

Suppression of corruption in Public Procurement Systems

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EU standards in public procurement procedures

The legislative framework

The Treaty

The Public Sector and Utilities Directives

The Remedies Directives

WTO Government Procurement Agreement (GPA)

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The aim of the Public Procurement Directives

- to ensure the application of basic principles (recital 2 of 2004/18/EC highlights):
 - free movement of goods,
 - freedom of establishment and to provide services,and principles deriving from these, such as
 - the principles of equal treatment, non-discrimination , mutual recognition, proportionality and transparency

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The legislative framework

- lengthy development from the 1970s to the 1990s
- Single market/remedies
- Following 1996 Green Paper, proposals to revise directives result in adoption of legislative package

WTO GPA parallel development, but progress not achieved on wider Transparency Agreement

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Legislative package

Directive 2004/18: Public sector (classical directive)

Directive 2004/17: Utilities (water, energy, transport, postal services)

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Procedures (needs to be adapted to type of procurement):

- Open
- Restricted
- Negotiated
 - with a call for competition &
 - without

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Improvements in 2004/18/EC

- Competitive dialogue (for complex contracts)
- Framework agreements
- Use of electronic means (e-procurement)
 - improves communication and audit trail
 - reduces costs and potential to improve vfm (eg through use of e-auctions)

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Tendering process: selection, evaluation and award criteria

Procedures provide for:

- objective selection on basis of financial standing and technical ability, &
- transparency in award criteria, either most economically advantageous or lowest price

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Specific provision on mandatory exclusion, Article 45 of 2004/18/EC provides for this where convicted of:

- Participation in a criminal organisation,
- Corruption,
- Fraud, or
- Money laundering

This reinforces the potential exclusions where there has been proven grave professional misconduct or conviction concerning professional misconduct

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Rules on enforcement: remedies

Remedies legislation

Directive 89/665: remedies for contracting authorities
(contracts covered by 2004/18)

Directive 92/13: remedies in the utilities sectors (contracts
covered by 2004/17)

Directive 2007/66: amending both previous directives (for
implementation by Member States by 20 December 2009)

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Remedies Directives provide that:

Member States must ensure that decisions taken by contracting authorities/entities may be reviewed as quickly as possible on the grounds that such decisions have infringed the public procurement legislation

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- Remedies continued
 - interim measures including suspension of the procedure
 - setting aside of decisions taken unlawfully,
 - damages granted to the person harmed by the infringement

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2007/66/EC: main changes to remedies rules

- Harmonises the standstill period between contract award and conclusion (following Alcatel case: C-81/98): 10/15 days, some derogations
- Introduces ineffectiveness for illegal direct awards (and other serious breaches)

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Post award transparency

- Debriefing (2004/18/EC: Article 41)
 - information about decisions and why winning tender was selected

Thank you