European & International Board

6 March 2012

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Annex 2 - LGA response - EU proposals for procurement reform

Summary

On the 20 December 2011 the European Commission published new draft Procurement Directives which will replace the existing public sector and utilities Directives and introduce a new Directive and therefore make important changes to the way councils procure supplies, services, and works. The new legislation will be amended by ministers and the European Parliament and is planned to come into force on 30 June 2014.

The 246 pages of proposals aim to simplify the EU procurement rules but in practice represent a mix of measures, some of which are welcome and some of which are considered unnecessary or impose new burdens.

The response gives an overview of the main measures which will affect councils and the LGA's view following consultation with councils. The numbers in brackets refer to articles in the draft legislation.

Key issues

1. The new shared services exclusion (11.4) needs to be wider than proposed or deleted. The reference to 'mutual rights and obligations' should be removed and councils should be allowed to make an operational surplus provided it is reinvested into public services. Such reform is essential to allow the public sector to make efficiency savings.
2. New advertising requirements at EU level for education, health, and social services regimes should be rejected, as should requirements for new national rules, given the nature of these services. The current Part A/B distinction should remain. If not, then there must be significantly higher thresholds for these services of €5m to reflect the lack of cross-border markets.
3. Similarly, new requirements and burdens should not be introduced for the commissioning of legal services.
4. Councils will have to adapt to accepting self-declarations by SMEs at the selection stage. They will also have to adapt to new e-procurement requirements, but both should result in a welcome reduction in administration for councils and SMEs alike.
5. In the UK, an ability for employee 'mutuals' to receive 'dowry' contracts without tender must be included in the new legislation.
6. The 'light' approach proposed for service concessions, with higher thresholds and no specific award procedures at EU level, should inspire the reform of the procurement directive. The Commission needs to go much further with simplification.

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1. Scope of proposals

1.1 Thresholds (4)
It is disappointing that generally thresholds are proposed to remain at €200,000 for supplies and services and €5m for works. Despite consistent stakeholder feedback from public bodies across the EU, the Commission has not opted to set thresholds at levels which it is believed would reduce administrative burdens and better reflect cross-border economic viability for both contracting authorities and providers.

Our evidence presented to the Commission, as well as their own data, clearly shows a lack of cross-border interest in procurement markets at such low levels of contract value. The result can be unnecessary administrative burdens on public bodies in running lengthy EU-wide procurement processes which receive little or no attention from those based abroad. A more proportionate approach is therefore required based on significantly raised thresholds.

We welcome the intention to review the thresholds by 30 June 2017 (94).

Whilst the thresholds are adjusted in line with the exchange rate against the Euro, no account has been taken of inflation since the thresholds were originally introduced.

Recital 13 (pg 17) suggests that EU institutions and other EU bodies will not have to follow the procurement rules. As we have advocated in other EU proposals, it seems unacceptable that the European Commission does not have to follow its own rules.

1.2 New regime for social, education, and health services (75,76)
The current rules distinguish between Part A services which are subject to the full application of the procurement rules and Part B services which are subject to limited technical and procedural requirements. We note the proposed abolition of the distinction between 'Part A' and 'Part B' services and the creation of a new regime for social, health, and education services and a limited number of other specified services, the so-called 'non-priority' services listed in Annex XVI.

The new regime requires the publication of a Contract Notice (or presumably a PIN as outlined in section 1.4) and publication of a Contract Award Notice for contracts above a higher threshold of €500,000 (75) in the OJEU. There are no specified procedures or statutory time limits. It is advocated that procedural requirements should be limited to ensuring compliance with the principles of transparency and equal treatment such as quality, continuity and accessibility.

Whilst some larger councils routinely advertise Part B services in the OJEU, or even follow Part A procedures for Part B contracts in line with a single tendering path, other councils regret these new burdens in the form of EU level advertising requirements.

Furthermore councils don't see the value of this new regime given the proven lack of cross-border relevance of these services and the competences of the Member States in these fields. The extra tendering costs are unwelcome, and it is believed go against Government's Munro review which is aimed at reducing bureaucracy in children's social care.

