



Stock-taking of administrative capacity, systems and practices across the EU to ensure the compliance and quality of public procurement involving European Structural and Investment (ESI) Funds

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TABLE OF CONTENTS

ABSTRACT.....	7
EXECUTIVE SUMMARY	8
GLOSSARY	14
1. INTRODUCTION	16
1.1. Context, rationale and objective of the study	16
1.2. European Structural and Investment Funds and public procurement	17
1.3. Structure of this report.....	19
2. KEY TERMS AND CONCEPTS	20
2.1. EU Procurement Directives.....	20
2.2. Public procurement procedures	22
2.3. Thresholds.....	24
2.4. Institutional framework of public procurement.....	26
2.5. Institutional framework of European Structural and Investment Funds	27
2.6. E-procurement	29
2.7. Administrative capacities	30
2.8. Strategic use of procurement under Europe 2020	31
2.9. Irregularities	32
3. SURVEY RESULTS.....	36
3.1. Human resources	37
3.2. Training	39
3.3. Systems and tools	41
3.4. E-procurement	48
3.5. Data collection and monitoring	50
3.6. Views and needs of practitioners	53
3.7. Audit Authorities.....	54
4. COUNTRY PROFILES.....	57
4.1. Key facts and figures	57
4.2. Country profiles.....	60
5. CASE STUDIES	61

5.1. Portugal	61
5.2. Czech Republic.....	67
6. GOOD PRACTICES	72
6.1. Ad hoc support.....	72
6.2. Guidance documents.....	74
6.3. Professionalisation	76
6.4. Quality execution of public procurement	77
6.5. Review	78
6.6. Simplification and efficiency	81
6.7. Transparency	85
7. CONCLUSION AND RECOMMENDATIONS	87
7.1. Human resources	87
7.2. Systems and tools	89
7.3. Governance structures	91
7.4. Better policy making	93
7.5. Law enforcement.....	94
7.6. Data collection	95
7.7. Transparency	96
8. APPENDIX.....	98
8.1. Appendix 1: Data tables	98
8.2. Appendix 2: Individual country profiles.....	112
8.3. Appendix 3: Country-specific recommendations.....	113
8.4. Appendix 4: Field visit takeaways	123

ABSTRACT

A well-functioning procurement system is important for all European Union Member States both for their own budgetary efficiency, and in the context of their management and control of European Structural and Investment (ESI) Funds. However, procurement has been identified as a major source of deficiencies at audit, which can be attributed in large part to a lack of sufficient administrative capacity in terms of human resources, systems and tools, and governance structures.

This stock-taking study provides a systematic assessment of the public procurement systems of each Member State with a particular focus on the administrative capacity currently in place. Based on desk research, field interviews, case studies, and an online survey of practitioners, the study assesses each system's strengths and weaknesses and provides country specific recommendations for reform. It also identifies a list of good practices for strengthening administrative capacity and improving outcomes, and makes recommendations to the Member States generally, as well as to the European Commission, on how to implement the good practices and lessons learnt.

EXECUTIVE SUMMARY

Public procurement is integral to both the European Union (EU) economy, and the policy agendas of the EU and the individual Member States (MS), being the channel through which approximately 20% of European GDP is generated. Given its broad economic impact, improving the efficiency, effectiveness, and integrity of procurement procedures is a key priority of EU and national policymakers.

The objective of the current study is to support this agenda in two ways. First, by assembling a comprehensive picture of current procurement processes across the EU, including the capacities, experiences, practices, organisational and governance structures, human resources, and systems and tools used by the MS. Second, by identifying lessons learnt from past capacity building initiatives and reforms in order to make recommendations and provide examples of best practices to strengthen public procurement systems and processes.

Background and context

Procurement is the process by which contracts to provide supplies, services and public works, as well as utilities and concessions, are awarded by contracting authorities to economic operators such as private sector enterprises. Procurement can be conducted via a number of different procedures, the most common of which is referred to as the “open procedure”. Detailed descriptions of the major types of procedure, and statistics on their use by MS are provided in Section 2.2.

In the EU, procurement is governed by a combination of national laws and regulations, and EU Directives and principles. A key element of the context of the study is the adoption of the so-called 2014 procurement Directives which promote the use of non-price criteria, the participation of small and medium sized enterprises (SMEs), the inclusion of environmental and social criteria, and the use of e-procurement, among other goals. MS must transpose these Directives into national law by April 2016. Details on the 2014 Directives, the concepts included in them, and a selection of earlier directives relevant to procurement are presented in Section 2.

The section continues by presenting the various institutions involved in the procurement process, such as policy, executive and oversight bodies. Furthermore, the European Structural and Investment (ESI) Funds’ institutional framework is described, providing a clearer view of management and control authorities involved in procurement at MS level. Finally, Section 2 concludes by exploring the concept of irregularities in procurement, which are mainly induced by the complexity regulatory frameworks and the lack of sufficient administrative capacity of stakeholders involved in the procurement process.

Methodology

The methodological approach of the study consisted in several tasks. The first step was desk research covering the reports, statistics, and publications of key procurement bodies at the international, EU, and MS levels.

Second, interviews were conducted with policy makers, oversight bodies, and practitioners in 15 MS, namely Bulgaria, Croatia, the Czech Republic, France, Germany, Greece, Hungary, Italy, Latvia, Poland, Portugal, Romania, Slovakia, Slovenia and Spain, in order to get a better understanding of the experiences and challenges at the MS level. The key takeaways from these field visits are presented in Appendix 4 to this Report. Particular attention was paid to recent reform efforts in the Czech Republic and Portugal, which were the subject of detailed case studies.

Finally, an online survey of contracting authorities, Managing Authorities (MAs), and ESI Funds Audit Authorities was conducted to gather data on the day to day experience of procurement practitioners. The content of the survey was broken down into six main topics, i.e. human resources, training, guidance materials,

e-procurement, outside support, and transparency. The questions were translated into 22 official EU languages, and received nearly 2,400 responses.

Survey results

Section 3 presents the key findings of the online survey. According to the responses, procurement practitioners appear to have a substantial level of experience in their field, with a majority of respondents having more than five years of experience. Staff turnover seems to be relatively low as individuals stay on average more than five years with their organisation. Bulgaria and the Czech Republic stand out as having among the fewest highly experienced procurement practitioners, combined with some of the highest turnover rates. Slovakia fared better in terms of more experienced staff, but had the highest turnover rate in the EU, with a striking 37% of staff staying with their organisation less than one year.

Regarding training, the most common issues covered were those that were broader in nature, such as general procurement information, information on different procedures, and legal-oriented training. Overall, when training is available, practitioners reported that they attend them. Among barriers to participation in training the most frequent response by far was the cost which in many instances includes the cost of travel and accommodation.

The third topic covered by the survey was the material, systems and tools available to procurement practitioners to support them in their work. Specifically, this part of the survey covered available guidance documentation such as manuals, topic-specific guidance, standardised tender documents, ad hoc support channels, and support from external sources. Responses indicated that general guidance is widely available but may need to be enhanced, whereas topic-specific guidance often does not exist, and needs to be created. In addition, ad hoc support channels such as telephone hotlines and web-based services were used frequently, particularly by inexperienced or infrequent procurers.

The survey also looked into the availability and use of standardised procurement documents. This category includes standardised contracts, as well as sample contract notices, tender specifications and criteria. Results showed that standardised tender documents are not currently broadly available in the EU. However, when they were available they were used frequently by practitioners of all experience levels.

The fourth section of the survey examines the use of e procurement in the EU. E procurement is defined as the digitisation of the pre-award phases of the procurement process, and thus consists of e-notification of contract notices, e-access to tender documents, and e-submission of offers. Implementation of e-notification is by far the most advanced of the three, with fully three-quarters of respondents reporting that they publish their contract notices online.

The fifth topic covered by the survey is the collection and publication of procurement data for use in both, increasing transparency and combatting corruption. Respondents indicated that only the most basic information was collected regularly, such as the budget of the contract and type of procedure used to procure.

The survey also asked respondents about the difficulties they face as procurement practitioners. The most common answer was the complexity of the rules and regulations covering procurement procedures. This result was strongly supported by numerous comments received from the survey, and made during the field interviews. Roughly one third of the respondents did say they lacked the technical expertise needed to prepare tender documents and conduct evaluations. The lacking clarity of the implementation rules was identified as a major issue, which can be interpreted as a need for better guidance material and support.

Country profiles

Section 4 presents the individual country profiles for each MS, included in Appendix 3. A sample table at the beginning summarises some of the most salient procurement

facts and figures in each MS including information on the annual value of procurement, the procedures used, the share of procurement by buyer and contract type, fulfilment of the procurement ex ante conditionality criteria at the start of the 2014-2020 ESIF programming period, as well as indicators on e-procurement, and perceived corruption.

Each country profile presents a description of main features of the procurement system and an outlook, an analysis highlighting the main strengths and weaknesses, as well as country-specific recommendations.

Case studies

Section 5 presents two specific case studies of public procurement reforms recently carried out in Portugal and the Czech Republic. The goal of the case studies is to describe the context and the rationale in which the reform was launched, describe the main features of the reforms and how the reform was implemented, and identify good practices and lessons learnt that can be useful for other MS.

Portugal fundamentally reformed its procurement system in 2008 focused on modernisation and transparency. The reform is considered a major success and Portugal has since then positioned itself as a frontrunner in the domain of e-procurement. On the other hand, the Czech Republic implemented a package of anti-corruption related reforms in 2012, some of which faced challenges in implementation and were ultimately repealed.

The comparison of these two cases contributed to a single conclusion, namely that the implementation process of procurement reform is far more important for the success of the reform programme than its content. The two key concepts are inclusiveness and deliberation. In the policy making process a broad range of stakeholders must be consulted in order to craft robust policies. And sufficient time must be allocated between enactment of the reform and its implementation to allow for awareness raising on the one hand, and updating of guidance materials on the other. This ensures that the people responsible for applying the new rules and processes can do so with confidence.

Good practice

As a result of the desk research, and particularly of the field visits conducted in the 15 selected MS, the study was able to identify a number of good practice examples which could potentially be implemented in other MS. Section 6 presents the identified cases of good practice, including both initiatives that have been implemented, and have already produced some positive results, as well as some promising concepts that have not yet been fully tested.

Good practice is presented in the seven categories of ad hoc support; guidance documents for contracting authorities; professionalisation of public procurement practitioners; initiatives ensuring the quality of public procurement; review processes; measures for simplification and efficiency; and data monitoring and practices fostering transparency.

Each good practice discussed includes a short description of the good practice itself, its purpose and achievements, as well as the key factors which contribute to the success and usefulness of the practice at stake. Finally, while not claiming to be exhaustive, a set of concrete examples implemented in the MS is presented to illustrate each good practice.

Good practice identified for ad hoc support includes setting up a hotline and a one-stop-shop helpdesk. For ad hoc support to be successful, contracting authorities must be aware of the hotline and know how to use it. Furthermore, it should be free of charge, flexible in terms of availability, and there should be sufficient staff to provide responses with minimal delay.

Providing high quality guidance documents in the form of guidelines and manuals was also identified as good practice. In order to prove useful for practitioners, guidance material should be regularly updated to ensure materials are up-to-date, and should contain practical examples to ensure that theoretical information is well grounded in practice. Similarly, standardised documents need to be user-friendly and available in a commonly used electronic format, with clear instructions for how to adapt them to the specific needs of the contract. Finally, as with ad hoc support, guidance material needs to be promoted to contracting authorities and easy to find when needed in order to be useful.

Defining a curriculum of competencies is a good instrument to foster the professionalisation of procurement. In order to professionalise staff, training needs to be offered frequently enough to ensure that interested and qualified personnel can benefit from them. Also, training must be offered in a variety of geographical locations to make it easily accessible and reduce the cost of participation. Competencies must be clear and targeted to the roles of practitioners. If a certification is needed, it must be based on more than participation in training, and thus should be able to be fulfilled with practical experience as well as proof of successful education.

In order to strengthen the quality of monitoring and oversight, and to promote more strategic thinking among contracting authorities, some MS require them to post their procurement plan in advance at least once a year. The publication of such annual procurement plans can be considered good practice, as it has the added value of allowing economic operators to plan better their businesses, and to prepare for large and complicated contracts. This is particularly true for SMEs which often need more time to submit a bid, such as to form a consortium or acquire greater capacity.

Other good practice identified revolves around how contracting authorities can seek redress for complaints about the procurement system. To ensure continuous improvement and review of public procurement processes and to gather feed-back from a variety of relevant stakeholders, some countries have introduced specific feed-back channels through which economic operators and contracting authorities can share opinions and perceptions, flag possible dysfunctions and irregularities and provide recommendations based on their experience. For disputes about a decision, mediation can be a useful tool for achieving faster and less costly resolutions, and reducing backlog in the appeal process. For disputes that do end up in the judicial system, specialised procurement courts can improve the efficiency and consistency of outcomes.

A number of important good practice examples presented in this study address the simplification and efficiency of procurement systems. Fostering the interoperability of their data systems is one specific way in which administrations can reduce the administrative burden on economic operators, and avoid potential errors in data entry. With such interoperability, an economic operator would only need to provide their business identifier, and the administration would “auto-fill” the requested data already available from the fiscal administration. The pre-qualification of economic operators and the policy of winner-only habilitation also allow a reduction of administrative burden for bidders. Other good practice examples to simplify procurement include the adoption of the LEAN management methodology, as well as the reduction of the number of economic operators through enhanced use of joint or aggregated procurement.

Finally, good practice in the domain of transparency includes publishing public procurement monitoring reports in English, as well as providing regular and detailed procurement information online in order to facilitate oversight of public procurement by civil society and external bodies.

Conclusion and recommendations

Section 7 presents the main conclusions of the study, including policy recommendations for both the MS and the European Commission (EC) based on the

information gathered through the desk research, the field visits conducted in 15 MS, the case studies and the survey of public procurement practitioners. While country-specific recommendations are included in each country profile, a number of common issues and themes emerged during the course of the study that are broadly applicable to many MS. The recommendations have been elaborated around 7 topics, including human resources, systems and tools, governance structures, better policy making, law enforcement, data collection, and transparency.

It is important to note that given the wide range of procurement laws, traditions, institutions, and systems currently existing in the MS and regions of the EU, there is no such thing as a one-size-fits-all solution. All good practice and recommendations put forward in this study have to be considered in the local context and, where applicable, adapted to that context in order to succeed.

In terms of human resources, the study makes a distinction between actions needed to strengthen the skills of frequent procurers and the capabilities of those who only procure infrequently. Frequent procurers need advanced training to further develop, whereas infrequent procurers can best be supported via standardisation, guidance, external help, or greater use of joint procurement. Recognition of procurement as a profession including adequate compensation is needed in order to reduce the high levels of turnover as well as the difficulties in finding adequate skills on the market. In terms of actions for the European Commission, the provision of support through on-site expertise has proven valuable in Greece and could be expanded to other MS.

Procurement practitioners, particularly those least experienced, need comprehensive, practical, and up-to-date guidance, as well as appropriate systems and tools to do their jobs correctly. One of the best ways to support infrequent procurers is by publishing standardised tender documents for commonly purchased products and services that can be customised to suit the individual procurer's needs. Ad hoc support channels are another important support tool.

At EU level, there is a need for harmonisation of audit practices and for greater clarity in terms of ESI Fund guidance. The provision of standardised tender documents, such as contract notices and criteria, or lists of recognised standards and certifications, by the European Commission could prove valuable, too. Similarly, an EU-wide one-stop shop for procurement information would facilitate MS authorities' access to information and support.

Well-designed governance structures are another key element to an efficient procurement system. To the extent possible, procurement policy, executive, purchasing, and oversight functions should be concentrated in a single body. From a bottom-up perspective, there is a need for a mechanism for sharing and disseminating some of the ideas and best practice that originate at the local and regional level. Exchange of experiences and good practice could be applied at the EC level as well to foster knowledge transfer at EU level.

As the case studies have demonstrated, good procurement policy depends on a good policy making process. In this sense, it is recommended that reforms be made deliberately, inclusively, and with sufficient time and effort given to implementation. Particularly, the reform process should involve all affected stakeholders. Legal changes should be bundled to be infrequent and finally implementation must include lead times to prepare and promote guidance material.

Many MS have a well-crafted regulatory framework for procurement in place, but the rules and regulations are not observed in practice. For example, in some MS sanctions for violations of procurement rules are too modest, or are not imposed often enough to have a deterrent effect. Furthermore, oversight bodies face technical and legal barriers in accessing procurement files and information. In order to strengthen law enforcement in procurement, it is critical to impose sanctions high enough to act as deterrents, to empower independent and specialised law enforcement agents to

implement them, and to improve interoperability and access to procurement information to oversight bodies.

Data collection and comprehensive monitoring of public procurement still represents an area in need of improvement in many MS, as it is essential for allowing fact-based policy decisions. Therefore, it is recommended that all documents related to procurement procedures be digitised and entered into a system to ensure that all data which is currently being produced can be saved and monitored. Furthermore, tracking could be expanded to cover other policy fields such as data on the remedies process or on the use of strategic procurement. The European Commission could also benefit from expanding the procurement-specific ESI Funds monitoring and reporting.

Finally, giving the public easy access to procurement and contract information is essential for transparency, and can enable essential citizen and taxpayer oversight. Procurement information must be published online promptly, regularly, in clear and easily searchable formats, and available to download in common, machine-readable formats to increase transparency. Furthermore, it is recommended to strengthen the Tenders Electronic Daily (TED) platform as an EU-wide crucial source of procurement data by increasing incentives for MS to publish more contracts on TED, including by facilitating technical links with national databases.

GLOSSARY

Acronym	Definition
AAR	Annual Activity Reports issued every year by Directorates-General and services of the European Commission
ACR	Annual Country Reports submitted by Audit Authorities to the European Commission, which includes audit findings as well as audit opinions
CPR	The Common Provision Regulation (Regulation (EU) No 1303/2013), which provides common rules applicable for the use of the five European Structural and Investment Funds during the programming period 2014-2020
DAS	Annual Statement of Assurance on the legality and regularity of the EU budget provided by the European Court of Auditors to the Parliament and the Council of the European Union
DG AGRI	Directorate-General for Agriculture and Rural Development of the European Commission
DG EMPL	Directorate-General for Employment, Social Affairs and Inclusion of the European Commission
DG GROW	Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs of the European Commission
DG MARE	Directorate-General for Maritime Affairs and Fisheries of the European Commission
DG REGIO	Directorate-General for Regional and Urban Policy of the European Commission
EAFRD	The European Agricultural Fund for Rural Development, one of the five European Structural and Investment Funds
EC	The European Commission
ECA	The European Court of Auditors
EEC	The European Economic Community
EMFF	The European Maritime and Fisheries Fund, one of the five European Structural and Investment Funds
ERDF	The European Regional Development Fund, one of the five European Structural and Investment Funds
ESF	The European Social Fund, one of the five European Structural and Investment Funds
ESIF	The European Structural and Investment Funds
EU	The European Union
FAQs	Frequently Asked Questions
GDP	Gross Domestic Product
GPP	Green Public Procurement
IT	Information Technology
ISO	The International Organisation for Standardisation
LEAN	Management methodology focused on the reduction of unnecessary costs
MA	Managing Authority
MEAT	'Most Economically Advantageous Tender' criterion

MS	Member State of the European Union
OLAF	The European Anti-Fraud Office
OP	Operational Programme
PA	Partnership Agreements between Member States and the European Commission outlining strategy and priorities for the use of European Structural and Investment Funds during the 2014-2020 programming period
SME	Small and Medium-sized Enterprise
TED	Tenders Electronic Daily, the Supplement to the Official Journal of the European Union
VAT	Value-Added Tax

1. INTRODUCTION

1.1. Context, rationale and objective of the study

The conduct of public procurement in the European Union (EU) is an integral element of the successful implementation of EU policies because it is the means by which most European Structural Funds and other investment funds are spent. This is particularly true for the Cohesion policy, where substantial funds are implemented via procurement in support of the goals of regional development and convergence. It is estimated that almost half of the European Structural and Investment Funds (ESI Funds) are spent through public procurement¹. As such, the European Commission (EC) and other management bodies have a vested interest in promoting the efficiency and effectiveness of national procurement systems.

However, procurement is a complex process fraught with many potential challenges. As a result, the performance of national procurement systems substantially varies among Member States (MS), and irregularities in public procurement are the single most common source of errors and financial corrections in the use of EU funds. Furthermore, because public procurement impacts around 20% of EU GDP, the importance of a well-functioning procurement system is significant for individual MS administrations, particularly in a context of economic downturn and budget constraints that require a more strategic, efficient and outcome-driven use of public funding.

These challenges have been brought into sharper focus during the 2014-2020 programming period as a result of new requirement that the ESI Funds be implemented in a more result-oriented manner. One tool for assuring a more efficient and strategic use of ESI Funds by MS and Managing Authorities (MAs), is the introduction of *ex ante* conditionalities that must be met by MS as a condition of receiving ESI funds. The procurement *ex ante* conditionality, described in greater detail in Section 4 below, reflects the idea that in order for ESI Funds to be spent well, procurement systems must be well designed and rigorously managed.

In this context, DG REGIO is taking stock of administrative capacity, systems and practices across the EU to strengthen the quality of public procurement, and ultimately to ensure better results of the policies at stake.

The overall objectives of this study are to:

- Assemble a comprehensive picture of current procurement processes across the EU, including the capacities, experiences, practices, organisational and governance structures, human resources and systems and tools used by the MS and MAs responsible for the ESI Funds in relation to public procurement;
- Identify lessons to be learnt from past capacity building initiatives and reforms in order to ensure the compliance and quality of public procurement processes. This includes identifying where successful procurement reform programmes have been enacted, as well as where weaknesses persist, in order to make recommendations and to provide examples of best practices to strengthen public procurement systems and processes.

¹ European Commission (2015) Public Procurement Guidance for Practitioners on the avoidance of the most common errors in projects funded by the European Structural and Investment Funds

1.2. European Structural and Investment Funds and public procurement

ESI Funds are implemented under a system of shared management, which implies that implementation tasks are delegated to individual MS administrations. Under this system, the MS are responsible for ensuring that these tasks are managed correctly and effectively, and that operations are systematically controlled for irregularities and fraud according to EU rules and regulations.

The Regulation (EU) No 1303/2013 Common Provision Regulation (CPR)² establishes that the EC and the MS are involved at all stages of implementation and have primary responsibility over the sound management of ESI Funds. However, the responsibility for the implementation and control of the expenditure, the organisation of the control system, and the management of Operational Programmes (OPs) rests with the MS.

One of these implementation tasks is procurement, which is the process by which contracts to provide supplies, services and public works, as well as utilities and concessions, are awarded by contracting authorities to economic operators such as private sector enterprises.

Furthermore, there are a number of EU Directives, presented in further detail in Section 2.1 below, defining how procurement can and must be conducted by the MS, particularly for contracts whose value exceeds the given EU thresholds.

Despite this shared management system, public procurement irregularities persist. All MS face challenges in consistently complying with EU and national rules and regulations, preventing conflicts of interest and other risk factor for fraud and corruption, and properly integrating EU policy goals into their tender documents. This can be the result of a lack of administrative capacity on the part of contracting authorities and oversight bodies, inadequate systems and tools in place, and ineffective governance structures.

Breaches in public procurement rules remain one of the main sources of irregularities in projects co-financed by ESI Funds. During the 2007-2013 programming period, 40% of all errors or irregularities identified in European Regional Development Fund (ERDF) and Cohesion Fund (CF) operations were related to public procurement³ underscoring the importance of public procurement in the implementation of ESI Funds. Violations of procurement law may result in the suspension or interruption of payments, or in *ex post* financial corrections.

In addition to the regular management and control of procurement procedures, the EC introduced a new mechanism to ensure the compliance of MS procurement systems for the 2014-2020 programming period via an *ex ante* conditionality. As part of their Partnership Agreements with the EC, each MS had to conduct a self assessment of their fulfilment of four procurement specific criteria, and in the event that any of the criteria were not met at the outset of the programming period, propose and Action Plan for fulfilment of the criteria by the end of 2016. Fulfilment of all criteria is a condition to receive allocated ESI funds. To fulfil the procurement *ex ante* conditionality, MS have to demonstrate that they have arrangements in place for the effective application of EU public procurement rules, to ensure the transparency of contract award procedures, for the training and dissemination of information for staff

² Regulation (EU) No 1303/2013, available at : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0320:0469:EN:PDF>

³ European Commission, DG Regional and Urban Policy (2013), Public Procurement and the Structural Funds: Audit experience - Budapest, 11 October 2013

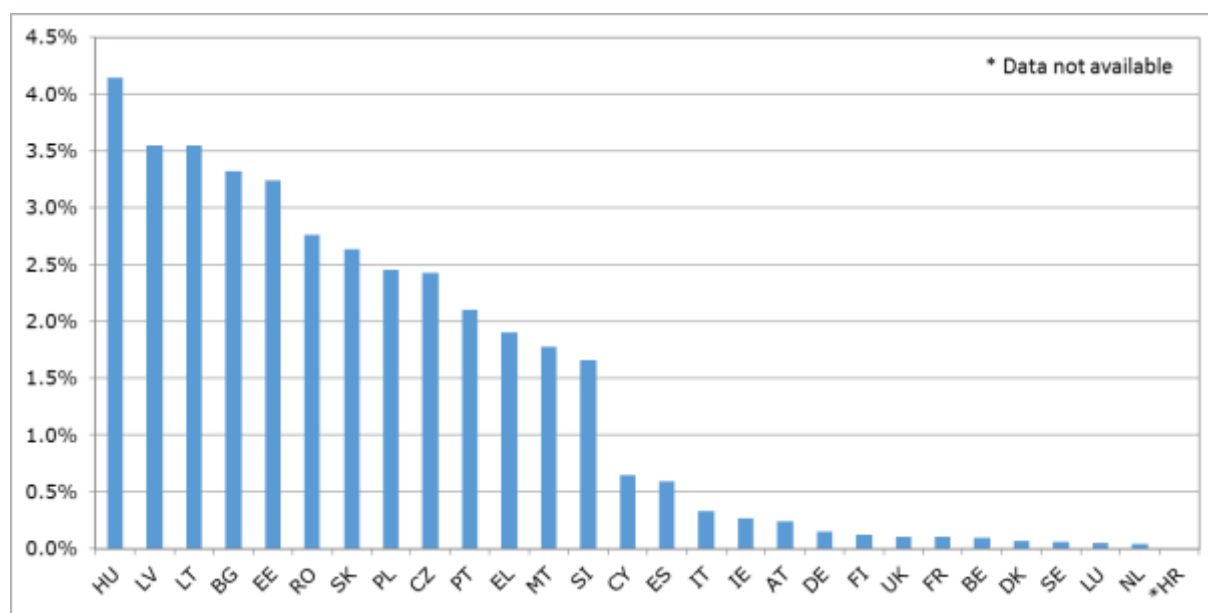
involved in the ESI Funds, and for the existence of appropriate administrative capacity to implement and apply the EU public procurement rules. For more detailed information on the procurement *ex ante* conditionality and those criteria that were not met, see Section 4.

