

TOWARDS EFFICIENCY IN PUBLIC PROCUREMENT: SIMPLIFYING PROCEDURES AND REDUCING THE ADMINISTRATIVE BURDEN

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ABSTRACT. Simplification of legislation and administrative procedures may be of considerable assistance, in order to improve the regulatory framework, by introducing more modern and up-to-date regulations and reducing the administrative burden, all of which would be to the benefit of firms and, as a consequence, the overall economy. Simplified administrative procedures certainly represent a challenge that confronts regulations on public procurement in the European context, as the administrative burden may be considerably lightened by less complex regulations. Among other measures, those that refer to the contractor selection phase have the potential to promote simplification. The aim of this paper is to study such measures and make proposals for their inclusion in European Directives on public procurement.

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INTRODUCTION

The establishment and successful operation of the single market has been one of the cornerstones of the European project since its origin. The signing of the Treaty establishing the European Economic Community (EEC Treaty) was intended to bring about harmonious development of economic activities in the context of the Community through the establishment of a “common market” (article 2). The signatory states agreed to eliminate customs duties between them and to establish a common customs tariff with regard to third-party States (articles 3.a and b). Likewise, they agreed to remove the obstacles to freedom of movement for persons, services and capital and to approximate the laws of Member States for the functioning of the common market (articles 3.c and h).

In the *White Paper on the completion of the Internal Market* (1985), the Commission proposed, in a general way, the need for a decisive strategy to bring to a successful conclusion the objective of an internal market in 1992, removing the obstacles and barriers, whether physical, technical or fiscal that might prevent it from being achieved. The Single European Act (1986), which came into force on 1st July 1987, incorporated into law the concept of the internal market in the EEC Treaty as an area without internal frontiers in which freedom of movement of goods, persons, services and capital is guaranteed.

The existence of a single integrated market without frontiers offers great potential in terms of employment, growth and competitiveness and, in consequence, work continues within European institutions to remove any obstacle that hinders the achievement of such objectives. Likewise, and given that there is still too much bureaucracy and red tape, the need to intervene in favour of simplified administrative procedures is stressed which makes the fundamental freedoms of the Union effective, in particular the free movement of people and the rights and interests of employed persons. In this sense, the political action of the EU proposes moving towards improvements in its regulation, the simplification of the legislation, greater flexibility of its procedures and the removal of unnecessary administrative burdens (Monti, 2010)¹.

The objective of this paper is to make known the principal measures that are covered in the new proposals of the Directives

of the European Union to make effective the requirement of simplification in the context of the strategic programmes «Better Lawmaking» and «Smart Regulation».

SMART/BETTER REGULATION IN THE EUROPEAN UNION

Better Regulation is a fully-fledged policy. Enterprises need a legal framework that is easy to understand and to apply. Better Regulation helps to increase competitiveness by removing the unnecessary costs and burdens of this legal framework. By acting in a comprehensive and coordinated way its aim is to reduce the burden for businesses and to transform lawmaking into an effective tool to address society's needs in a proportionate and useable manner (Radaelli, 2007; Radaelli and De Francesco, 2007; Allio, 2007).

Nevertheless, the objective of reducing the administrative and bureaucratic burdens has been constant, since the first European initiatives were approved for the simplification of administrative procedures, in 1998, to guarantee European firms greater possibilities of competing in a highly competitive global environment (Villarejo-Galende, 2008, 2009). In particular, since the Communication from the Commission *Simplifying Administrative Procedures within The Community - General Considerations* (1988) and Recommendation 90/246/EEC from the Council, of 28 May 1990, on the implementation of policy of administrative simplification in favour of small and medium-sized enterprises in the Member States. Among its other measures, it advocated the development of simplified administrative measures especially for small and medium-sized enterprises. Subsequently, the Resolution of the Council, of 3 of December 1992, on administrative simplification for enterprises, especially small and medium-sized enterprises, the «Molitor Report»² of the group of independent experts on legislative and administrative simplification (1995) and the SLIM Project (Simpler Legislation for the Internal Market, 1996)³.

In March 2000, the Extraordinary European Council held in Lisbon set in motion the Strategy for Growth and Employment of the European Union, known as the *Lisbon Strategy*. A ten-year programme of reforms was established for economic, social and environmental renovation of Europe. Its aim was to convert the EU into the most competitive and dynamic zone in the world, capable

of sustainable economic growth, with more and better employment and greater social cohesion. In this sense, the improvement of the regulatory framework and the removal of distortions in the single market caused by differences in the regulatory regimes were essential to satisfy this ambition⁴ (Radaelli, 2007).

From that point, various steps were taken by European institutions in the improvement of the normative framework, in order to simplifying the Community 'acquis' and reduce its volume. The *White Paper on European Governance*, adopted by the Commission on 25 July 2001, included a section that was dedicated to the improvement of the quality of regulation proposing a programme to simplify the existing norms (Mandelkern Report, 2001; Hampton, 2005)⁵. However, the principal measures to improve legislation in the European context are contained in two documents: the Action Plan on the Simplification and Improvement of the Regulatory Framework of 2002, modified in March 2005⁶ and the *Inter-institutional Agreement on Better Lawmaking*, adopted by the European Parliament, the Council and the Commission in December 2003⁷. This leads to a mention of the *Better Regulation Programme*. As pointed out earlier, this programme has the aim of making legislation less burdensome and easier to apply, at both a European and a national level, so that it achieves its objectives in a more effective way (Baldwin, 2005)⁸.

In this context of regulatory improvement, the Commission set in motion, in January 2007, the *Action Programme for Reducing Administrative Burdens* with the aim of achieving a reduction of 25% of the administrative burden that falls on firms, by no later than 2012. This Programme was amended in March 2007, by the Council of Europe in Brussels, which gave its specific support to this joint common objective and invited Member States to "set national targets of comparable ambition", given that the legislative improvements and the reduction of bureaucracy are central elements of the measures aiming to increase competitiveness and promote employment⁹ (OCDE, 2003, 2007, 2011; Open Europe, 2005; Wipo & Ceps, 2006; Wegrich, 2009: 12; Virant, & Kovač, 2010).

This Programme focused its attention on 13 priority areas¹⁰, one of which was public procurement (Table 1). The Commission relied on the assistance of the *High Level Group of*

Independent Stakeholders on Administrative Burdens, to help it to achieve the objective of a 25% reduction¹¹. Those suggestions which relate to the 72 legal acts already covered by the Action Programme have been integrated in the Sectoral Reduction Plans. At the start of 2009, the Commission made a commitment to present sectoral reduction plans for the thirteen priority areas and prepare additional measures to reduce administrative burdens. In this sense, the preparation of additional measures to reduce administrative burdens responds to what is established in the *Small Business Act* and its “Think Small First” principle. Special emphasis should therefore be placed on the reduction of burdens that fall on Small and Medium sized Enterprises (SMEs) (Commission 2009a; 2009b; 2009c).