Furthermore, the threshold of €500,000 appears low given the nature of the services. €5m would seem a more appropriate threshold for government to push for in negotiations.

All-in-all therefore it would be preferable to maintain the current Part A/B distinction.

Whilst there are no award procedures specified at EU level for these services, the proposals also include a requirement for government to bring in some form of award procedure nationally (76). This is unlikely to be welcome by contracting authorities. Such services are normally service contracts relating to people in need and there needs to be an ability to respond quickly and flexibly when procuring, in line with local decision-making and local conditions. Again the aim should be to simplify existing procedures, not to bring in new procedures.

1.3 New 'Part A' services

Contracts for legal services (and others) are proposed to be subject to the full requirements of the proposals. This is a major area of activity and there are concerns from councils that they will have to spend more time running procurements than currently when they can appoint their existing preferred and trusted legal advisors which whom they have built up a relationship.

Again new burdens, the more lengthy EU timescales involved, increased tendering costs, and new areas of legal challenge (standstill/remedies), are not welcome at this time. The main advantage of being in 'Part B' is not having to follow the EU timescales and standstill requirements, thus allowing, it is believed, procurements to happen more rapidly.

Leisure services (sport and recreation) being subject to full requirements may also create similar difficulties in some cases.

There are also strong concerns that the new wording in Article 10d for the exclusion of financial services means that loan services would now fall within the scope of the procurement rules and that councils will have to tender when they wish to raise capital. Again this is an unnecessary new burden, and draft article 10(d) should be reworded as currently to again include 'transactions by the contracting authorities to raise money or capital'.

LGA is therefore in favour of the continuing classification of legal (and leisure) services under the non-priority (Part B) regime.

1.4 Lighter procedural regime for local & regional authorities (24.2, 46)
The 'light' regime proposed for 'sub-central' authorities allows a prior information notice (PIN) or annual PIN to suffice as a means of calling for a competition, meaning that the publication of separate, individual contract notices would no longer be necessary for specified types of procurements including the restricted or the competitive procedure with negotiation. Sub-central authorities can also set certain time limits in a more flexible way. This is a significant simplification and is welcome. However the proposals need to be clearer about when they mean a single PIN or an annual PIN.

(The Directive specifies what information must be included in a PIN, a PIN used as calling for competition, a contract notice, and a contract award notice in Annex VI).

Within the restricted procedure, sub-central contracting authorities may also set shorter time limits for the receipt of tenders by mutual agreement between the contracting authority and the selected candidates, provided that all candidates are treated in the spirit of transparency and equal treatment.

Greater flexibility in both these areas is welcome although the dual uses of a PIN may just add to complexity/confusion. There is also a risk that the market will expect to see a Contract Notice rather than a PIN to launch a competition. Awareness raising about the new role of PINs would therefore be required before such changes are introduced.

As opposed to what is proposed in the draft Directive, councils should be able to put their PIN for competition on their buyer profile under the same conditions as currently.

Currently PINs are used as a forward planning tool to also gather information and for market testing so this use of PINs should not be put in jeopardy.

1.5 In-house exemption (11.1 to 11.3)
We note that the current Directive does not outline any form of 'in house' or shared services exemption. Important decisions on the organisation of local public services are therefore reliant on practitioner interpretations of CJEU case law. This sometimes results in local authorities spending on expensive and ultimately inconclusive external legal advice, or potentially not developing more innovative models of public service delivery.

The proposed codification of the in-house exemption based on CJEU case law is therefore welcome as it adds to legal certainty: especially codification of the 10% rule (second limb of *Teckal* test).

1.6 Public-public cooperation / shared services exemption (11.4)
The proposed codification to allow greater inter-authority cooperation appears not to meet councils' needs as regards 'tender free' pooling of services between public authorities.

The five tests proposed (11.4a to e) to benefit from the shared services exemption are generally from CJEU case law but test 11.4a referring to 'joint' performance of public service tasks and 'mutual rights and obligations' is unnecessarily restrictive and should be deleted.

