

## Round Table: "A new European Directive for Concession Contracts"

The lack of clear EU-wide rules governing the award of concession contracts gives rise to legal uncertainty and to obstacles to the free provision of services across the Union. It also causes distortions in the functioning of the single market. As a result, economic operators, in particular small and medium enterprises, are being deprived of their rights within the single market and miss out on important business opportunities. An appropriate legal framework for the award of concessions would ensure that all EU economic players have effective and non-discriminatory access to the EU market. It would also provide greater certainty as to the law, which would in turn encourage more public investment in infrastructure and strategic services for the citizen. This is the aim of the new European directive for concession contracts.

After a first proposition coming from the European Commission, on 24 January 2013, the Internal Market Committee adopted its position on draft rules setting out minimum EU requirements for the award by public authorities of "concession" contracts to procure works or services from private suppliers. Compared to the initial draft proposed by the European Commission, the European Parliament position created more room for negotiating concession contracts by stating only that the concession award criteria should be "objective" (the Commission had proposed that the contract should go to the "most economically advantageous offer"). "Objective" award criteria, by contrast, could include quality, after-sales service or experience of the contractor. Furthermore, the European Parliament reinforced that public authorities could include environmental, social, gender-equality or innovation-related award criteria.

One issue discussed extensively is that the proposed directive provides for several possible exemptions. More especially, one clause says that concessions awarded to "affiliated undertakings" (i.e. those mainly controlled or owned by the contracting authority) will be exempted from the directive if at least 80% of their turnover derives from business with the contracting authority.

The objective of the round table will be to discuss how light the new directive should be. More precisely, questions such as

- Should possible criteria for call for tenders should be limited? Should they be ranked? Weighted?
- Should renegotiations in such contracts be prohibited, or strongly limited?
- How concessions awarded to "affiliated undertakings" (in-house) should be considered?
- Each speaker will give their view on one or several of those topics

Participants :

- Diane d'Arras (Deputy General Manager Water Europe at Suez Environnement)
- David Martimort (EHESS & PSE)
- Marian Moszoro - IESE Barcelona
- Stéphane Saussier (Sorbonne Business School)
- Joanna Szychowska - European Commission DG MARK
- Anne Yvrande-Billon - French Competition Authority