5
A Critical Assessment of Public Procurement

Introduction

The process of the liberalisation of public procurement in the European Union has two primary objectives: i) to achieve an open and competitive regime of public purchasing which would yield substantial savings to the public sector and ii) to act as a stimulant for the much needed restructuring and adjustment of the European industrial base. When compared with other advanced integrated economic or political systems, the regulation of public procurement in the European Union has no precedence. It is not only the aspiration for the creation of a genuinely integrated public sector market within the Community, but to a large extent it is the impact of such a regime upon the overall process of European Integration that deserves further attention. The mechanism of the public purchasing regulation has revealed a considerable range of socio-economic considerations which interact with the envisaged aims and objectives of the regime. The public procurement sector in the European Union is by no means readily receptive to the parameters of any legislative framework. Rather, it is a forum of well-established socio-economic and legal patterns which for a long time have served national interests.

One should not expect a dramatic and unprecedented transformation of the way public procurement has been conducted in the Member States of the European Union, for two main reasons. Firstly, what has been asked by European law and policy on public procurement represents a significant change of the modus operandi of contracting authorities, which quite often have regarded the European rules as a burden. The unwillingness of public authorities to change well established public purchasing patterns and practices not only does reflect their reservations over the financial implications of such an exercise, but mostly their
concern over domestic policy considerations which are closely associated with public procurement. The second reason for the modest progress in adapting to the new regime can be attributed to a number of factors which may not only slow the progress of public sector integration but also hinder the delivery of the envisaged results and the accomplishment of the objectives under the relevant framework. The primary concern of European institutions over the progress of public procurement regulation is the simple assumption that the Member States and their contracting authorities do indeed comply with the stipulated requirements of the Public Procurement Directives. However, the integration the public markets in the European Union could encounter problems which focus on five main areas: a) inherent constraints in the legislation, b) the existence of public monopolies and the process of their privatisation in the Member States, c) harmonisation of standards and specifications, d) the reluctance of the supply side in initiating litigation, and e) the need to sustain certain industries through public procurement.

**Inherent shortcomings in the public procurement rules**

The legislation on public procurement is far from perfect. It has envisaged the creation of a framework which will enhance competition in public markets, but the actual mechanism in delivering the objectives has revealed a number of limitations with its impact on the demand and supply sides. The most significant danger in the legislative framework of public procurement in the Community is the potential elements of non-tariff protection which might arise from its application. Indeed, inherent shortcomings in the legislation could pose considerable obstacles to the integration of the public sector in Europe. The impact of the law and policy of public purchasing upon the demand side in particular has exposed two fundamental limitations which are integral to the legislative framework. The first limitation refers to the quantitative division of public markets in dimensional (above certain thresholds) and sub-dimensional ones (below the thresholds which trigger the applicability of the Directives). The second limitation is concerned with the potential adverse effects of the principle of transparency upon the public procurement process.

**The dimensionality of public procurement**

The main objective of the European rules on public procurement, as implemented by Member States in the form of domestic laws is the