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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE  
EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Action plan for the implementation of the legal framework for electronic public  
procurement**

{SEC(2004)1639}

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## 1. INTRODUCTION

This Communication proposes an Action Plan for the implementation of the new legal framework for electronic public procurement adopted in April 2004 as part of the legislative package of Procurement Directives, 2004/18/EC and 2004/17/EC. These provide a coherent framework for conducting procurement electronically in an open, transparent and non-discriminatory way, establish rules for tendering electronically and fix the conditions for modern purchasing techniques based on electronic means of communication.

If online procurement is generalised, it can save governments up to 5% on expenditure and up to 50-80% on transaction costs for both buyers and suppliers. While it is difficult to quantify competition and efficiency benefits for the EU as a whole, greater competition and efficiency in public procurement markets can impact - directly and indirectly - on the whole economy and play an important role in achieving the Lisbon objectives.

However, the inappropriate introduction of e-procurement carries high risks of market fragmentation. The legal, technical and organisational barriers that may result from procurement online are one of the greatest challenges for policy makers.

The consultations as part of the impact assessment conducted by the Commission<sup>1</sup> confirm the need for an Action Plan. Member States, candidate countries and businesses are ready to participate in it. Building upon existing efforts to modernise European public procurement markets and to make these more open and competitive, the Commission proposes measures along three axes:

- *Ensure a well functioning Internal Market when public procurement is conducted electronically;*
- *Achieve greater efficiency in procurement and improve governance;*
- *Work towards an international framework for electronic public procurement.*

## 2. OBJECTIVES AND ACTION

### 2.1. Ensure a well functioning Internal Market in electronic public procurement

#### 2.1.1. *Implement the legal framework correctly and on time*

Member States are required to implement the new legal framework by 31 January 2006, but slippages cannot be excluded. Early adoption of the new e-procurement provisions is essential to avoid barriers to and distortion of competition. It is also very important for the rapid development and the effective use of e-procurement by economic operators. Member States should deploy all efforts to comply with the Directives' deadline.

Erroneous or divergent interpretation of the new rules can create barriers to cross-border trade and ultimately fragment the market. The Commission will monitor transposition closely and encourage appropriate exchanges with the Member States at the draft stage in order to facilitate understanding of the legal framework. It will issue an interpretative document on the

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<sup>1</sup> SEC (2004) 1639, Extended Impact Assessment for an Action Plan on electronic public procurement, Commission staff working document

legal requirements for e-procurement. At the same, time training demonstrators simulating the new electronic environment will be available to support initiation of administrations and businesses.

- **1<sup>st</sup> quarter 2005** The Commission issues an interpretative document on the new rules on electronic public procurement
- **1<sup>st</sup> quarter 2005** The Commission makes online training demonstrators available, allowing contracting authorities and economic operators to familiarise with the new e-procurement provisions and tools
- **2005** The Commission provides appropriate assistance to Member States in transposing the new legal provisions

#### 2.1.2. *Complete the legal framework by the appropriate basic tools*

Of all notices sent for publication on TED<sup>2</sup>, 90 % are still in paper form. The standard forms established by Directive 2001/78/EC have slightly improved the situation. Their processing however still implicates high costs, delaying publication and increasing risks of errors.

The new Directives do not provide for an all electronic notification system; this would not be feasible in the short run given the different levels of development and penetration of electronic means in the Member States. Instead, a phased approach has been chosen. The Commission will adopt in early 2005 a Regulation on standard forms adjusting the existing forms to the elements introduced by the new Directives, e.g. e-auctions, dynamic purchasing systems and buyer profiles. By the end of 2006, the Commission will propose a new generation of structured electronic standard forms to allow for the electronic collection, processing and dissemination of all procurement notices covered by the Directives. This new generation should facilitate the automatic production of summaries in all official EU languages, and should be easy to integrate into all operational e-procurement systems. The establishment of an electronic directory of EU public purchasers should also be considered.

The new Directives make the use of the Common Procurement Vocabulary (CPV), introduced by Regulation 2195/2002/EC, mandatory. Electronic public procurement creates new possibilities for using the CPV, e.g. structuring and analysing procurement expenditure, or the compilation of statistics. Revision of the CPV is under way to adjust it for use in a fully electronic environment. To this end, a study was launched to which Member States and interested parties will be invited to actively contribute. If successfully completed it should lead to a world class international classification model for public procurement contracts.

