to review and, where needed, adjust policy orientations, so as to provide a supportive EU environment for the effective deployment of interoperable e-procurement.

The Commission services aim to complete this evaluation by mid-2010. We hope to work closely with the ePWG and its members in preparing this evaluation.

The purpose of this paper and the ensuing discussion is to provide some preliminary material relating to the assessment of e-procurement policy.

Sections 2 and 3 provide a detailed overview of the findings from the online stakeholder survey and analysis of TED data. Section 4 sets out some preliminary conclusions by the Commission services at this stage, followed by an outline of issues for discussion in the ePWG in section 5. The methodology for the survey (sample size and structure, number of replies etc.) is described in detail in annex 1.

2. KEY FINDINGS OF THE STAKEHOLDER SURVEY

2.1. The stakeholder survey

In the context of the evaluation, DG MARKT commissioned an online survey to gather key stakeholders' perceptions on the effective up-take of e-procurement across the EU. The survey was open from 23 October 2008 – 20 January 2009 (initially 20 December 2008), in English, French and German. It aimed at four different stakeholder groups:

- (1) Member States ('MS'): National institutions responsible for public procurement policy or related technical or legal aspects (including ACPC and ePWG members).
- (2) Contracting authorities ('CA'): Contracting authorities / entities which may have awarded works, supplies or services contracts by traditional and / or e-procurement procedures.
- (3) Central Purchasing Bodies ('CPB'): specialised procurement entities which centralise or co-ordinate the purchase of works, supplies or services for one or more contracting authorities / entities, at national, regional, local or vertical level. CPBs may have awarded works, supplies or services contracts by traditional and / or e-procurement procedures.
- (4) Economic operators ('EO'): Suppliers who may have conducted business with public purchasers in a traditional and/ or e-procurement procedure.

In particular, the evaluation considers the phases of the purchasing cycle specific to *public* procurement (notification, tendering, submission of offers and evaluation, and award of contract). In addition, it also covers subsequent phases that complete the purchasing business process (ordering, invoicing and payment). Second, although the study focuses on contracts of a value above the thresholds set by the EU directives, it also takes into account implementations for below threshold contracts.

2.2. Findings per questionnaire section

Effective Up-Take of e-Procurement

First implementation of an e-procurement system: Since the year 2000 the number of e-procurement implementations at national level has been continually increasing. In 2004 when the directives were adopted, 6 MS had implemented a system (following some few earlier pilot implementations); in 2009 this number has reached 17. This trend is also reflected in the replies by contracting authorities (55 systems in use in 2008) and CPBs (16 systems in 2008).

The **approximate share of e-procurement procedures** (i.e. including at least some elements) has increased in a majority of MS responding to the question (8/12). Whereas it is difficult to compare the precise values provided by the different respondents (few replies, very variable width of replies), an opinion question was asked on whether the observed developments were up to expectations. Here it appears that a majority of respondents rated the current uptake as '*still too low*' (17/31). At the same time however, almost a third said that uptake was '*just about right*' or even '*better than expected*' (together 11/31).

Factors limiting cross-border use: For MS respondents, the overwhelming obstacle is the difficult use of e-signatures (27/34 – 80%), followed by the lack of interoperable systems and tools (23/34) and linguistic issues (23/34). This seems to be echoed by CAs which also deplore difficulties with e-signatures (12/49) and the need to operate double circuits (paper and electronic) (16/49). This contrasts somehow with CPBs' perceptions: these explicitly seem to think that e-signatures '*are not a problem*' (7/14). '*Lack of trust*' (11/14) and '*resistance to change by CAs*' however are (9/14), as well as the double circuits (10/14). Also interesting: in comparison, lack of interest from suppliers in e-submission is not often noted (CAs 15/59; CPBs 6/14).

CPBs state that contracting authorities/entities use mainly their platforms but perform the procedures themselves, although some phases are fully outsourced. The main phases presently used by CPBs are e-notification (16/27), e-access to documents (18/27) and e-submission (13/27). The post-award phases e-ordering, e-invoicing and e-payment are less used today but forecast for future use. This also applies to automated evaluation which is presently least used (2/27). With regards to below threshold contracts, e-invoicing and e-payment are again the least used (at present). It is clear also that e-notification is not used, suggesting this is only used with the OJEU and not with other official journals.