Table 1
Burden and Reduction

Priority Area	Administrative Burden (in €)	Sectoral Reduction Figure (in €)	Reduction as % of Burden
Public Procurement	216 300 000	-60 100 000	-28 %

Source: Communication from the Commission to the Council and the European Parliament - Action Programme for Reducing Administrative Burdens in the EU Sectoral Reduction Plans and 2009 Actions, COM(2009) 544 final, 22 October 2009, p. 5

At the start of 2010, the achievements of the Lisbon Strategy were not as expected and in June of that same year a new strategy was approved to face up to the modern-day European challenges, among which it is of interest to highlight the economic and financial crisis, the globalization of the economy and unemployment. This new initiative was given the name of “*Europe 2020 Strategy*” (Commission 2010a).

The Europe 2020 Strategy aims to respond to the economic crisis and has the aim of preparing a Europe for the next decade¹². Among the long-term perspectives of the *EU 2020 Strategy*, the single market is a key element to achieve a highly competitive and sustainable social economy. Nevertheless, both European firms and citizens face continuous difficulties in their trans-national activities due to the Member State’s excessive and onerous requirements. Thus, and as the institutions of the Union have repeatedly expressed, the greatest challenge is to find a

balance between an open economy, that responds to the demands of a social and environmental nature, but without creating unnecessary restrictions in view of the simplification of their norms and the removal of barriers to market access¹³.

Thus, the *Europe 2020 Strategy*, announced three mutually reinforcing priorities: smart growth based on knowledge and innovation; sustainable growth that promotes a more resource efficient, greener and more competitive economy; and finally, inclusive growth, which fosters a high-employment economy and social and territorial cohesion. Nonetheless, to achieve these ambitious objectives the Commission considers it essential to provide an acceptable regulatory framework, and it is in this context that the concept of “*Smart Regulation*” arises¹⁴.

Smart Regulation does not approach legislation from a quantitative perspective, but is about securing results in the least onerous way possible for legal operators. Thus, and in accordance with this new concept, the aim is to reduce the “gold-plating” or excessive regulation by Member States when transposing the Directives on the single market (High Level Group of Independent Stakeholders on Administrative Burdens, 2011)¹⁵. Thus, the Commission in its Communication *Smart Regulation in the European Union* considers that the time has come to “step up a gear”; in other words, it is necessary to legislate better, but it is also necessary to guarantee the competitiveness of firms, for example, by eliminating the costly fragmentation of the single market owing to different national rules. The administrative burdens imposed on firms and economic operators should therefore be limited to what is strictly necessary (Commission, 2010b).

PROVISIONS ON SIMPLIFICATION IN THE REVISED AND MODERNISED PUBLIC PROCUREMENT LEGISLATIVE FRAMEWORK

In the earlier section, we were able to see how the EU has set up suitable programmes to establish measures aimed at cutting the amount of red tape for firms. We shall now analyze the extent to which this objective is applicable to the administration of public contracts, all the more so as the Commission has presented public procurement as one of the twelve initiatives that can strengthen the Single Market through easier access for SMEs

and the promotion of cross-border contracts (Commission 2011a, 2011b).

This is a key sector in the achievement of the Single Market, as we can not ignore that, according to data published by the European Commission, in Europe public authorities spend around 19.7% of GDP on works, goods, and services in 2010 (2,406.98 billion €)¹⁶. This percentage of public expenditure has meant that public procurement is not only understood as a form of supply, but also as a powerful tool for effective compliance with other public policies (Gimeno-Feliú, 2006, 2010a, 2010b). Its importance justifies the study of specific administrative procedures in public procurement in view of the principles of efficiency and effectiveness through the adoption of simplification measures meeting the specific needs of small contracting authorities (Moreno Molina, 2009).

The current European Directives on public procurement

Since 2004 in the EU, the regulatory framework of public procurement has principally consisted of two Directives: Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors («Utilities Directive») and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts («Classic Directive»)¹⁷.

The above Directives, as may be understood from the second recital of Directive 2004/18/EC and the ninth of Directive 2004/17/EC, pursue as an immediate objective, the coordination of awards procedures to stimulate the development of effective competition in the sectors involved in their respective areas of application (Arrowsmith, 2005, 2008; Bovis, 2007). In this normative context, and in accordance with the case-law of the Court of Justice of the European Union (ECJ), it should be remembered that the purpose of coordinating, at a Community level, the procedures for the award of public contracts is to “eliminate barriers to the freedom to provide services and goods and therefore protect the interests of traders established in a Member State who wish to offer goods or services to contracting authorities established in another Member State”¹⁸.

On occasions, however, the award procedures in the Directives are excessively rigorous and do not allow the contracting authorities to negotiate the contract conditions with potential bidders. Likewise, the obligations to supply information to participate in contractual procedures may discourage possible tenderers, as happens, for example, with SMEs, for whom the presentation of documentation for qualification of candidates (evidence for selection criteria) constitutes one of their main barriers to their accessing procurement contracts (Commission, 2008, 2011)¹⁹.

Table 2
Problems faces by bidders, by company size class (proportion of companies using the source 'always' or 'often', in percentage)

Potential problem	Micro	Small	Medium	Large	Total
Administrative burden	45	34	35	30	34

Source: GHK, 2010:51 – Commission Staff Working Paper, SEC(2011) 1585 final, p. 132.

These obstacles constitute the challenges that the new Proposals for Directives have to face. Therefore, throughout the rest of this study, we shall centre on changes that are envisaged in the contractual rules to overcome these drawbacks. In this sense, the proposals advance in the idea that future public procurement policy will incorporate a list of targets in the contractual regulatory framework in harmony with the aforementioned European Strategy 2020. The following sections of this paper will therefore examine: (i) procedural simplification; (ii) the reduction of the administrative burden in terms of the obligatory information needed to be able to contract and finally (iii) the incorporation of new technologies as a channel for administrative procedures (e-procurement).

Review of the regulatory framework for public procurement

On 20 December 2011 the Commission submitted:

- Proposal for a Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors, COM(2011) 895 final;

- Proposal for a Directive of the European Parliament and of the Council on public procurement, COM(2011) 896 final, and
- Proposal for a Directive of the European Parliament and of the Council on the award of concession contracts, COM(2011) 897 final.

As we have pointed out earlier, this package aims to modernise public procurement rules by increasing the efficiency of public spending and reducing transaction costs for public authorities and private enterprises. This would be done by making the public procurement rules more flexible and simple (Commission 2011a - *Green Paper on the modernisation of EU public procurement policy*). Still, as there are three Proposals for Directives that are under discussion at present, we shall refer principally to the Proposal for a Directive of the European Parliament and of the Council on public procurement (“the Proposal”), as this is the one that refers to the classic sectors.

SIMPLIFICATION OF AWARD PROCEDURES

One of the objectives foreseen in the reform is that of increasing the efficiency of public expenditure, in order to guarantee the best possible procurement results in terms of quality/price. Thus, the *Green Paper on the modernisation of EU public procurement policy* (Commission, 2011a) proposed that one of the questions in need of review at a European level was the possibility of introducing greater flexibility into contracting procedures, allowing the contracting authorities to negotiate the contractual conditions with potential tenderers.