The requirement for 'mutual rights and obligations' is not mentioned in the case summary for the *Hamburg* case (C-480/06) for example. Future CJEU cases would be necessary to establish whether this will be decisive in general for agreements involving public-public cooperation. It therefore seems premature to base the new exemption on such a condition.

Without rewording the proposed article 11.4, the exclusion may not apply to typical shared services arrangements between councils in practice, where there are often not reciprocal rights and obligations (it is rather a unilateral assignment of a task from one council to another).

Instead of imposing mutual rights and obligations as a precondition of the shared services exemption, the article should seek to better distinguish services with 'market orientation' from those which are genuinely non-market oriented, and don't place any commercial provider at a disadvantage.

Test 11.4d (no profit) is also unnecessarily restrictive as is does not appear to allow for a profit element or even an operational surplus to be carried over and reinvested in other services in the public interest, as may often be the case in practice.

It would be preferable to have no Article 11.4 at all rather than one which provides such a restrictive interpretation of the *Hamburg* case law.
The article should therefore be reworded or deleted.

1.7 Changes to contracts (72)
The clarifications are welcome as regards when a 'significant change' to a contract during its performance requires a new procurement procedure, including the '5% of contract value' rule.

However clarification for practitioners is needed immediately as the issue is causing difficulties in practice: waiting for the Directive to be agreed and implemented will take several years.

2. Localism

There are two specific instruments introduced by the UK's Localism Act (2011) which give rise to a number of complexities.

2.1 Employee mutuals
The Commission has not incorporated local and central government requests for a special regime to allow for 'tender free' award of 'dowry' contracts directly to employee-led organisations or mutuals. The proposals contain no exemption to allow this meaning that a competition will have to be run under which employee-led organisations will have to bid along with private sector players, to deliver a given service. This creates complexities around using mutuals as a delivery vehicle.

Government should continue to push for an exclusion on this during the EU level negotiations. However in parallel, and in the meantime, it should be made clear to councils that an EU compliant procedure is required when awarding a contract to a mutual.

2.2 Community Right to Challenge (CRC)
The new 'Community Right to Challenge' (CRC), also outlined in the UK's Localism Act (2011) allows voluntary and community groups to require a local authority to run a procurement exercise to externalise its service.

Despite government reassurances that the new right does not alter EU procurement law, outstanding questions remain about the interface and compatibility of these provisions with EU procurement law

Can an authority be a contracting authority and a bidder for its own contract simultaneously? Under what conditions can an authority abandon a CRC-triggered procurement process or ignore the result? What standard of evidence is required to justify such decisions?

The LGA is currently working on the CRC in more detail with government ahead of the publication of the UK regulations which will bring the Right into force at the end of April 2012.

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3. SMEs

3.1 Divisions of contracts into lots (44)

There are a number of provisions relating to the use of lots. These are aimed at encouraging the contracting authority to consider the structuring of opportunities to encourage SME participation. We note the new requirement to explain why contracts have not been broken down into lots of €500,000 or less.

If this requirement remains, support will be needed to be given to councils on how to define/decide on lot types and options, especially if there is to be legal challenge where contracts are not divided into lots. This is the main area of concern: that not dividing into lots will usher in a new area of legal challenge against councils.

All-in-all, it would be better to delete this requirement to explain non-disaggregation.

It must remain at the discretion of the contracting authority to determine whether it seeks lower contract costs with large volume procurement or whether it seeks to afford greater opportunities for SMEs.

Division into small lots also goes against the trend to seek costs savings and aggregate public sector procurement through central purchasing bodies.

3.2 Financial guarantees (56)

The proposals limit annual turnover requirements to up to three times contract value to help SMEs. The proposals to outlaw the asking of excessive financial guarantees from SMEs are welcome (56.3). We don't believe councils are routinely asking for financial guarantees in excess of this.

3.3 SME self-declaration & EU procurement passport (57,59)

We note that councils will have to accept self-declarations from SMEs as initial evidence for selection purposes (57), and that an electronic EU 'procurement passport' will also be introduced to automatically qualify an SME for participation in a procurement procedure, meaning an SME's details don't have to be provided many times to the same authority (59).