Specific e-procurement phases and tools

The **most widespread process** as well as the **first to have been made electronic** seems to be e-notification (MS 15/19). Other process phases lag far behind, the next popular one being e-access to documents (MS 8/19). As regards tools, framework agreements come first (MS 7/19), followed by e-auctions (both on price as well as on other quantifiable factors) (MS 5/19 respectively).

This trend seems to be confirmed by contracting authorities which also report the highest usage figures in e-notification (63/251 – 30%). A small number of authorities also appear to have made the first tools and phases mandatory (e.g. e-notification 18% and e-submission 5%).

A majority of MS respondents stated that e-procurement processes and tools were first introduced in light of their compliance with national policies, strategies or plans (MS 14/25) or because they were the least complex (MS 12/25). Cost-benefit aspects also seem to have played a role ('greater potential saving' and 'least expensive to implement' – MS 19/25).

Replies under this questionnaire section also provide some direct policy orientations. Thus, for example, it appears that a majority of MS respondents would be ready to make the use of **e-notices** mandatory (i.e. online transmission only to the OJEU of procurement notices for all contracts covered by the EU directives). For this, most MS respondents would favour a 'light scenario' system based on the current infrastructure (MS 23/29).

Also interesting findings as regards **e-auctions**: a large majority of respondents across all stakeholder groups considers that auctions are useful (MS 25/32; CAs 42/81) but often, not well understood (MS 12/32). This is also reflected in the reply that the most pressing barrier in this context is a lack of e-auction skills, both internally and from suppliers (MS weighted average 4.0 and 3.8 respectively).

Finally, a majority of MS thinks that the Dynamic Purchasing system or **DPS** is a useful concept as such (MS 6/30) but again not well understood (MS 13/30). Although together this seems to be a surprisingly positive stance given the very little operational usage of

DPS today – it accounts for two thirds of replies - one third of respondents think indeed that DPS are not useful or do not make a difference. These combined results would also correspond to the greater use and acceptance of e-auctions, which seem to be a more long-standing and accessible concept than the dynamic purchasing system.

Strategy and Plans

Most MS state that they have a **defined strategy for e-procurement**, albeit not a ‘big bang’ one. Their implementation approach is step by step (15/20). Thus it seems most MS have chosen a progressive and phased implementation approach. These findings are echoed by CAs and CPBs: again the dominant response was to follow a step by step approach (CAs 31/130, CPBs 13/15) although many also answered that they followed no particular strategy at all (CAs 20/130). (However there were a high number of 'not answered')

Also interesting to note that **EU rules and requirements** were - by far - considered the **most important factors influencing national e-procurement policy** and regulation (MS 22/27); other factors seem to have had a much weaker impact, most notably private sector experience does not seem to have been taken into account (MS XX/XX).

As regards particular **technology-related cost management strategies**, for a majority of CAs it seems to be most popular to use off the shelf solutions (18/64) as well as to re-use existing components and standard templates (12/64 respectively). Open source seems to be the preferred approach for only a small majority (4/64).

Costs and Benefits

Two questions sought to identify perceptions of the benefits of e-procurement and whether the costs had been outweighed by the benefits.

It turns out that the assessment of **e-procurement cost benefit aspects is overwhelmingly and consistently positive across all four stakeholder groups**. Thus a strong majority stated that investments made in e-procurement had already paid off or were expected to pay off in the near future (MS 15/24; CPBs 13/16, CAs 24/53) or that at least some elements had paid off (MS 4/24, CPBs 2/16, CAs 6/53). Except for CAs, no respondent chose the option ‘no, expected benefits have not materialised’ (MS, CPBs, EOs; CAs 9/53).

In terms of more specific effects, a majority of MS stated they did not know the **impact on prices**; however, those available pointed towards a **decrease of at least 5%**. As could be expected the price effect seems to be **most noticeable in the use of e-auctions**, where it reaches 15% and more, although it is most pronounced for auctions on price (MS 8/8 respectively).

Replies on different impacts on contracts above/below thresholds are inconclusive (MS: 11/29 no difference; 9/29 impact above thresholds).

3. OBSERVATIONS BASED ON TED DATA (2006-2008)

The Commission services, together with the EU Publications Office, have collected and analysed data on the use of certain basic e-procurement related tools, as follows: e-notices generally; buyer profiles; e-auctions; Dynamic Purchasing Systems (DPS).