The proposal met with a warm welcome in the public consultation phase opened by the aforementioned Green Paper, in such a way that a clear majority of groups of interested parties supported the idea of allowing greater use of a negotiated procurement procedure²⁰, as in fact, the use of negotiations in procurement procedures had already been specified in the Government Procurement Agreement (GPA), provided that it was published in the contract notice.

Nevertheless, the possibility of greater use of the negotiated tender procedure should be subject to respect for the principles of non-discrimination and equality. The possible

advantages of greater flexibility and procedural simplification should be weighed up against an increased risk of favouritism. Moreover, in general, the greater discretionary powers of the contracting authority in the negotiated procedure may give rise to subjective decisions. Remember that, according to the case-law of the Court of Justice, the illegal practice of directly awarding a contract could lead to “the most serious breach of Community law in the field of public procurement on the part of a contracting authority” (see, on this, Case C-26/03 *Stadt Halle and RPL Lochau* [2005] ECR I-1, paragraph 37).

It would be recommendable, in order to protect tenderers against abusive and discriminatory practices – and moreover to guarantee the right to effective administration – if the negotiations were conducted through an independent organization rather than a political body. A transparent account of the negotiation process should also be provided, for which purpose it may be useful to prepare negotiating methods that use electronic mediums that keep a record of the terms in which the negotiation takes place. In this sense, it could be useful to take the model of electronic auctions as a reference (Gimeno Feliú *et al.*, 2011)²¹.

Moreover, it should be taken into account that to give greater freedom to contracting authorities will only yield useful results if they have technical experience, knowledge of the market and the necessary skills to negotiate a good agreement with suppliers. Finally, the type and size of contract for which negotiation would make sense must be carefully assessed. Negotiation would often be particularly appropriate for the award of small contracts. Moreover, it would also be useful for tenders of very large projects, especially through alliances between the public and the private sector. Some especially flexible procedures and large margins for negotiation might be even more necessary than ever, given the complexity of the contracts in relation to these types of projects, as well as greater technical experience of the contracting authority to conduct the negotiations.

Negotiation in the European Union under the legislation now in force

In the negotiated procedure, the entities and contracting authorities consult the economic operators of their choice and negotiate the conditions of the contract that will be awarded with

one or more of them. This negotiation of the conditions of the offer is not possible in the open or restricted procedures.

The «Classic Directive» (2004/18/EC), considers the negotiated procedure as strictly exceptional, as it is only allowed under the circumstances established in Directive (articles 30 and 31). In this regard, Member States cannot, under penalty of rendering the Directives ineffective, establish cases and circumstances for the application of a procedure that are not envisaged by the Directive, nor can they add new conditions to the circumstances that are expressly envisaged that have the effect of making it easier to participate in the procedure.

The «Utilities Directive» (2004/17/EC) allows greater flexibility, in such a way that public service firms may freely decide to award their contracts through a negotiated procedure, provided that they have published a tender notice²².

The Proposal for a Directive on public procurement

The Proposal for a Directive on Public Procurement (COM(2011) 896 final), acknowledges that there is a general need for greater flexibility and, in particular, for wider access to a public procurement procedure providing for negotiation, such as those explicitly foreseen in the Proposal for all procedures (Recital 15). It therefore proposes that, unless otherwise provided for in the legislation of the Member State concerned, the contracting authorities should have the possibility of using a competitive procedure with negotiation as stipulated in the Directive, in various situations where they are unlikely to achieve satisfactory procurement results through the open or restricted procedures without negotiation.

However, this procedure must be accompanied by adequate safeguards that guarantee observance of the principles of equal treatment and transparency. This will give the contracting authorities greater margin to acquire works, supplies and services that are better adapted to their specific needs. At the same time, they should increase cross-border commerce, as the evaluation has shown that contracts are very often awarded through the negotiated procedure with prior publication to cross-border tenders.

Thus, article 24 of the Proposal establishes a structured menu of five types of competitive contract procedures available to

Member States and the contracting authorities, however, as a general rule, it underlines the use of the open and restricted procedures.

As regards the possibility of contracting authorities using a competitive procedure with negotiation, article 24 of the Procedure lists the following cases as reasons to allow the competitive procedure with negotiation or competitive dialogue:

- a) with regard to works, where the works contract has as its object both the design and the execution of works, or where negotiations are needed to establish the legal or financial makeup of the project;
- b) in respect of public works contracts, for works which are performed solely for purposes of research or innovation, testing or development and not with the aim of ensuring profitability or recovering research and development costs;
- c) with regard to services or supplies, where the technical specifications cannot be established with sufficient precision with reference to any of the standards, European technical approvals, Common technical specifications or technical references;
- d) in the event of irregular or unacceptable tenders in response to an open or a restricted procedure;
- e) owing to specific circumstances related to the nature or the complexity of the works, supplies or services or the risks attaching thereto, the contract cannot be awarded without prior negotiations.

Article 27 of the Proposal regulates the different phases of the competitive procedure with negotiation, in which any economic operator may submit a request to participate in response to a call for competition by providing the requested information for qualitative selection.

In the contract notice or in the invitation to confirm interest, contracting authorities shall describe the procurement and the minimum requirements to be met and shall specify the award criteria so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the negotiations. In the technical

specifications, contracting authorities shall specify which parts thereof define the minimum requirements.

The minimum time limit for receipt of requests to participate shall be 30 days from the date of the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent; the minimum time limit for the receipt of tenders shall be 30 days from the date on which the invitation is sent.

Only those economic operators invited by the contracting authority following their assessment of the requested information may submit a written tender which shall be the basis for the subsequent negotiations. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure

The points that may not under any circumstances be modified in the course of negotiation are the description of the procurement; the part of the technical specifications which define the minimum requirements and the award criteria.

During the negotiations, contracting authorities shall ensure equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. In addition to this, contracting authorities shall not reveal solutions that are proposed or other confidential information communicated by a candidate participating in the negotiations to the other participants without the candidate's agreement. Such agreements shall not take the form of a general waiver but shall be given with reference to the intended communication of specific solutions or other confidential information.

Competitive procedures with negotiation may take place in successive stages, in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or the procurement documents, the contracting authority shall indicate whether it will use this option.

REDUCING DOCUMENTATION REQUIREMENTS

The Directives on public procurement require certain conditions of suitability and financial standing to be able to contract with public authorities in view of the interests at stake. However, maintaining these conditions of participation, the Proposal seeks to reduce requirements that contracting authorities impose on economic operators to prove their eligibility to participate in a given procurement procedure.

