

# Procedure file

Basic information		
INI - Own-initiative procedure	<a href="#">2008/2139(INI)</a>	Procedure completed
Pre-commercial procurement: driving innovation to ensure sustainable high quality public services in Europe		
Subject		
2.10.02 Public procurement		
2.40.02 Public services, of general interest, universal service		
3.50.04 Innovation		
4.60 Consumers' protection in general		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>IMCO</b> Internal Market and Consumer Protection		06/05/2008
		PPE-DE <a href="#">HARBOUR Malcolm</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>ITRE</b> Industry, Research and Energy		03/06/2008
		PSE <a href="#">PODIMATA Anni</a>	
Council of the European Union	<b>JURI</b> Legal Affairs		25/06/2008
		PSE <a href="#">SAKALAS Aloyzas</a>	
	Council configuration	Meeting	Date
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a> <a href="#">2871</a>		29/05/2008
European Commission	Commission DG	Commissioner	
	<a href="#">Research and Innovation</a>	POTOČNIK Janez	

Key events			
13/12/2007	Non-legislative basic document published	<a href="#">COM(2007)0799</a>	
22/05/2008	Committee referral announced in Parliament		
29/05/2008	Resolution/conclusions adopted by Council		
22/01/2009	Vote in committee		Summary
27/01/2009	Committee report tabled for plenary	<a href="#">A6-0018/2009</a>	
02/02/2009	Debate in Parliament		
03/02/2009	Results of vote in Parliament		

03/02/2009	Decision by Parliament	<a href="#">T6-0037/2009</a>	Summary
03/02/2009	End of procedure in Parliament		

Technical information	
Procedure reference	2008/2139(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 54-p4; Rules of Procedure EP 54
Stage reached in procedure	Procedure completed
Committee dossier	IMCO/6/62935

Documentation gateway					
Follow-up document		<a href="#">COM(2007)0799</a>	14/12/2007	EC	Summary
Follow-up document		<a href="#">SEC(2007)1668</a>	14/12/2007	EC	
Committee draft report		<a href="#">PE414.361</a>	17/10/2008	EP	
Committee opinion	ITRE	<a href="#">PE409.653</a>	05/11/2008	EP	
Committee opinion	JURI	<a href="#">PE412.288</a>	05/11/2008	EP	
Amendments tabled in committee		<a href="#">PE416.382</a>	04/12/2008	EP	
Committee report tabled for plenary, single reading		<a href="#">A6-0018/2009</a>	27/01/2009	EP	
Text adopted by Parliament, single reading		<a href="#">T6-0037/2009</a>	03/02/2009	EP	Summary
Commission response to text adopted in plenary		<a href="#">SP(2009)1843</a>	18/06/2009	EC	

## Pre-commercial procurement: driving innovation to ensure sustainable high quality public services in Europe

The Committee on Internal Market and Consumer Protection adopted the report by Malcolm HARBOUR (EPP-ED, UK), welcoming the Commission communication and supporting the proposed risk/benefit sharing pre-commercial procurement model as one of the drivers of innovation.

MEPs note the attention already given to pre-commercial procurement, in particular in the USA, China and Japan, who are actively exploiting the potential through a range of public policy instruments. They consider that, in the EU, pre-commercial procurement constitutes an under-exploited driver of innovation-led growth, which has significant potential to achieve high-quality and readily accessible public services, as well as to address the social challenges of climate change, sustainable energy and an ageing population.

The committee notes that strengthening pre-commercial procurement remains one way among many for Member States to raise their game in innovation and research. It calls therefore on Member States to promote innovation by engaging all stakeholders, including universities, research institutes and other bodies involved in the promotion of economic development, so as to better engage public authorities with innovative enterprise. MEPs stress that this engagement should be included in a consistent strategy for research, innovation and development.

MEPs note that pre-commercial procurement can be deployed within the existing legal framework of Directives 2004/17/EC and 2004/18/EC, which exempt research and development services from their scope unless the services procured are fully paid for by, and the benefits accrue solely to, the contracting authority. In this context, MEPs urge Member States to screen national legislation to ensure that public authorities are not limited in pre-commercial procurement through inexistent, incorrect, or unnecessarily complex transposition of the relevant exemptions and unnecessarily elaborate national tendering requirements and procurement models.