For all items, the following parameters have been considered:

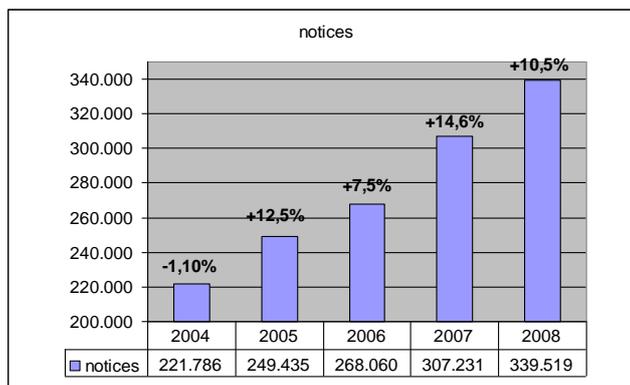
- Situation per Member State
- Usage by type of contracting authority/entity
- Usage by type of purchaser
- Usage by type of purchase

Furthermore, for each notice, information on sector (CPV), type of procedure and country of origin was also considered to the greatest possible extent.

3.1. Overall use of e-Notices (2004-2008)

- **TED is ever more popular:** The number of notices published on TED further increased nearing 340.000 documents in 2008 (+10,5% compared to 2007). The number of visits to the site also keeps going up, from 3.734.547 (2004) to 8.16054 (2008). (A first peak was reached in (2007) with 9183.679 visitors).

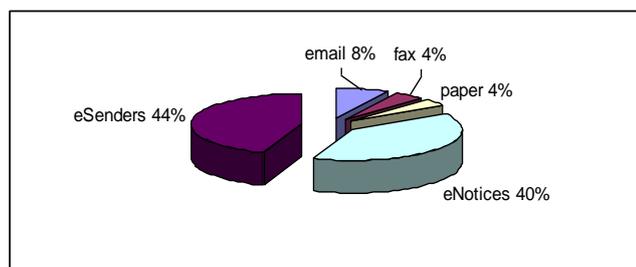
Number of notices published 2004-2008



- **Use of e-notices close to 100%:** The use of online forms (SIMAP eNotices application) increased by 7% from 2007-2008. By end 2008, 17 MS were sending more than 90% of all their notices in structured electronic format. Overall, on average 84% of notices were transmitted in structured format (87% in 2009).

The number of operational OJ-s eSenders (institutional intermediaries) went up to 56 (+14% compared to 2007), now including 21 EU MS, Switzerland and Norway.

Notices – means of transmission (2008)



3.1 Buyer profiles

The 2004 directives introduce the concept of 'buyer profiles' as a means for contracting authorities/entities to publish on their own website a prior information notice or a periodic information notice, following common rules. The self-publication of such information on a CA's buyer profile must be notified to the Commission using standard form n°8 (as laid down in Regulation N°1564/2005 and available on SIMAP http://simap.europa.eu/buyer/forms-standard_en.html) and subsequently be published in the EU Official Journal on TED (<http://ted.europa.eu>).

The Action plan encourages the use of buyer profiles and mentions that the standard forms will be adapted to this new element, but makes no further recommendations. The Commission services further encourage use of buyer profiles in the 2005 'Explanatory Document on the requirements for e-procurement'.

From 2006 - 2008, 261 notices have been published on form n°8 (78 in 2006, 125 in 2007 and 58 in 2008). This is a very low figure, compared to the 425.162 contract notices published on TED over the same period (0,06%). The sample is too small to draw definitive conclusions. But the following trends emerge:

- **Usage is low and does not seem to be in line with the rules:** Contrary to what might have been expected, form n°8 has been used in only 13 Member States (mainly IT and PL). Most users however seem to be unaware of the rules for buyer profiles. Often, no corresponding notice could be found on the relevant websites.
- **Buyer profiles are mostly used by 'classic' CAs:** While some contracting authorities still seem to be testing buyer profiles with a certain increase over the years, the share of utilities' buyer profiles has decreased by half from 2006 to 2007, to nil in 2008.
- **Buyer profiles are used for all types of purchase:** Buyer profiles are mostly used for services contracts (43%), followed by supplies (33%) and works (24%).