This *ex ante* conditionality is a major incentive for MS authorities to comply with relevant EU rules and improve their public procurement systems. In total, 12 MS (Bulgaria, the Czech Republic, Croatia, Greece, Hungary, Italy, Latvia, Malta, Poland, Romania, Slovenia, and Slovakia) concluded that they did not fully meet all four criteria and developed Action Plans to fulfil them by the end of 2016. These MS are more likely to need support from the Commission in particular in the field of administrative capacity.

With the exception of Italy, all MS that did not meet one or more of the public procurement *ex ante* conditionality criteria heavily rely on ESI Funds, in the sense that ESI funds represented approximately 2% or more of national GDP during the 2007-2013 programming period (see Figure 1 below). As a result, effective and efficient procurement of these funds can itself have an important impact on economic growth and territorial development.

Furthermore, these MS strong reliance on ESI funds can be an important avenue for introducing best practices which can improve the administration of the MS as a whole. In the field of public procurement, these practices can be for example the use of standardised tender documents or the creation of help-desk services for contracting authorities.

Figure 1: 2013 Cohesion policy, EAFRD and EMFF financial allocations in percentage of GDP



Source: PwC based on data from DG REGIO, DG AGRI, DG MARE and Eurostat

For the remaining MS that did meet the procurement *ex ante* conditionality criteria, ESI funds tend to be much less important to the national economy, weighing in, on average, at less than 0.6% of national GDP (again with the exception of Italy, see Figure 1). As a result, the potential impact that EU support could have on the improvement of tender procedures is more limited. However, ESI Funds could potentially have a significant qualitative leverage effect on national public procurement practices through the provision of specific support tools or instruments and the promotion of good practices. In that sense, ESI Funds might also play a major role in

public procurement and help exporting the strategic objectives of innovative, sustainable, and inclusive growth to public procurement procedures.

1.3. Structure of this report

The objective of this Report is to present an overview of the state of play in public procurement in 28 MS through the different stages undertaken to conduct this study.

Section 2 of the Report presents and explains the key terms and concepts relating to public procurement in the EU.

Section 3 is presents the results of the online survey of procurement practitioners conducted in all 28 MS. The topics covered include human resources, guidance materials, training, use of e-procurement, and key challenges faced. Results are presented for the EU as a whole, and where relevant, by individual MS.

Section 4 introduces the content of the country profiles, included in Appendix 3, which take an in-depth look at the legal and governance structures, systems and tools in each MS's procurement system, as well as an analysis of their strengths and weaknesses. Each country profile also includes country-specific recommendations on how to address persistent weaknesses, reduce irregularities, and improve outcomes.

Section 5 of the report presents the case studies of public procurement reforms undertaken by the Czech Republic and Portugal, and the lessons learnt from their experiences.

Section 6 lays out the good practices and the lessons identified during the course of the study. For each practice, examples are provided from the experiences of the MS.

Section 7 presents the conclusions of the study, primarily composed of general recommendations applicable to a wide range of MS, and recommendations for how the EC itself can better support procurement practitioners in the EU.

Finally, appendices at the end of the Report provide some more detailed information collected during the course of the study, including the full data sets used in the country profiles key facts and figures tables by MS, the most salient takeaways from the 15 MS field visits, and the 28 country profiles.

2. KEY TERMS AND CONCEPTS

Procurement as such is relevant insofar as it is an important channel through which ESI Funds are implemented. However, given the complexity of the procurement process and the variability of implementation policies across the Union, it is important to introduce and define a few key procurement concepts before shifting focus to the MS.

The following sections roughly mirror the outline of the individual country profiles, and should serve as a reference point for them.

2.1. EU Procurement Directives

The EU Procurement legal framework has been originally developed to bring some common rules to regulate the crucial government function represented by public procurement. Specifically, the main goal of the EU Public Procurement Directives is to ensure that businesses across the European single market can compete for public contracts above certain thresholds. In addition, they seek to ensure equal treatment and transparency, reduce fraud, corruption as well as legal and administrative barriers to participation in cross-border tenders. More recently, additional policy goals are being added to this list, including environmental sustainability, promotion of innovation and social inclusion⁴.

Ten of these Directives are presented below. They have evolved over time reflecting changes in the EU strategies and in the European context and are indispensable for the proper understanding of the study since they compose a common legal framework for all MS. The EU Directives apply to all contracts above EU thresholds and all MS have to transpose them either by the use of stand-alone laws or directly incorporate them into existing national laws.

The 2004 Directives (Directive 2004/17/CE and Directive 2004/18/CE)

The 2004 Directives are the core legislation governing public procurement in the EU. They have set a common framework for MS authorities, which apply directly to procurement contracts above the EU thresholds. In that respect, they are particularly relevant within the framework of the study and are therefore primarily addressed in the country profiles.

The 2004 Directives set the general rules to be followed and strategic orientations to be pursued in the public and utilities sectors. For instance, the Directives provide the applicable EU thresholds, the rules governing specifications and contracts documents, the rules governing design contest, the procurement procedures opened to contracting authorities (see section 2.3 below), the applicable time limits, award criteria and transparency requirements. Among the main novelties of the Directives are the introduction of the competitive dialogue procedure and the framework agreements for central purchasing bodies.

In addition, they initiate new strategic orientations for public procurement, in particular in terms of digitalisation of procurement processes and greening of public purchases.

⁴ European Commission, DG MARKT (2011), EU public procurement legislation: delivering results. Summary of evaluation report

The 2014 Directives (Directive 2014/24/EU and Directive 2014/25/EU)

The 2014 Procurement Directives are designed to replace the 2004 Directives as the basis of EU procurement regulation. They update the rules for procurement above the EU thresholds in the public and utilities sectors to be more streamlined, and to better reflect strategic EU policy goals. One key policy goal is the promotion of SME access to public markets. To this end, the 2014 Directives propose limiting turnover requirements and encouraging contracting authorities to split-up large contracts into lots. They also set tougher measures to prevent conflicts of interest, favouritism and corruption, and put in place e-procurement adoption targets.

Given their recent vintage, many MS have yet to transpose the 2014 Directives into national law, and are in many cases expected to act as legislative vehicles for other reforms. In that respect, they are highly relevant within the framework of the present study.

The Remedies Directives (Directive 89/665/EEC and Directives 92/13/EEC)

The so-called Remedies Directives are among the oldest in the EU, and were designed to ensure that economic operators have clear and efficient means to seek redress in cases where there are disputes about award decisions. Directive 89/665/EEC applies to general public sector goods, services and works contracts, while Directives 92/13/EEC covers utilities contracts. They ensure that all MS put in place a system for halting, reviewing, and reopening award decision in the case where infringements of procurement law are detected.

The Updated Remedies Directive (Directive 2007/66/EC)

This Directive makes amendments to the existing procurement remedies regime to strengthen the sanctions for breach of procurement rules, including by introducing the possibility of invalidating already awarded contracts, creating time for challenges to an award decision to be filed and adjudicated via standstill periods and automatic suspensions, and sets stricter rules for direct award procedure.

The Updated Remedies Directive has therefore enforced review procedure in the EU, modernising the existing remedies regime and provided review bodies, contracting authorities and economic operators with common remedies and procedures for appeals.

The Concessions Directive (Directive 2014/23/UE)

The Directive sets the common rules specific to public and utilities sector procurement in which an economic operators is given rights to commercially exploit public properties, services or utilities, known as a concession. These rules largely reflect the other 2014 Procurement Directives introduced below, as well as adopting concession specific case law of the EU Court of Justice.

The Concessions Directive does not prescribe the procurement procedures to be followed by contracting authorities but sets some procedural rules such as the compliance with the principles of transparency, equal treatment and non-discrimination.

The Defence and Security Contracts Directive (Directive 2009/81/EC)

This Directive sets the common EU rules for the procurement of supplies, services and works for defence and security purposes. It includes the general procurement rules such as thresholds and time limits, and more specific rules for such sensitive contracts such as confidentiality obligations and rules for the protection of classified information.

The Directive on the promotion of clean and energy-efficient road transport vehicles (Directive 2009/33/EC)

The objective of this Directive is to stimulate the market for clean and energy-efficient road transport vehicles in the EU by recommending lifecycle cost evaluation methods in the procurement of road transport vehicles. In particular, the Directive asks public procurers to consider energy consumption, CO2 emissions, and pollutant emissions linked to the operation of the vehicles to be procured as award criteria. Within the framework of this Directive, MS should also develop public purchasing guidance to support public procurers in implementing this new approach of calculating the price of the product they purchase and to raise awareness among them.

2.2. Public procurement procedures

Public procurement can be handled through four different official procurement procedures, which mainly differ on the level of competition they create.

Open procedure

The open procedure is the most commonly used public procurement procedure among MS. In contrast to other procedures described below, bidding is open to all interested economic operators, including cross-border bidders, and typically promotes the most competition, resulting in a better deal for contracting authorities. The share of open procedures is therefore a key indicator of the level of competition in the public procurement system.

Although open procedures are preferred for the degree of competition they promote, they are not suitable to all types of contracts and can entail greater administrative burden. Complex or highly specialised contracts may be better allocated via a more restrictive process.

Restricted procedure

The restricted procedure proceeds in two-stages. First, the contracting authority publishes a notice describing the broad requirements of the tender in which economic operators are invited to express their interest. Then, the contracting authority invites a limited number of qualified economic operators to submit their detailed offer. At least five bidders should be invited to tender.

The restricted procedure narrows the award decision to only the most qualified bidders, but results in reduced competition. Consequently, restricted procedures are best suited to contracts whose technical or financial barriers are high and are most of the time used for large contracts, for instance infrastructure-related contracts.

Negotiated procedure

The negotiated procedure, with or without prior publication of a contract notice, provides the contracting authority with the opportunity to directly select the bidders that will participate to the tender procedure. The contracting authority invites candidates to submit offers and negotiate with them the terms of the contract. The contract can be awarded based on either price only, or by selecting the most economically advantageous tender (MEAT), which takes account of both price and quality criteria.

The use of this procedure is limited to a small number of cases, such as supplies for research or testing purposes or for contracting authorities in sectors such as energy, transport or postal services.

Negotiated procedure also applies to contracts for which no tenders (or no suitable tenders) or no applications have been submitted to an open or a restricted procedure, given that the initial conditions of the contract are not substantially modified.

Competitive dialogue

The Competitive Dialogue procedure applies when the contracting authority is unable to either specify the technical means of satisfying their needs or to specify the legal or financial set up of the project. In that case, the contracting authority publishes the contract notice and then open a dialogue with the candidates satisfying the selection criteria as stated in the contract.

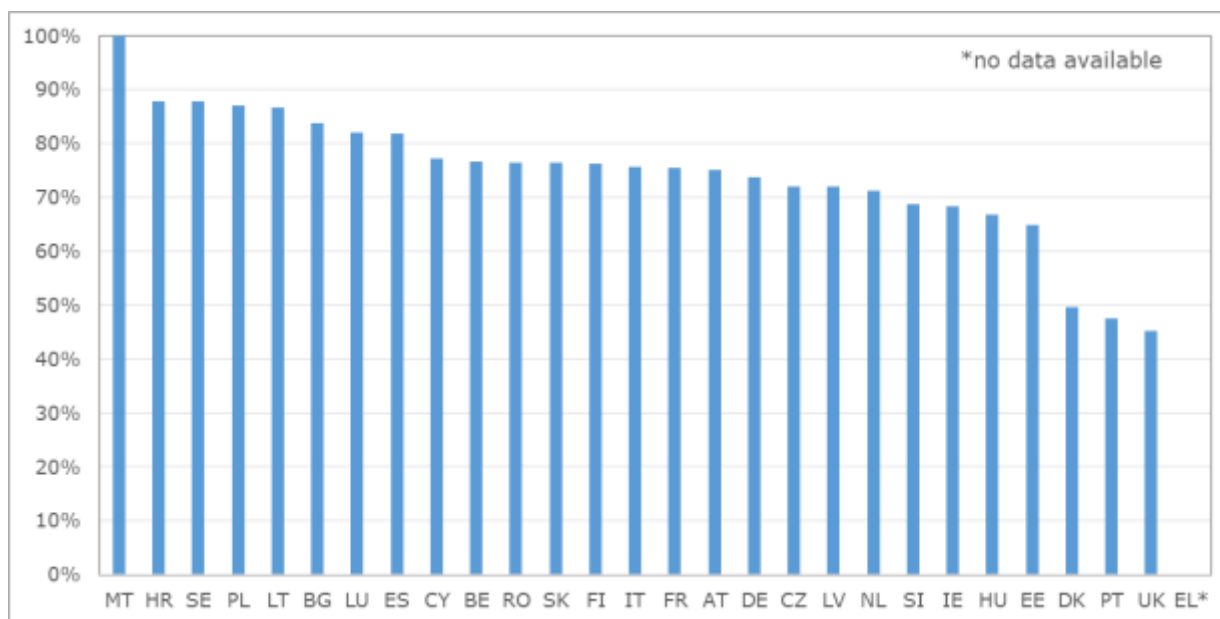
Negotiation is conducted separately with each candidate whose number has to be at least three to help define the needs of the contracting authority and to build possible solutions. Once the dialogue concluded, all tenderers are asked to submit their offer based on the terms of the contracts specified during the dialogue. The contract is then awarded to the most economically advantageous tender.

Simplified procedure and direct award

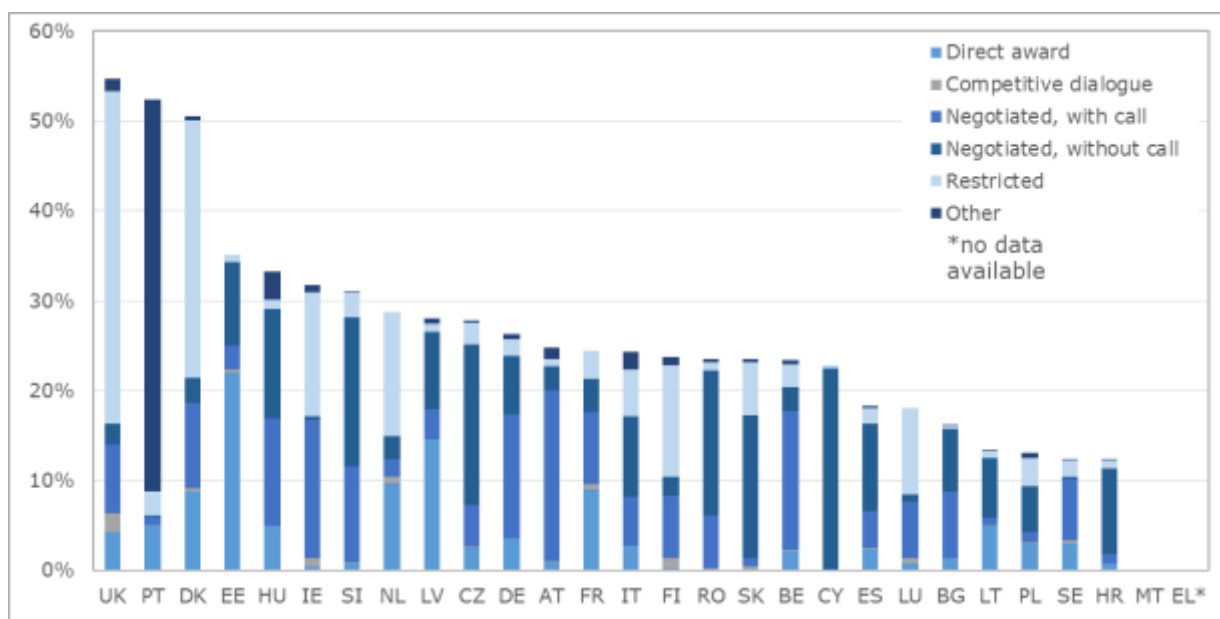
When the value of a contract is below specific thresholds (defined at national level), procurement procedures can be simplified. It results in shorter procedures with less administrative requirements (see section 2.4).

Furthermore, some public contracts do not follow a procurement procedure and are directly awarded without publication or competition. Most of the MS use direct awarding for the smallest contracts in terms of economic value. The rationale for direct award is that procurement procedure would entail disproportionate costs compared to the value of the contract. This does not mean that no rules govern direct award. Most MS define both thresholds under which direct award is allowed and specific conditions for using such procedure.

Figure 2 below shows the distribution of open procurement procedures across all MS, while Figure 3 presents the distribution of other types of procedures, including restricted procedures, negotiated procedures with and without a call for competition, and competitive dialogue, and other procedures, as well as direct award. The “other” category includes accelerated restricted procedures and accelerated negotiated procedures.

Figure 2: Share of 2014 contract award notices using open procedures by MS

Source: TED Structured Dataset 2014, PwC analysis

Figure 3: Share of 2014 contract award notices using other procedures by MS

Source: TED Structured Dataset 2014, PwC analysis

2.3. Thresholds

The thresholds delimit the application of EU and national legislation in public procurement and are expressed according to the value of the contracts. There are two different types of thresholds: the European thresholds and the national ones.

EU thresholds

Generally speaking, the EU thresholds differentiate between the field of application of EU Directive and national rules respectively. When the value of a contract reaches or exceeds the EU thresholds, EU Directives apply and the contract has to be published on the Tenders Electronic Daily (TED) database. TED is the online version of the Supplement to the Official Journal of the EU, dedicated to European public procurement, which is the single point of access to information available on public

procurement notification. Three types of notices are published on TED: the prior information notice, which provides advanced information on what will be published on TED; the contract notice, which contains the minimum amount of information on the procurement procedures, and the contract award notice, which announces the result of the procurement procedure, including the winning-price of the contract and the winning company. When the value of the contract is below EU thresholds, the procurement processes are regulated by national rules and are published at national level. The EU thresholds aim at creating a level-playing field for all businesses across Europe by harmonising the public procurement rules for the larger contract, considered of cross-border interest.

The EU thresholds for all the procurement contracts have been published in the EU website and they are accessible by any interested party⁵. They differ, whether the tender concerns goods, services or works and whether they relate to public, utilities or defence and security contracts.

The EU thresholds (net of VAT) applicable for EU Countries from 1st of January 2014⁶ are:

Table 1: EU thresholds (net of VAT) applicable from 1st of January 2014

	SUPPLIES	SERVICES	WORKS
Central Government public contracts	EUR 134,000	EUR 134,000	EUR 5,186,000
Other public sector contracting authorities public contracts	EUR 207,000	EUR 207,000	EUR 5,186,000
Utilities Contracts	EUR 414,000	EUR 414,000	EUR 5,186,000
Defence and Security Contracts	EUR 414,000	EUR 414,000	EUR 5,186,000

Source: Official Journal of the European Union

National thresholds

MS have also created national thresholds for contracts below EU thresholds. They delimit the application of specific national procurement rules, such as simplified procedure. MS can therefore set thresholds under which contracts can be awarded following a simplified procedure: restricted notification, restricted competition and for the smallest contract, direct award without publication. The national thresholds aim at creating specific procedures ensuring that small contracts do not generate disproportionate administrative costs for both contracting authorities and economic authorities. It results in a more flexible public procurement system.

In practice, MS can also decide to extend the rules applicable for contracts above EU thresholds to contracts under EU thresholds. For example, the largest contracts below EU thresholds can be asked to be published on the TED database.

⁵ DG GROW, Current rules, thresholds and guidelines, available at: http://ec.europa.eu/growth/single-market/public-procurement/rules/current/index_en.htm

⁶ Official Journal of the European Union, EC Procurement thresholds, available at: <http://www.ojec.com/thresholds.aspx>

2.4. Institutional framework of public procurement

The public procurement system of each MS is composed of various institutions which intervene at several levels of the procurement process: policy bodies that mainly act at the legislation level, executive bodies that implement procurement legislation and policies, oversight bodies that ensure the compliance of procurement practices with the procurement rules. Not least, contracting authorities, including central purchasing bodies, operate at all levels of governments and are the primary practitioners of public procurement.

First of all, every MS has at least one agency that acts as the main public procurement policy body, drafting legislation and amendments, and ensuring the overall consistency of public procurement regulation both internally with other national legislation, and externally with the EU Directives. Typically, the policy body has a mandate to ensure the proper transposition of EU Directives into national legislation, acts as the country contact point for EU institutions and represents the MS in EU level fora. In a centralised system, these responsibilities are assumed by a single central government level entity. In other cases, responsibilities may be shared among multiple institutions, or in decentralised political systems by regions that have their own procurement implementing legislation.

The implementation of the public procurement legislation is the responsibility of public procurement executive bodies, which ensure the operational aspects of procurement. Their responsibilities include providing guidance and support to contracting authorities and economic operators on how to fulfil their functions in compliance with laws and regulations, and act as a source of input to the policy bodies based on the experiences of those on the front lines. In some cases, they may also perform *ex-ante* controls to help those preparing tender documentation avoid errors, or receive appeals and provide opinions on disputed case. Other responsibilities include implementing thematic policies affecting public procurement such as administering a national e-procurement platform, or green public procurement (GPP) action plan. Particularly in these latter cases, responsibilities may be shared with non-procurement focused bodies, such as a Ministry of Environment.

Individual procurement contracts are handled by contracting authorities, which can include anything from a central government ministry to a municipality to a publically owned company. In some cases, purchasing is conglomerated in central purchasing bodies that conduct purchases on behalf of other agencies. Aggregation of purchases, whether through a central body or an *ad hoc* cooperation between municipalities, aims to benefit from a greater bargaining power and therefore lower prices for public purchases.

Oversight bodies ensure that procurement rules are properly applied by contracting authorities and economic operators. Their responsibilities include identifying weaknesses and irregularities, providing analysis of the overall public procurement system, and formulating recommendations at both the legislative and operational levels. Oversight bodies can be either internal or external. In the case of internal control, the main purpose is to improve procurement practices and procedures so as to be consistent with the legislation using *ex ante*, on-going and *ex post* supervision, the results of which are often kept internally without information to the public. External control bodies rely almost exclusively on *ex post* analysis of public procurement. The main external oversight body is typically a national Court of Auditors, which may focus on public procurement within specific controls or address it through larger analysis of financial activities of public organisations. Their analyses are usually made publicly available and are likely to benefit from media coverage. In that respect, national Court of Auditors often benefit from a high legitimacy, which allows them to influence policy and executive bodies.

Finally, for bidders who wish to dispute a tender procedure or outcome, remedy bodies are responsible for receiving and adjudicating their appeals through the various stages of the process for appeals. In most MS there are two separate stages of appeals. First instance bodies receive the complaints from the aggrieved bidders and issue a preliminary decision. This can be endorsed by ordinary and administrative courts, as well as specialised procurement review bodies. The decision of the first instance body can be challenged before the appeals bodies, which issue the final decision on the case.

The level of centralisation of these various competences varies depending on the MS. Some MS separate these competences among different authorities at central and/or local level. In this context, the degree of coordination between institutions is a key issue. Alternatively, in highly centralised systems, one single body can be responsible for the policy, executive and purchasing competences. This by design facilitates coordination, and thus the key question becomes internal capacity and communication with contracting authorities and economic actors.

2.5. Institutional framework of European Structural and Investment Funds

The ESI Funds are implemented all over the European Union and touch all territorial levels, from the EU-wide and national scale, to Europe's regions and local communities. They are managed by national, regional and local bodies in a system of shared management with the EC.

For the 2014-2020 programming period, ESI Funds are governed by a set of EU rules including the Regulation (EU) No 1303/2013 Common Provisions Regulation (CPR) and five fund-specific regulations⁷, which set out the operating and institutional framework that must be in place in each MS. Many of the institutions and concepts are carried over from the previous programming period (2007-2013).

Shared management between Member States and the European Commission

ESI Funds operate under a shared management system which involves different Directorates-General from the EC as well as various authorities at national and regional levels. However, according to the CPR, MS should have the primary responsibility, through their management and control systems, for the implementation and control of the operations in programmes.