Thus, the Proposal reduces the administrative burden of participants in a competition through four main points. In the first place, the use of self-declarations as *prima-facie* evidence for selection is more widely applied, in such a way that contracting authorities shall accept self-declarations as preliminary evidence that the grounds for exclusion do not apply to candidates and tenderers, and that they comply with the selection criteria that are established with regard to their suitability to pursue the professional activity, economic and financial standing and technical and professional ability; nonetheless, candidates or tenderers who make use of this option must, however, be prepared to submit the actual official documents “upon request and without delay”. In view of the provisions of this first measure, the tenderer or candidate has no obligation to present documentation on the points that the contracting authorities can confirm through official channels, and only the tenderer that has presented the best offer will have to submit all relevant certificates and documents within the established period. In our understanding, this new measure is a strong point of the Proposal, given that it does nothing to avoid compliance with the contractual requirements, but it postpones until a later date the administrative burden that this means of proof entails. The tenderer to which it has been decided to award the contract should, however, be required to provide the relevant evidence and contracting authorities should not conclude contracts with tenderers that are unable to do so, as stipulated in Recital 32 and article 57 of the Proposal.

The second measure foreseen in the Proposal to reduce the administrative burden in the awards procedure suspends the requirement for candidates and tenderers to present certificates or other documental evidence, if those documents have already been presented to the same contracting authority over the

previous four years, in an earlier procedure, and provided they are still valid (article 57.3).

The third and fourth measures attempt to overcome the obstacles created by administrative checks between different Member States, setting up mechanisms for the exchange of information that reinforce administrative cooperation in this matter. These instruments are principally based on new technologies and rely on information technology that facilitate this process: for example, the e-Certis database that provides a record of national certificates used for cross-border public procurement²³ or the development of a system of electronic records, in the form of a “European Procurement Passport”, which presupposes a legal persona and capacity to act as an economic operator throughout the EU, once its authenticity is established by the relevant competent authority (article 59 Proposal). We shall now closely examine the importance that this document may eventually assume.

Introduction of a European Procurement Passport

The European Procurement passport is a standard document, validated at Member State level, the purpose of which is to validate the absence of any grounds for exclusion (in particular, the absence of the majority of grounds for obligatory exclusion), as well as some conditions that may be necessary for the award of the contract.

As previously pointed out, article 50 of the Proposal regulates the European Procurement Passport. We find no reference, however, to such an instrument in the Proposal for a Directive on concession contracts (COM(2011) 897 final), nor the Proposal for a Directive on procurement by entities operating in the water, energy, transport and postal services sectors COM(2011) 895 final. Nevertheless, we understand that its absence from these texts is no obstacle to the use of the European Passport by economic operators that participate in the award of a concession or a works contract tendered by one of the entities subject to the “Utilities Proposal Directive”, as both of them refer to the need for economic operators that participate in tenders to accredit the absence of any grounds of exclusion identical to those covered in the Proposal. Likewise, its extension to the area of public works, supply and service contracts could be

considered awarded by entities and contracting authorities in the areas of defense and security, given that article 39 of Directive 2009/81/EC affirms the obligation of excluding a tenderer affected by the reasons that are listed in the provision, which coincide with those included in article 55.1 of the Proposal.

Moreover, the European public procurement passport is designed for use in contracts that fall within the scope of application of the Directive, established in accordance with the economic value of the contract (EUR 5,000,000 for public works contracts; EUR 130,000 for public supply and service contracts awarded by central government authorities; EUR 200,000 for public supply and service contracts awarded by sub-central contracting authorities and EUR 500,000 for public contracts for social and other specific services)²⁴. However, this instrument of simplification should also have positive effects on contracts which, because of their amount, are not subject to the prescriptions of the Directive. Member States, in their internal norms of transposition, should also accept the European public procurement passport in public contracts that are not or are only partially subject to European Directives.

Content of the European Public Procurement Passport

The European Public Procurement Passport will include two types of contents: some mandatory, and others of a facultative nature. The first, of a general nature, have a negative content, referring to certification of the absence of grounds for exclusion (Williams, 2006; Medina, 2008). On the contrary, the facultative contents present a positive character and refer, as we shall see, to the accreditation of certain conditions for participation.

The passport will include the following obligatory data (letters a, b, c and f of Annex XIII Proposal Directive):

- a) Identification of the economic operator;
- b) Certification that the economic operator has not been convicted by a firm judgment for one of the reasons for exclusion from participation in a contract listed in article 55, section 1 of the Proposal. This provision refers to the grounds for automatic exclusion of the economic operators, and is related to the firm conviction of the

tenderer for offences relating to participation in a criminal organization, corruption, fraud, terrorist offences or offences linked to terrorist activities and money laundering;

- c) Certification that the economic operator is not the subject of insolvency or winding-up proceedings;
- f) Indication of the period of validity of the Passport, which shall be not less than 6 months.

Alongside the obligatory content, there are other data that may be included in the passport, *where applicable* (letters d and e of Annex XIII), which is to say, of a facultative nature, and it has nothing to do with the absence of grounds for exclusion, but to positive contents, that are especially linked to compliance with certain conditions for participation. The European procurement passport will include:

- d) Certification of enrolment in a professional or trade register prescribed in the Member State of establishment;
- e) Certification that the economic operator possesses a particular authorization or is member of a particular organization.

Voluntary nature of the European Procurement Passport

The European Procurement Passport was designed as an instrument to assist tenderers and candidates, such that it should not be understood as an additional administrative burden to those that already exist. Understanding it in any other way would imply working against the objective of the Directive to improve the efficiency of the award procedures through the simplification of its procedures. For this reason, the voluntary nature of the passport is established, which is highlighted in article 59.1 of the Proposal, which specifically refers to the national authorities that have to issue a European public procurement passport, “at the request of an economic operator”.

Economic operators that decide not to request the European public procurement passport may at all times accredit the absence of grounds for exclusion by presenting an extract from a relevant register, such as the criminal record, or those

issued by the competent authority of the relevant Member State (article 60 Proposal).

Partial accreditation of the absence of grounds for exclusion

In view of the content that is proposed for the European public procurement contract (Annex XIII of the Proposal), it may be concluded that its presentation will not accredit the absence of all grounds for exclusion considered in article 55 of the Proposal. Not even to accredit the absence of all obligatory grounds for exclusion that it establishes.

The Proposal goes on to distinguish between mandatory exclusion (*“Any candidate or tenderer that has been the subject of a conviction by final judgment for one of the following reasons shall be excluded from participation in a public contract ...”*) and others of a facultative nature (*“A contracting authority may exclude from participation in a public contract...”*). The former refer to a firm conviction for certain offences, as well as failure to comply with obligations relating to taxes or social security contributions in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority.

The European Public Procurement Passport will provide no information on this mandatory prohibition on contracting. In our understanding, as the aforementioned prohibition is mandatory, certification that the tenderer is up-to-date with payment of taxes and social security contributions should perhaps be included in the contents of the passport.

Moreover, the passport will not for the meanwhile include information on the absence of other grounds for exclusion of a facultative nature other than whether the tenderer is the subject of insolvency or winding-up proceedings, such as those relating to the infringement of obligations established by European legislation on social, labour and environmental matters, grave professional misconduct or significant or persistent deficiencies in compliance with any substantive requirement under an earlier contract or contracts of a similar nature with the same contracting authority.

