

The new Directive on public procurement

A step forward for the quality and sustainability of SSGI?

EASPD

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NB: The information contained in this presentation is not binding for the European Commission and does not present an official position of the European Commission

Introduction – preparatory works

- *Green paper **on modernisation of European public procurement (27.1.2011)** and "Single Market Act" (13.4.2011)*
- *Evaluation of the European legislation on public procurement (24.06.2011)*
- ***Public consultation and conference (30.6.2011)***
- ***Report of the European Parliament (5.10.2011)***

Introduction - State of play

- **Commission adopted proposals on 20 December 2011**
- **Political agreement by European Parliament and Council reached during summer 2013**
- **Text still to be adopted formally by European Parliament (plenary session) : end 2013 / beginning 2014**
- **As from adoption, Member States will have 2 years to implement the Directives into national law.**

Objectives & Trade-offs

**1. Simpler /
more flexible
procedures**

2. Strategic use

**3. Better access
(SMEs, cross-
border trade)**

**4. Sound
procedures**

5. Governance / Professionalisation of procurement



Strategic use of public procurement

Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds.

→ ***to enable procurers to make better use of public procurement in support of common societal goals (environment, social inclusion and innovation).***

Horizontal "social clause"

- **Member States shall take appropriate measures to ensure the compliance by economic operators of applicable obligations in the field of environmental, social and labour law established by Union law, national law, collective agreements or by international environmental, social and labour law provisions.**
- **At the place where works are executed and services provided**
- **Posting of workers Directive 96/71/EC**
- General principles for choice of participants and award of contracts
- Exclusion criteria
- Abnormally low tenders
- Subcontracting

Horizontal clause – violations in the past

Specific exclusion ground

The CA MAY exclude where it can demonstrate the violations of the applicable obligations in the field of social, environmental and labour law, by any appropriate means.

MS can render it mandatory.

Horizontal clause – violations in the tender

CA MAY decide not to award **a contract to the tenderer submitting the best tender** where they have established that **the tender does not comply with the applicable obligations in the field of environmental, social and labour law;**

CA SHALL reject the tender where they have established that **the tender is abnormally low because it does not comply with applicable obligations in the field of environmental, social and labour law.**

Production process

- **Evolution of the concept of LINK with the subject matter of the contract.**
- **Contracting authorities may also take into account the production process of the specific works, services or supplies to be purchased, such as the inclusion of vulnerable and disadvantaged people or the use of non-toxic substance, in their award decisions.**
- **No general corporate policy.**

Public-public cooperation

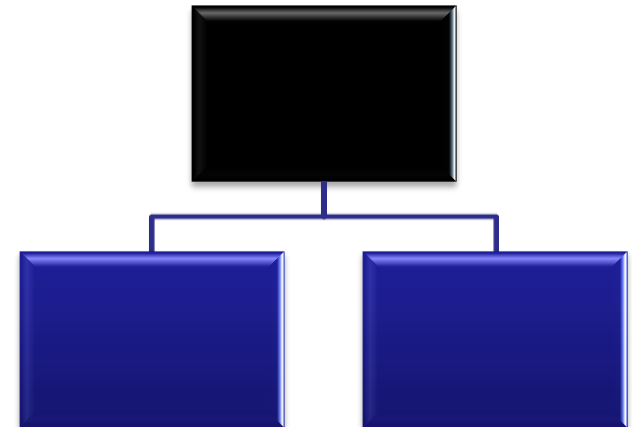
... codifying
ECJ Case-law

In-House with sole control

- Control
- Activity: at least 80% for controlling authority
- No **direct** private capital participation

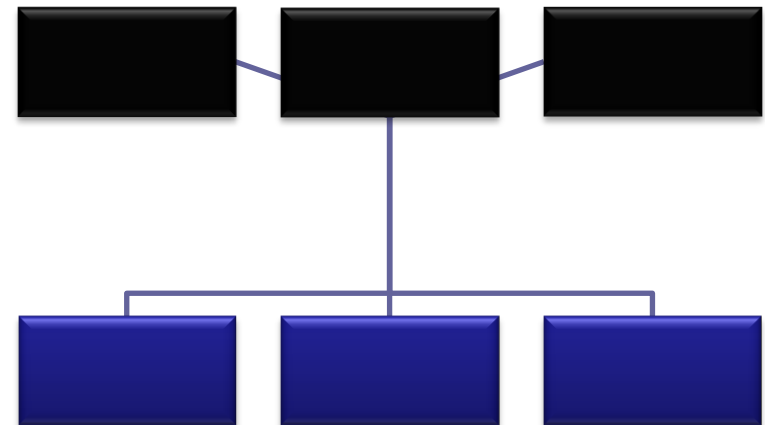
Exception:

- required by law and
- without controlling or blocking rights



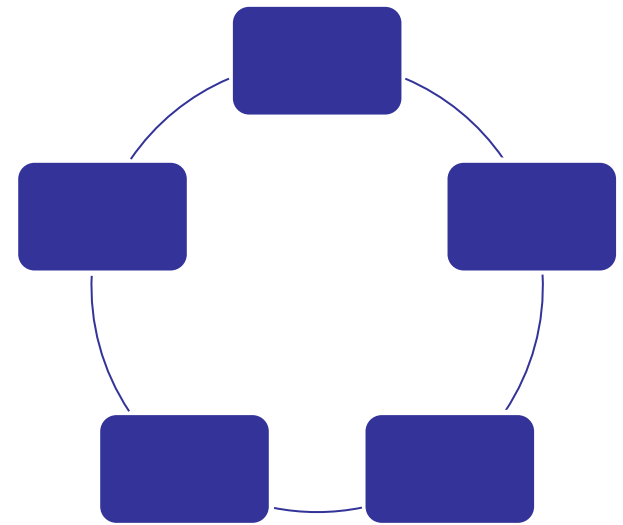
In-House with joint control

- Control jointly exercised
- Composition of **decision-making bodies**
- No **conflicting interests**



"Horizontal" cooperation

- **Cooperation** in performing **public services** for **common objectives**
- **Public interest**
- Outside activities **below 20%**



Social services – specific LIGHT regime

The end of A/B distinction

What is the content of the new regime?