Briefly, the main steps of the management process of ESI Funds and the main interactions between the EC and MS can be summarised as follows:

- On the basis of a proposal from the EC, the European Council and the European Parliament jointly decide the budget and the rules setting up the strategic, financial and regulatory framework for the use of ESI Funds;
- Each MS negotiates a Partnership Agreement and programmes which outline the country's strategy and priorities for the use of ESI Funds during the period 2014-2020. The programmes cover the entire EU regions and some of them involve more than one country (i.e. European territorial cooperation programmes);

⁷ For CPR Regulation (EU) No 1303/2013, ERDF Regulation (EU) No 1301/2013, CF Council Regulation (EU) No 1300/2013, ESF Regulation (EU) No 1304/2013, EAFRD Regulation (EU) No 1305/2013, available at: http://ec.europa.eu/regional_policy/en/information/legislation/regulations/
EMFF Regulation (EU) No 508/2014, available at: http://ec.europa.eu/fisheries/cfp/emff/index_en.htm

- As “Managing Authorities” (see section below), the MS and their regions manage and implement the programmes through the selection, monitoring, control and evaluation of many projects in a wide variety of sectors;
- The EC commits the funds at the beginning of the programming period in order for Managing Authorities to start spending. The EC pays the committed funds based on the expenditure declared by Managing Authorities along the implementation of programmes;
- Both the EC and Managing Authorities monitor and evaluate each programme and produce reports throughout the programming period.

Management and control authorities at Member State level

According to article 123 of the CPR, four specific types of authorities must be appointed in each Member States to carry out management and control functions for each co-funded programme:

- Managing Authorities;
- Certifying Authorities;
- Intermediate Bodies;
- Audit Authorities.

In addition, as responsible for the initiation and execution of concrete co-funded projects, the beneficiaries also play a crucial role in the use of ESI Funds.

Managing Authority

As stated above, MS and their regions are responsible for managing ESI Funds programmes and shall appoint one Managing Authority (MA) per programme. The same MA may be designated for more than one programme. The MA bears the main responsibility for the effective and efficient implementation of the related Funds. According to article 125 of the CPR, it thus fulfils a substantial number of functions related to programme management and monitoring, financial management and controls as well as project selection.

Certifying Authority

As per the MA, the MS have to appoint one Certifying Authority per programme, the same body being able to act as Certifying Authority for several programmes. According to article 126 of the CPR, the Certifying Authority should draw up and submit payment applications to the EC. It has to ensure that payment applications are complete, accurate and based on reliable accounts and verifiable documents and that the expenditure entered in them complies with applicable Union and national rules.

Intermediate Body

According to article 123 of the CPR, the MS can designate Intermediate Bodies at programme level in order for MAs and/or Certifying Authorities to delegate some of their tasks without prejudice of their responsibility as designated authorities. The appointed Intermediate Bodies can be for instance public agencies, regional or local authorities and need to be equipped with the sufficient administrative and financial management capacity. The delegation of tasks has to be formally recorded in writing.

Audit Authority

The Audit Authority has to be designated by the MS for each operational programme and must be functionally independent from the Managing Authority and the Certifying Authority. The same Audit Authority may be appointed for more than one operational programme. According to article 127 of the CPR, the Audit Authority's functions consist in ensuring that audits are carried out on the management and control systems, on an appropriate sample of operations and on the accounts. The Audit Authority has to produce control reports setting out the main findings of the audits carried out, including information on deficiencies found in the management and control systems as well as the corresponding corrective actions proposed and implemented. To ensure a homogeneous conduct of audits across MS, the EC is responsible for providing guidance on the scope and content of audits of operations and accounts and on the methodology for the selection of the sample of operations.

Beneficiaries

The beneficiary is the public or private body which receives the financing and which is responsible for the initiation and execution of the operations. In the case of co-funded public procurement procedures, the beneficiary may act as a contracting authority.

In accordance with the principle of transparency of EU spending, each MS has to publish lists of ESI Funds beneficiaries including their name, activity and the amount of public funding allocated.

2.6. E-procurement

E-Procurement refers to the use of electronic means of communications and transaction in the tendering processes. The description of e-procurement systems focuses on the level of comprehensiveness of the e-procurement in each MS, the legal status of e-procurement and the efforts to promote it among contracting authorities and economic operators.

The key concepts here involve the pre-award aspects of the procurement cycle, including "e-notification", or online publication of the contract and award notice, "e-access" to tender documents, and "e-submission" of offers. Subsequent elements include "e-evaluation" of tenders and "e-awarding" of the contract, running "e-auctions" for contracts, making available "e-catalogues" of supplier documents, "e-invoicing" and "e-payment". Within the framework of this study, e-submission is considered as a key indicator of the level of e-procurement adoption of each MS since it has been made mandatory for all contracting authorities as of 2018 by the EU.

Currently, MS vary in the comprehensiveness of their offerings between simple e-notification services to the full spectrum. There is also a range of approaches between a centralised approach with one national portal offering all services, such as in Estonia, to a fragmented approach with multiple platforms at the national and regional levels, as in Germany. Some platforms can also be privately owned. There are currently approximately 300 e-procurement systems in Europe with various levels of performance, reliability and security⁸.

In addition to the availability of services, it is important to consider whether they are used on a voluntary or mandatory basis, and under what conditions. Currently, e-notification is mandatory in most cases in most MS, whereas e-submission is almost

⁸ DG GROW, Golden Book of e-Procurement Good Practices, available at: http://ec.europa.eu/growth/single-market/public-procurement/e-procurement/golden-book/index_en.htm

everywhere voluntary. The legal status of e-procurement will be progressively harmonised at the EU level through a step-by-step implementation plan. By March 2016 e-notification will be made mandatory in every MS, by April 2017 e-submission for central purchasing bodies and by October 2018 e-submission for all contracting authorities will be mandatory⁹.

Finally, successful implementation of an e-procurement strategy requires substantial outreach and educational efforts. As such, the analysis will consider national action plans which are supposed to define the main strategic orientations in terms of e-procurement as well as the specific measures and targets to promote e-procurement. Such plans typically include the publication of guidelines and organisation of trainings offered to contracting authorities and economic operators to reach the expected targets. In addition, the level of information provided in the e-procurement platform, both on public procurement in general and on the use of the e-procurement platform in itself, and the level of user-friendliness of the platform affect significantly the development of e-procurement in the MS.

E-procurement systems offer many advantages to contracting authorities and economic operators and therefore to MS. The increased transparency and easier access to tender opportunities provided by e-procurement increases the participation in tenders, which ultimately leads to lower prices and better outcomes. Furthermore, e-procurement reduces the administrative costs of tenders for contracting authorities, which results in better use of administrative capacity and higher performance.

It also ensures a wider accessibility to SMEs and cross-borders bidders by reducing the time spent on administrative processes.

2.7. Administrative capacities

Administrative capacities dedicated to public procurement in MS is a key subject of the present study since they affect directly the overall performance of the public procurement system and impact most of the related subjects of the study such as compliance with procurement rules, corruption, e-procurement, strategic use of public procurement.

Administrative capacity in public procurement system relates to available resources in central bodies responsible for drafting and implementing the procurement policies as well as in contracting authorities at all levels which carry out tender processes. Given the importance of administrative capacity, the concept has been broken down into four component parts for more detailed consideration. These parts include human resources dedicated to procurement, training and capacity building structures that ensure the proper qualification of procurement practitioners, trainings offered to procurement practitioners and economic operators, and existing systems and tools aimed at improving the way procurements are handled in the MS.

Human resources refer to the number and the qualification of the staff dedicated to public procurement in MS. On the one hand, this includes a consideration of the number of procurement staff at key central policy, administrative and oversight bodies relative to the quantity and value of procurement contracts managed. At the same time, attention is given to the number of contracting authorities relative to the amount of procurement done in a country, as the more spread out contracts are among buyers, the less specialisation and experience they can be expected to have.

⁹ Public Procurement reform, Factsheet no.4: e-procurement, available at: http://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/new/index_en.htm

Finally, where applicable, the study considers the kinds of qualifications that are required of procurement officials and practitioners.

Creation and maintenance of administrative capacity in an MS requires dedicated, permanent institutions or structures in place to design and offer trainings and guidance materials on procurement. Trainings can be provided internally by specific teams within the main public procurement bodies, or by sanctioned external structures such as private sector training facilities. Often, a national public administration school will provide initial or on-going training and seminars on topics in public procurement legislation, for instance on the introduction of EU Directives. Such universities may also be asked to develop trainings on specific issues such as e-procurement or GPP. In some cases, secondary agencies may provide important, subject specific training and guidance services, as in many countries here the environment ministry is responsible for GPP. Support to economic operators frequently comes from private businesses and trade groups.

In addition, the study considers the nature of the trainings provided. It includes the type of training offered, i.e. whether it is internal or external, occasional or regular, compulsory or voluntary, and the way they are promoted. For larger MS, consideration must be given to where the trainings are offered, and who is responsible for transportation and lodging costs.

Finally, the study focuses on the systems and tools developed in each MS to help procurement practitioners and economic operators in managing their procurement procedures. These include IT tools, risk management tools, templates, guidance materials, standardised tendering documentation and other products that can assist practitioners in drafting and executing tenders in accordance with the law, and bidders with fulfilling their requirements and knowing their rights in the case of irregularities.

2.8. Strategic use of procurement under Europe 2020

Europe 2020 is the EU ten-year strategy for smart, sustainable and inclusive growth. It focuses on 5 pillars: employment, research and development, climate and energy, education, social inclusion and poverty reduction. Because public procurement accounts for such a substantial part of EU GDP, it has an important role to play in reaching the objectives of Europe 2020 strategy. The present study focuses on the way MS make strategic use of public procurement on three aspects of the EU 2020 agenda: development of green products and practices, promotion of innovation and social inclusion, and promotion of SMEs.

Environmental sustainability is promoted through the use of GPP practices. GPP refers to the inclusion of environmental criteria in tender documents either as technical specifications of the contract, in the selection criteria of the bidder, or incorporating them into the award criteria¹⁰. Due to the relative novelty of GPP, the EC has been encouraging MS to develop national action plans designed to raise awareness among contracting authorities and potential bidders on the advantages of GPP and insight into how it might be implemented, since 2003¹¹. The measures can include comprehensive guidelines and trainings both on the rationale for implementing green criteria and on the way to concretely implement them. Some support can be also provided by

¹⁰ The Commission defines Green public procurement (GPP) in the Communication (COM (2008) 400), available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008DC0400&from=EN>

¹¹ Communication from the Commission to the Council and the European Parliament – Integrated Product Policy – Building on Environmental Life-Cycle Thinking, COM/2003/0302, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52003DC0302>

dedicated platforms at the Ministry level or at the local level to accompany contracting authorities.

Similarly, MS are encouraged to promote social inclusion through public procurement¹². In the context of procurement, social inclusion refers to opening opportunities for marginalised communities, such as ethnic or cultural minorities, or other vulnerable groups, such as people with disabilities and long-term unemployed, to win public contracts. This can be achieved either by tailoring technical requirements and selection criteria or by recognising socially responsible practices in the award criteria. The way MS raise awareness among contracting authorities and economic operators and operationally support them in integrating such criteria are considered within the framework of the present study.

Finally, the Europe 2020 strategy puts a strong focus on fostering innovation and the development of SMEs, including in procurement¹³. As such, the study examines the extent to which MS are promoting these goals in their national policies. Improving access to SMEs can be achieved through a number of approaches, including requiring that larger contracts, for which normally only the biggest corporate players could be competitive, be split into lots. Because the administrative capacity of SMEs is a key obstacle to their effective participation in public procurement, simplified procedures and measures aimed at reducing the time and money spent in the tendering processes by economic operators should increase the participation of SMEs in public procurement. In addition, proper dissemination of procurement rules and qualification of economic operators through guidelines and trainings are part of the MS initiatives to increase SME participation in tenders. In terms of promoting innovation, this is a more time-intensive undertaking, as it requires developing an understanding of the marketplace of innovative product and service offerings available. Still, the reward can be substantial as the public sector can often provide a crucial step in bringing pre-commercial innovations to fruition.

2.9. Irregularities

Given the complexity and variety of the regulatory framework as well as the number of stakeholders involved, public procurement is often prone to irregularities and deficiencies. An irregularity is defined as:

"any breach of Union law, or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of the ESI Funds, which has, or would have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union."

EU Regulation No 1303/2013, Art. 2 (36)

Irregularities may result from intentional or unintentional behaviour. If intentional, irregularities are likely to constitute either fraud, collusion or corruption. On the other hand, irregularities related to breaches of public procurement rules may be unintentional, e.g. resulting from the lack of knowledge or misinterpretation of procurement rules, and consequently do not necessarily constitute fraud or corruption.

¹² European Commission DG EMPL (2010), Buying Social - A Guide to Taking Account of Social Considerations in Public Procurement, available at:

<http://ec.europa.eu/social/BlobServlet?docId=6457&langId=en>

¹³ European Commission DG ENTR (2014), Public Procurement as a Driver of Innovation in SMEs and Public Services, Guidebook series "How to support SME Policy from Structural Funds". Available at:

http://ec.europa.eu/growth/smes/business-friendly-environment/regional-policies/index_en.htm

This section provides a brief overview of the main irregularities in the public procurement system reported by EU and national oversight bodies. The breaches of public procurement rules applicable to contracts financed from the Union budget and subject to the shared management method do not substantially differ from the main errors identified by national oversight bodies in non ESIF-related procurement procedures.

Irregularities can occur at any of the four stages of the public procurement process: the planning and preparation of the tender, the tender publication and execution, the award of the contract and the implementation of the contract.

During the planning and preparation of the tender, irregularities may occur in the preparation of tender documentation. These may involve problems with the insufficient definition of the subject-matter of the contract, such as unclear technical specifications or incorrect estimation of the value of the contract. One of the most frequently cited irregularities involves artificial splitting of contracts into multiple tenders so that each remains below a given threshold in order to avoid the procedural requirements for contracts above that threshold. Irregularities occur also in the selection and award criteria when they are unclearly defined or mixed up, overly burdensome, or not directly related to the subject of the contract. This includes criteria that are intentionally written to favour one potential supplier over their competitors.

Irregularities in the execution of the tender are more linked to procedural issues. These include failure to publish contract notification in the required place, or within given timelines, unjustified use of restricted or negotiated procedure, unauthorised communication with bidders, or alteration of tender specifications after publication. They may also relate to non-compliance with other time limits, such as opening offers before the submission deadline.

A critical phase in the procurement process is the evaluation of tenders. Here, common irregularities include unjustified rejection of qualified tenders, failure to apply the award criteria outlined in the tender specifications, unclear or poorly documented selection process, or unequal application of criteria. This is also the stage that is most susceptible to conflicts of interest, which can arise when individuals with an interest in one or more of the bidders are allowed to participate in the award committee.

Finally, some irregularities can occur during the implementation of the contract. In this phase irregularities may be linked to the scope of the contract: substantial modification of the contract elements set out in the contract notice or tender specifications and the reduction in the scope of the contract constitute potential irregularities of contract implementation. Furthermore, the award of additional works/services/supplies contracts without competition constitutes an irregularity if carried out in the absence of the exemption conditions (for instance, extreme urgency, unforeseen circumstance).

All MS struggle with some irregularities in public procurement but the significance and the type of irregularities vary depending on the MS and on the type of contracting authority. For instance, some MS experience challenges with regards to their organisational capacity, while other MS experience irregularities because of complex and unstable legal rules. Thus, understanding the underlying causes for deficiencies in public procurement is key, and a differentiated approach to propose and implement solutions is necessary.

In order to protect the financial interest of the EU and to guarantee policy outcomes, ESI Funds are regularly audited by national Audit Authorities, the EC and the ECA. Procurement related irregularities are frequently cited as one of the most prominent issues in ESI Funds management. The various steps of the control system at MS and Commission level are described in detail below. In parallel the ECA performs its own audits of EU expenditure, including ESI Funds.

Audits at MS level

Under the shared management system, MS carry the primary responsibility for preventing, detecting and correcting expenditure irregularities. For this purpose, each MS has put in place a system of controls comprising first-levels checks by MAs, the certification of expenditure by Certifying Authorities and regular audits by ESI-specific national audit authorities. In the current 2014-2020 programming period, the responsibility for financial management by MS has been strengthened even further.

MS Audit Authorities play a very important role in the assurance of ESIF expenditure, as they certify that the control system in place is effective, i.e. that Managing Authorities and Certifying Authorities carry out their functions properly. The audits by Audit Authorities also determine whether there is a risk of irregular expenditure being certified.

Each year Audit Authorities submit an Annual Country Report (ACR) to the EC that includes their audit findings as well as audit opinions. Furthermore, Audit Authorities inform MAs and Certifying Authorities of their findings and verify whether their recommendations have been addressed. In cases where irregularities are identified, MAs are responsible in the first instance for making the appropriate financial corrections in accordance with the criteria and rates defined by the EC for irregularities related to the non-compliance with public procurement rules¹⁴.

Audits at Commission level

While MS carry out the first-level control and audit activities, the EC bears the responsibility for the protection of the financial interest of the Union and the correct implementation of its co-financed projects. In this respect, it performs audit work on its own, which is primarily targeted at verifying the functioning of national control systems. Furthermore, the EC approves the audit strategy of national Audit Authorities and monitors the information on irregularities provided by MS.

In cases where the EC uncovers serious deficiencies in the monitoring and control system of MS, it can formally suspend payments or initiate a financial correction procedure. This is typically the case if the EC finds that there are systemic deficiencies with MS control systems. MS have the opportunity to correct the irregularities; otherwise a financial correction is applied via a formal decision and the amount of EU funding allocated to the MS is reduced.

Where the EC detects irregularities related to the non-compliance with public procurement rules, it determines the amount of the financial correction applicable according to specific guidelines which set criteria and rates to be applied to the main types of irregularities. As stated above, the MS are recommended to apply the same criteria and rates when correcting irregularities, unless they apply stricter standards¹⁴.

The findings from the MS' ACRs and from the EC's own audits are included in DG REGIO's Annual Activity Report (AAR), i.e. the management report of DG REGIO's Director-General to the College of Commissioners.

¹⁴ Commission Decision COCOF(2013) 9527 final of 19.12.2013 on the setting out and approval of the guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement

Audits by the European Court of Auditors

The ECA acts as the external auditor of the EU. As part of its work, it provides the Parliament and the Council with an Annual Statement of Assurance (DAS) on the legality and regularity of the EU budget. Cohesion policy is covered under the DAS, which includes audits of approximately 200 Cohesion policy-funded projects. In addition to the DAS, the ECA carries out *ad hoc* audits, in which it may choose an area to investigate in greater detail.

The ECA has examined public procurement within EU Funds in great detail in recent years. Among the most common errors it finds are¹⁵:

- Assessment of bids (42%);
- Publication of requirements of the tender and tender specification (32%);
- Lack of tendering procedures or the award of contract based on inappropriate tendering procedure (16%);
- Additional contracts without procurement procedure (8%);
- Contract terms (2%).

Within these categories, the ECA differentiates among serious errors, such as those where the expenditure certified by the MS should not have been paid out by the Commission, and frequent compliance errors that occur regularly.

ECA audits do not result directly in financial corrections or sanctions, but have an impact on the final approval of the EU budget implementation by the Parliament and the Council.

Deficiencies detected by the European Anti-fraud Office

In addition to the audit bodies listed above, another organisation conducting oversight of procurement is the European Anti-Fraud Office (OLAF). OLAF is charged with reducing fraud affecting the EU budget, including corrupt practices, poor management and lack of transparency. Although it is an integral part of the Commission, the OLAF is fully independent in terms of investigative capacity.

OLAF conducts both internal investigations of EU institutions and external investigations of MS managing EU funds. These investigations may lead to recommendations for improvements, hearings by national authorities, administrative penalties, financial sanctions, disciplinary proceedings, or changes in legislation.

In addition to its investigation activities, OLAF also conducts studies in which it explore specific matters in greater depth. A recent study on 'Identifying and reducing corruption in public procurement in the EU'¹⁶ concluded:

- An estimated 18% of spending covered is lost to corruption;
- Corruption losses primarily take the form of cost overruns, delays of implementation and loss of effectiveness;
- These losses are likely greater in smaller projects than in larger ones;
- Procurement of training services is the sector associated with the greatest direct public losses.

¹⁵ European Court of Auditors (2014), Audit of public procurement by the European Court of Auditors – Berlin, 14 November 2014

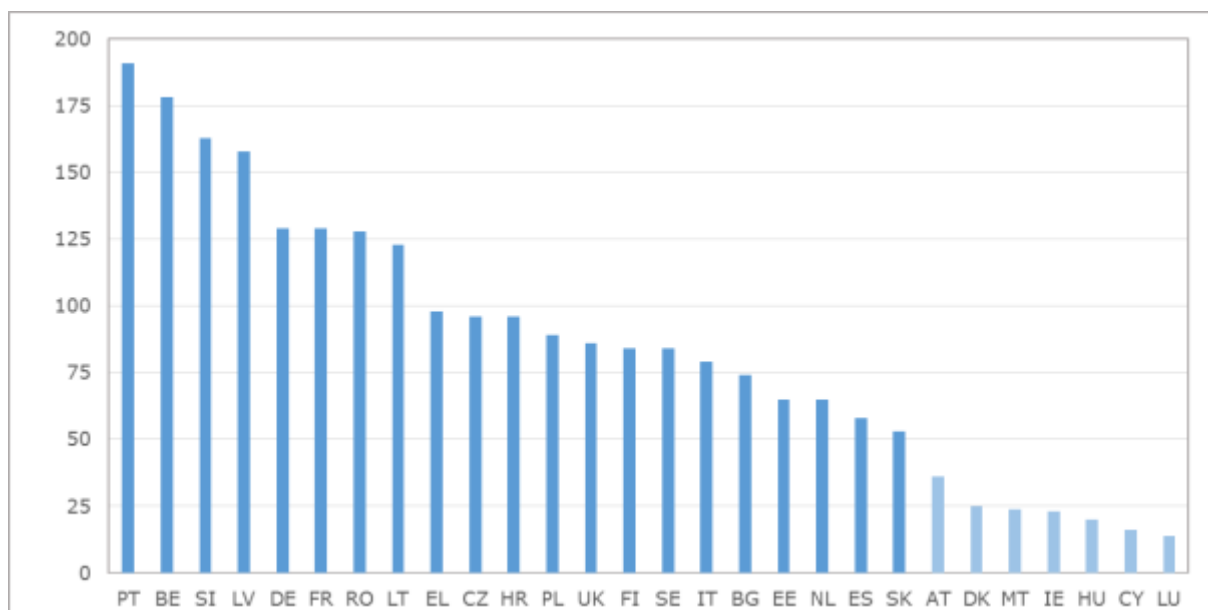
¹⁶ PwC (2011), Public Procurement: Costs we pay for corruption, Identifying and Reducing Corruption in Public Procurement in the EU

3. SURVEY RESULTS

The final data collection stage of the study involved conducting a survey of public procurement practitioners and ESI Funds AAs in all 28 MS. Survey responses were collected using an online platform which was open from 7 September to 9 October 2015. Invitations to participate were sent to all ESIF AAs and MAs, as well as to a list of several thousand contracting authorities listed as beneficiaries of ESI funds. In addition, MAs were invited to forward the invitation to their own beneficiaries. Ultimately, the survey received nearly 2,400 responses, with an average of 85 respondents per MS and an average response rate per MS of more than 70%. There are an estimated 300,000 contracting authorities in the EU.

Although the average response rate was quite high, there were some MS for whom the number of individual responses was considered too low to draw conclusions from (see Figure 4). These primarily include five MS with smaller populations and fewer contracting authorities, including Denmark, Malta, Ireland, Cyprus and Luxemburg. In addition, two moderate sized MS also had below average response rates, namely Austria and Hungary. The absence of more robust survey data is particularly surprising in the case of Hungary, a country that failed to meet all four procurement *ex ante* conditionality criteria, and which was thus an important focus of the study. In the charts and analysis below, these seven low response rate MS will be indicated visually using a lighter colour than other MS, and will not be highlighted in the text.

Figure 4: Number of survey responses by Member State



Source: PwC analysis

The purpose of the survey was to collect comparable data for all 28 MS on the day to day experiences of procurement practitioners. In order to ensure the comparability of data from across MS, questions were formatted in a multiple choice format and translated into 22 official EU languages by native speakers who work in the field of public procurement.

The content of the survey was broken up into six main topics, including:

- Human resources;
- Training;
- Guidance materials;
- E-procurement;
- Outside support;

- Transparency.

In addition, respondents were asked to provide information about their organisation, their position in the organisation, their level of experience, their educational and professional background, and the frequency and magnitude of their annual procurement activities.

An abbreviated version of the survey was also prepared for AAs, focusing on the particularities of their role in the procurement system in their country.

The results of the survey are provided below.

3.1. Human resources

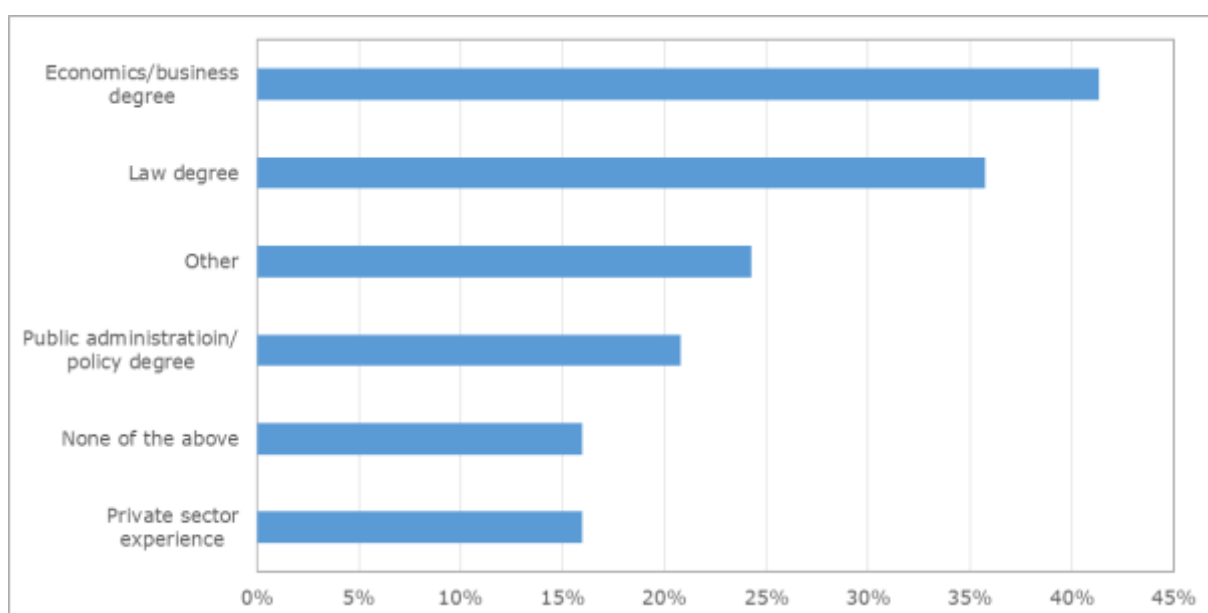
The first issue addressed by the survey was to examine who conducts public procurement in the EU. This section included questions about the specific background of the survey respondents themselves, as well as representative information about the procurement staff in their organisation as a whole.