Obtaining the Passport

When an economic operator wishes to obtain the European procurement passport, it should fill in a form and send

it to the issuing authority. In order to ensure uniform conditions for the implementation of the Directive, the European Commission delegates authority to create a standard form for its contents (Recital 56). In this case, the same happens with authorization to modify the contents of the passport to adapt them to the administrative needs and regulatory changes: the Commission is empowered, by means of a delegated act, to modify the standard form of the European procurement passport (article 59.1 paragraph 2).

Obtaining the information to issue the Passport

The authority that issues the Passport will obtain the necessary information directly from the competent authorities for its accreditation. Thus, it may apply to national registers of criminal records, professional registers, etc... These entities will communicate the information, except when prohibited by national rules on the protection of personal data. The request to issue the passport should contain an implicit authorization for the issuing authority to request the necessary information from the competent authorities that can provide it, in relation to the situation that the passport has to accredit.

Form of the European Procurement Passport

The Proposal does not establish the form in which the European Public Procurement Passport should be issued. At least for the time being, as article 59.2 suggests that it will be issued in an electronic format in the future. This provision points out that, after two years at most from the deadline for the transposition of the Directive into the domestic legislation of the Member States (foreseen for 30 June, 2014), the Passport will be provided *exclusively* in electronic form.

This provision is coherent with the desire to achieve full incorporation of electronic means into public contracting procedures, under the general obligation that, for this same date, all contracting procedures in accordance with the Directive, will take place using electronic communication methods, and, in particular, the electronic presentation of offers and requests (Gallego, 2009; Bernal-Blay, 2009). This question is studied in the final section of this paper.

Competence for issuing European Procurement Passports

Article 59 of the Proposal refers to the issuance of European Procurement Passports by “national authorities”, a concept that should be understood in opposition to “local and regional authorities”. This situation implies that, even under the assumption of decentralized States, competence for the delivery of these documents should be maintained with the national authority, even though national rules may attribute competence to different entities for issuing the Passport.

Period of validity of the European Procurement Passport

The Proposal does not cover the question of expiry of the European procurement passport. Annex XIII limits itself to pointing out that its validity *shall be not less than six months*. It would therefore appear that this question will be decided by the Member States themselves. However, article 59.4 of the Proposal allows a contracting authority to question the validity of the passport *when it was issued more than six months earlier* than the time at which it is presented. The most coherent approach would be to give European public procurement passports a validity of six months, accepting nevertheless the possibility of renewal (even establishing a quick procedure to do so) once that deadline has expired.

Confirmation of information certified in the European Procurement Passport

One of the principal advantages of this instrument is its efficacy in relation to any contracting authority in any Member State. This implies mutual recognition of the certification systems, as well as confidence in the procedures that are established to certify the contents of the passport. The circle is closed by the “open door” policy in this area established in section 5 of article 59 of the Proposal, which establishes that the Member States will make available to other Member States on request, any information on the authenticity and content of the European Procurement Passport. This obligation to exchange information is nothing other than a further manifestation of the duty of Member States to engage in administrative cooperation.

USE OF ELECTRONIC MEANS OF COMMUNICATION: ESPECIALLY E-SUBMISSIONS

The legislative package of public procurement Directives, approved in 2004, should have paved the way for the rapid spread of electronic public procurement across Europe. In fact, to achieve generalized use of electronic public procurement by 2010, the Commission proposed an *Action Plan for a functioning Internal Market and good governance in electronic public procurement* (Commission, 2004), but these steps have proven unsuccessful.

The e-procurement evaluation assessed the take-up of e-procurement across Europe as fairly low. Whereas one or two countries have made significant progress, generally no more than 5% of procurement procedures above the EU thresholds involved electronic processing. The exceptions are seen in countries which have mandated the use of e-procurement e.g. Portugal (all procurement) and Lithuania. Public authorities were often deterred by the significant costs and challenges of the switchover (administrative, organizational and technical), whilst economic operators faced difficulties, due to the demands of different systems and interfaces (not only for cross-border operations, but also within a single Member State). However, the technology to conduct e-procurement is now ready to be used and the replacement of paper-based public procurement procedures by automated processes can, as expected, deliver faster and more streamlined procurement administration.

According to the European Commission, recent figures from Deutsche Bank Research estimated "*that a full switch to e-procurement may save between € 50 to 75 billion on public procurement in the EU per year*" (Commission, 2011). As such, this lack of uptake represents a missed opportunity and the Commission is unwilling to waste more time. The Proposal is really ambitious regarding e-procurement. In this context, it aims to help Member States to achieve the switchover to e-procurement, enabling suppliers to take part in online procurement procedures across the Internal Market. For this purpose, in addition to other measures, the proposed Directive imposes the switch to fully electronic communication, in particular e-submission, in all procurement procedures within a transition period of two years²⁵.

Article 19 of the Proposal lists the rules applicable to communications. First of all, electronic means of communications are now placed at the beginning of the list of the permissible means of communications, to underline the importance. In view of

the risks and potential costs linked to blanket imposition of e-procurement, the initial proposal only makes e-procurement mandatory for: certain types of contracting authorities (central purchasing bodies), for certain types of purchasing methods (dynamic purchasing systems, electronic auctions or electronic catalogues), and certain phases of e-procurement - the notification phase and the provision of access to bid documents.

From the deadline for the implementation of the Directive set out in Article 92 (1) - 30 June 2014 - the following e-procurement obligations are applicable.

First of all, pursuant to Article 19, prior information notices, contract notices and contract award notices shall be drawn up and transmitted by electronic means to the Commission. Furthermore, contracting authorities shall offer unrestricted and full direct access by electronic means, which is free of charge, to the procurement documents from the date of publication of the notice, in accordance with Article 49, or the date on which the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which this documentation is accessible. The current Directive provides that deadlines for the receipt of tenders may be shortened by 5 days where contracting authorities have voluntarily offered unrestricted and full direct access to the procurement documents from the beginning of the procedure. As the Proposal makes this obligatory, there is a general shortening of deadlines.

Moreover, in the first instance, pursuant to article 19, e-submission is only mandatory when contracting authorities use dynamic purchasing systems, electronic auctions or electronic catalogues. Furthermore, all procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication. As the European Commission has made clear (Commission, 2011), there may be reasons for professional bodies such as central purchasing bodies, which are already strong users of e-procurement and repetitive purchasing techniques, to move more quickly to mandatory use of electronic communication - allowing them to make better use of repetitive or aggregation techniques, whilst also involving more suppliers thereby stimulating higher levels of competition. The dynamic purchasing system is a fully electronic procedure (albeit one requiring some adjustment) and framework agreements may be

organized on paper, but also electronically. In our opinion, imposing e-submission on these qualified purchasers is reasonable.

During these first phases, the Proposal explicitly states that Member States may impose use of electronic means of communications, either in all cases in which the Directive has not already made their use obligatory or only in some of them. The current provisions of article 42 limit themselves to stipulating that the choice of the means of communications lies with “the contracting authority”. But there was some doubt over whether Member States may impose the use of e-procurement on their contracting authorities.

Nevertheless, the key element to the Proposal is in article 19.2, as it generalizes the obligation to exclusively use electronic means of communications for all procurement procedures under the Directive, at the latest two years after the deadline for the implementation.

