

E-procurement in the Member States of the European Union

This paper aims to systemise data of e-procurement with regard to the legal rules in the Member States of the European Union, especially in the Czech Republic. The objective of this thesis is to provide a comparison of the situation in public procurement across and within the Member States.

In the EU, there were adopted new Procurement Directives, 2004/17/EC and 2004/18/EC, in April 2004. Member States were required to implement the new legal framework by 31 January 2006, but slippages were not excluded. Early adoption of the new e-procurement provisions is essential to avoid barriers to and distortion of competition. The Directives provide a coherent framework for conducting procurement electronically in an Open, transparent and non-discriminatory way, establish rules for tendering electronically and fix the conditions for modern purchasing techniques based on electronic means of communication.

The implementation of Directives' provisions on a dynamic purchasing system and e-auctions is optional. However, most of the Member States have introduced these procurement procedures. If not all Member States implemented electronic procedures, the differences between them could cause problems. Such a situation is not favourable for the development of the European Internal Market. It can be even characterised as an obstacle to it. Thus, it is proposed in this work to introduce obligatory European legislation (in the form of directives) regarding the e-procurement.

According to the Action Plan for the Implementation, if online procurement is generalised, it can save governments up to 5 % on expenditure and up to 50 - 80 % on transaction costs for both buyers and suppliers. Greater competition and efficiency in public procurement markets can impact on the whole economy and play an important role in achieving the Lisbon objectives.

Erroneous or divergent interpretation of the new rules can create barriers to cross-border trade and ultimately fragment the market.

The new Directives do not define which type of e-signature should be used in electronic tendering. Thus, Member States may choose the level they require in conformity with the e-signatures Directive 1999/93/EC. However, the Directives oblige any public purchaser in the EU to effectively recognize, receive and process tenders submitted, if required, with a qualified signature and their accompanying certificates.

It is obvious that the lack of generalised standards for electronic procurement systems across the Internal Market creates obstacles to the equal participation of suppliers in cross-border procurement.

It is not uncommon for suppliers to express their belief that a procurement competition can be considered as invalid, because it did not take place according to the ruling legislation. Therefore, Member States usually have existing bodies to deal with complaint procedures, initiated by suppliers.

The operation of such bodies can obviously become much easier with regard to e-procurement in comparison to non-electronic procurement, due to the audit trailing capabilities of electronic systems. All activities of e-procurement phases are recorded and stored into the system, allowing for a very detailed analysis. However, the bodies resolving complaints need to be educated in the operations.

In the Czech Republic, the Ministry of Regional Development decided to create a new Act on Public Procurement for implementing the Directives. According to this act no. 137/2006 Coll., the use of both electronic auctions and dynamic purchasing systems is regulated.

In this paper, there is further discussed a question of using electronic means for conclusion of contracts that chronologically follows the actual procuring phase. In the Czech Republic, there are no legal obstacles to use electronic means in such contracts and are even developed safety elements of electronic signatures that enables to identify the

contracting person.