We tend to look favourably on these measures as they could reduce bureaucracy for both SMEs and councils once such a system is in place, and provided councils receive appropriate support. Several councils have already considered moving towards procurement passports.

3.4 Direct payment of subcontractors (71.2)

The new possibility to allow direct payment of subcontractors by councils must not affect the right of councils to withhold payment for valid performance

reasons, even those for which the sub-contractor is not responsible.

Councils are reluctant to open up a new avenue which could see sub-contractors turning to councils to ask for direct payments. However providing the possibility remains optional (for the contracting authority) the proposals appear manageable.

4. Reformed procedures
We welcome the fact that time limits for participation and submission of offer are proposed to be shortened. The ability to further shorten the procurement timescales involved if the Contracting Authority and providers agree is a positive development.

4.1 Selection criteria (54.3, 56)
The greater flexibilities introduced under the open procedure to allow the evidence for selection criteria to be examined *after* award criteria, if contracting authorities choose to do so, is helpful (54.3). This should allow councils to only request certificates/documentation from the winning bidder, rather than burdening all bidders with providing documentation. In many cases councils do things this way around already, so the proposal provides nothing new.

The SME requirement for self-declaration (57) should mean there is negligible risk that the one winning provider has to incur the costs of tender submission only to find out that they did not satisfy the selection criteria.

This new approach needs to fit with government's recent plans to introduce a shortened pre-qualification questionnaire (PQQ).

We welcome that fact that deficiencies by providers in performing prior contracts will now be able to be taken into account as selection criteria. However there are some concerns that excluding bidders in these circumstances, when they have taken some remedial action, could lead to claims of discrimination and legal challenge. Accordingly, clear guidance would be needed.

4.2 Award criteria (66)
It is welcome that the possibility to choose from two procurement approaches, most economically advantageous tender (MEAT) or lowest cost, remains. We understand that MEAT is by far the most commonly used approach amongst councils in the UK.

The draft Directive provides that for works and services contracts a contracting authority can require tenderers to name in the tender or in the selection (PQQ) stage the names and relevant professional qualifications of those to be responsible for the performance of the contract. This change is

welcome. Current provisions if strictly interpreted only permit this information to be requested at the PQQ stage.

The fact that the employment of unemployed people can be specified as a contract performance condition is also welcome (provided it is linked to the subject matter of the contract and is non-discriminatory) (recital 43). However it should be clarified whether the employment of unemployed people can be an award criterion: whether the unemployed would qualify as a 'disadvantaged or vulnerable group' outlined in recital 41.

Draft contract conditions
The other thing that local authorities would like to see clarified is the ability to invite proposals on matters set out in draft contract conditions, including 'contract performance conditions', as opposed to the technical specifications, and to take those proposals into account at contract award stage.

This is an issue when councils invite proposals for how TUPE will be handled for example – it is seldom a specification issue, and is normally in the contract conditions. But being in the conditions means there can't be consideration of such issues at contract award stage. In complex procurements (such as PFI) where risk is being transferred, it is also common practice to invite comments on draft contract terms and there is often substantial feedback. It therefore needs to be made clear in the proposals that contract conditions can be taken account of at award stage where justified, non-discriminatory and linked to the subject matter of the contract etc.

4.3 Green procurement criteria (67)
Mandatory lifecycle costing is only introduced (for the moment) in the field of vehicle procurement where a costing methodology has already been adopted in EU law (see links). It would be useful for the EU to publish what other costing methodologies for other products or services are in the pipeline at EU level, and may be added to Annex XV meaning their use will be mandatory in future.

It is unclear why the office equipment Regulation (106/2008) has not been included in Annex XV as one which must be followed. The annex would be of more practical use if it listed *all* EU procurement legislation which contracting authorities need to follow.

We welcome the fact that the introduction of lifecycle costing otherwise remains optional, under an *enabling* approach, in line with the need for flexible procurement decision-making at the local level.

The proposals open the door to the mandatory introduction of lifecycle costing for new product/service areas. To ensure democratic scrutiny, such new costing methodologies must be agreed at the EU level through co-decision, not as delegated acts.

