EU:s konsultation gällande en modernisering av den offentliga upphandlingen

Nedan finner Ni ett inspel från IT&Telekomföretagen beträffande EU:s grönbok. Texten berör enbart miljö- och sociala krav.

Huvudbudskapet i detta inspel är detsamma som från Almega, Svenskt Näringsliv, CEFIC och BUSINESSEUROPE. Det budskapet är att vi inte ser något behov av att modifiera nuvarande lagstiftning. Det är snarare tillämpningen av lagstiftningen som är och blir problematisk.

Med vänlig hälsning,

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EU consultation on the modernization of EU public procurement policy  
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Response from the Swedish IT&Telecom Industries

The comments below relate to environmental and social criteria in public tenders.

The Swedish IT&Telecom Industries supports Green Public Procurement (GPP) as it financially re-wards our members who since many years offer environmental conscious products and services that go beyond legal compliance, especially regarding energy efficiency. When performed professionally and by respecting the basic principles of the Directives, including article 23 of 2004/18/EC, GPP is a policy instrument that can transform the market.

Our general position is that we do not see any need to make any changes to the current EU Public Procurement Directives which were revised in 2004 and implemented in Member State National regulation during 2006-2008. Before any adjustments are made, all effort should be focused to en-sure the legal correct and efficient implementation and performance of public tendering in the Member States and to avoid market fragmentation.

Only during the past 5 years, our members have responded to hundreds ‘green’ purchase specifications regarding ICT products, all different which create market distortion and a huge administrative burden for all involved. Following are special concerns:

- there is great legal uncertainty regarding article 23 of 2004/18/EC and the fact that eco label criteria have to be based on scientific information, a condition also in the EU eco label regulation, article 6 of 2010/66/EC;

- there seems to be no, or very little, coordination between EU DGs and the Member States which has resulted in different purchase specifications for ICT products;

- the 18 EU GPP criteria, published 2008-2009 are not used in many ‘real’ tenders, instead many additional requirements are added with little scientific justification;

- GPP is used to drive chemical politics, i.e. substances and materials are banned without scientific justification, also with no assessment of the used substitutes

- almost all official EU eco label criteria are used in public tenders, incorrectly assuming these meet the basic principles of the Directives including the scientific provision of article 23 of 2004/18/EC;

- the Swedish SEMCO organization invites all stakeholders when GPP criteria are established and revised, but unfortunately, the agreed specifications are not used in many ‘real’ tenders;

- there is minimal market assessment if products are at all available on the market which meet the purchase specifications;

- we see ‘green’ criteria which discriminate manufacturer of original toner cartridges and favour remanufactured cartridges, with no scientific justification;

- we see ‘green’ purchase specifications that most likely are Technical Barriers to Trade (TBT) which violate the free movement of goods principle. Examples are chemical substance concentrations be low the specified in harmonized EU Directives like the EU
battery and the RoHS Directive. Examples are ‘green’ purchasing criteria published and used in Sweden, see: www.msr.se/en/.

- we fully understand and respect the desire to include social criteria in public tenders. However, the recently published EU ‘Buying Social’ guidelines are not legally binding and must be used with care to avoid the arbitrary exclusion of bidders;

- public purchasers have no follow up procedures in place, to ensure that only products are being procured during the contract period which meet the original ‘green’ specification of the tender, a violation of the principle of equal treatment. Less serious bidders will state compliance to whatever is required, knowing there is not even a spot check during the performance of the contract. There is a risk that contracts are incorrectly awarded, the delivered products and services do not possess the required environmental attributes, a waste of taxpayers’ money and a loss for the environment;

- in frame agreements, additional environmental and social criteria are added in ‘mini tenders’ during the contract period, which is not allowed;

- during the tendering, ‘green’ criteria are added, changed and removed, which is not allowed.

Below are some additional comments to a selected numbers of the questions:

62. Do you consider that the rules on technical specifications make sufficient allowance for the introduction of considerations related to other policy objectives?

The overall goal of public procurement is best economic value for taxpayers’ money. When ‘green’ criteria are included, these must be in line with the legal provisions, they should be harmonized within the Member States, scientifically justified, including follow up process to ensure real progress.

We do not see a need to revise the current EU Public Procurement Directives as they already sufficiently allow for the use of environmental criteria on top of economic considerations.

71. Do you think that in any event the score attributed to environmental, social or innovative criteria, for example, should be limited to a set maximum, so that the criterion does not become more important than the performance or cost criteria?

Our members have years of experience that political statements underline the importance of environmental and social criteria, whilst real tenders set low weight to these aspects. Over the past 10 years, we have seen 1-25% weight assigned, with an average about 10%. Under the condition that criteria are in line with the legal provisions, technical standards indeed show quantitative differences between products, these attributes should be given minimum 10%, preferably 15-20% to be taken seriously by suppliers and have a positive effect on the environment.

If ‘green’ criteria are harmonized, used by the majority of the Member States, ‘green’ procurement will have a much larger impact than the current fragmented situation.
72. Do you think that the possibility of including environmental or social criteria in the award phase is understood and used? Should it in your view be better spelt out in the Directive?

Keeping in mind the above described market distortion, we see no need to modify the EU Public Procurement Directives as these do already allow for the use of environmental criteria on top of economic considerations. Again, the EU ‘Buying Social’ guidelines are not legally binding and must be used with care to avoid the arbitrary exclusion of bidders.