The provision does provide for exceptions to the obligation to use electronic means of communication. Contracting authorities shall be deemed to have legitimate reasons not to request electronic means of communication in the submission process in the following cases:

- a) owing to the specialised nature of the procurement, technical specifications are not easily described in file formats that are generally supported by commonly used applications;
- b) the applications supporting file formats that are suitable for the description of the technical specifications are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting authority;
- c) the applications supporting file formats that are suitable for the description of the technical specifications use file formats that cannot be handled by any other open or downloadable applications.

On the other hand, according to article 19 (3), to ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the

Commission shall be empowered to adopt delegated acts to establish mandatory use of specific technical standards, at least with regard to the use of e-submission, electronic catalogues and the means for electronic authentication.

As in the current Directive, the tools to be used for communicating by electronic means must be generally available. But the Proposal sets exceptions to this rule. Article 19 (4) provides for the possibility, where necessary, of using other means of communication that are not commonly available to potential bidders. In such cases, the contracting authority must actively ensure that the absence of general availability of the chosen means of communications will not create an insurmountable barrier to participation, either by offering access to the chosen means of communication or by allowing other means of communication.

With regard to e-signatures, an important provision has been added in article 19 (5 c). Pursuant to this Article, the level of security required for electronic means of communication in the various stages of the specific procurement procedure shall be proportionate to the attached risk. As is explained in the Proposal (“Annex IV: E-procurement”) the level of security required of an email requesting confirmation of the exact address at which an information meeting will be held does not have to be set at the same levels as for the tender itself, which constitutes a binding offer to the economic operator.

The Proposal still recognizes that advanced electronic signatures may be required. But it also sets out what amounts to a system of mutual recognition of electronic signatures through references to well-established legislative acts in the internal market. Where a tender is signed with the support of a qualified certificate that is included in the Trusted List provided for in Commission Decision 2009/767/EC, contracting authorities must not apply additional requirements that may hinder the use of those signatures by tenderers. These provisions encounter a relevant problem: the increased numbers of available e-Signatures have increased technical barriers.

To sum up, the new European regulation on e-procurement would force the pace of change. According to the Proposal, e-submission would be mandatory at the latest, by 30th June 2014. However, from our point of view, this is a realistic and

reasonable goal, as enterprises and economic operators make widespread use of Internet nowadays. Indeed, in the EU27, 95% of enterprises had access to the internet in January 2011. The share of enterprises having a fixed broadband connection to access the internet grew slightly from 84% in 2010 to 87% in 2011. On the other hand, the use of mobile broadband connections by enterprises in the EU27 increased significantly in the same period, from 27% to 47%. On the other hand, the initial investment of public administrations can easily be offset by short and medium-term savings.

As previously stated, different levels of development and implantation of ICT in the Member States can create new virtual borders (Medina, 2010). Nevertheless, only a European approach can surmount this difficulty²⁶. As has been explained in this text, the switch to fully electronic communication will take place in two steps. The more ambitious aim –generalization of e-submission– has been postponed until two years after the deadline for the implementation of the Directive. Moreover, business and public bodies will benefit *de facto* from a transitional period, thanks to the time-limits provided for the adoption and transposition in this proposal.

CONCLUSIONS

The Internal Market is not making the most of its full potential in the area of public procurement. For that principal reason a review of European regulations has been proposed to improve the efficiency of the EU public procurement regulations and procedures.

In comparison with current Directives on public procurement, the proposed new Directive will considerably reduce the administrative burden relating to compliance with the procedure, both for contracting authorities as well as for economic operators. The following points are among the main novelties that are foreseen:

- More negotiations permitted (e.g. greater freedom to use the negotiated procedure).
- Alleviation of administrative burdens through self-declarations with regard to evidence for exclusion and selection criteria.

- Introduction of a European Public Procurement Passport
- Improvements to mutual recognition of certificates, e.g. through greater use of e-Certis
- Increased use of e-procurement.
- Increased use of self-certifications, which could significantly reduce the administrative burden on firms. Similarly, using a European public procurement passport should be simpler for firms that would possess a document the validity of which would have to be recognized by all contracting authorities and entities, including those in other Member States.

¹ Available at: http://ec.europa.eu/bepa/pdf/monti_report_final_10_05_2010_en.pdf [Retrieved March 28, 2012].

² The Report was drafted by a group of independent experts appointed by the Commission in September 1994, in order to study the impact on employment and the competitiveness of community and domestic legislation, with a view to their possible reduction and simplification, COM(95) 288 final, 21 June 1995.

³ COM(1996) 204 final, *Simpler Legislation for the Internal Market (SLIM): A Pilot Project*.

⁴ This Strategy was relaunched in 2005 through the renewed Lisbon strategy on growth and employment, in a communication from the Commission *Working together for growth and jobs. A new start for the Lisbon Strategy*, which stressed the idea that “A new approach to regulation should seek to remove burdens and cut red tape unnecessary for reaching the underlying policy objectives.”, COM(2005) 24 final, 2 February 2005, p. 21.

⁵ Available at: http://ec.europa.eu/governance/better_regulation/documents/mandel_kern_report.pdf [Retrieved March 28, 2012]. Its recommendations are summarized in the EESC Opinion (OJ 2002 C 125, p. 105).

⁶ Plan of Action “*Simplifying and improving the regulatory environment*”, COM(2002) 278 final, 5 of June of 2002 was updated and completed by the Communication *Better Regulation for Growth and Jobs in the*

European Union, COM(2005) 97, 16 March 2005, which considers that simplification should be a priority action for the EU.

⁷ OJ 2003 C 321, p. 1

⁸ For other definitions of good or better regulation, see Mandelkern Group on Better Regulation.

⁹ Under sections 24 and 25 of the Conclusions of the Presidency or the Council of Europe (8 and 9 March 2007), it is made clear that the reduction in administrative burdens constitutes an important measure for stimulating the European community, especially through its impact on SMEs and, as a consequence, the European Council invited the Commission to put into action the Programme with assistance of Member States. On the impact of administrative burdens reduction on competitiveness, see Commission, *Quantitative assessment of Structural Reforms: Modelling the Lisbon Strategy*, European Economy - Economic Paper n° 282, June 2007.

¹⁰ These 13 priority are: Agriculture and agricultural subsidies, Annual accounts/Company law, Cohesion policy, Environment, Financial services, Fisheries, Food safety, Pharmaceutical legislation, Public procurement, Statistics, Taxation / Customs, Transport, Working environment / employment relations.

¹¹ Through Decision 2007/623/EC, of 31 August 2007, the Commission set up the *High Level Group of Independent Stakeholders on Administrative Burdens*, with a mandate to assess the European Commission on these programmes for a period of three years. Nevertheless this task has been prolonged until 31 December 2011, arguing that this Programme of Action for the Reduction of Administrative Burdens in the European Union should conclude in April 2012. For details, see http://ec.europa.eu/enterprise/policies/smart-regulation/administrative-burdens/high-level-group/index_en.htm [Retrieved March 28, 2012].