- **In early 2005** The Commission adopts new Standard Forms taking account of new procedures and the use of electronic means of communication.
- **By early 2006** The Commission presents proposals for revising the Common Procurement Vocabulary based on the results of the review study currently under way
- **By end 2006** the Commission presents a blueprint for a fully electronic system for the collection and publication of procurement notices on TED
- **By end 2007** Member States implement fully electronic systems at national level including appropriate tools for automated collection and publishing in TED

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<sup>2</sup> 'Tenders Electronic Daily', the EU official website which publishes all notices covered by the Procurement Directives.

### 2.1.3. Remove / prevent barriers in carrying public procurement procedures electronically

Barriers businesses fear most in cross-border tendering are inappropriate design of tendering systems and incompatible IT standards. Diversity and incompatibility of technical solutions can render suppliers' access to e-procurement systems impossible or discourage their participation because of additional difficulties or increased costs. Barriers may exist in terms of functional as well as technical characteristics.

In moving procurement online Member States should at all stages be guided by the basic concept that means of communication and tools used in electronic public procurement systems be non-discriminatory, generally available and interoperable and by no means restrict economic operators' access to the tendering procedure.

To prevent the emergence of e-barriers, Member States should use the results of the Commission's functional requirements analysis undertaken by IDA<sup>3</sup> when drafting legislation and designing e-procurement systems. The results of the project will be validated by the Commission and the Member States in light of the interpretative document to be issued by the Commission in 2005.

To build up confidence in e-procurement, the development of compliance verification schemes should be promoted. The Commission strongly recommends that Member States, in accordance with the Directives, introduce or maintain voluntary accreditation schemes to ascertain that e-procurement systems conform to the requirements of the Directives. A European scheme which would build on and integrate national schemes would seem desirable to ensure the smooth functioning of the Internal Market. The Commission and Member States should examine through a feasibility study the development of such a *TRUST* (Transparent Reliable Unhindered Secure Tendering) scheme based on the functional requirements.

Some horizontal problems also threaten to negatively affect the functioning of the Internal Market and the initiation of e-procurement. Potential difficulties relate to the use of advanced electronic signatures, in particular signatures based on a qualified certificate and which are created by a secure-signature-creation device (hereafter 'qualified signatures').

The new Directives do not define which type of e-signature should be used in electronic tendering. Thus Member States - who have different legal signature concepts - may choose the level they require in conformity with the e-signatures Directive 1999/93/EC. However, the Directives oblige any public purchaser in the EU to effectively recognize, receive and process tenders submitted, if required, with a qualified signature and their accompanying certificates, regardless of their origin within the EU or their technical characteristics, and even when they contain documents of different origins (i.e., from a consortium of suppliers) and possibly bear signatures of different levels from different sources (i.e., from different national authorities).

This makes e-procurement the first sector in which businesses use qualified signatures in transactions with public authorities in a Member State other than their home country. The existing significant differences between qualified signatures as required by some Member States should therefore be reason for great concern. The interoperability problems detected

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<sup>3</sup> 'Interchange of data between administrations' programme

despite the existence of standards<sup>4</sup>, and the absence of a mature European market for this type of signatures pose a real and possibly persistent obstacle to cross-border e-procurement<sup>5</sup>.

A project called Bridge/Gateway CA was launched under the IDA programme in 2002 to address the issue of recognition and trust of electronic certificates issued by different Certification Authorities (CAs) in the framework of exchanging secure e-mails and signatures between different national administrations. The results of the Bridge/Gateway CA Pilot, including recommendations on technical, organisational and operational aspects of such operational schemes, should be available by mid-2005. Although addressing some issues related to e-procurement, it would not, however, be enough to resolve the problems described above before the 2006 deadline. Building on the current efforts, Member States and the Commission, hearing industry's views, should work together on an operational project to rapidly find a solution based on the mutual recognition principle. At this stage, the Commission would favour a solution to test and promote solutions enabling cross-border use of qualified signatures. Any solution identified should be easy to generalise also in other fields of activity. In the meantime, the Commission recommends that Member States examine any appropriate transitional measures, e.g., confirmation in paper form for tenderers whose electronic signature does not correspond to the required one.

Lack of generalised and interoperable e-ordering and e-invoicing tools across the Internal Market also creates obstacles to the equal participation of suppliers in cross-border procurement. At present, these types of transactions are little used in practice and on an optional basis only. The Commission will continue monitoring the situation while solutions are being sought in the framework of standardisation activities undertaken by the EU.