The respondent-specific questions served to verify that, as requested, respondents were overwhelmingly managers and more senior staff members, and thus well positioned to provide information on their operations.

In describing the education and professional backgrounds of their colleagues and themselves, the most common responses were a degree in business or economics, or law. Degrees in public administration or policy were much less common. Approximately one sixth of those who selected “other,” the third most common response, reported a background in engineering or civil engineering. Private sector experience was relatively rare, which reflects common commentary from the business community that many public buyers lack an understanding of private markets.

Finally, it is also notable that roughly one quarter of all responses indicated that practitioners had no specialised background or educational qualifications relevant to public procurement, as indicated by those who responded “none of the above” or who chose “other” and indicated “none” or secondary education only.

Figure 5: Background of public procurement staff

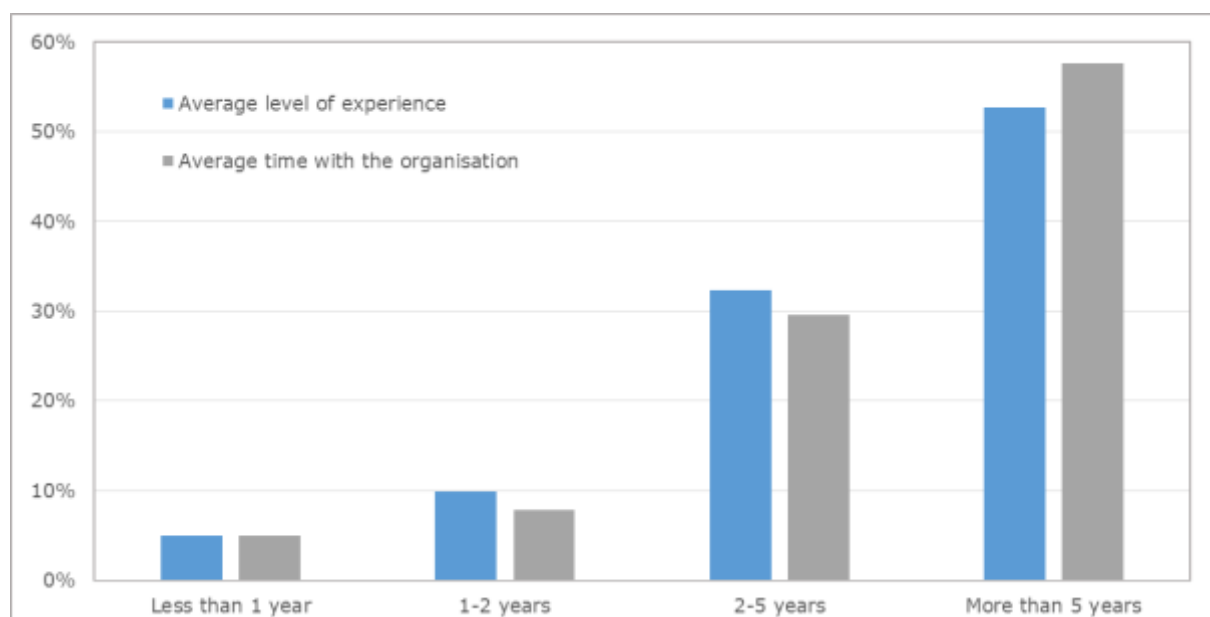


Source: PwC analysis

Respondents were also asked to provide information on the average level of experience of the members of their procurement staff, and on their average duration of employment. The goal of these questions was to gauge both the general experience level of procurement staff, as well as the issue of staff turnover. Both questions were in multiple choice format, with respondents able to choose between less than one year, between one and two years, between three and five years, and more than five years.

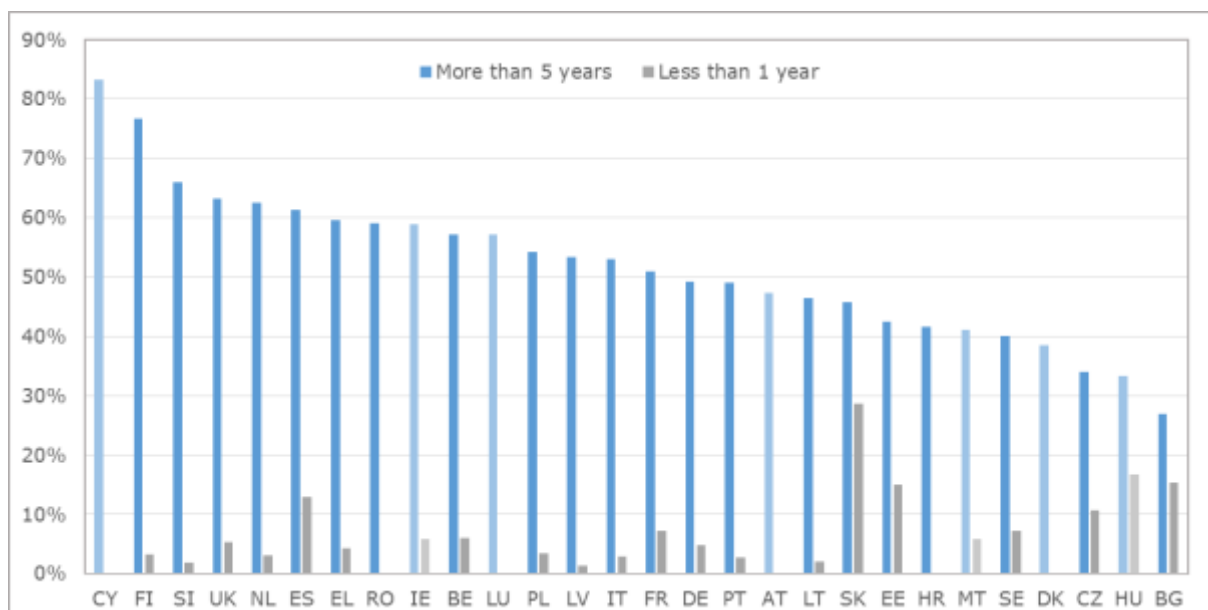
Procurement practitioners do appear to have a substantial level of experience in their field, with a majority of respondents saying that the average level of seniority in their organisation was more than five years. In addition, staff turnover appears to be relatively low, with a majority reporting that on average, individuals stayed more than five years with their organisation.

Figure 6: Experience level of procurement staff



Source: PwC analysis

At the MS level, Bulgaria and the Czech Republic stand out as having among the fewest highly experienced procurement practitioners, combined with some of the highest turnover rates. Slovakia fared better in terms of more experienced staff, but had the highest turnover rate in the EU, with a striking 37% of staff staying with their organisation less than one year.

Figure 7: Experience level by Member State

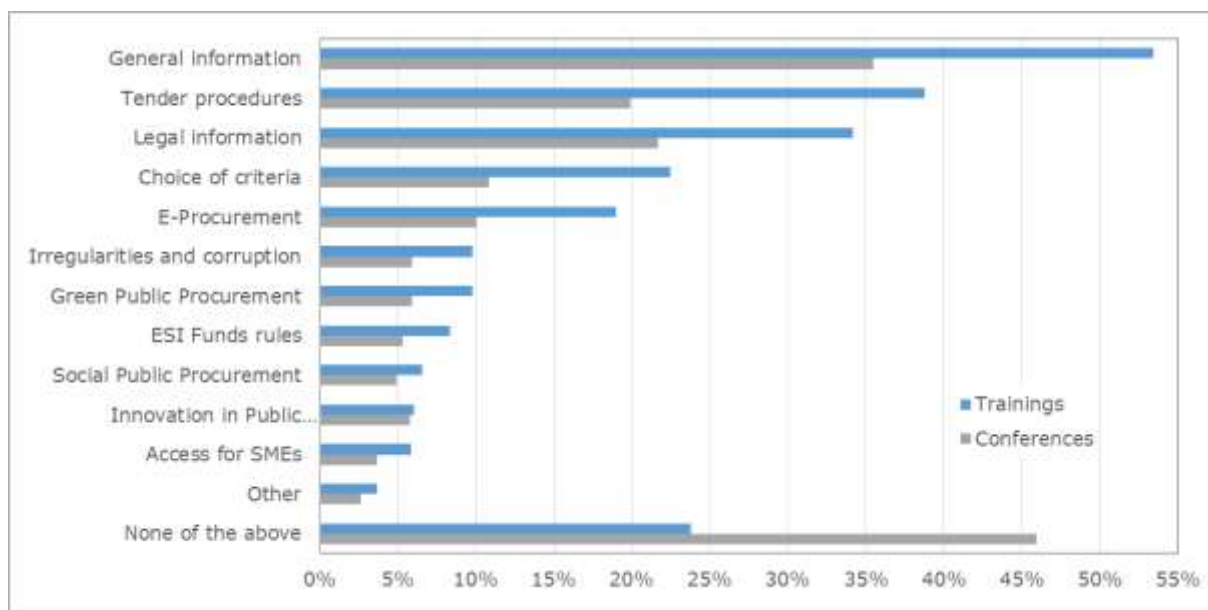
Source: PwC analysis

3.2. Training

The second issue explored in the survey revolves around practitioners' recent experiences with training and on-going education. Respondents were asked to indicate whether they or a member of their procurement staff had attended a training or conference in the past year covering any of a number of relevant procurement topics. In addition, respondents were asked what barriers might have prevented them or their colleagues from participating in training.

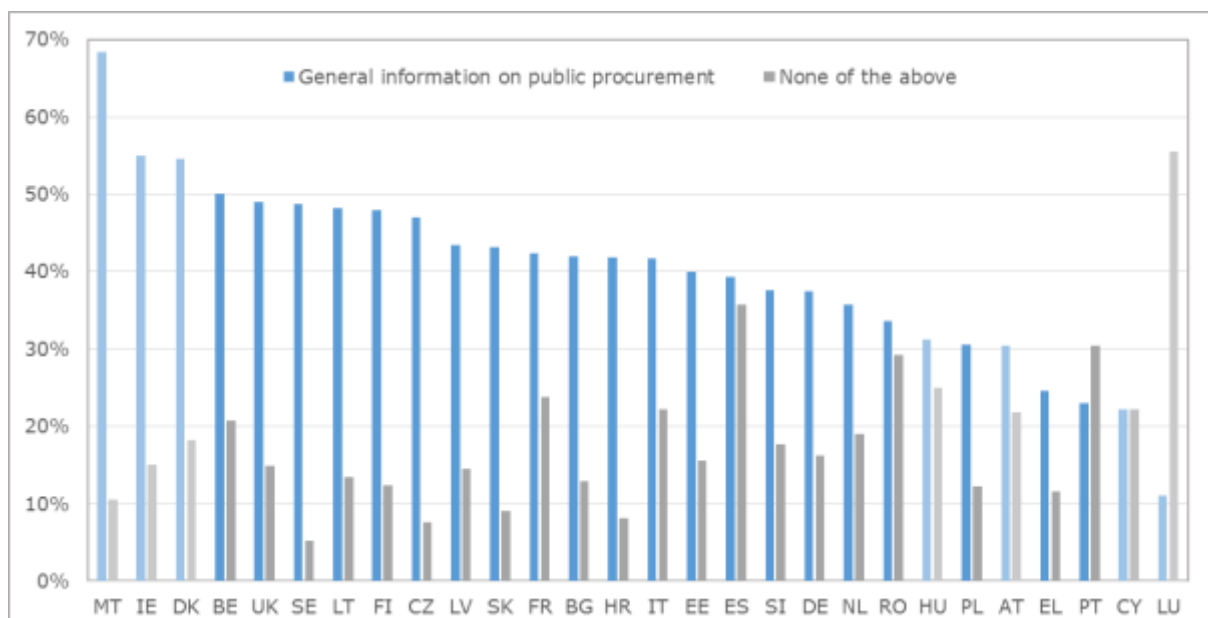
Training programmes were more common than conferences for all topics under discussion, and the most common issues covered were those that were broader in nature, such as general procurement information, information on different procedures, and legal-oriented training (see Figure 8).

Approximately one in five respondents reported a member of their staff attending specialised trainings on the use of e-procurement or how to draft selection and award criteria. Even less frequented were trainings on more specialised topics, including procuring using ESI funds, implementation of GPP, and improving access for SMEs. Attendance at trainings and conferences on how to reduce irregularities and/or fight corruption also did not exceed 10%. Nearly a quarter of all respondents said that no member of their staff had attended a training or conference in the previous twelve months.

Figure 8: Participation in skill building events in past 12 months

Source: PwC analysis

Greece (25%) and Portugal (23%) stood out as countries where participation in general trainings was lowest, with less than a quarter of respondents having a colleague attending this broadest category of trainings in the previous year. With respect to trainings on other procurement topics, response rates of people who said that neither they nor their colleagues had attended these kinds of trainings were highest in Spain (36%), Portugal (30%) and Romania (29%), while lowest in Sweden (5%).

Figure 9: Participation in training programmes by Member State

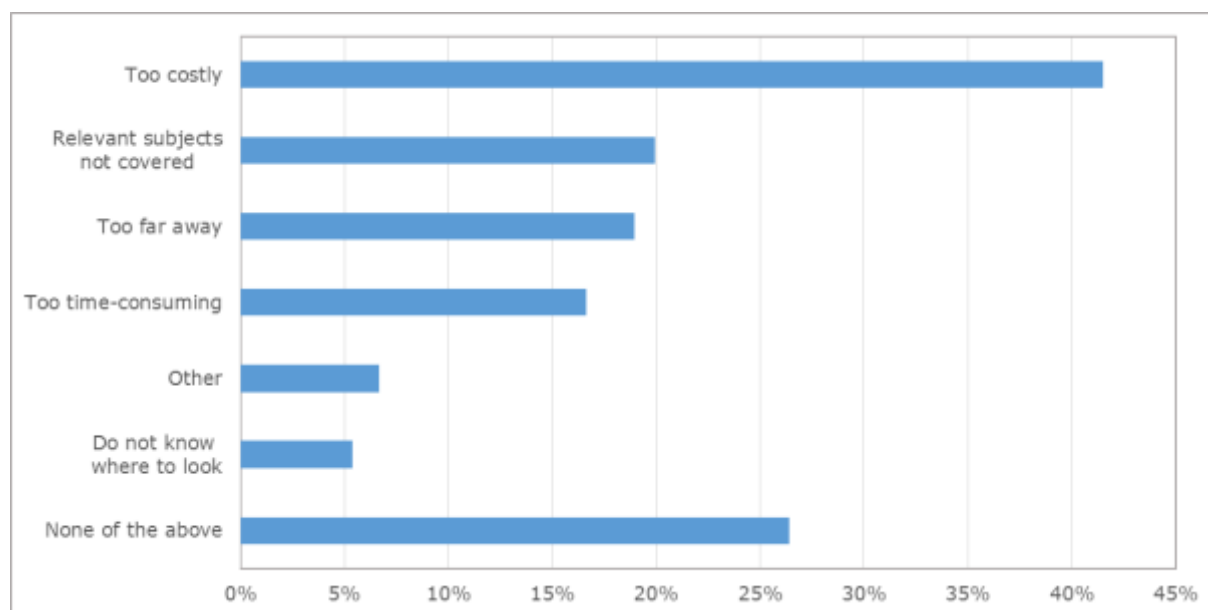
Source: PwC analysis

As a follow up, the survey asked respondents what issues, if any, had prevented them from participating in trainings or conferences in the past 12 months. More than one quarter said that they had faced no such barriers (see Figure 10).

For those that did face barriers to participation, the most frequent response by far was the cost. This is consistent with the feedback received during the field visits, where many interviewees stressed that participation in trainings offered was constrained by the limited budgets of contracting authorities, even when trainings were offered free of charge, due to the cost of travel, lodging, and lost productivity.

Furthermore, cost and distance were cited most frequently by those organisations which procured smaller budgets, and came from smaller communities. This reinforces the importance of offering trainings at multiple locations to better serve those procurers not located in large, central cities.

Figure 10: Barriers to participating in skill building events

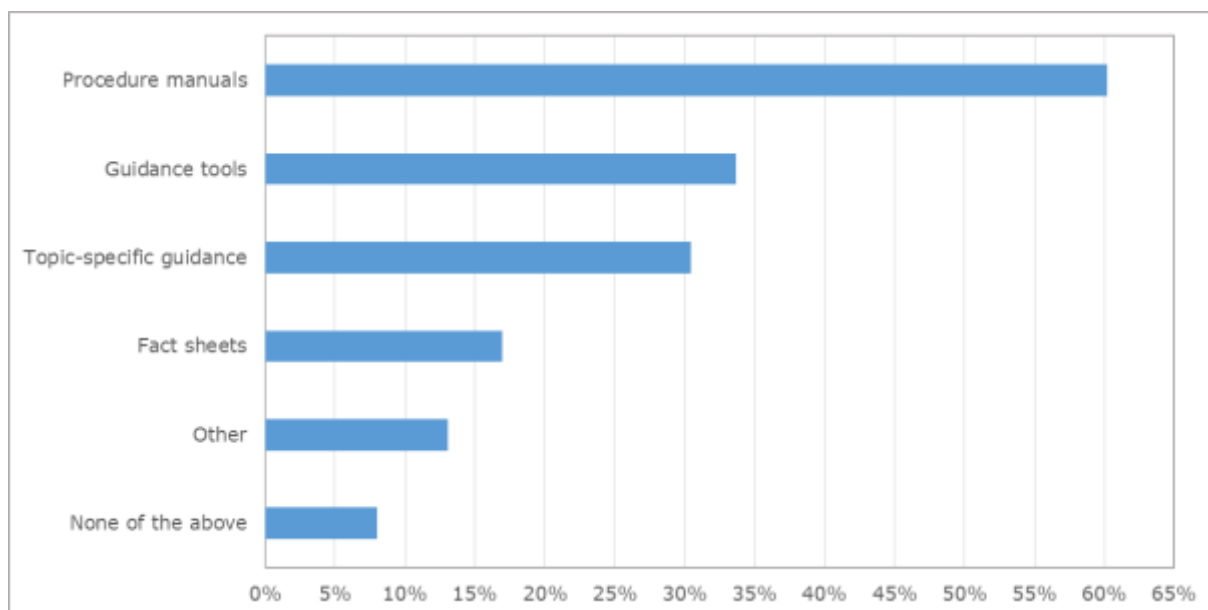


Source: PwC analysis

Notably, while one in five respondents said that topics they were interested in were not covered, barely five percent said that they did not know where to look for information on trainings and conferences, indicating that authorities are performing well in terms of making such information easy to find.

3.3. Systems and tools

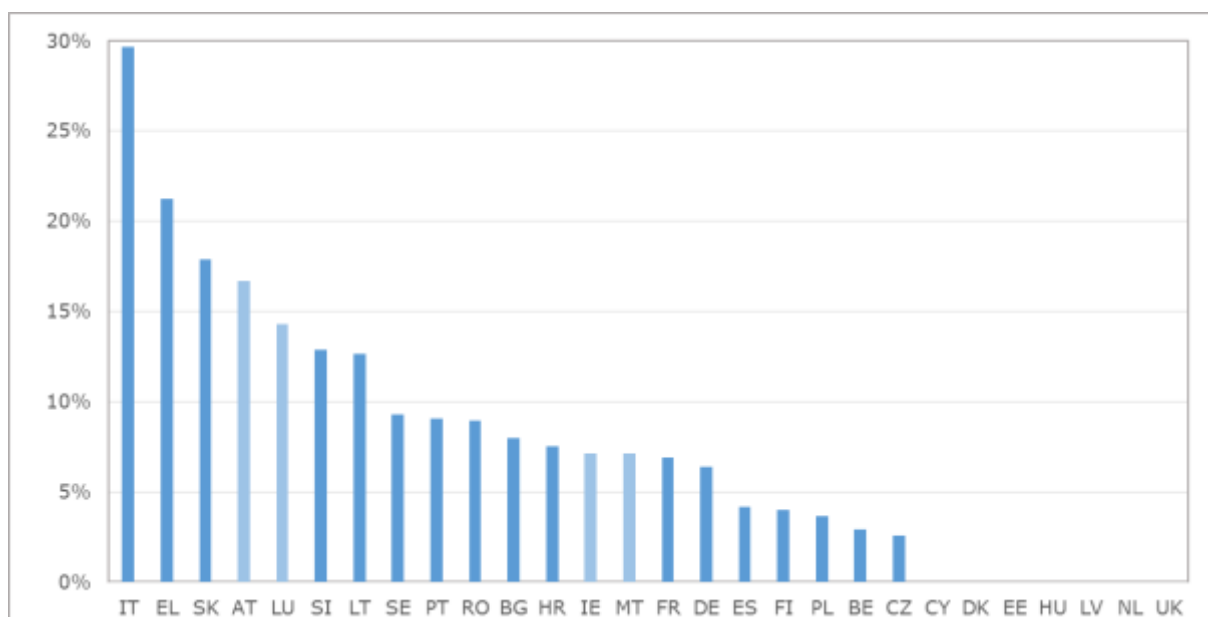
The third issue covered by the survey involves the kinds of materials, systems and tools procurement practitioners have access to in order to support them in their work. Specifically, this part of the survey covered available guidance documentation such as manuals, topic-specific guidance, tools, standardised tender documents, ad hoc support as well as support from external sources. For all MS except Greece (33%), Italy (37%), Slovakia (43%) and Slovenia (47%), a majority of respondents reported that a general procedural manual was available. The fact that responses were not closer to 100% may indicate that in those MS, where such general procedure manuals are available, significant numbers of practitioners are not aware of their existence, or they do not know where to find them.

Figure 11: Types of support materials available

Source: PwC analysis

For other kinds of support documents, including topic specific information and tools like online applications, only one third of the respondents reported having access. Estonia stands out as the MS where the largest share of respondents reported having access to such support materials (46%), whereas barely one in five Croatian respondents did.

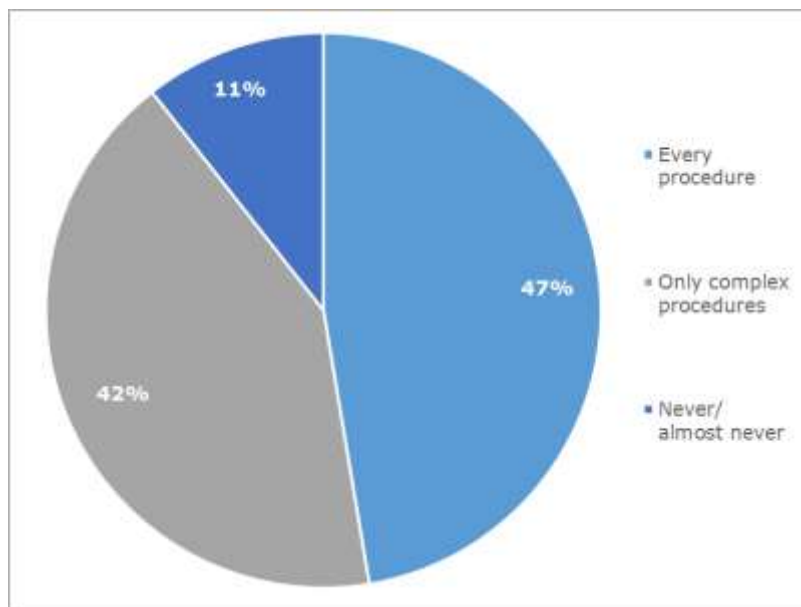
Overall, relatively few respondents reported having access to no support materials. The countries with the highest share of respondents reporting no access to support materials were Italy (30%), Greece (21%), and Slovakia (18%). For most other MS, fewer than 10% of respondents claimed they had access to no support materials. In fact, all MS provide at least some generally applicable and publically available support materials. As such, the below responses can most plausibly be interpreted as a lack of awareness of existing support materials.

Figure 12: Responding no support materials available by Member State

Source: PwC analysis

When asked how often they made use of these support materials, respondents were split roughly evenly between those who said they used them for every procedure, and those who only used them in the case of complex procedures. The Czech Republic (64%), Spain (63%) Croatia (62%), and Slovakia (57%) stood out as the MS most likely to respond that they used support materials for every procedure, whereas France (66%) and Lithuania (67%) were those most likely to respond that they used support materials only for complex cases.

Figure 13: Use of support materials



Source: PwC analysis

In addition to the kinds of materials available, the survey also explored the topics covered by support materials available, and asked if support in those areas needed to be improved. Here, as with training, the topics most frequently covered were the broadest ones, including general information, information on tender procedures, and general legal issues, and choice of procedure. Outside these four categories, coverage of topics falls sharply, including for general interest issues like use of e-procurement and prevention of irregularities and corruption, and for more specific topics.

