

Brussels, 30 September 2010

## **Public procurement: Commission refers Hungary to Court to ensure fair access to public contracts**

*The European Commission has today acted to ensure fair access to public contracts by deciding to refer Hungary to the Court of Justice of the EU in two separate cases. In the first case, the Commission considers that the Hungarian Government central purchasing body breached EU public procurement rules during the award procedure of a framework agreement concerning office supplies. In the second case, the Commission takes the view that Hungary has wrongly implemented EU public procurement rules in its national legislation, in this way restricting access for business to public contracts. EU public procurement rules exist to ensure fair competition for public contracts, thereby creating more business opportunities for European companies while ensuring best value for public money. If the rules are not properly implemented, there is a risk of a closed market and waste of public money. The Commission sent reasoned opinions – the second stage of EU infringement procedures - on both cases to Hungary in March 2010, requesting the authorities to comply with EU law (see [IP/10/306](#)). As no satisfactory response was received, the Commission has now decided to take both cases to the Court.*

### **What is the aim of the EU rules in question?**

Public procurement is about how public authorities spend public money. It covers purchases of everything from coffee to computer systems, waste water plants, ship building or consulting services. Total public procurement in the EU is estimated at about 17% of the Union's GDP. The open and transparent tendering procedures required under EU public procurement rules mean more competition, stronger safeguards against corruption, and better service and value for money for taxpayers.

## **How is Hungary not respecting these rules and why are citizens and businesses suffering as a result?**

### **Office Supplies**

In June 2009, the Hungarian central purchasing body (KSZF) published in the EU Official Journal a notice for a framework contract for the supply of paper, stationery and other office equipment to several public authorities. The framework contract was worth HUF 3.5 billion (approximately €13 million) and was due to be valid for 12 months. The contractor was due to be selected following a negotiated procedure, which means that KSZF would have individually negotiated the terms of the contract with bidders.

Informed of the facts through the Hungarian press, the Commission found that by using a negotiated procedure, KSZF had offered less guarantees for transparency and equal treatment to bidders compared to an open procedure – a procedure that is the standard under EU law - and could lead to a waste of taxpayers' money. The Commission's assessment is based on extensive case-law of the Court of Justice of the EU, which very strictly interprets the possibility for derogations from the main rule of open tendering and rejects any extensive reliance on negotiated procedures. According to the Hungarian authorities, a negotiated procedure was justified, since the value of the supplies could not be estimated in advance. However, in the light of the products concerned – office supplies - the Commission doubts that this justification is applicable.

### **Hungarian Public Procurement Act (HPPA)**

Under the reformed HPPA, a new provision was introduced in 2009 that in certain cases, bidders to a public contract can only rely on the resources of another economic operator if they hold a majority influence in that operator. In its assessment of the law, the Commission concluded that this provision restricts the possibilities for such cooperation to fewer cases than provided under EU law. Under EU public procurement rules, bidders may rely on the resources of other operators "regardless of the legal nature of the links".

As a result, the Commission considers that Hungary has failed to fulfil its obligations under EU public procurement rules. In the Commission's view, the modified HPPA restricts access of companies to valuable public contracts, leading to a possible waste of taxpayers' money.

### **More information**

Public procurement:

[http://ec.europa.eu/internal\\_market/publicprocurement/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/index_en.htm)

Latest information on infringement proceedings concerning all Member States:

[http://ec.europa.eu/community\\_law/index\\_en.htm](http://ec.europa.eu/community_law/index_en.htm)

For more information on EU infringement procedures, see [MEMO/10/457](#).