- **In 2005** Member States and the Commission test, refine and validate the results of the IDA common functional requirements for e-procurement systems, based on the 2004 IDA study on common functional requirements
- **Early 2006** Member States review whether all operational e-procurement systems have been adjusted to the requirements of the Directives
- **By mid-2005** Member States introduce national accreditation schemes to verify compliance of electronic tendering systems with the legal framework
- **By end 2005** Member States and Commission consider through a feasibility study whether to introduce a European compliance verification scheme
- **In 2005-2006** The Commission proposes an action under the IDABC programme to help Member States coordinate implementing the use of advanced qualified signatures to resolve interoperability problems<sup>6</sup>
- **By 31 January 2006** Member States apply, if required by national law, interoperable qualified electronic signatures

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<sup>4</sup> Pursuant to Directive 1999/93/EC, technical standards have been promulgated within ETSI ESI and CEN/ISSS e-Sign Workshop.

<sup>5</sup> For a detailed analysis see "The legal and market aspects of electronic signatures", Study for the European Commission, Interdisciplinary Centre for Law and Information Technology, CUL, Leuven, Oct. 2003.

<sup>6</sup> The European Parliament and the Council formally adopted on 21 April 2004 Decision 2004/387/EC establishing the new IDABC Programme. Building on the achievements of the preceding IDA programme its aim is to identify, support and promote the development of interoperable pan-European e-Government services as of 2005.

#### 2.1.4. Detect and address interoperability problems over time

In light of the above, it is clear that interoperability problems are persisting or may still emerge. Some have already been detected and appropriate actions have already been induced; others should be discovered through the gap analysis on interoperability needs in e-procurement currently carried out by CEN/ISSS<sup>7</sup>. However, interoperability should remain a constant concern. Technical and operational developments make it necessary to continuously revise and improve existing systems covering all stages of the purchasing cycle. Standards in the area are market-driven. Relevant input from RTD projects in the area of e-government should also be considered. Governments must follow and work on interoperable solutions through dialogue between the different parties involved either at national or European level and trail developments in business-to-business (B2B) electronic commerce in order to avoid driving a wedge between private and public procurement markets.

The Commission will continue to monitor the situation with respect to the emergence of interoperability problems in the Internal Market and in international trade and, if appropriate, consider issuing standardisation mandates. It would be desirable to continue current work in the IDA e-Procurement workshop and to continue monitoring developments so as to share information on specifications and good practices.

- **By 1<sup>st</sup> quarter of 2005** CEN/ISSS completes gap analysis on interoperability needs for effective electronic public procurement
- **2005-2007** The Commission proposes to continue activities on electronic public procurement under the IDABC programme for exchange and discussion on interoperability issues and monitoring of Member States developments
- **2005-2007** The Commission and Member States promote standardisation activities at European level and liaise with international standardisation bodies

## 2.2. Achieve greater efficiency in procurement, improve governance and competitiveness

### 2.2.1. Increase efficiency of public procurement and improve governance

Moving public sector procurement online requires legal, institutional and organisational changes at many levels. Member States will have to decide on the type and scope of purchases to computerise, the policies to implement, the systems and tools to use and the level of administrations involved. The risks of failure are not negligible. It is therefore essential to plan and monitor these efforts.

Greater efficiency will depend on the degree of automation in the field of public procurement as a whole, although a phased development of e-procurement is most likely to maximise benefits for both the public and the private sector. The Commission invites all Member States to transpose into national law all aspects of the legislative package in a comprehensive manner. Governments should, however, be able to modulate and adjust implementation of the new electronic tools and techniques over time. In particular, they should pay attention to potential excessive or abusive centralisation of purchases, inappropriate use of electronic auctions and preferences for closed purchasing systems (e.g. framework agreements) over open systems. Such practices may cancel out the benefits from increased efficiency.

To optimise benefits, Member States should establish national plans to be complemented by individual plans especially for their most powerful buyers. Setting uniform targets and ways

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<sup>7</sup> Centre Européen de Normalisation/Workshop on Information Society Standardisation Systems

for generalising e-procurement would not be expedient, as conditions in each Member State vary considerably. The Commission should assist Member States in this exercise where appropriate and facilitate the dissemination and sharing out of information. It will also monitor developments through appropriate indicators using data from the TED database. The Public Procurement Network established in Copenhagen in January 2003 could provide a forum for the exchange between Member States.

