

Topic : Public procurement – EU Directives & New Initiatives

Brief description and main aims:

The current legislative framework setting the rules for public procurement consists of the 3 directives adopted in 2014 (2014/23/EU on concessions, 2014/24/EU on “classic” procurement and 2014/25/EU on “utilities” procurement). These rules aim at ensuring that public procurement procedures are transparent and fair.

In October 2017, the European Commission published a package of mostly soft law measures (guidance) aimed at helping with the implementation of the directives. It promoted the “strategic use” of public procurement (i.e. using innovative, green, social / societal criteria), as well as the professionalisation of public procurers (i.e. capacity building).

Several recent strategies published by the new Commission foresee a great deal of initiatives regarding public procurement. The Commission envisages to propose further legislation and guidance to green public procurement. Importantly, it will come up with minimum mandatory green criteria for public procurement in sectoral initiatives, EU-funding or product-specific regulation, i.e. set a common definition of what a green purchase is. Moreover, the Commission will propose a Sustainable Procurement Screening Instrument ensuring the greening of public infrastructure projects. Also, it is foreseen to use level(s) to integrated life cycle assessment in public procurement. With regard to SMEs, the European Commission will call on contracting authorities to use the flexibility offered by the procurement framework and launch a “SME friendly” label for contracting authorities. These initiatives are all at the very beginning and the European Commission asks for any kind of input.

Why FIEC is dealing with this topic:

This issue is crucial for construction companies because it represents a high share of business opportunities, especially when it comes to public works.

As regards to the guidance package published by the Commission in 2017, FIEC broadly welcomed these measures, especially the professionalisation of public buyers, but was more sceptical about the strong promotion of “strategic procurement” (i.e including innovative, green and social/societal criteria). These criteria are not clearly defined and sometimes diverge significantly from the traditional principle of purchasing for the best value for money, which can put at risk the level playing field between the various bidders.

FIEC is currently preparing input for the upcoming initiatives on public procurement.

Actions and key dates :

- 2014** – Adoption of the public procurement Directives
- 10/2017** – European Commission’s guidance package on public procurement
- 04/05/2018** – FIEC position paper on the 2017 package
- 03/10/2018** – European Parliament resolution on 2017 package (Plenary)
- 02/2020** – Sustainable Europe Investment Plan
- 03/2020** – Industrial Strategy
- 03/2020** – SME Strategy
- 03/2020** – New Circular Economy Action Plan
- 24/03/2020** – FIEC meeting with DG GROW on upcoming procurement initiatives