3.2. E-auctions

Electronic reverse auctions are among the most complex, and also the most regulated innovative tools introduced by the new legal framework. And whereas many contracting authorities had high expectations for e-auctions' efficiency potential, economic operators feared excessive pressure on prices. In light of this the action plan encouraged their deployment, but also cautioned against 'improper use' by contracting authorities.

For the following assessment were taken into account all contract award notices (CANs) published on TED stating that an e-Auction had been organised. For the years 2006 - 2008, 1.707 CANs were counted (350 in 2006, 570 in 2007 and 787 in 2008). This represents altogether a total of 5.919 lots (960 in 2006, 1.970 in 2007 and 2.988 in 2008), of which 1.566 have been used for the calculation of savings (56 in 2006, 418 in 2007 and 1.092 in 2008).

- **Some big and many small users:** The greatest users of e-auctions are DE, FR, UK, IT and RO. They published on average at least 75 related CANs per year. Compared to this, some other MS are above the EU average of 21 CANs per year mentioning e-auctions (NL, PL), but most are below it (AT, BE, BG, CZ, DK, ES, FIN, EL, HU, IE, LV, LT, LUX, PT, SW, SV, SK). In a few MS; contracting authorities / entities did not seem to use any e-auctions at all (CY, ET and MT).

- **Consistent savings:** Savings - measured as the difference between initial estimated price and final price for the contract awarded - are consistent both over the years and between categories (e.g. per notice and per lot) at a level of around 10% per purchase.
- As expected, **e-auctions are mostly used for supplies contracts**, for which the specifications can most easily be determined with precision, compared to services and works contracts. The number of auctions for services remains steady in 2007 and 2008, but its relative share declines due to the e-Auctions boom for supplies. The relative share for auctions on works is stable. However, in all categories, a continuous increase in the number of auctions can be observed.
- **Usage does not always seem to be in line with the rules:** e.g. in most cases, contracting authorities did not mention as required in the CN that they would use e-auctions, but only stated that an e-auction had been used in the CAN. The same seems to hold the other way round (i.e. CN mentions the future use of an e-auction, but the CAN does not confirm it). This should be reason for serious concern, as publication rules for e-auctions aim to safeguard suppliers' interests in constructing an effective bid.

3.3. Dynamic Purchasing System (DPS)

The DPS is the most novel element of the directives, defining a completely electronic process for repetitive purchasing, which is open throughout its validity to any economic operator. A DPS is established through an open procedure. The contracting authority/entity can then re-open competition for specific contracts using a simplified contract notice. Any economic operator may join the DPS at any time, provided he submits an indicative tender on the basis of which he can be admitted to the system (i.e. the tenderer satisfies the selection criteria and the tender complies with the technical specifications).

In light of these requirements, the analysis looked mainly at data from contract award notices (CANs), i.e. standard forms n°3 (classic) and n°6 (utilities), when section II.1.3. (*"the notice involves contracts based on a dynamic purchasing system (DPS)"*) had been ticked. In addition, data for standard form n°9 (*"Simplified contract notice on a DPS"*) was considered, which advertises the specific contracts under a previously established DPS. One would expect published CANs mentioning a DPS to be linked to several, but at least two, simplified notices for specific contracts. On its own, and unless it is linked to a corresponding contract notice or contract award notice, form 9 is not valid and does not mean that a valid DPS has been set up.

From 2006 - 2008, 2.932 forms stated that a DPS had been established (440 in 2006, 964 in 2007 and 1.528 in 2008). However over the same period, only 38 forms n°9 have been published (4 in 2006, 12 in 2007 and 22 in 2008). For the EEA countries, Norway has published form n°9 twice in 2007. Moreover, the identified forms could not be matched but seemed to belong to different procedures respectively. Due to this limited sample, the analysis considers all three years together (where possible); it is not possible to draw definitive conclusions. Some trends have however been identified:

- As expected, **DPS are mostly used for supplies contracts:** DPS is designed for 'commonly used purchases, generally available on the market' and is repetitive, which is not as often the case for service or works contracts.

- **Usage is low and does not seem to be in line with the rules:** There is a lack of correlation between the use of forms n°3 and 6 (CAN indicating the establishment of a DPS) and form n°9 (corresponding simplified contract notice for a specific contract under a DPS).