Increased efficiency depends also on the automation of certain types of transactions such as invoices, orders and payments. Today at an early stage, their development is likely to pick-up driven by standardisation and automation of financial and budget systems. Following a mandate from the Commission, CEN/ISSS has assessed standards requirements and is finalising detailed guidance material on the implementation of Directive 115/EC/2001 on electronic invoices. In addition, IDA is running a project for developing XML schemas for e-procurement, including e-invoicing and e-ordering. Efforts in this area should be pursued in view of achieving interoperable solutions.

National policies can hardly be developed in the appropriate quality without a detailed picture of procurement markets. Existing statistical information is mostly incomplete and data collection mechanisms are poorly organised. E-procurement presents the opportunity to remedy this situation. The Commission will mobilise the Advisory Committee on Public Contracts (ACPC) and the Working Group on Statistical Information to fully exploit the introduction of e-procurement new technologies.

- **By end 2005** Each Member State prepares a national plan for introducing electronic public procurement setting measurable performance targets, taking account of the specific national needs
- **By end 2005** Each Member State encourages preparation of similar plans by individual national buyers and to coordinate and monitor their implementation
- **In 2005-2006** The Commission continues monitoring work on e-invoices by CEN/ISSS and proposes the continuation of XML activities undertaken in 2003-2004 on e-invoices and e-ordering under IDABC
- **By end 2006** Member States set up efficient electronic systems for the collection and processing of statistical procurement data

#### *2.2.2. Increase competitiveness of public procurement markets across the EU*

The Commission's online consultation of businesses identified transparency as a major aspect of computerisation of public procurement, together with confidence in the fairness of awarding procedures. Electronic means offer more transparency as they allow for easy and timely dissemination of contract information and reduce opportunities and incentives for fraud. They can also improve the quality of government procurement management, including monitoring and decision-making. Practices for disseminating contract related information may differ among Member State as well as requirements for traceability and auditing of e-procurement operations. The Public Procurement Network could play an active role in exchanging information and practices on those issues. The Commission could support a benchmarking exercise with a view to compare and measure performances.

The majority of businesses consider that online procurement should require less effort than traditional procedures. National administrative provisions and guidelines regulating procurement procedures have been conceived with a view to the handling of operations in paper form. Electronic means offer new opportunities to streamline procedures and save



suppliers time and money. Success depends on the degree of transformation of off-line practices to fully fledged online services. This requires re-thinking the service provided and re-engineering the different processes.

To generalise e-procurement, it is important that all steps are taken to reduce the regulatory burden. Standardising and restructuring business documents as well as more uniform tendering documents should help automating certain purchase routines and allow both sides to concentrate on the substance of the purchase.

A typical example of red tape concerns the numerous certificates and business documents required. These are rarely available in electronic form. Additionally, they need to be usable and acceptable across borders. The Commission and Member States should analyse and compare results achieved in this area at national level in the framework of the ACPC with a view to agreeing in early 2006 on a common set of electronic certificates, at least for some of those most frequently required. E-procurement would be an excellent test base for the development of such e-government services. The Commission will propose this line of action to Member States.

The use of e-catalogues is another major issue. Their deployment is important in particular for involving small and medium-sized enterprises (SMEs) in public procurement. Current applications make it possible for enterprises to present their products and services to contracting entities at reasonable cost, time and effort. Lack of uniform specifications and standards for e-catalogues means that there is a risk of IT applications on the market not meeting requirements of the public sector. Work to prepare framework standards for cataloguing is under way in a specific CEN/ISSS workshop. Building upon the IDA functional requirements project, the use of e-catalogues in dynamic purchasing systems and e-procurement framework agreements could be further studied and tested.

Finally, businesses expect e-procurement to increase contract opportunities, facilitate cross-border market access and make procurement procedures faster and cheaper. Public e-procurement represents a great potential for SMEs. In order to encourage those SMEs interested in public contracts, Member States have every interest to promote standard e-procurement systems based on existing and simple technologies and to tailor contract opportunities so as to not exclude SMEs.