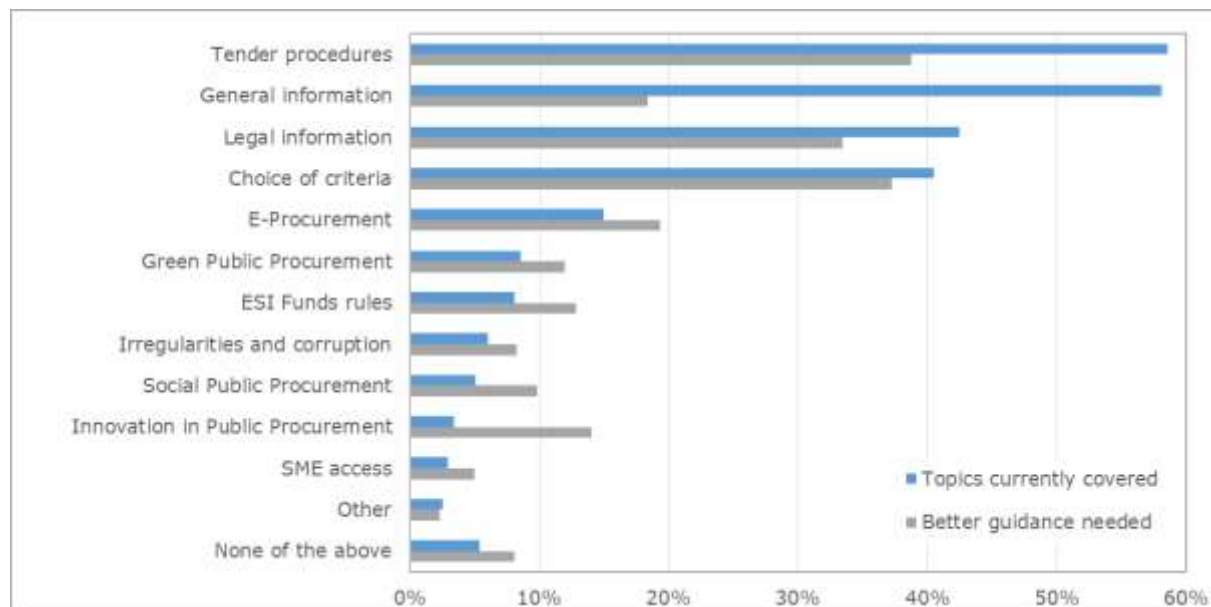
The survey also asked participants on which topics they felt that support materials need to be improved. It was interesting to note the difference between response rates for the question of availability and the question of whether improvement was needed by topic. For more general topics, more respondents reported that support materials were available than that they needed improvement (see Figure 14). However, for more specific or advanced topics, the number of respondents responding that support materials on a given topic needed to be improved exceeded those who said they were available, indicating that they wanted new support materials to be developed rather than wanting existing materials to be improved.

In addition to wider availability of guidance on broad procurement topics as reported by survey participants, a lower number of respondents indicated that this kind of guidance also needs improvements compared to the number of people responding that guidance is available. In contrast, fewer survey participants reported the availability of topic-specific guidance, but a larger number of respondents indicated a need for improvement. These results suggest that general guidance is overall available but may need to be enhanced, whereas topic-specific guidance often needs to be created.

These results are reinforced by a number of comments left in the survey indicating that existing training programmes and support materials were too basic to be of value

for experienced practitioners. Respondents, who themselves tended to be more experienced, expressed an interest in training and materials focused on more practical, hands-on examples, and on more advanced subjects, such as Public Procurement of Innovation (PPI) and supporting SMEs. This would indicate a need for MS authorities to develop a two-tier training and support programme offering general subjects targeted at new joiners and advanced topics for more experienced colleagues.

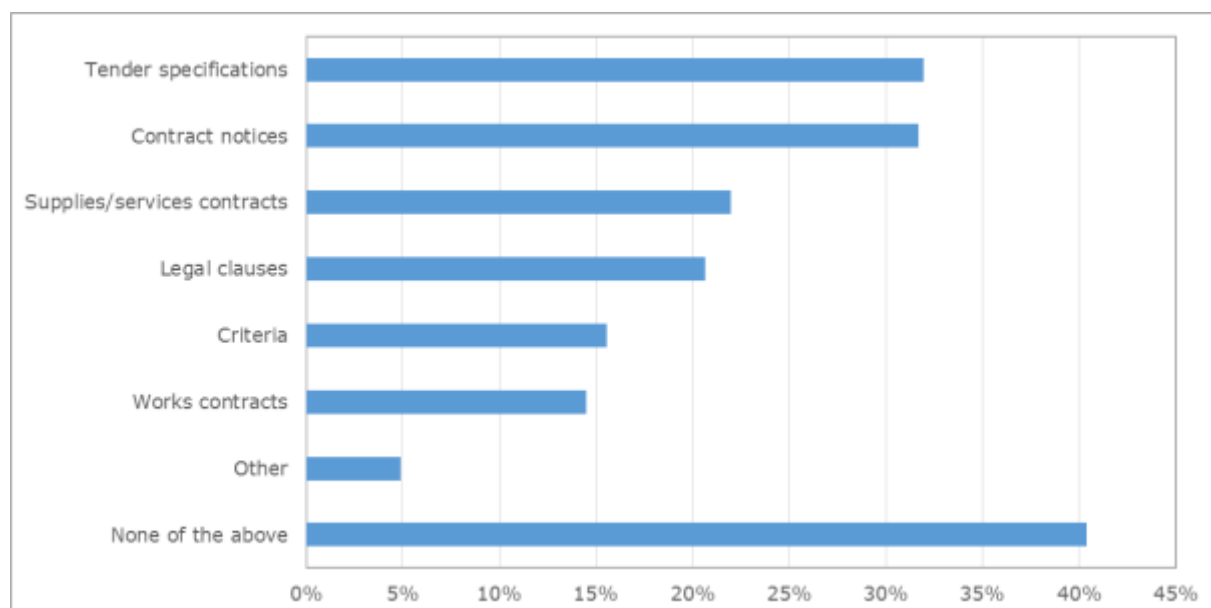
Figure 14: Topics covered by support materials



Source: PwC analysis

This section of the survey also focused on the availability and use of standardised procurement documents. This is a specific sub-genre of support document that can be used by contracting authorities to prepare their tender documentation. This category includes standardised contracts, as well as sample contract notices and tender specification criteria, either as complete documents or libraries of clauses, which can be applied as appropriate.

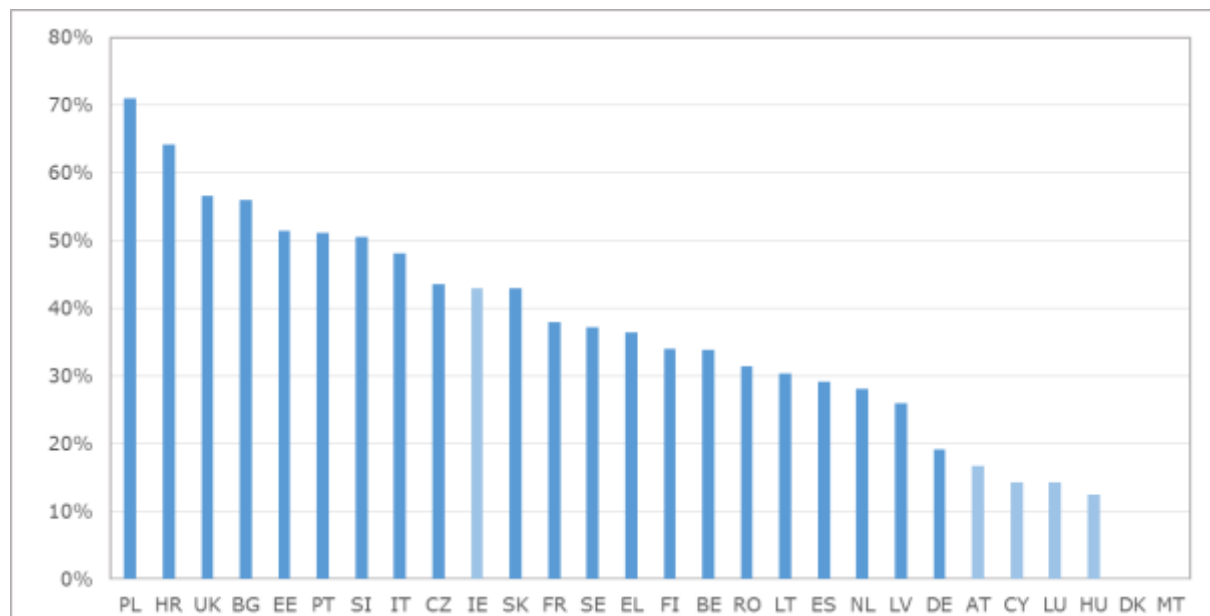
Figure 15: Types of standardised template documents available



Source: PwC analysis

Standardised tender documents are currently not used broadly in the EU, as indicated by the large share of respondents who reported that none of these kinds of materials were available in their MS, notably in Poland (71%) and Croatia (64%).

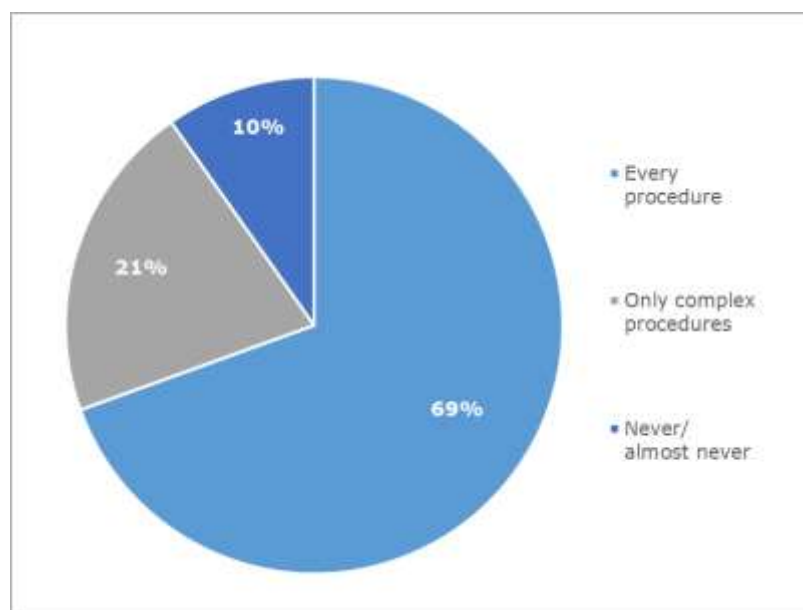
Figure 16: Responding no template documents available by Member State



Source: PwC analysis

Respondents overwhelmingly indicated that when these tools were available, they were used. Nearly 70% of those who said that at least one of the above listed standardised template document was available also reported to have used them in every single procedure they prepared. This is the most broadly supported message resulting from this survey: if administrations make template procurement documents available, contracting authorities will use them.

Figure 17: Use of standardised template documents

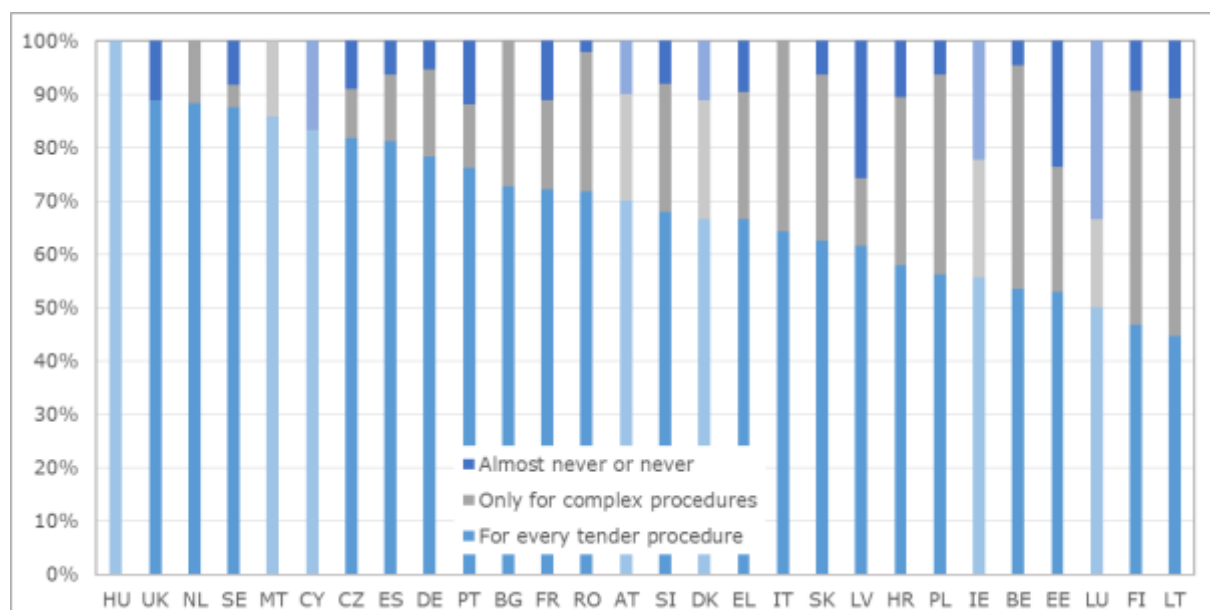


Source: PwC analysis

At the MS level, it is clear that the countries that use standardised template documents most frequently were those with well-developed libraries of such documents, including the UK, the Netherlands, and Sweden. MS where fewer respondents said they used such tools for every procedure tended to come from MS

with well-developed procurement systems, but without extensive template document libraries, including Lithuania, Finland and Estonia (see Figure 18).

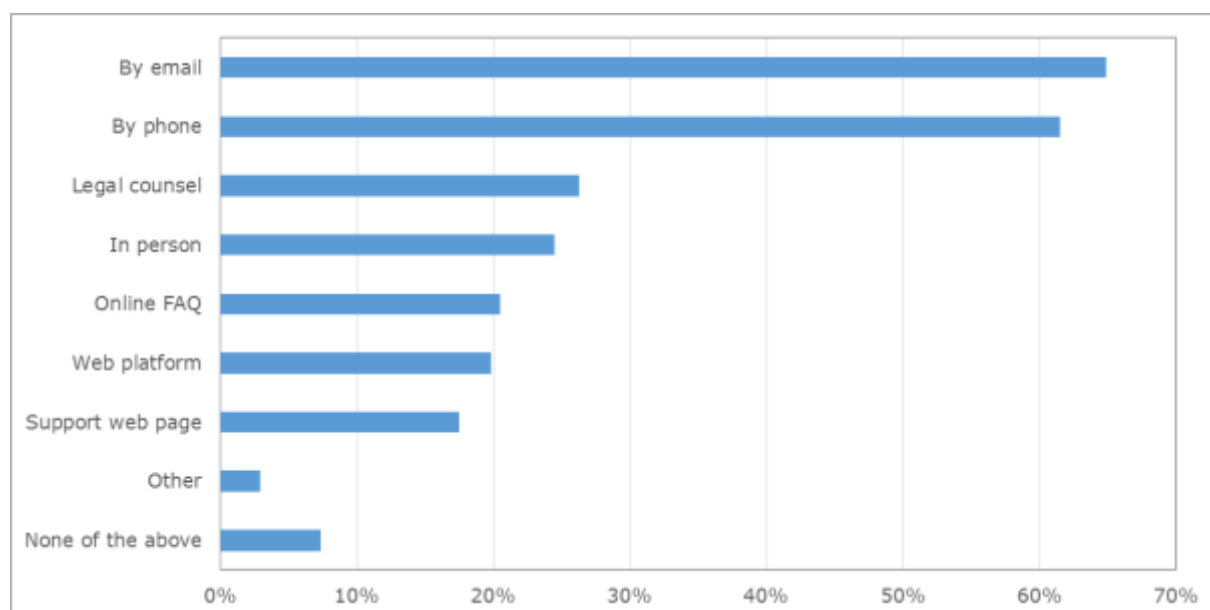
Figure 18: Use of template documents by Member State



Source: PwC analysis

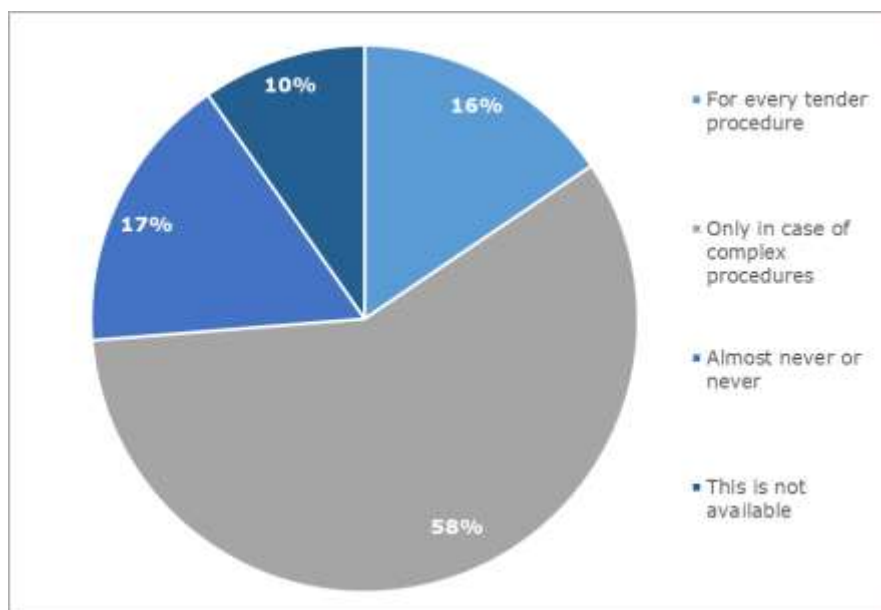
Finally, this section of the survey inquired after respondents' experiences using ad hoc support, such as telephone hotlines or e-mail services dedicated to procurement issues. The results indicate that this kind of quick, personalised support is widely available in the EU. Just under two-thirds of respondents reported having access to an ad hoc support via e-mail or by phone, and less than one in ten said there was no ad hoc support available at all.

Figure 19: Availability of ad hoc support



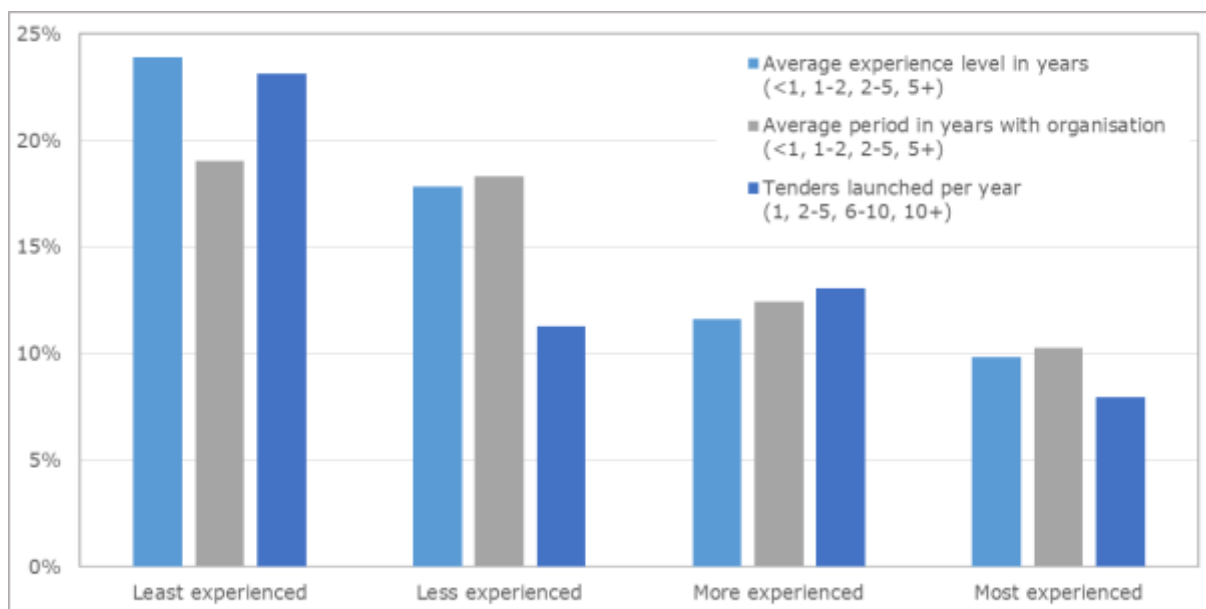
Source: PwC analysis

Here as well, respondents sent a clear message that when ad hoc services are available, they will be used. But contrary to the template documents discussed above, ad hoc support services tended to be used primarily for complex procedures.

Figure 20: Use of ad hoc support channels

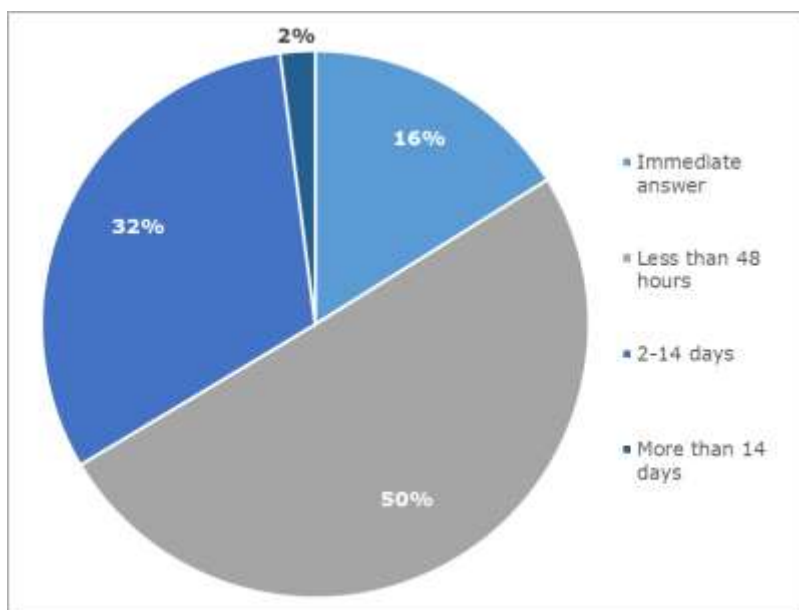
Source: PwC analysis

Furthermore, when use of ad hoc support channels is examined against the characteristics of the contracting authority, a clear pattern emerges. In terms of average experience level and average duration with the organisation for procurement staff, and in terms of the average number of tender procedures conducted annually, less experienced practitioners are more likely to respond that they use ad hoc support channels for every procedure. On the other hand, more experienced colleagues are more likely to make use of an ad hoc support only for complex procedures.

Figure 21: Use of ad hoc support channels by experience level

Source: PwC analysis

Finally, in order to gauge the effectiveness of existing ad hoc support channels, the survey inquired as to the average delay between submission of a request for support and the resolution of that request. Two thirds of the respondents said they received a response within 48 hours, with just two percent saying they had to wait more than two weeks.

Figure 22: Average response time for ad hoc support channels

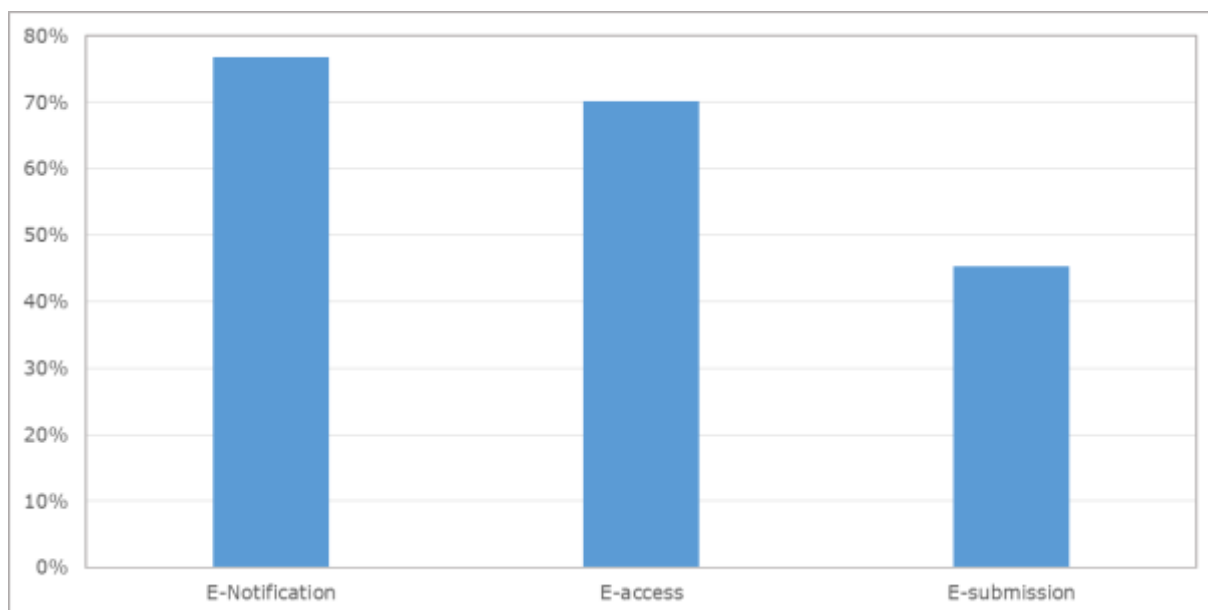
Source: PwC analysis

3.4. E-procurement

The fourth section of the survey examines the use of e-procurement in the EU. For the purposes of this study, e-procurement is defined as the digitisation of the pre-award phases of the procurement process, and thus consists of e-notification of contract notices, e-access to tender documents, and e-submission of offers.