Number of forms n°3, 6 and 9 published, by Member State (2006-2007)

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR
SF 3 + 6	31	56	15	16	537	181	37	1	231	454	220	408
SF 9	0	0	0	0	0	3	7	0	0	1	0	10

	HU	IE	IT	LT	LV	NL	PL	PT	RO	SE	SI	SK	UK
SF 3 + 6	4	84	227	14	6	73	53	16	4	30	12	5	217
SF 9	0	1	3	0	0	0	0	1	0	5	0	0	7

4. COM CONCLUSIONS

While recognising the need for great caution in drawing any lessons from such limited data sets, the Commission services would like to highlight some impressions relating to the use of e-procurement across the EU.

- **E-procurement is making its presence felt – but take-up / exposure vary across countries and operators.** Since the year 2000 the number of e-procurement implementations available at national level has been continually increasing, with 6 MS applications when the directives were adopted (2004) to 17 today (2009). This trend is reflected by CAs (55 systems in 2008) and CPBs (16 systems in 2008).
- **Overall, while e-procurement is still in its infancy, there is now real momentum across many Member States towards greater use.** The approximate share of e-procurement procedures (including at least some elements) has increased in a majority of MS responding to the question (8/12). A majority rated the current uptake as 'still too low' (17/31) but another third said that uptake was 'just about right' or even 'better than expected' (11/31).

- **Certain phases are heavily automated, others less so: e-notification and e-access to documents are the most widespread** processes and the first to have been made electronic. The most frequently used tools are **framework agreements** and **e-auctions** (both on price and on other quantifiable factors). The factors having influenced the implementation decision were that these are the *'least complex'* and *'greatest savings'*. This is also echoed by CPBs; they mainly use e-notification, e-access to documents and e-submission. Post-award phases (e-ordering, e-invoicing and e-payment) are not frequent today but forecast for future use. This also applies to automated evaluation which is presently least used.
- In general, contracting authorities/entities seem to be conducting their own procedures, and mainly use **CPBs' platforms**, although some phases are fully outsourced.
- A majority of MS are ready to make **e-notices mandatory**, using the current OJEU infrastructure. A large majority across all stakeholder groups considers that **e-auctions are useful** but often not well understood. Opinions on the Dynamic Purchasing system diverge: despite the very little operational usage of DPS today two thirds of respondents think the **DPS** is a useful concept, albeit not well understood. But one third of respondents think that DPS is not useful / does not make a difference.
- **Opinions differ on factors limiting cross-border use:** For MS the main obstacle is the difficult use of e-signatures, followed by the lack of interoperable systems and tools, and linguistic issues. CAs also highlight the need to operate double circuits (paper and electronic). In contrast, CPBs explicitly think that e-signatures 'are not a problem', but 'lack of trust' and 'resistance to change by CAs' are, as well as the double circuits. Lack of interest from suppliers is not often noted.
- **Price effects are perceptible but still inconclusive** a majority of MS stated they did not know the impact on prices; those available indicated a decrease of at least 5%. The price effect is most noticeable for e-auctions on price only (15% and more).
- **Positive experience from contracting authorities, CPBs and operators active in e-procurement:** Overall, all four stakeholder groups assess cost benefit aspects in an overwhelmingly and consistently positive way. Investments in e-procurement are said to have already paid off or are expected to in the near future. Only a few CAs chose the option 'no, expected benefits have not materialised'.

The final Commission evaluation will seek to document these trends more fully and provide the basis for initiatives to support / optimise the transition.

5. QUESTIONS TO THE EPWG

- (1) Observations or comments on the findings from the survey results: do these correspond to the situation in your Member State?
- (2) Observations or comments on the findings on the use of electronic tools and procedures drawn from TED: do these correspond to the situation in your Member State?
- (3) Comments on the extent of the shift from paper/mail-based procurement to e-procurement: In your Member State, is progress non-existent/perceptible; if the latter, is it slower than expected/definitely under way?
- (4) What factors do you consider most important in explaining any observed delays in the transition to e-procurement? Are these technical (systems development), economic (start up costs), legal (lack of or unclear legal framework) or policy related?

COM services would welcome any input or materials describing national initiatives and strategies to support the deployment of e-procurement.