- **2<sup>nd</sup> half 2005** The Commission considers proposing services for the electronic supply of business information and certificates in public procurement for implementation under the IDABC programme
- **In 2005-2006** Member States and the Commission agree on a common set of frequently required electronic certificates for use in e-procurement procedures
- **In 2005** The Commission proposes launching a study on e-catalogues in dynamic purchasing systems and electronic framework agreements using work by CEN/ISSS under the IDABC programme
- **In 2005** The Public Procurement Network launches a benchmark exercise on transparency, auditing and traceability of e-procurement systems
- **In 2006** The Public Procurement Network organises workshops to promote exchanges on tender document standardisation
- **2005-2007** Member States launch and support specific awareness campaigns and training programmes targeted at SMEs at national and regional level

### 2.3. Work towards an international framework for electronic public procurement

While e-procurement develops worldwide, the existing international agreements do not regulate its use. Legal and technical choices in e-procurement systems may reduce procurement opportunities for EU businesses in third countries, as well as restrict access of third country suppliers to the EU market. The Commission will monitor developments to ensure that implementation of the new EU procurement regime fully respects the international obligations of the Union, while accordingly taking initiatives to adapt international disciplines. It will also follow attentively current and future international standardisation initiatives.

The Commission will also consider any adjustments necessary and the feasibility of e-procurement in the context of the EU's external aid instruments. It already cooperates closely with international bodies such as the World Bank to ensure that execution of purchases financed by these in third countries does not hinder EU suppliers. Finally, it will take all appropriate measures aimed at sharing EU experiences and achievements with developing countries.

- **In 2005** The Commission pursues negotiations on the review of the Government Procurement Agreement (GPA)
- **In 2007** The Commission takes initiatives in the GPA to progress towards utilisation of a single common nomenclature for the classification of procurement goods and services
- **In 2005-2007** The Commission promotes the activities of and liaises with international standardisation bodies and fora to avoid emergence of technological interoperability barriers at international level
- **In 2005-2007** The Commission cooperates with the Multilateral Development Banks (MDBs) network in view of co-ordinating technical assistance to third countries supporting re-organising and computerising their public procurement regimes
- **In 2005** The Commission considers any adjustments necessary and the feasibility of e-procurement in the context of the EU's external aid instruments

### 3. IMPLEMENTATION OF E-PROCUREMENT ACTION PLAN AND MONITORING

In the long run, computerising public procurement practices will impact on the way in which national public purchasing practices are organised. Successful implementation of e-procurement may require changing administrative practices, not only those directly linked to the procurement process, but also indirectly, such as budgetary reviews. The sooner such reforms are implemented, the better for Europe's citizens and businesses. The Commission considers that the Action Plan measures provide the best possible blend in order to fully exploit the potential benefits from moving public procurement online while minimising risks. Candidate countries will be closely associated with the implementation of the Action Plan.

The Commission assisted by the Advisory Committee for Public Contracts will monitor overall progress. By end of 2007, the Commission will review the situation and report on the results achieved; it will propose at any time, if need be, corrective action or additional measures.

## LEGISLATIVE FINANCIAL STATEMENT

### **1. NAME OF THE PROPOSAL :**

Action plan for the implementation of the legal framework for electronic public procurement

### **2. ABM / ABB FRAMEWORK**

Policy Area(s): Internal Market

Associated Activity/Activities: IDABC Programme, Standardisation, Publications

### **3. BUDGET LINES**

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B. A lines)) including headings.

Les dépenses administratives et opérationnelles s'inscrivent et sont couvertes par les lignes budgétaires et les programmes existants et n'occasionnent pas un engagement de crédits supplémentaires par rapport à la programmation financière officielle de la Commission.

MARKT

12.0201 Implementation and development of the Internal Market

OPOCE

260201 Procedures for awarding and advertising public supply, works and services contracts

ENTR

020403 Normalisation et rapprochement des législations

02020401 Services paneuropéens de gouvernement électronique aux administrations publiques, aux entreprises et aux citoyens (IDABC)

02010405 Services paneuropéens de gouvernement électronique aux administrations publiques, aux entreprises et aux citoyens (IDABC) Dépenses administratives

3.2. Duration of the action and of the financial impact:

2005-2007

3.3. Budgetary characteristics (*add rows if necessary*) :

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
120201	Non-comp	Diff <sup>ll</sup>	NO	YES	NO	No [3]
020403	Non-comp	Diff	NO	NO	NO	No [3]
260201	Non-comp	Diff	NO	NO	NO	No [3]
02020401	Non-comp	Diff	No	YES	NO	No [3]
02010405	Non-comp	Non-Diff	No	YES	NO	No [3]

