

# Support to Dialogue on the EU-Ukraine FTA

## Stakeholder Positions on Public Procurement

### January 2009



*The Ukraine EU FTA is likely to involve progressive approximation of Ukraine's legislation with the EC acquis and the introduction of mutual access to their respective markets at all levels on the basis of national treatment. The following positions have been presented based on discussions with, and amongst the various stakeholders in Ukraine. They do not necessarily reflect the opinions of the project implementers or the British Government.*

#### Public Procurement Department, Ministry of Economy

In terms of approximation to EU public procurement directives, the Public Procurement Department has no real problem with adopting these new procedures. It understands the concepts and is willing to implement them if such a new law in Ukraine is adopted. However, in complying with EU public procurement procedures, there are a number of technical and practical issues which need to be resolved:

- the EU Directives **require an independent body under the judiciary to review and investigate public procurement**. However, under Ukrainian law this cannot be, any government body must report to the Cabinet, President or Verkhovna Rada.
- In principle, there are no problems extending public procurement to utilities and other public and private companies which are given "special exclusive rights." However, there is a major difference between the EU and Ukrainian definitions, throughout law, as to what constitutes "concessions" and this will need changes in a range of laws where these differences appear.
- in order to implement these procedures, this unit will need to train those bodies covered by the new public procurement procedures, publish tenders (both on paper and electronically) and adopt the EU's common procurement vocabulary (amongst other things). At this moment, the Department does not have the staff or resources for these activities: it estimates that it will need 150 staff but only has 31 at present, adequate budget for publishing tenders (in 2008, it had UAH 16 million for 9 months of publishing but for 2009, this has been reduced to UAH 1 million) and a new budget line altogether for introducing electronic tendering.
- this Department is **not responsible for considering the potential participation of Ukrainian companies in EU public procurement contracts** and they do not know of any body which is currently responsible or interested in this area.

*The decision on whether or not to approximate and adopt EU public procurement procedures is NOT the issue, it's the technical assistance and resources needed to implement these.*

#### Verkhovna Rada Sub-committee on Regulation

Currently, public procurement in Ukraine is governed by a Cabinet of Ministers Resolution and the Rada believes it should be governed by Law. A draft law which passed its first reading is currently being revised by the Sub-committee with technical inputs from different political factions of the Rada but it is by no means certain that this law will be adopted. Comments have also been sought and given by the World Bank and a TACIS project. Based on the current draft, there are still a number of issues:

- **Understanding of the benefits of open and transparent public procurement tenders is limited amongst Deputies, most believe it's a nationalism/protectionist issue rather than spending efficiency issue**. In the current political climate (financial crisis and upcoming presidential elections), restricting international participation in public tenders may be more popular even though savings through competitive tendering could reduce the price of contracts by up to 3 times.
- In terms of compatibility with the EU directives, **the major issue is that the review of tendering procedures is currently undertaken by a Department of the Ministry of Economy whereas it should be by an independent body**.

*Awareness raising targeted towards the Heads of political parties on the importance of open, transparent public procurement on public finance efficiency is key to ensuring any commitment in the FTA is translated to effective policy and law in Ukraine.*



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#### Department for Legal Approximation, Ministry of Justice.

There are no problems with approximating laws for which the Ukrainian negotiators have agreed to, including those on public procurement. The Department is aware of, and fully understands these Directives and is able to prepare approximated drafts for Ukrainian law. However, the real issues will be in implementation at several levels:

- the Verkhovna Rada will have to pass the public procurement laws and so can change the text as it wishes. This means that **the Ministry of Justice has no control over the Rada's changes and this could result in a law which does not comply with the EU Directives.**
- line Ministries in Ukraine do not like public procurement procedures, not just because of potential "interests" but because such **procurement procedures require a great deal of work, take a long time and are complicated** and officials are just not used to working in this way.
- Budgeting in Ukraine is also an issue as **EU procedures require a longer time lead in for tenders, including long term forecasts. However, in Ukraine budgets are agreed at short notice and even when agreed, funds are often not forthcoming or come late** towards the end of the year and then have to be spent before the end of that year (in Ukrainian law budgets cannot be carried forward over more than one year).

#### State Treasury

The State Treasury controls public finance in Ukraine but responsibility for how public funds are tendered are the responsibility of the Department for Public Procurement and responsibility for Negotiations is with Ministry of Economy.

#### Ministry of Regional Development and Construction, Ministry of Transport and Communications, Ministry of Utilities of Ukraine, State Postal Services "Ukrposhta" and Energy Company of Ukraine

These Ministries and the state owned companies do not appear to have any interest in the negotiations and do not see why they should. The Ministry of Economy is responsible for both public procurement and the negotiations and these Ministries will simply apply whatever laws and procures are in place.

#### Open Stock Company "Kievvodokanal"

As a private company feels that it has nothing to do with the Public Procurement procedures

#### European Business Association

In their regular round tables with its members, members are in favour of regulation based on the EBA stated position which is given at [www.eba.com.ua/files/documents/FTA\\_Position\\_paper\\_150808\\_ENG.pdf](http://www.eba.com.ua/files/documents/FTA_Position_paper_150808_ENG.pdf). This calls for the adoption of an EU procurement system in Ukraine based on transparency, equal market access and non-discrimination. No Ukrainian members have raised any issues or shown interest in participation in EU public tenders nor have European members shown any interest in participating in Ukrainian public tenders

#### Ukraine Chamber of Commerce and Industry

UCCI have experts in public procurement but have no knowledge of any interest amongst Ukrainian companies in participating in EU tenders.

*There is a lack of understanding of the effect of changes in procurement system on their operations.*

*Despite detailed explanations of the EU Utilities Directives, they are convinced they will never be subject o public procurement laws in Ukraine*