As far as local and regional authorities are concerned, MEPs note that there is still not enough information about the continuing obstacles preventing them from implementing pre-commercial procurement. They therefore urge the Commission and the Member States to provide local and regional contracting authorities with training guidelines and tools showing how pre-commercial procurement might be used in research and development.

MEPs call on the competent Commission Directorates-General to cooperate with each other in producing a comprehensive, easy-to-understand but legally watertight handbook in all the official languages with practical examples of risk-benefit sharing according to market conditions. This handbook should be designed for use by small and medium-sized enterprises (SMEs) and contracting authorities.

In order to encourage public authorities to tap into research and development markets and suppliers to become involved in government projects, MEPs propose that, within the scope of Community programs to stimulate innovation, financial incentives should encourage public authorities across the EU to jointly undertake pre-commercial procurement of innovative technology in lead markets and other areas of common European interest.

Moreover, the report stresses the need for a European pilot project in the context of pre-commercial procurement in order to show by example an implementation approach that ensures maximum legal certainty and protection for businesses, in particular for SMEs, which, by definition, are the weaker parties compared with contracting authorities and the large undertakings generally involved in public procurement.

With the aim of encouraging competition, MEPs recommend to the Commission and the Member States that the use of electronic procurement systems and dynamic procedures be promoted in order to facilitate the process of pre-commercial procurement.

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The European Parliament adopted by 587 votes to 12, with 6 abstentions, a resolution welcoming the Commission communication on pre-commercial procurement and promoting the establishment of EU instruments and measures to encourage this practice.

The resolution recalls that the Lisbon Strategy calls for Member States to raise research and development investment to 3% of GDP, a key commitment to drive innovation and the knowledge economy. It therefore supports the proposed risk/benefit sharing pre-commercial procurement model as one of the drivers of innovation.

**An under-exploited driver:** MEPs note the attention already given to pre-commercial procurement, in particular in the USA, China and Japan, who are actively exploiting the potential through a range of public policy instruments. They consider that, in the EU, pre-commercial procurement constitutes an under-exploited driver of innovation-led growth, which has significant potential to achieve high-quality and readily accessible public services, for example healthcare and transport, as well as to address the social challenges of climate change, sustainable energy and an ageing population.

**Using the existing legal framework:** the resolution notes that pre-commercial procurement can be deployed within the existing legal framework of Directives 2004/17/EC and 2004/18/EC, which exempt research and development services from their scope unless the services procured are fully paid for by, and the benefits accrue solely to, the contracting authority. In this context, MEPs urge Member States to screen national legislation to ensure that public authorities are not limited in pre-commercial procurement through in-existent, incorrect, or unnecessarily complex transposition of the relevant exemptions and unnecessarily elaborate national tendering requirements and procurement models.

**Engaging all stakeholders:** MEPs note that strengthening pre-commercial procurement remains one way among many for Member States to raise their game in innovation and research. They call therefore on Member States to promote innovation by engaging all stakeholders, including universities, research institutes and other bodies involved in the promotion of economic development, so as to better engage public authorities with innovative enterprise. MEPs stress that this engagement should be included in a consistent strategy for research, innovation and development.

**Improving information and training:** as far as local and regional authorities are concerned, MEPs note that there is still not enough information about the continuing obstacles preventing them from implementing pre-commercial procurement. They therefore urge the Commission and the Member States to provide local and regional contracting authorities with training guidelines and tools showing how pre-commercial procurement might be used in research and development.

MEPs call on the competent Commission Directorates-General to cooperate with each other in producing a comprehensive, easy-to-understand but legally watertight handbook in all the official languages with practical examples of risk-benefit sharing according to market conditions. This handbook should be designed for use by small and medium-sized enterprises (SMEs) and contracting authorities.

**Financial incentives:** in order to encourage public authorities to tap into research and development markets and suppliers to become involved in government projects, MEPs propose that, within the scope of Community programs to stimulate innovation, financial incentives should encourage public authorities across the EU to jointly undertake pre-commercial procurement of innovative technology in lead markets and other areas of common European interest.

**Pilot project:** the Parliament stresses the need for a European pilot project in the context of pre-commercial procurement in order to show by example an implementation approach that ensures maximum legal certainty and protection for businesses, in particular for SMEs, which, by definition, are the weaker parties compared with contracting authorities and the large undertakings generally involved in public procurement. With the aim of encouraging competition, MEPs recommend to the Commission and the Member States that the use of electronic procurement systems and dynamic procedures be promoted in order to facilitate the process of pre-commercial procurement.