¹² The Europe 2020 Strategy sets five ambitious objectives on climate and energy, employment, innovation, education and social inclusion to be reached by 2020 and identifies key drivers for growth, which aim at making Europe more dynamic and competitive. It also emphasizes the importance of reinforcing the growth of the European economy while delivering high levels of employment, a low carbon, resource and energy-efficient economy and social cohesion.

¹³ See the Communication from the Commission *A single market for Europe in the 21st century*, COM (2007) 724 final, of 20 November and the attached working documents of its services titled, "The single market: review of achievements SEC (2007) 1521 and "The review of

the single market; one year”, SEC (2008) 3064. Likewise the Recommendation of the Commission, of 29 June 2009, on measures to improve the functioning of the single market, and the Resolutions of the European Parliament, of 4 September 2007, on the Single Market Review and of 20 May, 2010, on delivering a single market to consumers and citizens (P7_TA-PROV (2010) 05-20).

¹⁴ “*Smart Regulation*” was the term used by Neil GUNNINGHAM and Peter GRABOSKY to describe an approach to environmental policymaking that they argue will produce more effective and efficient policy outcomes (Gunningham & Grabosky, 1998).

¹⁵ Gold-plating refers to the practice of national bodies going beyond what is required in EU legislation when transposing or implementing it at Member State level (Commission, 2010b:5). The report titled *Europe can do better. Report on best practice in Member States to implement EU legislation in the least burdensome way* states that “almost a third of the administrative burdens deriving from EU legislation are in fact not caused by the requirements of the legislation as such, but primarily stem from inefficient national implementation of the requirements”, High Level Group of Independent Stakeholders on Administrative Burdens, 15 November 2011, p.4. Available at: http://ec.europa.eu/dgs/secretariat_general/admin_burden/best_practice_report/docs/bp_report_signature_en.pdf [Retrieved March 28, 2012].

¹⁶ These data were taken from the Working Document of the European Commission *Public procurement indicators 2010*, 4 November 2011. Available at: http://ec.europa.eu/internal_market/publicprocurement/docs/indicators2010_en.pdf [Retrieved March 28, 2012].

¹⁷ In order to complete its regulation, it should be updated with the provisions contained in the Remedies Directive (2007/66/EC) and the Directive on Defence and Security procurement (2009/81/EC).

¹⁸ See, for example, Case C-380/98 *University of Cambridge* [2000] ECR I-8035, paragraph 16; Case C-19/00 *SIAC Construction* [2001] E.C.R. I-7725, paragraph 32; Case C-92/00 *HI* [2002] ECR I-5553, paragraph 43, and Case C-507/03 *Commission v Ireland* [2007] ECR I-9777, paragraph 27.

¹⁹ Recital 32 in the Preamble to Proposal for a Directive on public procurement states that “Many economic operators, and not least SMEs, find that a major obstacle to their participation in public procurement consists in administrative burdens deriving from the need to produce a substantial number of certificates or other documents related to

exclusion and selection criteria". COM(2011) 896 final, 20 December 2011.

²⁰ Recital 32 in the Preamble to Proposal for a Directive on public procurement states that "Many economic operators, and not least SMEs, find that a major obstacle to their participation in public procurement consists in administrative burdens deriving from the need to produce a substantial number of certificates or other documents related to exclusion and selection criteria". COM(2011) 896 final, 20 December 2011.

²¹ The working document of the responses to the Green Paper is available at: http://ec.europa.eu/internal_market/consultations/docs/2011/public_procurement/synthesis_document_en.pdf [Retrieved March 28, 2012].

²² The contributions made by members of the Green Paper research group may be consulted at: https://circabc.europa.eu/d/d/workspace/SpacesStore/a8d72656-33a7-47b4-829b-954f1516347e/unizar_es.pdf (University of Zaragoza) [Retrieved March 28, 2012].

²³ This greater flexibility is because Directive 2004/17/EC applies not only to public authorities, but also to commercial firms, whether public or private, that operate with special or exclusive rights. In consequence, its procedures attempt to resemble commercial practices, while preserving a minimum of transparency and equal treatment.

²⁴ E-CERTIS is an information system of the European Commission that helps users to determine the documents and certificates that are usually requested in contract award procedures in the European Economic Area and that are available. The aim of e-Certis is to facilitate the exchange of certificates and other documentary evidence frequently required by contracting authorities. Available at: http://ec.europa.eu/internal_market/publicprocurement/e-procurement/e-certis/index_en.htm [Retrieved March 28, 2012].

²⁵ The present economic thresholds of the Directives on public procurement were approved by Commission Regulation (EU) 1251/2011 of 30 November 2011, amending Directives 2004/17/EC, 2004/18/EC and 2009/81/EC (OJ 2011 L 319, p. 43).

²⁶ According to Recital 19 "electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. They should become the standard means of communication and information exchange in procurement procedures. The use of electronic means also leads to time savings. As a result, provision should be made for reducing the minimum periods where electronic means are used,

subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Moreover, electronic means of information and communication including adequate functionalities can enable contracting authorities to prevent, detect and correct errors that occur during procurement procedures”.

REFERENCES

- Allio, L. (2007). "Better Regulation in the European Commission", in C. Kirkpatrick and D. Parker (Eds.), *Regulatory Impact Assessment: Towards Better Regulation?*, Cheltenham: Edward Elgar Publishing, 72 - 105.
- Arrowsmith, S. (2005). *The Law of public and utilities procurement*, 2nd ed., London, Sweet & Maxwell.
- Arrowsmith, S. (2008). "EC Regime on Public Procurement" in K. Thai (Ed.), *International Handbook of Public Procurement*, Boca Raton: CRC Press, 131 - 155.
- Baldwin, R. (2005). "Is better regulation smarter regulation?". *Public Law* (Autumn), 485-511.
- Bernal-Blay, M. Á. (2009), "Medios electrónicos", in J. Bermejo Vera (Ed.), *Diccionario de Contratación Pública*, Madrid: lustel, 393 - 400.
- Bovis, C. (2007). *Europe Public Procurement Law*. London: Elgar European Law.
- Commission (1985) *Completing the Internal Market: White Paper from the Commission to the European Council (Milan, 28-29 June 1985)*, COM(85) 310, 14 June 1985.
- Commission (1988). *Simplifying Administrative Procedures within the Community - General Considerations*. COM(88) 404 final, 5 July 1988.
- Commission (1995). *Report of the Group of Independent Experts on Legislative and Administrative Simplification*, COM(95) 288 final, 21 June 1995 (Molitor Report).
- Commission (2001). *White Paper on European Governance*. COM(2001) 428 final, 25 July 2001.
- Commission (2002). *Better monitoring of the application of Community Law*. COM(2002) 725 final/4, 16 May 2003.
- Commission (2003). *Updating and simplifying the Community Acquis*. COM(2003) 71, 11 February 2003.
- Commission (2005). *Better Regulation for Growth and Jobs in the European Union*. COM(2005) 97 final, 16 March 2005.

