

EUROGAS VIEWS ON THE COMMISSION'S COMMUNICATION PUBLIC PROCUREMENT IN THE EUROPEAN UNION

INTRODUCTION

1. Eurogas, the European Union of the Natural Gas Industry, commented on the Commission's Consultative Green Paper on Public Procurement in the EU. Main concerns of Eurogas included :
 - the Commission's line of approach to remedy the weaknesses and problems in the procurement regime seemed to be directed towards tightening the legislative approach. Furthermore,
 - adequate distinction was not made between the public sector proper and the utilities which operate in a competitive market
 - the procurement regime was too costly and bureaucratic

Furthermore, Eurogas stressed the importance of the procurement regime's taking into consideration the dynamics of the profession and the evolving business environments of the utilities.

2. Eurogas, considers that overall the Commission's Communication on Procurement indicates a new, welcome preparedness on the Commission's part to take a fresh look at the approach to procurement policy in the EU and apparently, to develop a more flexible and simpler approach, called for by Eurogas and other industry associations.
3. The Commission also seems to have taken on board the need to clarify aspects of the existing legislation.
4. Acknowledging these encouraging developments, Eurogas nevertheless considers at this early stage it is important to clarify intentions of the Communication, and comment on those areas of the Communication which indicate misunderstanding of the procurement profession, with a view to enhancing the basis for future dialogue.

A Transparent Approach

5. In the last few years, the procurement regime has been subject to near continuous legislative change, with the latest revised Directive 98/04 only recently adopted and not to be implemented before 2000. Now there is a prospect of
 - a new legislative package adjusting 93/38 or 98/04 and at the same time
 - clarification to the existing Directives through interpretative documents
 - planned consolidation of the three Directives.
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6. Eurogas seeks assurance that this ambitious work programme will be carried out in a transparent manner, with appropriate consultation of industrial and commercial interests, including contracting entities and contractors. While clarification of a few provisions in the text of the Directive may be practicable, limited to cases where the text is muddled, these interpretations must rest within the established legal framework of the Directives, and not in practical effect introduce amendments. If lack of clarification touches on policy issues, then it is more appropriate to take the legislative route, involving Council and Parliament fully. Similar care must be taken to ensure that *consolidation* of the Directives does not permit an abbreviated procedure to introduce amendments.
7. Eurogas notes that the legislative package will cover competitive dialogue procedure, framework contracts and concessions, and so these will be subject to full consultation in the legislative route. Any proposals to exclude from the field of application of Directive 93/38 (98/04) some sectors or services should also be subject to the full legislative route but the intentions on this are not clear.

Exclusion of Services and Sectors

8. Eurogas endorses the announced intention in the Communication to take account of the changes which have occurred to sectors and services because of liberalization. As long, however, as there are no concrete proposals on regulations for exemptions, gas companies can with difficulty notify the Commission of services to be excluded as requested. Furthermore, the exclusion system should not be unduly bureaucratic, but should be managed according to principles of subsidiarity at Member States level. The national situation should be notified to other Member States, and published in the Official Journal.

Intra-group trading

9. Eurogas points out that the evolution of market structures and utilities already calls into question the appropriateness of Article 13 on intra-group trading. It is a matter of concern that this issue has not been specifically identified by the Commission as requiring a changed approach. Eurogas considers it important to exempt from the scope of the Directive as many of the contracts awarded to associated companies as possible.

Facilitating Dialogue

10. Eurogas notes that the objective of introducing a new standard procedure “competitive dialogue” alongside open and restricted procedures is to achieve procedural simplification and flexibility. Eurogas, however, sees no need to replace the negotiated procedure system. Perhaps, underlying this suggestion is an intention to have the same procedural options for utilities and the Government and municipal sectors with a view to consolidation of the Directives but this would be counter-productive if it were to restrict procedures for utilities.
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Framework Contracts

11. Eurogas does not wish to see the framework contract system amended with regard to utilities.

Treatment of Concessions and Forms of Public Private Partnership

12. It is not clear to Eurogas what is intended by a *new legal framework to govern treatment of concessions as well as forms of public-private ownership*. In the latter case, there may be some justification for review of arrangements. In the view of Eurogas, however, it would be inappropriate to consider adopting procurement legislation governing concessions for the provision of energy supply services. Such issues remain a matter for energy policy and subsidiarity. Uncertainties should not be introduced into the progressive market-opening approach adopted by Member States.