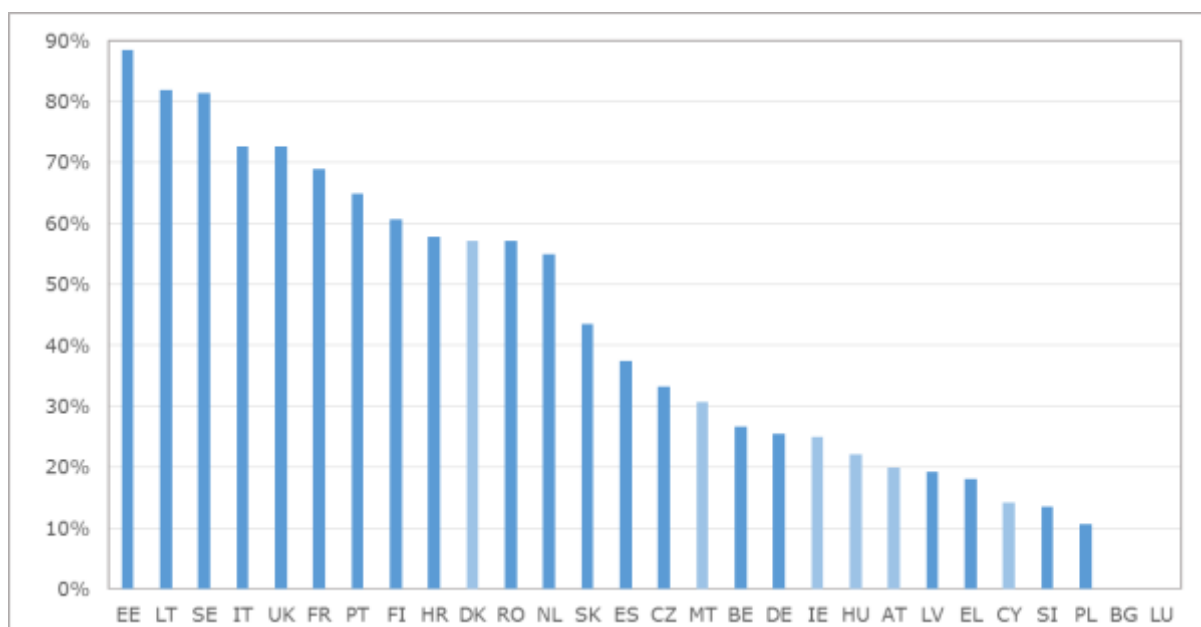
Implementation of e-notification is by far the most advanced of the three, with fully three-quarters of respondents reporting that they publish their contract notices online. This question does not differentiate between those who publish all notices online, and those who only publish some. Publication requirements differ between MS.

The share of respondents who reported giving potential bidders e-access to tender documents is nearly as high. Here as well, the survey did not differentiate between those who do so for all contracts or just for some.

Figure 23: Use of e-procurement

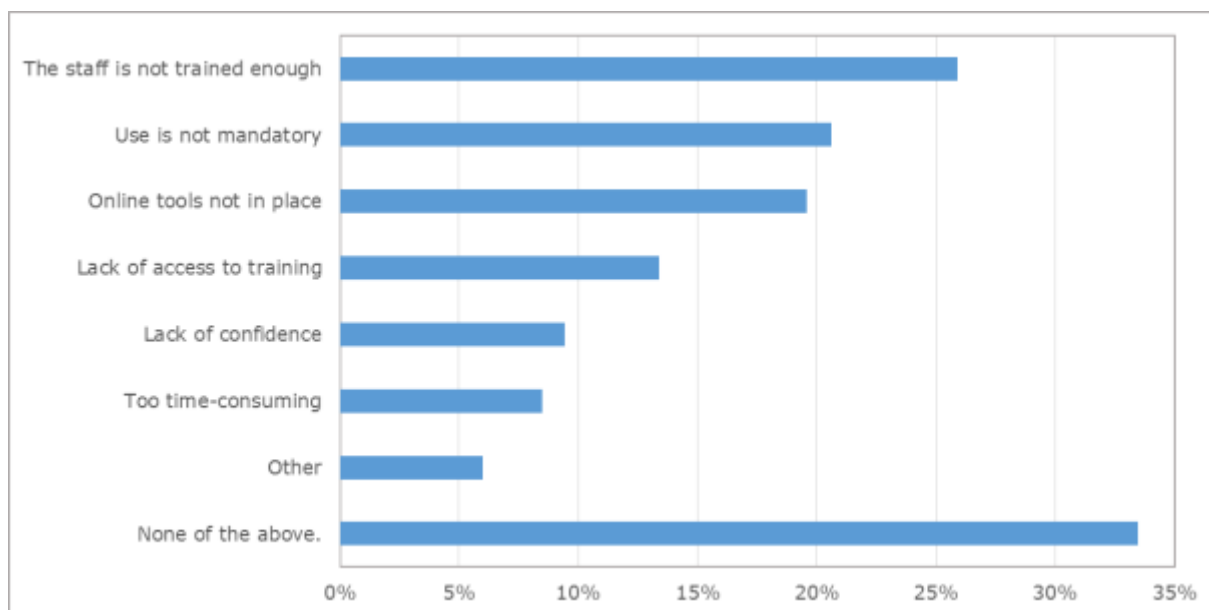
Source: PwC analysis

In contrast, the use of e-submission, which is both the most technically complex of the three to implement and the one which adds the greatest potential value, remains below 50%. Within this number, there was substantial variation among MS, with Estonia (89%), Italy (73%), Lithuania (82%), Sweden (81%) and the United Kingdom (73%) posting uptake rates above 70% and Bulgaria (0%), Poland (11%) and Slovenia (14%) less than 15%.

Figure 24: Use of e-submission by Member State

Source: PwC analysis

When asked about the barriers limiting their use of e-procurement, three primary issues were cited by respondents: lack of trained staff, lack of e-procurement tools, and the fact that use is not mandatory. Insufficiently trained staff was particularly problematic in Greece (48%) and Italy (45%). Not having sufficient tools in place was a driving factor in Bulgaria (39%) and Slovenia (38%). Finally, the fact that the use of e-procurement was not mandatory was cited most frequently by respondents from Latvia (37%), Poland (36%), and Spain (50%).

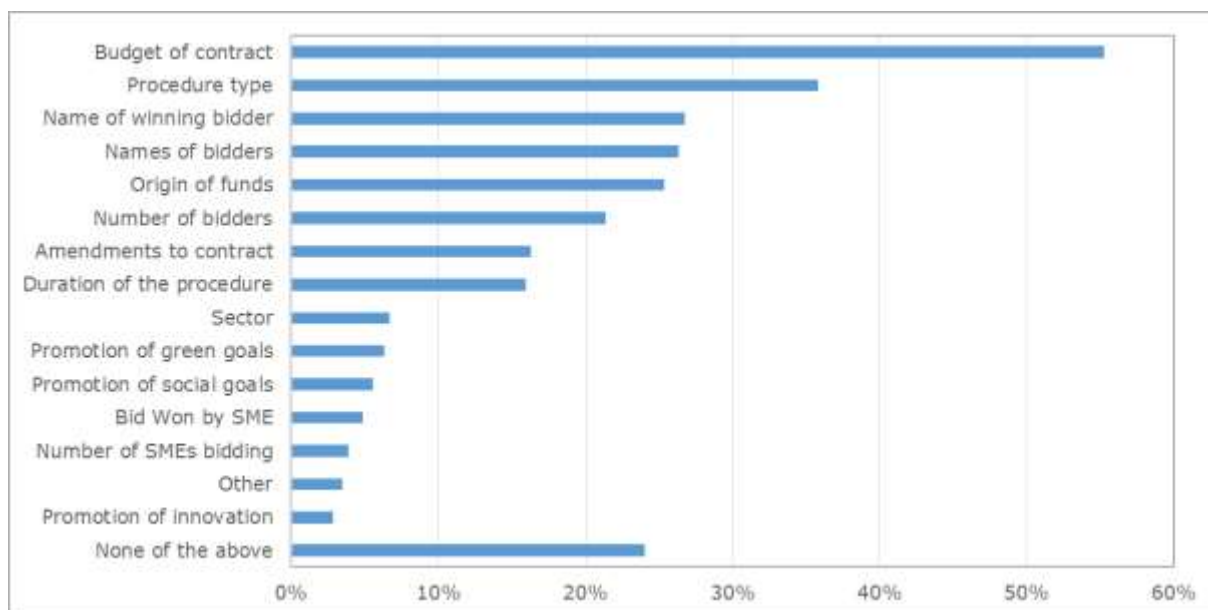
Figure 25: Barriers to the use of e-procurement

Source: PwC analysis

3.5. Data collection and monitoring

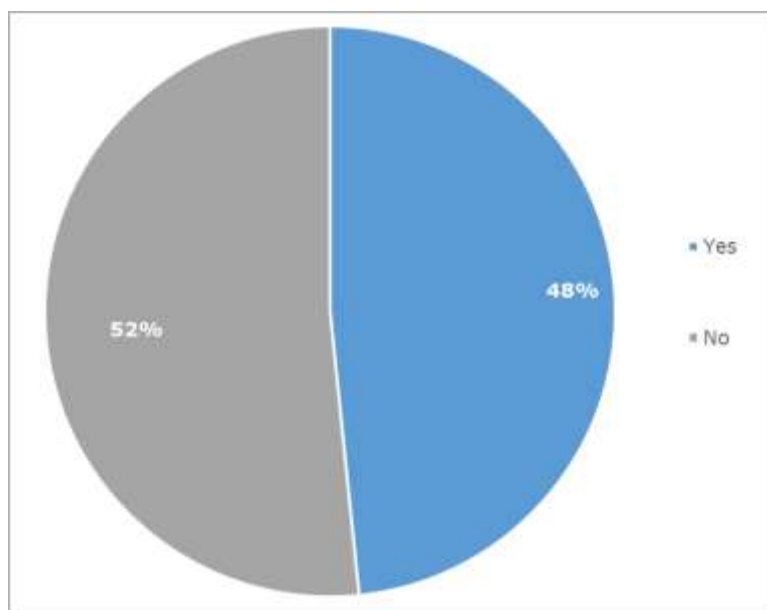
The fifth topic covered by the survey is the collection and publication of procurement data for use in both increasing transparency, and in combatting corruption. When asked about the kinds of data collected and tracked, respondents indicated that only the most basic information was collected regularly, such as the budget of the contract and type of procedure used to procure.

Other kinds of information that could be of substantial value in informing the policy making process, reducing irregularities and combatting corruption, were not recorded or monitored, including the promotion of strategic policy goals, duration of the procurement procedure, the number of bidders per contract, or information on post award amendments to the contract. In addition, fully one quarter of respondents reported not tracking any data at all, particularly in Belgium (40%), and Sweden (40%).

Figure 26: Types of procurement data collected

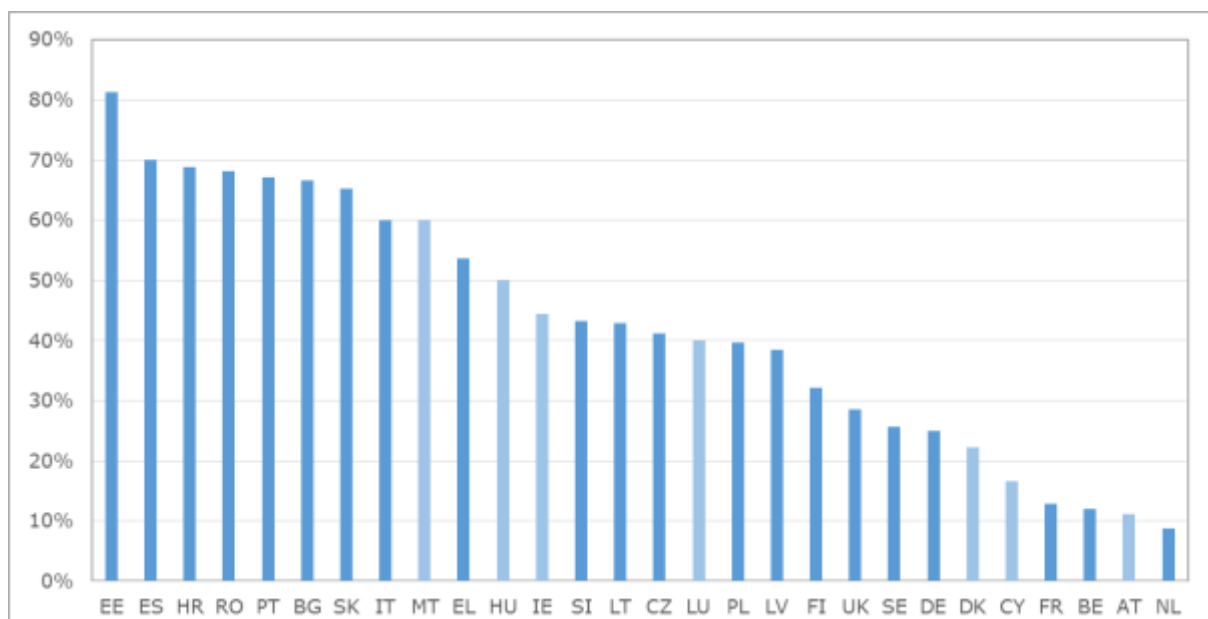
Source: PwC analysis

On average, there is a split between those who make the data they collect available to the public, with a small majority (57%) responding that they do not.

Figure 27: Publication of procurement data

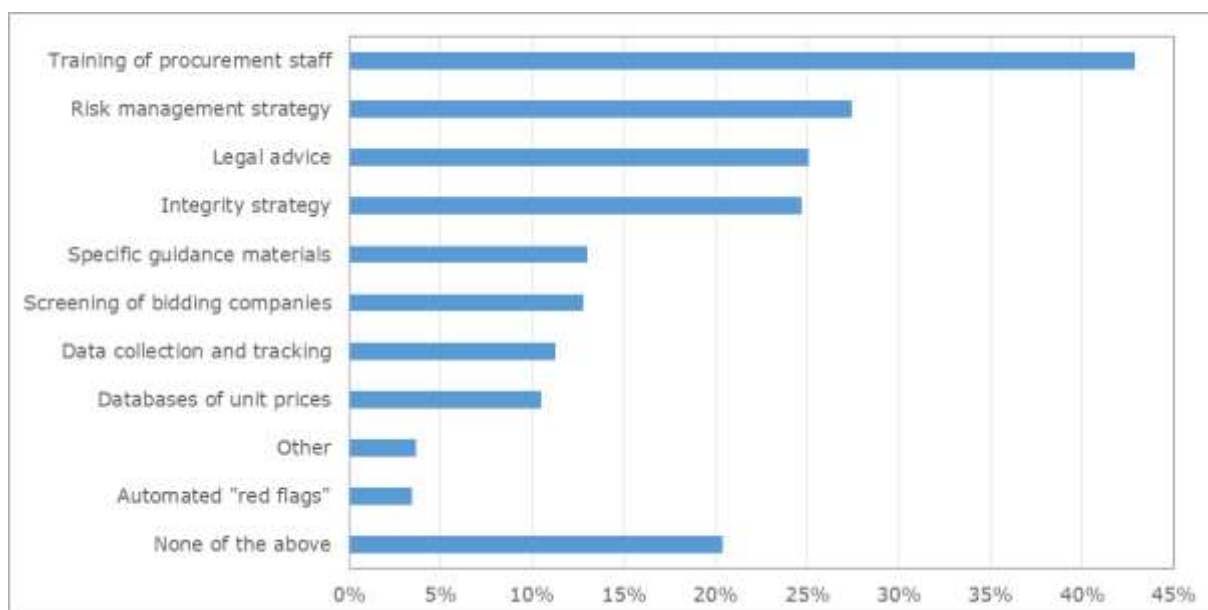
Source: PwC analysis

At the MS level, in the Netherlands (9%), Belgium (12%), and France (13%) responding contracting authorities are least likely to provide access to procurement data collected, with only around 10% of respondents saying they made the information they collected available to the public. On the other end of the spectrum, only Estonia (81%) was strongly committed to openness by disclosing a vast majority of procurement data to the public (see Figure 28).

Figure 28: Making procurement data available to the public by Member State

Source: PwC analysis

Finally, the survey looked at the specific anti-corruption policies in place in the EU, asking what kinds of policies, systems and tools were in place in the respondent's organisations to address the risk of fraud and corruption. Training of individual staff members was by far the most frequently cited policy, and this was reported in less than half of all organisations. None of the specific tools and strategies are used by more than a quarter of organisations surveyed, and the use of data-driven tools, such as risk evaluation tools, is rarer still. However, the vast majority of respondents do make use of at least one of the tools listed, as just one in five said they had no anti-corruption policies in place at all.

Figure 29: Anti-corruption policies

Source: PwC analysis

3.6. Views and needs of practitioners

The last section of the main survey asked respondents for their views on the difficulties they face as procurement practitioners. Respondents were asked to choose the three most relevant responses.

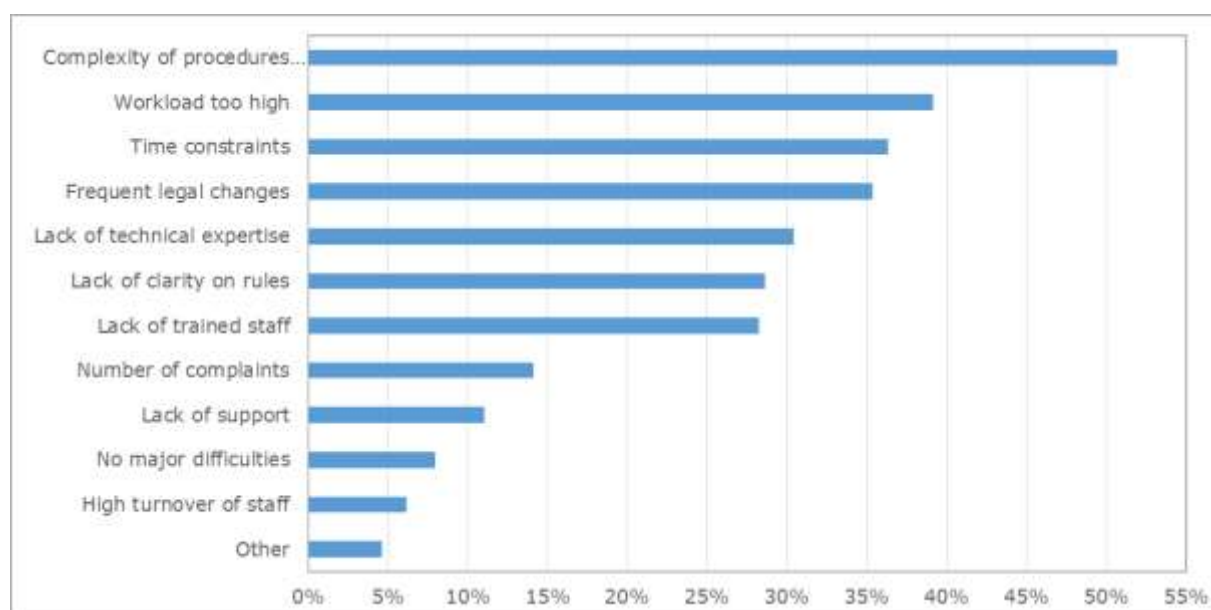
The most common answer, cited by a bare majority of all respondents was the complexity of the rules and regulations covering procurement procedures. This was particularly common for the Czech Republic (62%), Greece (65%), and the United Kingdom (61%). Notably, this issue was least pressing for Bulgarian respondents, with just 23% citing it as one of the top three barriers they face. In contrast, Bulgaria was the highest among those who said that frequent changes to the law was a challenge (60%), followed by Lithuania (59%), Romania (58%) and Greece (58%).

In terms of human resources, 39% of respondents said that the workload was too high for existing staff, 36% said that time constraints were a major factor, and 28% of respondents said that they lack specialised or highly trained staff members needed to fulfil their procurement duties. These three issues are closely related, and could be summarised as a lack of sufficient human resources. Only Denmark and the Netherlands appear to view these three issues as not particularly limiting. Consistent with the self-reporting presented above, it appears that staff turnover is not a major concern for most respondents, with the exception of Bulgaria, where nearly one quarter of respondents cited staff turnover as a major issue.

Roughly one third of respondents did say they lacked the technical expertise needed to prepare tender documents and conduct evaluations. This is an issue that is typically addressed by hiring outside experts, but can be difficult given budget constraints.

The last major issue cited was a lack of clarity on the implementation rules, which can be interpreted as a need for better guidance materials and support. This was cited by just over one quarter of respondents over all, but more at least half of respondents from Poland (55%) and Romania (50%).

Figure 30: Main difficulties encountered by procurement practitioners

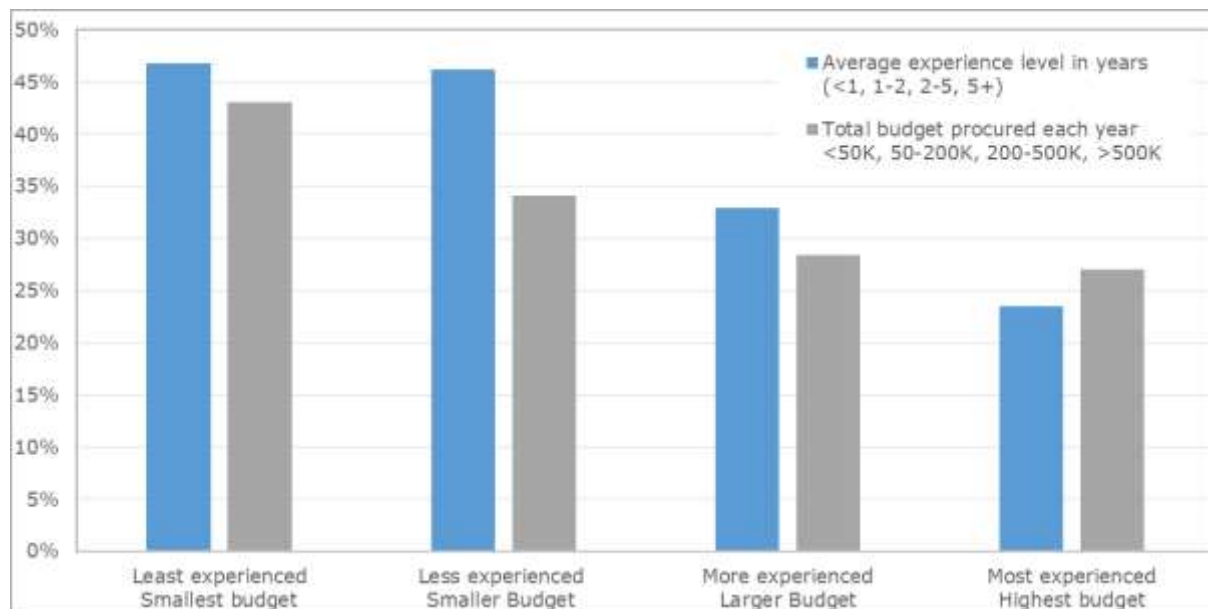


Source: PwC analysis

One field in which responses varied by the type of organisation was in the number of respondents who cited a lack of sufficiently trained staff as one of their main difficulties. This issue was cited by just under half of all respondents whose

organisations had an average experience level of two years or less, or an annual procurement budget of below EUR 50 million. Those rates are half as high for organisations whose annual budgets exceed EUR 200 million, or whose average experience level is greater than five years. As a result, it emerges that lack of trained staff is particular acute for organisation with lower average levels of experience and lower procurement budgets.

Figure 31: Lack of trained staff by average experience level and annual procurement budget



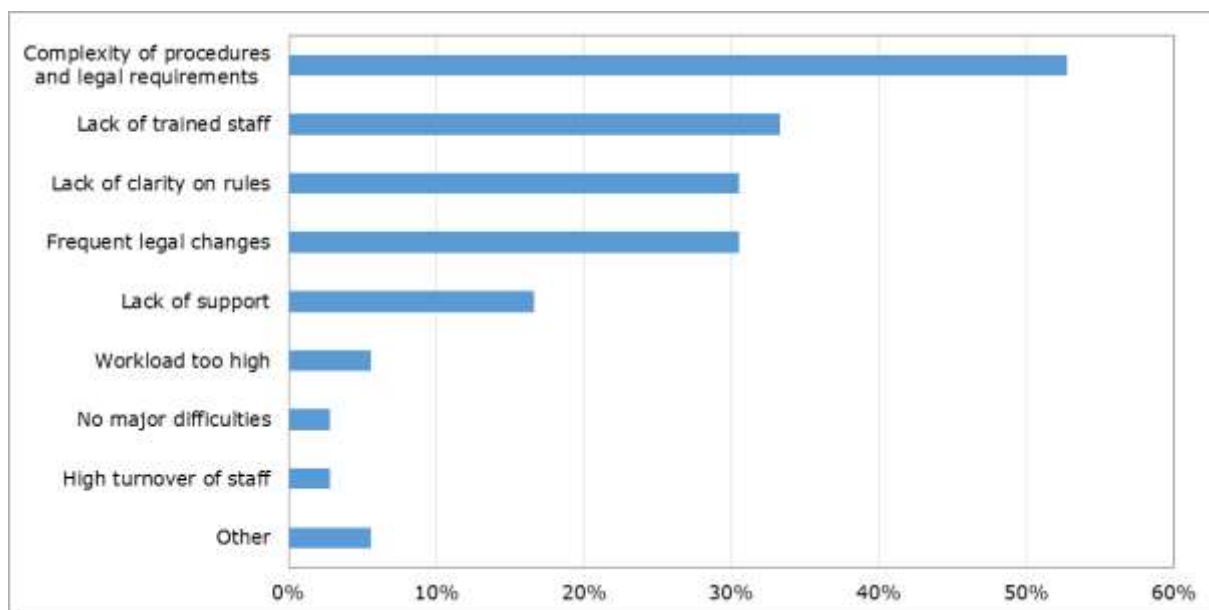
Source: PwC analysis

3.7. Audit Authorities

Respondents who identify themselves as working at an AA completed a shorter version of the survey to be better tailored to the respondents, such as excluding non-audit issues such as the use of e-procurement.

