



**EUROPEAN COMMISSION**

## **MEMO**

Brussels, 26 June 2013

### **Commissioner Michel Barnier welcomes agreement on new rules for the award of concession contracts**

I congratulate the European Parliament and the Council on having reached agreement on a new Directive on the award of concession contracts. This is not only about ensuring transparency and equal treatment in the single market. It's about providing a flexible framework for partnerships between public and private that will boost much needed investments in infrastructure and services, and ultimately contribute to better quality works and services for citizens at a better price.

These new rules will greatly improve legal security for public authorities and economic operators across Europe when cooperating on infrastructure projects such as roads or ports or the provision of services to the citizens.

The draft Directive confirms the autonomy of contracting authorities across Europe to decide on the best way to provide public services. When they have recourse to concessions, the new rules will give them flexibility as to the choice of the award procedures and the choice of the most appropriate, non-discriminatory award criteria.

The new rules will also provide for a well-functioning internal market in concessions, by ensuring EU-wide transparency and competition as concession notices will be published in the Official Journal of the EU. This means not only more opportunities for contracting authorities but also for EU companies, including SMEs, and consequently increased economic growth and more jobs.

The draft Directive further clarifies the cases in which contracts concluded between contracting authorities are not subject to the application of concession award rules. This brings valuable support to the development of public-public cooperation.

Finally, it was agreed, as [I suggested last Friday](#), to exclude water from the scope of the new rules.

The negotiations in the Parliament and in the Council, accompanied by EU citizens' voices on the issue of water in particular, have led to a very good result. I am confident that the European Parliament and the Council will confirm this very soon. I would like to warmly thank all the people who have contributed to this success and in particular, the rapporteur, Philippe Juvin, as well as the Cypriot, Danish and Irish Presidencies for their willingness to reach a first reading agreement, and for their spirit of compromise. I also wish to thank all the stakeholders for their involvement in consultations; they have helped us to come up with solutions adapted to concession contracts.

## Background

In December 2011, as announced in the Single Market Act ([IP/11/469](#)), the Commission adopted its proposal on the award of concession contracts ([IP/11/1580](#)). This proposal is part of an overall programme aiming at modernising public procurement in the European Union.

Concessions are partnerships between the public sector and mostly private companies, where the latter exclusively operate, maintain and carry out the development of infrastructure (ports, airports, parking garages, toll roads) or provide services of general economic interest (energy and waste disposal for example). Concessions are the most common form of Public Private Partnership (PPP).

Unlike public contracts, which are regulated by the European public procurement Directives [2004/17/EC](#) and [2004/18/EC](#) and public works concessions, which are partially covered Directive [2004/18/EC](#), the award of service concessions is not subject to any clear and unambiguous provisions, being guided only by the general principles of transparency and equal treatment of the Treaty on the Functioning of the EU. This loophole gives rise to potentially serious distortions of the Single Market such as direct awards of contracts without any competition (with associated risks of national favouritism, fraud and corruption) and generates considerable inefficiencies.

## Main elements of the new rules:

- (1)** A clearer and more precise definition of a concession (building on the Court's case law);
- (2)** Coverage of award of works and services concessions both in the classic sector (all other sectors not covered by utilities) and in the utilities sector (Directives 2004/18/EC and 2004/17/EC respectively);
- (3)** Compulsory publication of concessions in the Official Journal of the EU, when their value is equal to or greater than €5,000,000;
- (4)** Pragmatic solution for dealing with changes to concessions contracts during their term notably when justified by unforeseen circumstances;
- (5)** Establishment of certain obligations with respect to the selection and award criteria to be applied by the contracting authorities and contracting entities when awarding concessions. These rules aim at ensuring that such criteria are published in advance, are objective and not discriminatory. In general, they are less rigid than similar provisions currently applicable to public contracts;
- (6)** No specific award procedures but instead definition of certain general guarantees aimed at ensuring transparency and equal treatment with particular reference to negotiation;
- (7)** Application of the [Remedies Directives](#) (Directives 89/665/EEC and 92/13/EC, as amended by Directive 2007/66/EC) to all concessions above the threshold, which will guarantee judicial protection for all EU companies bidding for such projects

More information on concessions is available at: [MEMO/11/932](#)