4.4 Energy efficiency in procurement
Whilst local authorities should be given every encouragement to procure energy efficient products, there should be no new *mandatory* energy requirements imposed on local authorities as proposed under the new energy efficiency directive.

The LGA recognises the important role of public procurement in demonstrating leadership but does not support the blanket imposition of mandatory energy requirements in all procurements. The draft energy efficiency directive will need to strike a balance between seeking ambitious levels of energy efficiency and value for money principles. Local taxpayers should not be expected to meet the costs of developing the market in highly energy efficient works, products or services. An even hand should be demonstrated with equivalent expectations made of manufacturers.

The draft energy efficiency directive should recognise that for local authorities a significant proportion of purchasing decisions are made by contractors. Local authorities can specify that energy efficiency expectations are met by contractors and their suppliers in future contracts. However there will be limitations in their ability to change expectations within existing contracts.

As regards the requirements for the energy efficiency of buildings, local authorities use a number of criteria in the choice of buildings to rent. These include location, configuration and capacity. With these considerations in mind it will not always possible to find an appropriate building to fulfil all energy requirements before the market in highly energy efficient rental buildings reaches sufficient maturity.

The LGA suggests therefore that this part of the draft energy efficiency directive would be more appropriately focused on providing guidance for local authorities on the value of energy efficient products rather than imposing compulsory criteria.

4.5 Social considerations
It is positive that no new mandatory requirements are imposed in this area, and that the Commission focuses on an *enabling* approach. This approach must not be altered by the European Parliament which may push for more mandatory measures in this area.

It is welcome that fair trade considerations, and any factors directly linked to the production process may now be taken into account in the technical specifications and in award criteria (working conditions, minimum wages, child labour etc).

We note however that general corporate social responsibility (CSR) requirements will not be able to be taken into account (such as a certain

percentage of women on the board of directors), because they are not directly linked to the subject matter of the contract.

Social and environmental criteria should only be introduced at the discretion of the contracting authority and where appropriate to the category of supplies or services.

It is positive that violations of EU or international law in the field of social, labour or environmental legislation will become legitimate reasons to not award a contract, or to exclude an 'abnormally low' tender (54.2).

In general it is felt that there needs to be more discussion amongst public bodies, and greater understanding about incorporating social issues and CSR into the procurement process.

4.6 Sheltered workshops (17)
A wider definition of sheltered workshops is proposed. Whilst the current directive (Art.19) refers to 'handicapped persons', the proposals (Art.17) would allow contracts to be reserved for employers/programmes employing more than 30% 'disabled or disadvantaged' workers. Again, it needs to be established if 'disadvantaged' would allow councils to reserve contracts for those social enterprises helping the long-term unemployed (for example).

4.7 Competitive procedure with negotiation (27)
The proposals allow a greater use than currently of a competitive procedure with negotiation. The conditions permitting the use of Competitive Negotiated and Competitive Dialogue have been changed so that they are the same for both procedures. This option to allow greater negotiation with suppliers is helpful. We note the regime is optional: governments may implement it or not (24.1). Government should ensure it is transposed into UK law in the future public contracts regulations, in a way that makes the procedure workable/useful in practice.

4.8 Competitive dialogue procedure (28)
Similarly, we note that use of the existing competitive dialogue procedure will be optional for Member States in future (24.1), and thus government will decide whether to maintain the use of the competitive dialogue procedure or not in the UK.

LGA is supportive of the proposed new ability to negotiate with the preferred bidder after the close of competitive dialogue. One of the current risks of competitive dialogue was the inability to move to a negotiated procedure if the process failed in the last stage to have a submission of at least two bids (wasting time and money for all parties to the tender).

4.9 Innovation partnership procedure (29)
We note the creation of a new 'innovation partnership' procedure which may make it easier for councils to commission the research and development and subsequent purchase of new products/services/works, rather than simply buying existing off-the-shelf solutions.

In practice many councils don't have the financing to invest into the research and development of prototype products, services or works. The new procedure is nevertheless welcome for those larger authorities who do. Birmingham City Council for example is involved in several research and development projects in the energy saving field.