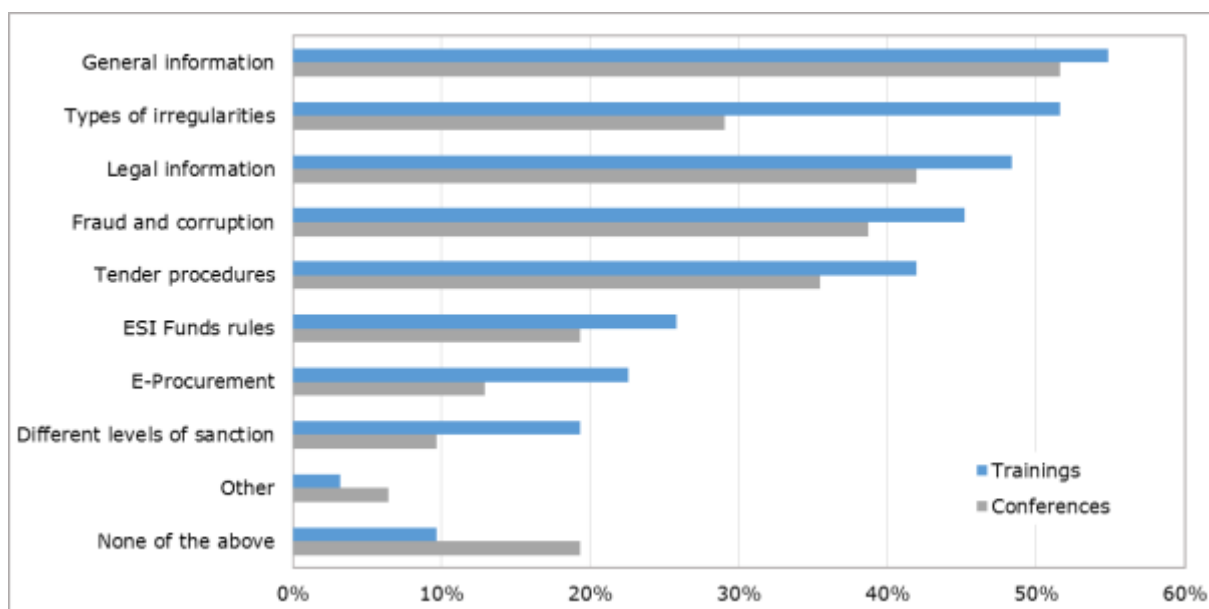
As with the contracting authorities who responded to the main survey, AAs overwhelmingly indicated that the high degree of legal and regulatory complexity involved in the procurement system was their main challenge. Here as well, the related issues of frequent changes to the laws and regulations, and the lack of clarity on how to implement these rules also rank high in the list of difficulties with public procurement.

Respondents to the AA survey also cited the lack of trained staff as an issue, but in contrast to contracting authorities, did not emphasise the burden of their workload relative to staff levels. High staff turnover was not a major issue either.

Figure 32: Main difficulties encountered by Audit Authorities

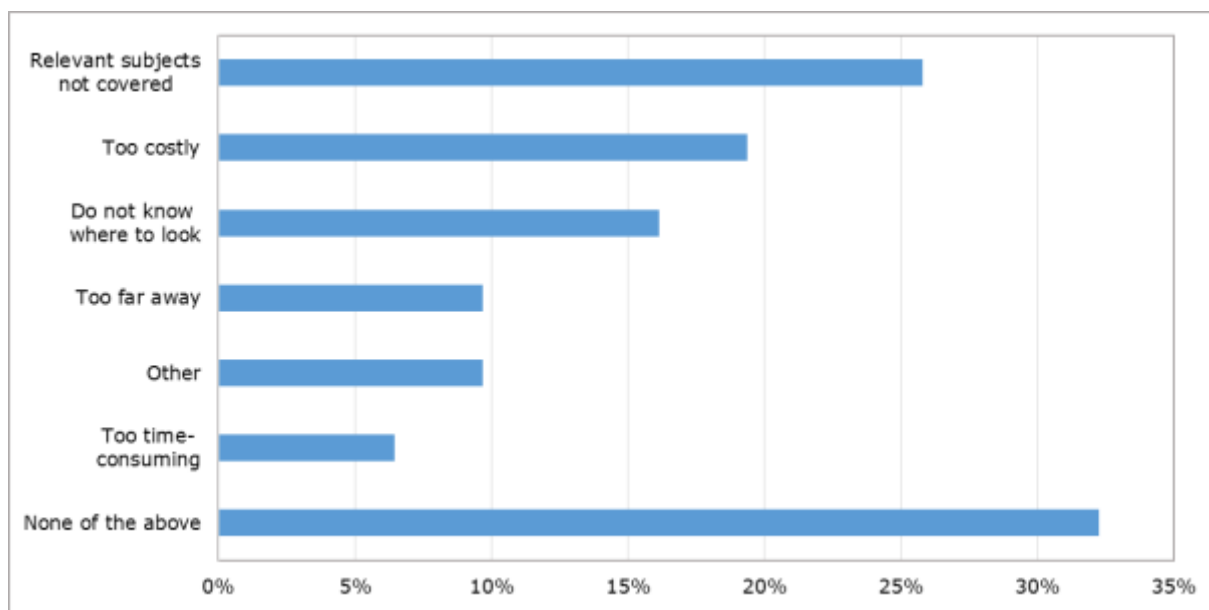
Source: PwC analysis

In terms of participation in skill-building events, overall participation rates were substantially higher than among contracting authorities, and on a wider range of issues. In particular, consistent with the specificities of the role of an auditor, AAs reported participating in trainings and conferences on irregularities, preventing fraud and corruption, and ESI funds-specific rules at much higher rates than contracting authorities did.

Figure 33: Skill building events attended by Audit Authorities

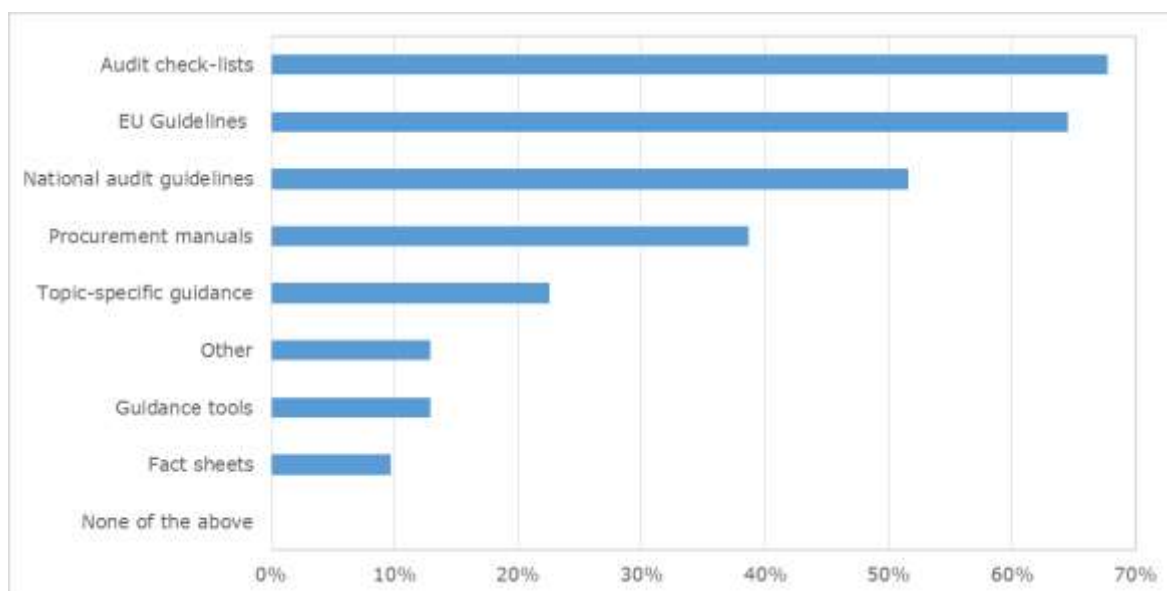
Source: PwC analysis

In terms of barriers faced, respondents to the AA survey were far less likely to say that they faced any barriers in accessing training at all. Among those that did face barriers, cost in particular was far less important for AAs than for contracting authorities.

Figure 34: Difficulties faced by Audit Authorities in accessing training

Source: PwC analysis

When asked about the kinds of guidance materials available to them, roughly two thirds of respondents to the AA survey reported having access to standardised checklists and detailed information on ESI funds management and controls. AAs also reported having access to national level audit guidelines, and to a lesser extent, to procurement procedure manuals. Not a single respondent claimed not to have access to any relevant guidance materials.

Figure 35: Guidance materials available to Audit Authorities

Source: PwC analysis

4. COUNTRY PROFILES

4.1. Key facts and figures

The individual country profiles, included in annex, begin with a brief summary of some of the most salient facts and figures in each MS. A sample table, from the Czech Republic profile, is included below. This section gives an overview of the information provided and sources used.

Table 2: Example “Key Facts and Figures” table

Key Facts and Figures in Czech Republic						
Overview	Total procurement 21,480,000,000€		Procurement % GDP 14%		2013 GDP 156,932,600,000€	Contracting authorities 1,989
Procedures applied	Open 72%	Restricted 3%	Negotiated procedure with call 5% no call 18%		Competitive dialogue 0%	Direct award 3% Other 0%
Share of contract notices by buyer	National 25%		Regional/local 25%		Body governed by public law 24%	Other 26%
Contract type	Services 33%		Works 17%		Supplies 50%	Framework agreement 8%
Ex ante conditionality criteria as of 2014	EU rules Partially met		Transparency Fully met		Training Fully met	Admin. capacity Partially met
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Partially mandatory	Uptake rate 0%
Perceived corruption	Corruption widespread in society			Corruption widespread in procurement		
	Businesses 94%		Individuals 96%		At national level 77%	At local/regional level 67%
TED indicators	Value of tenders 6,083,478,093€		Of total procurement 28%		# contract notices 5,376	# contract awards 5,951
Other indicators	Received single bid 19%		# days for decision 104.2		Price only criteria 82%	MEAT criteria 18%
	Won by foreign firms 5%		Related to EU funds 42%		Joint purchase 5%	Central purchasing No

The first row gives an overview of the country specific public procurement indicators. It starts with an estimate of total general government public procurement expenditure on supplies, services, and works in 2013 as calculated by DG GROW based on Eurostat data. For comparison sake, the top row also includes that same estimate of total procurement as a share of GDP, and the 2013 national GDP in Euros used to calculate it, also from Eurostat. The last indicator of this line provides an estimate of the total number of contracting authorities in the MS, which are taken from the EC’s 2013 Annual Public Procurement Review.

The second row gives the share of tenders posted to TED by the procedure used. In this case, the other category includes accelerated restricted and accelerated negotiated procedures. All figures here are taken from DG GROW’s TED Structured dataset from 2014.

The third row gives the percentage of tenders posted to the TED database by the type of buyer, including national/central government, regional and local governments, bodies governed by public law, and other, which in this case includes utilities. The following row shows the proportion of tenders for each of the three main categories of tenders, i.e. supplies, services and works. As a further indicator of how purchasing is done, the last box of this row presents the share of contracts awarded via framework agreements. Again, the figures of the third row are taken from the TED Structured dataset from 2014.

The fifth row gives each MS's self-assessment of their fulfilment of the four conditions of the procurement *ex ante* conditionality for the 2014-2020 programming period. The four specific criteria are: arrangements that ensure the effective application of EU public procurement rules; transparent contract award procedures; training for staff involved in the implementation of the ESI Funds; and administrative capacity for implementation and application of EU public procurement rules. The table below provides an overview of those MS that did not fulfil one or more of the criteria at the time of the signature of their 2014-2020 programming period Partnership Agreement (PA) with the EC in 2014. The information provided here is excerpted from the individual PAs.

Since approval of their Partnership Agreement in 2014, three of the below-mentioned MS have completed their Action Plans, and thus have now met all four of the procurement ex-ante conditionality criteria: Malta, Poland and Slovenia.

Table 3: Fulfilment of the public procurement ex-ante conditionality criteria at the time of signature of 2014-2020 Partnership Agreements

MS	1. Application of EU rules	2. Transparent procedures	3. Training in ESI Funds	4. Admin. capacity
BG	Not met	Fully met	Not met	Not met
CZ	Partially met	Fully met	Fully met	Partially met
EL	Not met	Not met	Fully met	Not met
HR	Fully met	Fully met	Not met	Not met
HU	Not met	Not met	Not met	Not met
IT	Partially met	Partially met	Partially met	Partially met
LV	Not met	Fully met	Fully met	Fully met
MT	Fully met	Fully met	Fully met	Not met*
PL	Not met*	Fully met	Fully met	Fully met
RO	Not met	Not met	Not met	Not met
SI	Not met*	Fully met	Fully met	Not met*
SK	Not met	Not met	Not met	Not met

**This ex ante conditionality criterion has subsequently been met*

The sixth row provides an overview of the development of e-procurement. It lists whether the three primary pre-award dimensions are currently mandatory, partially mandatory, or voluntary, and gives the share of total contracts that used e-submission in 2011 as the uptake rate. All data referred to here come from the 2015 DG GROW E-Procurement Uptake Study¹⁷.

The seventh row examines the level of perceived corruption in each MS according to Eurobarometer surveys responses for both the country as a whole, and in procurement in particular. These two categories are further divided into two sub categories. For views on procurement throughout the country, the table presents the responses of both businesses and individuals. The second category presents the views of businesses of corruption public procurement managed by national authorities, and procurement managed by regional and local authorities. The three indicators presenting the business perspective come from Flash Eurobarometer Survey 374 "Businesses' attitudes towards corruption in the EU", carried out in.¹⁸ Figure 36 below provides an overview of the perceived corruption in public procurement at national

¹⁷ European Commission (2015), DG GROW, E-procurement Uptake, available at:

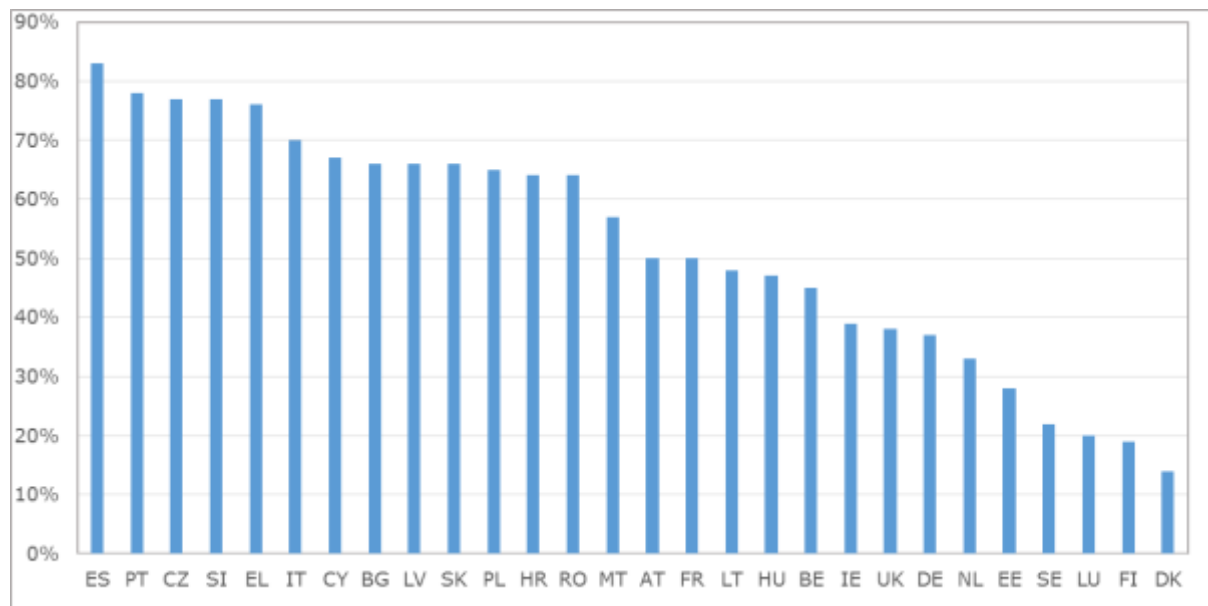
http://ec.europa.eu/growth/single-market/public-procurement/e-procurement/documents/index_en.htm

¹⁸ European Commission, DG HOME-DG COMM (2014), Flash Eurobarometer 374 survey, Businesses' attitudes towards corruption in the EU, available at:

http://ec.europa.eu/public_opinion/archives/eb_special_379_360_en.htm#374

level for the 28 MS. Individual response are taken from Special Eurobarometer 397 "Corruption" from 2014.¹⁹

Figure 36: Level of perceived corruption in public procurement at national level



Source: Flash Eurobarometer 374 survey, PwC analysis

The following row gives an overview of the share of total estimated procurement expenditure that is published on TED. The first box is an estimate of the total value of contract notices excluding utilities posted to TED in 2013, the most recent year available. The second display this figure as a share of the estimate of total procurement from the first row, which also excludes utilities. The following two boxes contain the number of contract notices and contract award notices posted to TED in 2014.

The two last rows provides with diagnostic information on procurement in the MS. The first box in row nine gives the average duration between the deadline for submission of offers and the announcement of the award decision. This is an indicator of overall efficiency. In fact, excessively long procedures are often a signal for inefficiency and high administrative burden. On the other hand, very substantially short procedures may indicate inaccuracy in execution, as proper implementation of procurement procedures is time-consuming. The second box displays the share of awarded contracts that received only a single bid, an indicator of competition in public markets. The third and fourth boxes show the share of tenders awarded using lowest price as the only award criteria, and the share using MEAT criteria.

In the last row, the first box shows the share of tenders awarded to foreign companies, an indicators of the openness of the procurement system to the European single market. The second box shows the share of tenders related to EU funds. The third box shows the share of tenders awarded on behalf of other contracting authorities, which is an indicator of joint or central purchasing. The very last box gives reference if whether or not the country has a central purchasing body at the national level and if so, gives its name. Once again, all figures from the last two rows are taken from DG GROW's TED Structured dataset from 2014.

¹⁹ European Commission, DG HOME-DG COMM (2014), Flash Eurobarometer Survey 397, "Corruption," available at: http://ec.europa.eu/public_opinion/archives/eb_special_399_380_en.htm#397

4.2. Country profiles

This chapter contains the country profiles, which present per MS the overview of its public procurement system. The objective of the country profiles is to provide a snapshot of actual public procurement systems in a way that is comprehensive and easily comparable across all 28 MS.

Each country profile presents a summary of the key public procurement facts and figures, a description of main features and of the outlook for each public procurement system as well as an analysis highlighting the main strengths and weaknesses.

The presented information was acquired through desk research and has been completed thanks to interviews with relevant stakeholders in 15 MS.

The 28 country profiles are presented as follows in appendix of the present report:

Table 4: Order of presentation of the country profiles

List of countries	Data collection		
	Desk research	Interviews	Survey
Austria	✓		✓
Belgium	✓		✓
Bulgaria	✓	✓	✓
Croatia	✓	✓	✓
Cyprus	✓		✓
Czech Republic	✓	✓	✓
Denmark	✓		✓
Estonia	✓		✓
Finland	✓		✓
France	✓	✓	✓
Germany	✓	✓	✓
Greece	✓	✓	✓
Hungary	✓	✓	✓
Ireland	✓		✓
Italy	✓	✓	✓
Latvia	✓	✓	✓
Lithuania	✓		✓
Luxembourg	✓		✓
Malta	✓		✓
Netherlands	✓		✓
Poland	✓	✓	✓
Portugal	✓	✓	✓
Romania	✓	✓	✓
Slovakia	✓	✓	✓
Slovenia	✓	✓	✓
Spain	✓	✓	✓
Sweden	✓		✓
United Kingdom	✓		✓

5. CASE STUDIES

In addition to the case studies, which aim to provide a snapshot in time of the current state of procurement in each of the MS, the study also focuses on the process of implementing procurement reform in greater depth for just a few MS from a historical approach. The goal of the case studies is to describe:

- The context and the rationale in which the reform was launched;
- The main features of the reforms;
- How the reform was implemented;
- The good practices and lessons learnt that can be useful for other MS.

To this end, the two following countries were chosen:

- Portugal, which in 2008 implemented a fundamental overhaul of its procurement system focused on modernisation and transparency;
- The Czech Republic, which in 2012 implemented a package of anti-corruption related reforms, some of which faced challenges in implementation and were ultimately repealed.

5.1. Portugal

INTRODUCTION

In 2008, the Portuguese government implemented a comprehensive overhaul of the national procurement system that modernised and streamlined procedures, implemented e-procurement, and transposed the 2004 EU procurement directives. The reform is broadly considered to be a substantial success, and has made Portugal a model for other MS considering reform, particularly in the adoption of e-procurement.

The Portuguese reform process was not triggered by any single event, but rather by the convergence of several strands. First was pressure for simplification from contracting authorities, who felt overburdened by an ever-increasing number of laws, regulations and judicial rulings. At the same time, the number of Portuguese contracting authorities that were subject to national procurement rules had expanded dramatically in the preceding years, increasing the number of public administrations affected by the burden.

Second, Portuguese oversight bodies, including the Court of Accounts and the Public Audit Authority had concluded that the State needed to review its procurement procedures. Specifically, there were calls for a number of reforms related to the procurement of public works, in particular by imposing tighter limitations on the use of additional works clauses to increase the value of specific contracts. In addition, the EC audit authority emphasised similar conclusions, which ultimately prompted the reform of the public procurement system.

Third, there was growing pressure from economic operators to reduce administrative burdens, increase transparency and strengthen appeal rights. Those who participated in the tendering process were increasingly saying that the cost of bidding, and the lack of clarity and confidence in a fair outcome were unacceptable. Furthermore, economic operators complained that current laws were an impediment to implementing modern, electronic data transfer technology.

Fourth, there was an interest among the broader public to see the State take a stronger stance regarding corruption, particularly in the procurement system. There was a growing awareness that the complex, bureaucratic nature of the system created waste and opportunities for abuse that could be eliminated through streamlining reform. This led the government to introduce in 2006 the "Simplex" program,

designed to identify specific laws, regulations, and procedures that could be simplified without violence to their underlying purpose.

Finally, there was the obligation to transpose the 2004 EU procurement Directives, and to update the 2003 National Plan for E-Procurement, goals to which the government had committed itself.

The convergence of these pressures led to the conclusion that it would be better to attempt a single, comprehensive reform process than such a large number of individual changes. This set in motion the process that culminated, but did not end, with the adoption of Decree Law No. 18/2008, approving the Portuguese Public Contracts Code (PCC).

A COLLABORATIVE PROCESS

The reform process began as far back as 2002, with a small group of policy experts and academics examining the issues and publishing a number of white papers on issues in Portuguese public procurement. These papers helped set the agenda for the more formal institutions that would ultimately drive the policymaking process.

The first official step in the reform process was the establishment, in 2005, of the Institute for Construction and Real Estate (InCI) within the Ministry of Public Works, Transport and Communications. Staff from this newly created body were charged with managing the legislative work, as well as the coordination among the various stakeholders, including the Ministries of Economy, Finance, Environment, and Justice, as well as with the private sector and the general public.

A dedicated management team was appointed to spearhead the process. The team mainly consisted of the InCI and the ANCP, but also of a small number of established subject matter specialists in fields including public procurement management and administration, public finance, and Portuguese and European law.

Throughout the 2005-2008 policymaking process, the management team was guided by a handful of basic principles:

Modernise

- The adoption of new and innovative e-procurement solutions was both a goal in and of itself, as well as a means to achieve other goals including making the process more transparent and efficient;
- Promote new procedural tools, such as framework agreements, simplified direct award, electronic auctions, dynamic purchasing systems, electronic catalogues, and competitive dialogue;
- Aggregate demand for standardised contracts via central purchase bodies.

Simplify

- Eliminate all unnecessary bureaucracy to reduce administrative burden on contracting authorities and economic operators;
- Promote the harmonisation of procedures and rules, in particular with regard to the execution of contracts.

Promote competition and fairness

- Increase attractiveness in participating in public markets;
- Facilitate cross-border tendering;
- Increase transparency in both procedures and outcomes;
- Defend the interests of economic operators directly involved in the procedures; avoiding unnecessary judiciary intervention;
- Protect intellectual property while respecting the need for transparency.

Manage the change

- Guarantee the basic continuity of the existing legal framework in order to provide legal certainty and confidence;
- Promote an open and participative policymaking process;
- Provide timely and comprehensive guidance materials and trainings to allow contracting authorities and economic operators to successfully navigate the new system.

Do not forget the essentials

- Enhance value for money through expenditure control and efficiency enhancement;
- Public procurement is a tool to promote sustainability and economic growth;
- Keep in mind the spirit and the letter of the 2004 EU Directives.

In addition to the specific stakeholders mentioned above, the management team solicited input and opinions from the Portuguese autonomous regions Azores and Madeira, the Portuguese National Municipal Association, the Professional Association for Architects, the Professional Association for Lawyers, the Professional Association for Engineers, the Competition Authority, associations representing the public works sector and other invited specialists. These organisations contributed to the process by providing recommendations based on the experience and perspectives of their constituents, and by organising public conferences and debates to foster broader participation in the process.