#### 4. SUMMARY OF RESOURCES

##### 4.1. Financial Resources

##### 4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		Year n (2005)	n + 1	n + 2	n + 3	n + 4	n + 5 and later	Total
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##### Operational expenditure<sup>8</sup>

Commitment Appropriations (CA) <sup>9</sup>	8.1	a	1,15	1,35	0,705				3,205
Payment Appropriations (PA)		b	0,855	0,875	0,875	0,6			3,205

##### Administrative expenditure within reference amount<sup>10</sup>

Technical & administrative assistance (NDA)	8.2.4	c	0,080	0,080	0,080				0,240
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##### TOTAL REFERENCE AMOUNT

Commitment Appropriations		a+c	1,23	1,43	0,785				3,445
Payment Appropriations		b+c	0,935	0,955	0,955	0,6			3,445

##### Administrative expenditure not included in reference amount<sup>11</sup>

The needs for human and administrative resources shall be covered within the allocation granted to the managing DG in the framework of the annual allocation procedure

Human resources and associated expenditure (NDA)	8.2.5	d	0,594	0,594	0,594				1,782
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<sup>8</sup> Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

<sup>9</sup> Investments by the Publications Office should over time considerably reduce expenditure for publications in the Official Journal.

<sup>10</sup> Expenditure within article xx 01 04 of Title xx.

<sup>11</sup> Expenditure within chapter xx 01 other than articles xx 01 04 or xx 01 05.

Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6	e	0,109	0,109	0,109				0,327
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#### **Total indicative financial cost of intervention**

<b>TOTAL CA including cost of Human Resources</b>		a+c+d +e	<b>1,933</b>	<b>2,133</b>	<b>1,488</b>				<b>5,554</b>
<b>TOTAL PA including cost of Human Resources</b>		b+c+d+e	<b>1,638</b>	<b>1,658</b>	<b>1,658</b>	<b>0,6</b>			<b>5,554</b>

#### 4.1.2. Compatibility with Financial Programming

X Proposal is compatible with existing financial programming for 2005 and 2006.

Pour l'année 2007, la proposition est conforme au nouveau cadre des perspectives financières 2007-2013, voir la Communication [COM(2004)101] de la Commission de février 2004.

- Proposal will entail reprogramming of the relevant heading in the financial perspective.
- Proposal may require application of the provisions of the Interinstitutional Agreement<sup>12</sup> (i.e. flexibility instrument or revision of the financial perspective).

#### 4.1.3. Financial impact on Revenue

X Proposal has no financial implications on revenue

Proposal has financial impact – the effect on revenue is as follows:

### **5. CHARACTERISTICS AND OBJECTIVES**

**Details of the context of the proposal are required in the Explanatory Memorandum. This section of the Legislative Financial Statement should include the following specific complementary information:**

5.1. Need to be met in the short or long term

<sup>12</sup> See points 19 and 24 of the Interinstitutional agreement.

On 30 April 2004, the European Parliament and the Council have adopted Directives 2004/17/EC and 2004/18/EC as part of the legislative package of Procurement Directives. These Directives provide for the first time a coherent framework for conducting procurement electronically in an open, transparent and non-discriminatory way, establish rules for tendering electronically and fix the conditions for modern purchasing techniques based on electronic means of communication.

However, the move towards using electronic means in the procurement process is not without risks. Incorrect application of the new EU rules and discriminatory technical solutions and practices could fragment the Internal Market and increase the risk of inefficiencies and bad governance. Implementing the new EU provisions on electronic public procurement correctly and as quickly as possible will determine Europe's capacity to keep open the markets for electronic public procurement and contribute to achieving the Lisbon objectives.

#### 5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

The transformation of public procurement from procedures carried out on paper to electronic procedures is a complex operation which requires action and decisions at many levels beyond the simple transposition of the new rules by Member States. Organisational, technical and institutional issues should be addressed by governments in order to re-engineer existing processes for tendering and purchasing, and to exploit the available ICT solutions and tools. Adoption of the EU legal framework for the use of electronic means in the public procurement process was a first significant step in order to remove legal uncertainties and to establish the required safeguards for open, transparent and non-discriminatory public procurement using electronic means.

Use of electronic means should guarantee in practice that any business in Europe with a PC and internet connection can participate in a public purchase conducted electronically. Besides ensuring compliance with the legal framework, Community involvement is intended to provide guidance and impetus to Member States' efforts and coordination. Through the Action Plan, it addresses risks and problems in particular in the following areas: legal environment; technical environment; administrative and organisational processes; businesses' access to public procurement markets; knowledge-building, skills and awareness.