-
- Commission (2007). *Action Programme on reducing administrative burdens in the European Union*. COM(2007) 23 final, 24 January 2007.
- Commission (2008). *“Think Small First”. A “Small Business Act” for Europe*. COM(2008) 394 final, 25 June 2008.
- Commission (2009a). *Third strategic review of Better Regulation in the European Union*. COM(2009) 15 final, 28 January 2009.
- Commission (2009b). *Working Document on Reducing Administrative Burdens in the EU*. COM(2009) 16, 28 January 2009.
- Commission (2009c). *Action Programme for Reducing Administrative Burdens in the EU. Sectoral Reduction Plans and 2009 Actions*. COM(2009) 544 final, 22 October 2009.
- Commission (2010a). *Europe 2020: a strategy for smart, sustainable and inclusive growth*. COM(2010) 2020, 3 March 2010.
- Commission (2010b). *Smart Regulation in the European Union*. COM(2010) 543 final, 8 October 2010.
- Commission (2010c). *Towards a Single Market Act For a highly competitive social market economy 50 proposals for improving our work, business and exchanges with one another*. COM(2010) 608 final, 27 October 2010.
- Commission (2011a). *Green Paper on the modernisation of EU public procurement policy – Towards a more efficient European Procurement Market*. COM(2011) 15 final, 27 January 2011.
- Commission (2011b). *Single Market Act Twelve levers to boost growth and strengthen confidence "Working together to create new growth"*. COM(2011) 206, 13 April 2011.
- Gallego Córcoles, I. (2009). “La contratación electrónica y su impulso por el Derecho Europeo”. *Noticias de la Unión Europea*, 298 (noviembre): 43 - 53.
- Gimeno Feliú, J. M^a. (2006). *La nueva contratación pública europea y su incidencia en la legislación española*. La

necesaria adopción de una nueva ley de contratos públicos y propuestas de reforma. Madrid: Thomson-Civitas.

- Gimeno Feliú, J. M^a. (2010a). *Novedades de la Ley de Contratos del Sector Público de 30 de octubre de 2007 en la regulación de la adjudicación de los contratos públicos.* Cizur Menor (Navarra): Civitas - Thomson Reuters.
- Gimeno Feliú, J. M^a. (2010b). "Directiva de servicios y contratación pública. Hacia la simplificación". *Revista Aragonesa de Administración Pública*, vol. 12: 409 - 443.
- Gimeno Feliú, J. M^a. (Ed.) (2011). *Observatorio de Contratación Pública 2010.* Cizur Menor (Navarra): Civitas - Thomson Reuters.
- Gunningham, N. & Grabosky, P. (1998). *Smart regulation. Designing Environmental Policy.* Oxford: Clarendon Press.
- Hampton, P. (2005). *Reducing administrative burdens: effective inspection and enforcement.* London: HM Treasury. Available at: <http://www.hm-treasury.gov.uk/d/bud05hamptonv1.pdf> [Retrieved March 28, 2012].
- Mandelkern Group (2001). *Final Report of the working group on better regulation.* Available at: http://ec.europa.eu/governance/better_regulation/document/s/mandelkern_report.pdf [Retrieved March 28, 2012].
- Medina, T. (2008). "EU Directives as an Anticorruption Measures: Excluding Corruption-Convicted Tenderers from Public Procurement Contracts" in K. Thai (Ed.), *International Handbook of Public Procurement*, Boca Raton: CRC Press, 105 - 130.
- Medina-Arnáiz, T. (2010). "La apuesta europea por la contratación pública electrónica como buque insignia de la Administración electrónica". *Revista Aranzadi de Derecho y Nuevas Tecnologías*, 22: 69 - 83.
- Moreno Molina, J.A. (2009). "La influencia del Derecho Comunitario de la contratación pública en el Derecho español. Los principios generales de la contratación en el sector público". *Noticias de la Unión Europea*, 298 (noviembre): 7 - 19.

-
- Monti, M. (2010). *A new strategy for the Single Market. At the service of Europe's Economy and Society*. Report to the President of the European Commission by Professor Mario Monti, 9 May 2010. Available at: http://ec.europa.eu/bepa/pdf/monti_report_final_10_05_2010_en.pdf [Retrieved March 20, 2012].
- OCDE (2003). *From Red Tape to Smart Tape: Administrative Simplification in OECD Countries*. Paris: OECD Publishing.
- OCDE (2006). *Cutting Red Tape: National Strategies for Administrative Simplification*. Paris: OECD Publishing.
- OCDE (2007). *Cutting Red Tape. Administrative Simplification in the Netherlands*. Paris: OECD Publishing.
- OECD (2011). *Cutting Red Tape. Administrative Simplification in Poland: Making Policies Perform*. Paris: OECD Publishing.
- Open Europe (2005). *Less regulation: 4 ways to cut the burden of EU red tape*. London: Open Europe. Available at: <http://www.openeurope.org.uk/Content/Documents/PDFs/re gs.pdf> [Retrieved March 20, 2012].
- Pelkmans, J., Labory, S. and Majone, G. (2000). "Better EU regulatory quality: assessing current initiatives and new proposals". In G. Galli and J. Pelkmans (Eds.), *Regulatory Reform and Competitiveness in Europe*, Volume 1: Horizontal Issues, Cheltenham: Edward Elgar Publishing.
- Radaelli, C. M. (2007). "Whither better regulation for the Lisbon agenda?". *Journal of European Public Policy*, 14 (2): 190-207.
- Radaelli, C. M., & De Francesco, F. (2007). *Regulatory quality in Europe: concepts, measures and policy processes*, Manchester: Manchester University Press.
- Schooner, S. (2002). "Desiderata: Objectives for a System of Government Contract Law". *PPLR*, 11: 103 - 110.
- Villarejo Galende, H. (2008). "La simplificación administrativa en la Directiva relativa a los servicios en el mercado interior. Sus repercusiones en la Administración electrónica española y el desafío que plantea su transposición". *Revista de Derecho de la Unión Europea*, 14: 47 - 82.

-
- Villarejo Galende, H. (2009). Simplificación administrativa al servicio del Mercado Interior Europeo. In *Libro Marrón: Retos y oportunidades para la transposición de la Directiva de Servicios* (pp. 433 - 495). Madrid: Círculo de Empresarios.
- Virant, G., & Kovač, P. (2010). "Reducing administrative burdens as part of the Better Regulation Programme - The case of Slovenia". *Lex Localis*, vol. 8 (4) October: 369 - 393.
- Wegrich, K. (2009). *The administrative burden reduction policy boom in Europe: Comparing mechanism of policy diffusion*. London: London School of Economics and Political Science. Available at: <http://eprints.lse.ac.uk/36536/1/Disspaper52.pdf> [Retrieved March 20, 2012].
- Williams, S. (2006). "The mandatory exclusions for corruption in the new EC Procurement Directives". *European Law Review*, 31: 711 - 734.
- Wipo & Ceps (2006). *Pilot project on administrative burdens*, Report for the European Commission, Available at: http://ec.europa.eu/enterprise/policies/smart-regulation/files/pilot-study_en.pdf [Retrieved March 20, 2012].