78. How could contracting authorities best be helped to verify the requirements? Would the development of "standardized" conformity assessment schemes and documentation, as well as labels facilitate their work? When adopting such an approach, what can be done to minimize administrative burden?

Multiple means of compliance verifications must be accepted also in the future and these should not be awarded differently in the bid evaluation. The supplier is always responsible for the correctness of provided information. With the right balance between trust and compliance spot check, the quality can be raised without any changes of the current Directives.

Regarding labels, the ICT industry is global and our members, since many years are exposed to a large number of labels, especially eco labels. Therefore, more labels are definitely not desired. Also, eco-labelling criteria establishment and revision is a slow process in the fast moving ICT industry. In recent criteria revision regarding personal computers within the EU eco label and the German Blue Angel, industry comments were ignored and the required market assessment to ensure that 10-20% of compliant products were available on the market, was only performed regarding energy efficiency, not regarding restrictions of substances and materials.

Most important is that eco-labelling organizations take any responsibility for product compliance, this is the responsibility of the certificate holder. Important to know is that 80-100% of eco label criteria compliance is achieved by applicant self declaration, i.e. hardly any independent testing is performed by the eco label organization.

Since decades, the various eco label organizations in Europe officially state they cooperate and strive for criteria harmonization, whilst in practice they compete and do whatever they can to maintain a competitive advantage for their own label of the few ICT product categories which have a decent number of licenses.

Instead of establishing yet another label, there should be a serious effort to reduce the existing number, ensure criteria are based on science and then harmonize between the various labels.

81. Do you believe that SMEs might have problems complying with the various requirements? If so, how should this issue be dealt with in your view?

It is indeed already difficult for SMEs to take part in and win contracts in the public sector. This will be even more difficult with the introduction of green and social criteria which requires in depth knowledge and control of the supply chain. If SMEs should have a chance to bid, there needs to be some limitations regarding supply chain requirements in public tenders.
83. Do you think that EU level obligations on "what to buy" are a good way to achieve other policy objectives? What would be the main advantages and disadvantages of such an approach? For which specific product or service areas or for which specific policies do you think obligations on "what to buy" would be useful? Please explain your choice. Please give examples of Member State procurement practices that could be replicated at EU level.

The main objective of public procurement is best economic value for taxpayers’ money. At present, Public Procurement should not prescribe ‘what to buy.’ If any changes are considered in this respect, stakeholder consultation must be substantially improved. We do believe there is a good dialogue regarding energy efficiency of ICT products, however, concerning chemicals and materials, the consultation with industry is poor and must be considerably improved.

84. Do you think that further obligations on "what to buy" at EU level should be enshrined in policy specific legislation (environmental, energy-related, social, accessibility, etc) or be imposed under general EU public procurement legislation instead?

We believe, the current Public Procurement Directives do not need to be revised.

85. Do you think that obligations on “what to buy” should be imposed at national level? Do you consider that such national obligations could lead to a potential fragmentation of the internal market? If so, what would be the most appropriate way to mitigate this risk?

From the examples above, it is clear that the market is already too fragmented. There is no need to add more complexity to the process.

Obligations on “what to buy” should, if at all, be defined in a uniform way on European level (and not on national level or below).

The most appropriate way to reduce this risk is a more uniform application of harmonized EU GPP criteria that are ‘legally safe’, based on sound science and are established (and updated) in consultation with business and industry in a transparent and efficient process.

86. Do you think that obligations on what to buy should lay down rather obligations for contracting authorities as regards the level of uptake (e.g. of GPP), the characteristics of the goods/services/ works they should purchase or specific criteria to be taken into account as one of a number of elements of the tender?

Obligations on “what to buy” should continue to be related to the subject matter, i.e. the characteristics of the goods/services/works that contracting authorities should purchase.

86.2. Should mandatory requirements set the minimum level only so the individual contracting authorities could set more ambitious requirements?

In general, requirements should be set on the European level in order to safeguard uniform implementation across the internal market.

Again, market assessment is crucial to understand at what percentage ‘green’ compliant products are available and to decide between mandatory or award criteria.
88. The introduction of mandatory criteria or mandatory targets on what to buy should not lead to the elimination of competition in procurement markets. How could the aim of not eliminating competition be taken into account when setting those criteria or targets?

In general, public procurement should not be tied to political goals, as the main objective is best economic value for taxpayers’ money. The wider uptake of “green” / sustainable public procurement should rather be encouraged through soft measures, including training of public authorities, exchange of best practises and use of the already available guides.

Criteria on “what to buy” should, if at all, be developed on an objective, scientific basis and treat all chemical substances and materials equally. In particular, they should not discriminate substances merely based on their chemical structure (e.g. phthalates), their elementary basis (e.g. halogens) or their function (e.g. plasticiser, solvent, flame retardant, antioxidant etc.). Subjective factors like public perception should not play a role in criteria development.

Experience with national and European type I eco-labels has shown that the often extreme restrictions on substances and materials in these criteria render compliance technically very difficult. Translated to public procurement, this would mean the elimination of competition in the market. Therefore we demand that technical and market feasibility of mandatory criteria or mandatory targets on “what to buy” are checked and validated, i.e. via thorough market assessment and in dialogue with the industry.