In doing so, Community action in relation to e-procurement may be expected to provide a coherent framework for introducing e-government services more generally and sustain convergence of RTD efforts in this field. Eventually, use of e-procurement at national, regional and local level in the Member States may also contribute to more efficient management of Community structural funds.

#### 5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

To achieve generalised use of for electronic public procurement by 2010, the Commission proposes an Action Plan for a functioning Internal Market and good

governance in electronic public procurement. The Action Plan shall assist Member States and facilitate implementation of the relevant provisions of the Directives correctly and in time, in particular with the aim:

- To prevent fragmentation, e.g. the emergence of new ‘e-barriers’ in EU public procurement markets;
- To provide the conditions for ensuring good governance and greater efficiency of public procurement markets and
- To work towards an international framework for electronic public procurement.

The Commission assisted by the Advisory Committee for Public Contracts will monitor overall progress in implementing the Action Plan. By the end of 2007, the Commission will review the situation and report on the results achieved. This assessment will concentrate on the progress achieved on the legal front, the development of the necessary infrastructures for carrying procurement electronically, the use of electronic means and progress achieved in implementing the Action Plan. An assessment of economic impacts would be rather premature as experience shows that benefits from such reforms take longer to materialise. The Commission will use the following indicators to monitor progress:

- *Indicators for the implementation of the legal framework:* Proper alignment of national legislations to the legislative package, e.g. transposition of all provisions on electronic public procurement in each Member State; implementation of the directives in due time; number of legal actions for failure in transposing into national legislation; date of transposition of the directives into national legislation.
- *Indicators for use of electronic means in public procurement process:* General development of electronic procurement across the Union, e.g. share of notices dispatched electronically by contracting authorities; share of tender documents accessible electronically; number and volume of dynamic purchasing systems; share of calls for tender using electronic auctions; share of cross-border procurement. And increased transparency and compliance in public procurement activities
- *Economic indicators:* statistical information is already being collected on public procurement markets; this information will be progressively extended to cover electronic means such as the share of central purchasing and evolution of dynamic purchasing systems. The Action Plan envisages improvements to collection and processing of procurement data at both, national and Community level.

To implement the Action Plan on e-procurement, the Commission intends to carry out a substantial number of actions, among which an Interpretative Communication on electronic public procurement and a Commission Regulation establishing standard forms for the publication of notices. In this context, the Commission will table proposals and take the appropriate initiatives according to the time-table set out in the Action Plan. It will provide the necessary legal support and assistance to the Member States for the transposition of the public procurement directives and monitor the application of



Community law as well as organise meetings of the relevant committees, in particular, the Public Procurement Advisory Committee and the Working Group on e-procurement; it will also propose continuation of the activities of the e-procurement workshop managed under the IDA programme. In addition, meetings with Member States will be organised within the Statistics working group to improve data collection and explore solutions to automate it in view of the end-2006 deadline laid down in the e-procurement Action Plan. Finally, the Commission will participate actively in international fora and provide adequate input to international standardisation fora, most particularly on interoperability issues.

Commission output will be surveyed in terms of timely delivery and content of outputs; the completion of studies on time; compliance cost indicators for public procurement rules; appropriate impact assessments where applicable and the degree of acceptance from stakeholders. The quality of economic indicators will be judged by the quantity of reliable data available, and the fulfilment of EU statistical obligations.

#### 5.4. Method of Implementation (indicative)

Show below the method(s)<sup>13</sup> chosen for the implementation of the action.

##### *Centralised Management*

- Directly by the Commission
- Indirectly by delegation to:
  - Executive Agencies
  - Bodies set up by the Communities as referred to in art. 185 of the Financial Regulation
  - National public-sector bodies/bodies with public-service mission

##### *Shared or decentralised management*

- With Member states
- With Third countries

##### *Joint management with international organisations (please specify)*

Relevant comments:

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<sup>13</sup> If more than one method is indicated please provide additional details in the "Relevant comments" section of this point

## **6. MONITORING AND EVALUATION**

### 6.1. Monitoring system

### 6.2. Evaluation

#### 6.2.1. Ex-ante evaluation

Extended impact assessment

#### 6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)

Not relevant

#### 6.2.3. Terms and frequency of future evaluation

Review by the Commission and Advisory Committee for Public Contracts in 2007; if necessary, additional evaluation exercises will be considered.