Clarification and Consolidation

13. As stated above Eurogas agrees that there are areas of the existing Directive which require clarification, and service contracts, in particular the situation of financial contracts, is one such area. Interpretative documents on other topics, however, risk touching on areas better left to a legislative approach. Eurogas questions, however, why a definition is planned to interpret "special or exclusive rights", when this criterion is so significant in terms of the anticipated debate on the exclusion of sectors/services subject to real competition. Also there seems to be some contradiction in the Commission's wish for flexibility and insistence at the same time on detailed definitions.
14. Consolidation of the traditional Directives may be practicable, but Eurogas would be concerned if it led to any weakening of the distinction between utilities and the public sector proper, by shifting the emphasis to the regime governing the latter.

Market Monitoring

15. Eurogas is ready to co-operate with the Commission and/or national authorities in the objective of Market Monitoring, in particular to ensure that the indicators and measurements to be used are sound and practicable. The objectives of these exercises should, however be clear and agreed in advance and commercially confidential information should not be involved. Eurogas has reservations about the usefulness of SIMAP in this respect (see also below, paras 19-21)

Attestation

16. Eurogas welcomes that the Commission agrees with its view expressed on the Green Paper that there should be a benefit to a company in opting for attestation, particularly if this would exempt an entity subject to attestation from certain bureaucratic constraints.
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SMEs

17. Eurogas endorses the objective of encouraging greater participation by SMEs in public procurement. The involvement of SMEs, however, is very often through sub-contracts, and the Internet-based solution will not necessarily be effective in this respect. It should not be overlooked that the complexity of the Directives is in itself a barrier to participation by SMEs.

Qualification of Suppliers

18. Eurogas is concerned about the implied approach on qualification. Opportunity for some form of co-ordinated approach should be studied but harmonisation as suggested would lead to problems, eg common exclusion could arise unfairly for a particular supplier. This is a complex area, and the objective should be to increase efficiency and reduce costs for involved parties. Eurogas proposes that the following possibilities are explored

- 1) A common approach on pre-qualification, including the establishment of a common vendors' register. A number of commercial schemes exist.
- 2) A push to mutual recognition of standards.

But to go further raises unwelcome complications.

Electronic Procurement

19. Eurogas has growing concerns about the development of SIMAP.
 - To force the pace on electronic tendering risks being against the interest of SMEs
 - In less complex areas, SIMAP opportunities will be welcome, but for the bulk of the gas sector's specialist purchasing, other options should not be squeezed out
 - Most important, Eurogas is concerned that SIMAP is driving policy developments through technical pressures and that users are not adequately involved in designing the system, which is claimed to be in their interests. Eurogas supports the principle of proceeding with pilot projects, but not then to extrapolate a main-line approach.
 20. Furthermore, for reasons of commercial confidentiality, companies may not wish to make tender documents available on the Internet.
 21. Nor does Eurogas welcome the implication, that a regime will be developed for below-threshold procurement.
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Complementing other Community Policies

22. Eurogas welcomes the Commission's proposed cautious approach on the link between procurement policy and environmental aspects. The criteria for efficient procurement practices rest economic, but companies in general are aware of the wider dimensions involved in their responsibilities. It is for this reason that the Eurogas statement on Environmental Management Systems within the Natural Gas Industry recognizes that *in contacts with contractors and suppliers, account should be taken of environmental considerations, among these that they operate an EMS system.*
23. It is important, moreover, that the link between environmental concerns and procurement does not lead to a discriminatory approach.
24. Social issues is a very complex area and Eurogas would be concerned if the EU were to take unilateral action, which could put EU industry at a competitive disadvantage internationally.

International Aspects

25. Eurogas welcomes the line proposed by the Commission on international aspects.

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