Work will need to be done to raise awareness of what this procedure is and how it can best be used to help councils achieve their aspirations in the fields of product and service innovation. Issues around the transfer of intellectual property rights to councils will also need to be considered.

4.10 Framework agreements (31)
There appears to be no reform to framework agreements. Much-needed provisions for better communication as to the existence of frameworks or to allow for a new contracting authority to join subsequently or to refresh frameworks with new suppliers are absent. This does not properly address concerns experienced by contracting authorities who are calling for such reforms to reflect changes in markets and changes in demand.

It needs to be clear that a 'class' of public authority, such as all 'local authorities', can be specified rather than specifying specific local authorities to receive supplies/services. This is important especially for central purchasing bodies, and has caused legal problems in other Member States due to differing interpretations at the local level.

4.11 Dynamic Purchasing Systems (32)
Simpler rules for dynamic purchasing systems (DPS) and electronic catalogues are proposed. We note a Dynamic Purchasing System (DPS) can now be run as a restricted procedure eliminating the need for indicative tenders and allowing any economic operator meeting the selection criteria to take part. This appears to be a helpful innovation which may make it easier and more cost effective to automatically purchase regular supplies. We note that little use has been made of DPS to date.

4.12 E-procurement (33,34,51)
The directive introduces a mandatory requirement for all councils to use safe e-procurement by 30 June 2016: sending and receiving all documents electronically i.e. via web or email, free of charge.

We have no reason yet to believe this will be problematic. Many larger councils are already doing this, but smaller councils may need time and support to adapt.

However, contrary to what is proposed, it would seem reasonable that central purchasing bodies (often run in conjunction with local authorities) should be given the same time to prepare as local authorities, and benefit from the 2 year transition period (30 June 2014 to 30 June 2016).

Making it easier to use safe electronic auctions, electronic catalogues, and electronic marketplaces for frequently purchased supplies is welcome.

There are proposals to reduce the standard statutory minimum time limits. This is to be welcomed as this will go some way in speeding up the process.

5. Governance & transparency

5.1 a single independent oversight body (84)
The Directive requires government to appoint an independent oversight body which will be responsible for the coordination of implementation activities. All contracting authorities shall be subject to its oversight. The oversight body will be responsible for a number of areas, some of which could create problematic internal conflicts of interests, including:

- monitoring the application of public procurement rules by contracting authorities
- providing legal advice to contracting authorities on interpretation of public procurement rules
- countering procurement fraud and examining complaints from citizens and businesses.

We note the UK already has something of a support structure in place, the most recent incarnation being the Government Procurement Service (GPS) under the Cabinet Office 'Efficiency Reform Group'. However the degree to which this is 'independent' from government is perhaps questionable.

However, councils do not necessarily want to see a new public agency established specifically to police procurement. Improvement in procurement practices should be led principally by the local government sector itself.

As regards ensuring the application of procurement law, we suggest that this should be, as currently, the role of the national courts, rather than a new agency.

A 'single' body may also be difficult given devolved competences to Wales, Scotland, and Northern Ireland.

5.2 Conflicts of interest (21)
The proposals include new rules to 'effectively prevent, identify and immediately remedy conflicts of interest' arising in the conduct of EU procurement procedures. The rules must cover staff members of contracting authorities, procurement service providers, other providers who are involved in the conduct of procurement procedures (including the private sector acting in this capacity) as well as chairs and members of decision making bodies. *Perceived* conflicts of interest are also covered. Safeguards are also introduced to ensure no preference is given to participants who have advised the contracting authority in the preparation of a procurement procedure (39.2). Such provisions to fight corruption are welcome, provided they achieve their aim and do not simply introduce new administrative burdens.

New provisions require a copy of all supplies and services contracts over €1m, and all works contracts over €10m to be sent to the 'national oversight body' so that they can maintain an overview of all winning bidders selected and make the contracts available to interested persons. Again this is a new burden resulting in the transmission and handling of tens of thousands of contracts, which may add to a delay in the procurement process. It may be a lighter administrative regime to allow the body to *request* copies of any contracts above these thresholds on which they have concerns rather than having to automatically receive them all.

