

INTERGOVERNMENTAL CONFERENCE ON THE
ACCESSION OF ICELAND TO THE EUROPEAN UNION

NEGOTIATING POSITION OF ICELAND
Chapter 5
Public Procurement

Summary of the negotiating position

1. Chapter 5 on Public Procurement is fully covered by the EEA Agreement. Iceland implements and applies EEA relevant *acquis* under this chapter on an ongoing basis.
2. Iceland accepts the *acquis communautaire* with respect to Chapter 5 on Public Procurement as of 15 November 2010¹. Iceland will have implemented any outstanding *acquis*, as of that date, under this chapter by the date of accession.
3. Iceland has the legislative and infrastructure framework necessary to continue implementing the *acquis* in this chapter.
4. Iceland does not request special arrangements, derogations or transitional periods under this chapter.

EEA Agreement

Iceland has been a party to the agreement on the European Economic Area (EEA) since its entry into force in 1994. As a result, Iceland has participated in the single market for more than 16 years and implemented all relevant EU legislation with respect to the four freedoms, as well as in other important areas such as research and development, education, social policy, the environment, consumer protection, tourism and culture. The EFTA Surveillance Authority (ESA) regularly monitors Iceland's performance under the EEA Agreement and publishes information about Iceland's implementation record twice yearly in an internal market scoreboard.

In those chapters covered by the EEA, Iceland has built its legislative framework and institutional framework to comply with and implement relevant EU legislation. Chapter 5 on Public Procurement is covered by the EEA Agreement.

Legislative framework

The legislative framework is in place to continue implementing the *acquis* in this chapter. Iceland's public procurement legislation is already in line with the EU *acquis*. EU Directives are either transposed by an Act of Parliament ("Althingi") or, when parliamentary intervention is not

¹ Date of screening meeting (one meeting on this chapter)

required, by a regulation issued by the Ministry of Finance (“*Fjármálaráðuneytid*”).²

Iceland has transposed all the regulations and directives that have been incorporated into the EEA Agreement. At the time of writing, only four EU acts are yet to be incorporated into the EEA Agreement. They are.

- Directive 2007/66/EC (remedies), which calls for the modification of an act of Parliament. Draft legislation has been prepared and consultations commenced with interested parties.
- Directive 2009/81/EC (defence), which calls for the modification of an act of Parliament. A draft bill is currently being prepared.
- Directive 2006/97/EC and Directive 2007/24/EC, both of which may be implemented without Parliamentary intervention.

Iceland has the legislative framework necessary to implement the *acquis* in this chapter by the date of accession and does not foresee any difficulties in transposing these directives.

In Iceland, the most important legislative act on Public Procurement is the Act on Public Procurement No 84/2007, which transposes *inter alia*:

- Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts,
- Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors,
- Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors,
- Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts,
- Commission Directive 2005/51/EC of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement,
- Commission Regulation (EC) No 1564/2005 of 7 September 2005 establishing standard forms for the publication of notices in the framework of public procurement procedures

² Drafting of legislation is done in close cooperation with the EFTA working group on public procurement and implementing acts are notified to the EFTA Surveillance Authority (ESA).

pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council and

- Directive 2005/75/EC of the European Parliament and of the Council of 16 November 2005 correcting Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

The Act on Public Procurement has been modified on numerous occasions in order to reflect modifications to the EEA-Agreement. In addition to the Act on Public Procurement, several other legal acts and regulations exist in this field, such as:

- Regulation No 411/2008 on the Common Procurement Vocabulary (CPV)
- Regulation No 755/2007 on the procurement procedures of entities operating in the water, energy, transport and postal services sectors
- Regulation No 916/2008 amending Regulation No 755/2007
- Regulation No 1300/2007 establishing standard forms for the publication of notices in the framework of public procurement procedures
- Regulation No 807/2007 on the application of thresholds for the procedures for the award of contracts

The *Ministry of Finance* sets policy in the field of public procurement. It has done so by issuing a number of guidelines. The most important one is the “Guide to Public Procurement” (hereinafter referred to as the “Guide”) issued in February 2008. The Guide contains a comprehensive overview of regulations in the field of public procurement, up until the date of issue. The Guide furthermore defines which parties are subject to the rules on Public Procurement and which types of contracts. A special section of the Guide deals with domestic thresholds, which are lower than those prescribed by the *acquis*. In accordance with Article 20 of Act No. 84/2007 all procurement of supplies exceeding ISK 5,000,000 and procurement of services and work exceeding ISK 10,000,000 shall be put out to tender or made in accordance with the official procurement procedures.³ The Guide furthermore explains the public procurement procedures step by step and lists which documents may or may not be required for accepting a bid. The Guide contains provisions on eligibility of bidders, which are set to reduce possible conflicts of interest as well as rules on the submission of tenders, selection procedures, complaints procedures and the annulment of contracts and possible damages.

Further guidelines have been set with regard to “green” procurement and “electronic” procurement. Both policies are in line with EU Policies in this field.

³ On 24 February 2011 the Central Bank of Iceland listed the exchange rate between the Icelandic Krona (“ISK”) and the Euro as 160.28 ISK to 1 Euro.

Institutional framework

The institutional framework is in place to continue to implement the *acquis* in this chapter.

The Ministry of Finance is responsible for the general supervision and execution of public procurement rules in Iceland. The Ministry's role is *inter alia* to manage Iceland's public procurement policy, set regulations and draft legislative proposals that are submitted to Parliament.

The Ministry of Finance currently has a staff of five people working part time on public procurement. In addition, the Ministry has the possibility to delegate some of its tasks to outside counsel. This is mainly done for large tasks that require substantial work over a short period of time, such as when drafting a new legislative bill.

In accordance with the provisions of Article 1(3) of Directive 89/665/EEC, Iceland has established review procedures for contract award procedures. The responsible body is the Public Procurement Complaint Committee ("kærunefnd útboðsmála"). The Procurement Complaint Committee is the final authority within the administration as regards complaints made by economic operators and their claims. Besides powers to annul procurement procedures, the Procurement Complaint Committee can give an advisory opinion as to liability. For a legally binding decision on damages, a court action is needed. In accordance with Article 8 of Directive 89/665/EEC, all of the Procurement Complaints Committee's decisions are subject to judicial review by the general court system.

The State operates a central purchasing entity, the State Trading Centre (*Ríkiskaup*). The State Trading Centre is responsible for procurements for State institutions and State concerns. It also examines joint needs for supplies and services and coordinates procurements for state needs and provides assistance and instructions for State institutions. The State Trading Centre also provides consultation and training to municipalities as well as to Government entities that use public procurement procedures for minor purchases. Although the State Trading Centre is essential for the good running of the State public procurement, it does not have regulatory powers. The State Trading Centre has a staff of 22.

Acceptance of the *acquis*

Iceland accepts the *acquis communautaire* in Chapter 5 on Public Procurement as of 15 November 2010. No special arrangements, derogations or transitional periods are requested under this chapter.