Also, there are concerns that additional scrutiny could deter suppliers from dealing with the public sector as regards the sharing of information and solutions.

6. Service concessions
We note the separate new proposals to regulate service concessions under EU legislation for the first time (COM 2011 897). Service concessions are seen as fundamentally different from public contracts as much of the risk is transferred to the operator. They have therefore not been subject to EU legislation in the past, although they have been subject to the Treaty principles of transparency and non-discrimination etc.

It is regrettable that service concessions have not been integrated into the reform of the public procurement directive as it further fragments the regulatory landscape, adding further to complexity.

It remains unclear to what extent service concessions, as opposed to service contracts, are actually used by councils. Our 2011 survey suggested 27% of councils had awarded at least one service concession rather than a service contract in the last 5 years. However it is possible that there are different perceptions of what a service concession is (UK terminology v EU law) and that even some of the so called 'concessions' in the UK have in fact been procured competitively as a normal service contract.

In any case, local authorities in the UK will not routinely award service contracts as concessions. There are however increasing opportunities to exploit assets and therefore the opening to the wider market of what can be a substantial service concession contract may be of benefit.

In practice the proposals may affect some councils' franchise arrangements: leisure centres, toll roads/bridges, waste concessions, car parks, school canteens, letting of roof space on municipal buildings for solar panels, are some examples LGA is aware of.

The high threshold of €5m is welcome (presuming such new legislation is required in the first place), as is the light regime limited to certain advertising requirements.

The light approach proposed under the concessions proposal should in fact act as inspiration to reform the procurement directive as well (no specific award procedures at EU level etc).

Extending the remedies provisions to govern service concessions may be problematic, and there is a need to avoid opening up new areas of legal challenge against councils.

We see that the benefits of the proposal are that major procurement markets governed by concessions on the continent in energy and waste fields for example would be opened up to UK providers. This could be of significant economic benefit to UK business.

7. Next steps
Elements of these proposals may well change during negotiations and before they become law. Thus this position may be refreshed in future to take account of the current state of negotiations.

In conjunction with the LGA's 'Productivity Programme' we look forward to working with local government, government, the European Parliament, the Committee of the Regions, and other partners across Europe as the negotiations progress.

Feedback from councils is welcome throughout the process either directly to the lead contact listed below or via the LGA Productivity and Efficiency Exchange (see links).

LGA contacts
dominic.rowles@local.gov.uk (Brussels Lead)
rob.hann@local.gov.uk (London, Local Partnerships)
neil.rimmer@local.gov.uk / siobhan.coughlan@local.gov.uk (London, Productivity Programme)

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Links – EU reform proposals

Commission proposals COM (2011) 896, press release, and FAQ (20.12.2011)
http://ec.europa.eu/internal_market/publicprocurement/modernising_rules/reform_proposals_en.htm

Proposed new directive on service concessions (20.12.2011)
http://ec.europa.eu/internal_market/publicprocurement/partnerships/concessions/index_en.htm

Cabinet Office note (21.12.2011)
http://www.cabinetoffice.gov.uk/sites/default/files/resources/PPN-11-11-Legislative-Proposals-for-the-Revised-Procurement-Directives_0.pdf

Feedback from councils is welcome throughout the process via the LGA Productivity and Efficiency Exchange (Community of Practice soon to be replaced by LGA 'Knowledge Hub'):
http://www.communities.idea.gov.uk/comm/landing-home.do?id=436525&tab=c

Other procurement links
Commission guidance on public-public cooperation / shared services (Staff Working Paper 4.10.2011)
http://ec.europa.eu/internal_market/publicprocurement/partnerships/cooperation/index_en.htm

Department for Transport – guidance on procurement of clean vehicles (23.8.2011)
http://www.dft.gov.uk/publications/guidelines-clean-energy-efficient-vehicles/

LGA 'Buying into Communities' guide (December 2011)
http://www.local.gov.uk/productivity-procurement