Following passage of the PCC, many of these institutions also contributed to awareness raising and training initiatives to support the successful implementation of the law they helped craft. The management team was responsible for creating guidance materials, such as flow charts, presentations and FAQs.

THE 2008 PUBLIC CONTRACTS CODE

The result of this three year national dialogue was the 2008 PCC, which fundamentally remade the Portuguese procurement system. The law's primary provisions include:

Transposition of the 2004 EU procurement directives

- The PCC transposed EU Directives 17/2004/EC and 18/2004/EC.

Adoption of e-procurement

- Made the use of electronic means mandatory for all public contracts, and phased in a requirement to publish, accept tenders, and make awards via electronic platforms;
- Implemented mandatory e-notification, e-access, e-submission and e-award;
- Introduced e-signature and e-registration with digital signature;
- Established a system of privately operated, publically certified platforms, all linked through the centralised BASE Portal.

Procedural simplification

- Harmonised procedures across agencies and types of contracts;
- Eliminated inefficient and unnecessary provisions, such as the Open Public Act requirement that submitted tenders be opened at a public meeting of competitors, a process that could last for hours or even days;
- Replaced the submission of habilitation documentation with a declaration of honour so only the winning bidder has to provide documentary evidence of qualification. If the winner cannot substantiate the qualifications included in the declaration of

honour, they are subject to sanction for false statements and the contract is awarded to the next highest scoring bidder.

Transparency

- Clarified the rights and responsibilities of contracting authorities and economic operators in the tendering process and established new, more efficient channels for bidders to assert those rights;
- Made publication of tender evaluation models mandatory;
- Made extensive public contract information available online in an easily searchable database;
- Limited additional works to a maximum of 5% of the total contract value;
- Improved data auditing processes.

Aggregation

- Unified seven existing ministerial-level purchasing bodies into single central purchasing body called ANCP, now eSPap.

The PCC was officially published on January 29th, 2008, but most of its major new provisions did not go into effect until that start of 2009. This eleven month lead time was crucial to the relatively smooth implementation of the new law as it provided ample time for the administration and its partners in the private sector to deploy a comprehensive awareness raising campaign, and to produce and distribute guidance documentation to stakeholders.

The first analyses to appear following the implementation of the PPC were produced by InCI and the ANCP at a synthetic level in 2011, using 2010 data, and in greater detail in 2012. Both studies note the fact that the adoption of near-universal e-procurement procedures provided policy analysts with a wealth of quantitative information on the functioning of the procurement system that was previously unimaginable. This side-effect of the digital transition was seen as a highly valuable tool for policy making and oversight.

The second major take-away from the reviews was that the transition to e-procurement had been almost completely achieved within just two years. E-procurement uptake reached 62% in 2011, 92% for contracts above the EU thresholds.²⁰

However, although the new law was broadly considered a success, it did not solve all of Portugal's procurement issues, and in fact created some new ones. For one thing, as a result of the process of consolidating a range of existing laws and regulations, the PCC was quite lengthy and complex. The new law had a total of 473 articles, as compared to the Spanish code with 309, the French with 295, or the English procurement law which has just 49 articles.

Second, while the procedures laid out in the PCC are considered an improvement, it also contains quite expansive exceptions to their requirements, i.e. for the use of direct award. According to a 2013 report of the Court of Accounts, direct award is used for more than 80% of public contracts, accounting for fully half of all purchases by value.

Finally, the decision to use private, for-profit platforms has its detractors as well. For one thing, their number means that economic operators, and in fact even contracting authorities that wish to use multiple suppliers or change suppliers, are required to

²⁰ InCI report Public Procurement in Portugal, 2011, available at: <http://www.base.gov.pt/Base/pt/Relatorios>

learn multiple interfaces and maintain multiple profiles and accounts in order to access the national procurement system.

In addition, although the law requires that accessing private platforms be free of charge for economic operators, a complex and non-transparent system of credits, user fees and nominally optional services has emerged to allow platform operators to generate revenue from bidders. While in contravention of the law, the practice persists due to the lack of enforcement mechanisms. The only legal requirement for participating in the procurement system is possession of a valid security certification. And so, the unauthorized charges continue virtually unchecked.

A WORK IN PROGRESS

Since 2008, the PCC has been amended eight times for both technical and substantive issues. A substantial number of the changes made were done so in the context of the 2011 “*Memorandum of Understanding on Specific Economic Policy Conditionality*” between the Portuguese State, the International Monetary Fund, the European Central Bank and EC. The amendments address shortcomings in the PCC both as compared with the standards laid out in the procurement Directives, as well as shortcomings in the implementation of national law.

The primary changes include:

- Elimination of all special exemptions, permanent or temporary, permitting the direct award of public contracts below EU Thresholds;
- Tightening restrictions on, and oversight of the award of additional works or services contracts;
- Establishing a legal liability for the managers of contracting authorities for irregularities in procurement procedures, meaning that they are subject to personal financial penalties in the case of violations of the PCC.

Additional, non-legislative changes to the system put in place in 2008 include establishing *ex ante* reviews of tender documentation and a re-vamp of the BASE portal to improve transparency.

Moreover, amendments are expected into be incorporated in to the PCC as part of the transposition of the 2014 Directives. These will target the unauthorised fees charged by platform operators by introducing additional certification requirements, and allowing economic operators to access all calls for tender through a single bidder platform of their choice.

LESSONS LEARNT

In terms of the goals laid down at the outset of the reform process by the InCI reform management team, the Portuguese procurement reform process was a resounding success. The post reform procurement system is more modern, more transparent, more efficient, simpler and less costly to navigate for economic operators and contracting authorities alike, less susceptible to abuse, and produces fewer errors and irregularities than it was before. What’s more, the transition was achieved without major disruption or unforeseen costs, and currently enjoys broad public support.

The secret to Portugal’s success is not in what they did. Of the reforms undertaken, few were revolutionary. Indeed, those changes that were truly unique, such as the reliance on privately run platforms, likely could have been omitted entirely without substantial impact on the outcome.

Instead, the Portuguese reform effort succeeded because of how it was done, that is, because of the deliberate process through which the details of the reform were identified, debated, vetted, and implemented. Below are some of the key lessons learnt through this process.

Take your time

Perhaps the single most important factor in the success of the Portuguese procurement reform process was the amount of time policymakers allowed themselves to get it right. While administration analysis and debate contributing to the reform can be traced back to 2002, even when using the conservative starting point of the establishment of the InCI in 2005 the government allowed itself no less than three years to write the new procurement law.

Furthermore, following debate and enactment by parliament, the new law built in a grace period of eleven months before the main provisions of the law went into effect, and an additional year before some of the more challenging new requirements would be enforced.

The pace of debate and implementation created space for reforms to apply the following, additional good practices.

Bring everyone to the table

One of the reasons the transition to the 2008 law went as smoothly as it did, and required relatively few *post hoc* adjustments to function properly, is that it had already incorporated the perspectives of a wide range of experts and practitioners. The reformers used the time allotted to them to solicit suggestions and feedback that helped to ensure that the final product was more robust than any limited group of individuals could have developed in isolation.

Although the core reform management team included experts from a range of relevant fields, given the broad range of goods, services, industries, regions and stakeholders that participate in the procurement, it would not have been possible to foresee how any given proposal or provision would affect all of them. So instead, the management team worked closely with representatives from central government ministries and independent agencies, regional and municipal governments, and the key industry associations in crafting the law, and organised a series of conferences and public debates to ensure that every perspective had a chance to be heard.

Get the public on board

In addition to building a better law, the inclusive process implemented by the reform team ensured that by the time the final law was signed, it had garnered a broad base of public support from those who were most likely to be impacted by its implementation. Policymakers, administrators, and business groups all had taken some degree of ownership for the content of the law, and thus for its success.

As a result, many of the key stakeholders listed above participated in the awareness-raising and education and training campaigns that followed enactment, thereby contributing to the relatively smooth implementation process.

Instruction manual included

Finally, the time allotted between passage of the law and its entering into force also gave the relevant administrative agencies time to prepare guidance materials, and to conduct an awareness raising campaign. This ensured that, by the time the law went into effect in 2009, the vast majority of affected stakeholders knew what to expect, or if not, where they could turn for answers.

5.2. Czech Republic

INTRODUCTION

In 2010 a new government came to power in the Czech Republic, elected in part based on a platform of increasing transparency and reducing corruption. Due to the relatively high perception of corruption in the handling of public contracts, a key plank in this platform was the reform of the public procurement system. As a result there was a strong expectation by the public, and interest among legislators, to enact fundamental reforms.

Procurement policy in the Czech Republic falls under the mandate of the Ministry of Regional Development (MRD). MRD worked closely with top procurement stakeholders such as the Office for Protection of Competition, the National Economic Council and the Platform for Transparent Public Procurement to draft legislation designed to improve transparency, strengthen administrative capacity, improve value for money, and reduce the potential for fraud and abuse.

Given the strong desire by the new government to deliver on its promised reform, an effort was made to enact the resulting legislation as quickly as possible. To this end, the usual inter-ministerial comment process was accelerated, leaving little time for rigorous public debate. The 2012 procurement reform law was passed in February 24, 2012, and went into effect on April 1st of the same year, just 5 weeks later.

THE 2012 AMENDMENT

The 2012 amendment to the Public Procurement Act (PPA) of 2006 (Act No. 137/2006 Coll.) consisted of a number of unrelated provisions, which can be broken down into the following categories:

Transparency

- Required all tenders to be published on the contracting authority website within three days from notification;
- Required detailed information on all public contracts or amendments to contracts worth over EUR 18,250 to be published online, including final price paid and the list of subcontractors.

Procedures

- The thresholds for contracts, which must be procured according to the procedures specified in the PPA, was reduced by approximately half, from EUR 73,000 to EUR 36,500 for services, and from EUR 219,000 to EUR 109,500 for works;
- The use of restricted procedures and negotiated procedures without publication was limited to disallow restricting the number of participants due to better qualifications;
- Eliminated the use of a “coin toss” to award similarly scored contracts;
- Mandated the use of electronic auction in certain cases.

Tender documents and selection criteria

- Required a higher standard of detail in specifying the subject of the contract, and the criteria and sub-criteria that will be used to evaluate tenders;
- Replaced the use of economic and financial qualifications with the requirement that bidders sign a self-declaration of their economic and financial eligibility to fulfil a public contract;

- Eliminated the use of specific technical qualifications, such as standards by the International Organisation for Standardisation (ISO) or other certifications. Contracting authorities must use references to establish capacities;
- Instituted a requirement to cancel any tender for which only one offer is submitted;
- Required contracting authorities to involve individuals with special training from the MRD to sign off on tender documentation and participate in the evaluation committee on all tenders above the EU thresholds (starting in 2014).

Enforcement

- Increased the sanctions imposed by the Office for the Protection of Competition for incorrect application of procurement procedures by as much as double.

Implementation

The new rules were something of a revolution for the Czech public administration, and triggered a rush among contracting authorities to publish as many tenders as possible before the April 1st implementation date. In the first quarter of 2012, the number of tenders published spiked as buyers rushed to ensure that as many as possible of the year's planned purchases could be conducted under the old, familiar rules.

The new rules introduced some unambiguous improvements, particularly in terms of transparency. Requiring online publication of contract details, including the newly required justification for the tender, substantially increased the ability of civil society groups and the wider public to oversee the procurement process. Furthermore, the elimination of award via coin toss was also seen as a step in the right direction.

However, the primary reaction to the new rules was confusion, which often undermined the very goals the reforms were designed to promote.

By their very nature, the reforms were designed to increase contracting authorities' administrative burden by forcing contracting authorities to use tendering procedures rather than direct award for lower value contracts, and requiring all tenders to submit and publish substantially more paperwork per tender. Many procurement practitioners reported feeling largely unprepared for the new requirements, and that they had not been provided with sufficient methodological guidance for how to correctly fulfil them. An updated methodology was published in 2014.

In addition, the uncertainty surrounding the rules led to a substantial increase in review requests. For example, the Office for Protection of Competition saw a 17% increase in requests to open procurement-related proceedings between 2011 and 2012, and a 49% increase in the number of administrative proceedings initiated *ex officio*²¹. As a result, the Office had to increase its staff by roughly 70% over the course of the year, and to acquire new office space to accommodate them.

Uncertainty also led to a downward spiral in evaluation criteria and quality that undermined the entire process. Because contracting authorities feared exposing themselves to risk under the new justification and reporting requirements, the use of lowest price as the only evaluation criteria rose substantially, from 61% of tenders in 2011 to 79% in 2013²². The logic goes that lowest price award decisions are less likely to be appealed than those that try to capture value for money, however objective the criteria.

²¹ Office for Protection of Competition 2012 Annual Report, available at: <http://www.uohs.cz/en/information-centre/annual-reports.html>

²² Ministry for Regional Development 2013 Annual Report on Procurement, available at: <http://www.portal-vz.cz/cs/Spoluprace-a-vymena-informaci/Vyrocní-zpravy-a-souhrnné-udaje-o-verejnych-zakazkach/Vyrocní-zpravy-o-stavu-verejnych-zakazek>

The increased focus on price as the exclusive award criteria put pressure on bidders to push their bid prices as low as possible. Many contracting authorities complain that this has contributed to a decline in quality of goods and services delivered.

The requirement that all tenders receiving only one bid be cancelled also faced difficulties in implementation. For one thing, there are some goods and services that can only be offered by a single bidder. This is the case in, for example, artistic performances, research and development, and highly specialised machinery. In other cases, the lack of bidders may simply be due to temporary and/or local market conditions, which under this rule made it effectively impossible for administrations to procure the goods and service they required at all. As a result, this provision became one of the most controversial in the reform package.

Finally, the provision requiring all procurement procedures to make use of an MRD trained and certified individual proved to be unworkable. Although this portion of the law was not scheduled to go into effect until the start of 2014, giving the government 21 months to prepare it, the MRD quickly realised that it would not be able to train and certify a sufficient number of individuals in time to reasonably meet the demand from contracting authorities nationwide.

As a result, Czech officials saw the need to modify the reforms adopted in 2012, and quickly set about drafting follow-on legislation.

THE 2013 AMENDMENT

Based on the experiences of contracting authorities, economic operators and the MRD in implementing the 2012 procurement reforms, a second reform law was drafted in 2013. This legislation included provisions repealing or altering those elements of the 2012 law that proved problematic, as well as a number of further reforms not covered in the previous legislation. The new law went into effect on January 1, 2014, including:

Changes to the 2012 reforms

- Restored thresholds for contracts which must be procured according to the PPA to EUR 73,000 for services, and EUR 219,000 for works;
- Created a provision under which tenders that receive only a single bid can be re-opened and awarded if certain conditions were met;
- Waived the requirement for re-launched tenders to re-publish advanced notice;
- Repealed entirely the requirement to involve an MRD-certified procurement professional in all tenders.

New provisions

- Requirement that all documentation submitted to the Office for the Protection of Competition be processed in electronic form;
- Created a provision allowing for facts relative to the fulfilment of the qualification requirements to be considered, even if they occur after the deadline for the submission of bids.

The 2013 technical amendments essentially undid a substantial portion of the 2012 reforms, reflecting a decision on the part of the Czech government to prioritise the smooth functioning of the procurement system over its anti-corruption efforts.

THE 2015 AMENDMENT

Subsequently, a third package of procurement reforms was adopted in March 2015. This relatively minor legislative update once again contains changes to provisions of the 2012 law, as well as new material, including:

Changes to previous reforms

- Repeals entirely the restriction on awarding contracts when only one qualifying tender has been submitted;
- Conditions governing the award of additional works and services updated to comply with the 2014 Directive (2014/24/EU).

New provisions

- Allows for consideration of the impact of the award on employment opportunities for people with limited access to labour markets to be used as a selection criteria;
- A previous requirement that university diplomas used as credentials be accompanied by certified translations into Czech was repealed.

In addition to the above reform, the MRD has submitted the first draft of a comprehensive change to the procurement system to reflect the 2014 EU procurement Directives. The new law is planned to go into effect in 2016.

LESSONS LEARNT

The Czech experience points to two critical factors for a successful procurement reform process: an inclusive policymaking process that solicits and addresses the views of a broad range of stakeholders, both public and private, and the need for proper training and guidance materials to be made available in advance of implementation.

Inclusive policymaking process

The primary lesson to be learnt from the Czech experience in reforming their procurement system is the need for robust, careful and inclusive consultation with stakeholders in crafting reforms.

The reforms implemented in the 2012 package were crafted under time pressure in order to meet the political needs of the government. While the limitations of the political context of policymaking are an inherent feature in a democratic system of government, a balance must be struck between political expediency and the need for a thorough policymaking process. In this instance, the policymaking process suffered, resulting in sub-optimal policy outcomes.

To be clear, the process did deliver tangible results and thus, was not a complete failure. The MRD did include many of the primary procurement stakeholders in the early stages of the policymaking process. Together, they successfully identified a number of areas in need of reform, and proposed several solutions which functioned well and remain in force today. These include advanced notification, increased reporting and publication of contract data, reduced administrative burden for bidders, and higher sanctions for violations of the code.

However, many of the provisions introduced were well-intentioned but impracticable, concepts that sounded good in theory, but failed to accord with the reality of procurement as it is practiced. This is precisely why it is so important in any policy reform to engage with the full range of affected stakeholders during the policy formation process to give them a chance to share to provide insight and feedback for how a proposed change is likely to work in practice. In the case of procurement, this includes not only the key policy bodies, but also contracting authorities at the federal regional and local levels including a variety of sectors, such as infrastructure, social services, and healthcare, as well as economic operators large and small.

In the case of the 2012 reforms, the consultation step was given short shrift, and so the policies introduced reflected the limited experience of a small group of experts.

For example, the ban on awarding contracts on tenders with only a single bid was a strong move to promote competition in the bidding process, but failed to include reasonable exceptions for foreseeable circumstances, and was thus too strict. Consultations with contracting authorities that regularly award under such conditions could have identified those cases where single bids are clearly not related to fraud and abuse, and thus should be allowed.

In the case of the lower thresholds, and to a lesser extent, the increased reporting requirements, the new rules failed to take into account the limited administrative capacity of those who would have to implement them. Here as well, greater consultation, or even the use of a pilot programme requiring a sample of buyers to comply with the proposed requirements, could have helped the policymakers strike a better balance between the desire for increased transparency and the need to keep the machinery of government working.

Training and guidance materials

The administrative capacity issue points to another lesson learnt from the Czech reform process, namely the importance of providing practitioners with the knowledge and resources necessary to implement the changes.

The 2012 reform package was a major break from the existing procurement rules, introducing substantial changes to several elements at the same time. But at the time the rules went into effect, and in fact for many months thereafter, the contracting authorities whose responsibility it was to put the new policies into practice complained that they did not have the training or guidance materials they needed to do so with any confidence.

The failure to adequately prepare contracting authorities is undoubtedly linked to the haste with which the reforms were implemented. In fact, although the law went into effect in April 2012, a full updated methodology was not published until April 2014.

The lack of effective guidance served to heighten uncertainty among contracting authorities about the changes being implemented, and likely contributed to the increase in review requests with the Office for Protection of Competition.

Augmenting the reform's implementation with a roll-out period including publication of guidance materials and a series of informational and training sessions could have substantially improved the success of the reforms.

6. GOOD PRACTICES

As a result of the desk research, and particularly the field visits conducted in the 15 selected MS, the study was able to identify a number of good practices which could potentially be implemented in other MS. These include both initiatives that have been implemented, and have already produced some positive results, as well as some promising concepts that have not yet been fully tested.

The list of good practices has been organised into seven categories, including:

- *Ad hoc* support;
- Guidance documents for contracting authorities;
- Professionalisation of public procurement practitioners;
- Initiatives which ensure the quality of public procurement;
- Review processes;
- Measures for simplification and efficiency;
- Data monitoring and practices fostering transparency.

Each good practice discussed includes a short description of each good practice itself, its purpose and achievements, as well as the key factors which contribute to the success and usefulness of the practice at stake. Finally, while not claiming to be exhaustive, a set of concrete examples implemented in the MS is presented to illustrate each good practice.

6.1. Ad hoc support

HOTLINE

Description

Hotlines provide *ad hoc* and immediate assistance to contracting authorities in the form of call centres or telephone consultation. They allow for quick and tailor-made responses to public procurement practitioners and are particularly valuable to support infrequent procurers. As public procurement regulatory frameworks can be quite complex and unstable, hotlines are useful to help clarifying legal questions as well as solving recurrent issues in terms of choice of procedures, publication rules or tender documentation.

Key success factors

- Contracting authorities must be aware of the hotline and know how to use it;
- Should be free of charge, and available during reasonably flexible hours;
- Sufficient human resources to provide responses with minimal delay.

Examples

France: Call centre for contracting authorities

The Ministry of Finance (*Minefi*) operates a call centre and e-mail inbox (CIJAP) with a staff of 10 that fields questions from public buyers and the local and regional level, including State administration in the regions. The vast majority of calls, 86% in 2014, are answered on the spot. Most other phone questions are responded to in writing within 48 hours. In the case where the question requires a more detailed legal interpretation, the inquiry is forwarded to a specialised Unit “Advice to buyers” of the Directorate for Legal Affairs of the *Minefi*. This unit generally produces written answers within 45 days.

Since the transposition of EU Procurement Directives in 2005-2006, the call centre has been in high demand, fielding as many as 35,000 inquiries per year.

Slovenia: Phone consultation service

Slovenia’s Ministry of Finance operates a telephone consultation service for public procurement practitioners twice a week for three hours. This hotline has proven to be useful for contracting authorities and thus will be strengthened shortly with the development of a complete helpdesk that the Ministry of Public Administration will put in place during the 2014-2020 programming period.

The hotline will be open every working day and will support contracting authorities throughout the whole procurement procedure, from preparation of tender documentation, to publication and execution of the contract.

ONE-STOP SHOP HELPDESK

Description

A one-stop shop helpdesk consists of a single, comprehensive web platform where multiple public procurement support services are offered to contracting authorities and economic operators. Assistance is provided in the form of guidance documents, regular updates, legal information, links to hotlines or dedicated e-mail services, on-the-spot consultations, and periodic newsletters. The value of a one-stop shop is in eliminating the need for practitioners to navigate multiple websites and formats to find the help or information they need. Having it all in one place also makes it easier to guide users to the right source for their issue.

Key success factors

- Comprehensive and practical information;
- User-friendly and intuitive interface which enables users to easily search and access the support documentation and tools;
- Awareness of contracting authorities and economic operators of the existence of one-stop shop helpdesks;
- Regular updates to ensure information remains relevant.

Examples

Finland: Helpdesk of the Public Procurement Advisory Unit

In Finland, the website *hankinnat.fi* serves as a one-stop helpdesk for procurement practitioners. The portal is hosted by the Public Procurement Advisory Unit, a joint project of the Ministry of Employment and Economy and the Association of Finnish Local and Regional Authorities which serves local and State authorities as well as other public bodies by providing them with free advice on the public procurement law and its

application.

The website offers guidance materials, newsletters, methodologies and FAQs on a wide range of topics such as quality procurement, green, social and innovation criteria, prevention of conflicts of interests and corruption. Particular attention is paid to helping procurers prepare their tender procedures with adequate planning and market assessment methods.

In addition, free *ad hoc* support and advice is provided to public authorities by phone and e-mail. The majority of questions are resolved immediately.

Netherlands: PIANOo-desk

The Public Procurement Expertise Centre (PIANOo) of the Ministry of Economic Affairs, the Agency for Public Authorities and CSR Netherlands operate a helpdesk called Dutch Public Procurement Expertise Centre (PIANOo-desk) to professionalise procurement and tendering in all government departments.

The PIANOo-desk is a discussion platform, which allows public procurement professional and contracting authorities to exchange experience, ask questions, discuss, share files, collaborate on documents, and plan projects. Moreover, a dedicated networking section allows purchasers to consult each other and find all information and instruments on sustainable public procurement. Finally, the users can use different services like a handbook on green public procurement, a coach to measure progress and different mutual learning working groups.

6.2. Guidance documents

GUIDELINES AND MANUALS

Description

The legal and regulatory frameworks for procurement are complex and constantly evolving. In order to assist practitioners in navigating this system, all MS publish guidance materials of one kind or another that help to translate the rules into practice.

There are many different types of available guidance documents, which can be organised in the following three main categories:

- **Methodological manuals** provide instructions on how to implement the law and describe the different stages of tender processes in detail;
- **Thematic guidelines** cover a sub-set of procurement related issues and may focus on a specific theme. They can be either informative or indicative, i.e. providing support for optional aspects of procurement, or more technical ones. Topics that are often covered by thematic guidelines are IT purchases, e-procurement, green public procurement, innovation procurement, as well as corruption and bid-rigging;
- **Guidance tools** can cover the entire spectrum of procurement topics, but are meant to support contracting authorities with a hands-on instrument. Furthermore, tools are not exclusively designed by the government, but can be offered by private providers.

Key success factors

- Regular updates to ensure that materials are up-to date; in the case of legislative changes, the information necessary to comply with the new rules should be made available before those rules come into effect;
- Contains practical, hands-on information, preferably using real world examples, to ensure that theoretical information is well grounded in practice;

- Materials must be published where they can easily be found; dissemination and awareness raising efforts may be appropriate in the case of upcoming changes;
- Guidance should be as comprehensive as possible to make it easier for users to locate the information they need.

Examples

France: Walkthrough of public procurement (Methodological manual)

The Department for Legal Affairs of the Ministry of Economy and Finance (*Minefi*) publishes an extensive manual on public procurement (a walkthrough or *vade-mecum*) authored by a team that includes legislative experts one of the *Minefi*'s advisory services to contracting authorities. It includes methodologies for the use of the different procedures, examples of good practices, FAQs and several technical notes on the key issues of public markets and sector-specific procurement information. Last updated in 2015, this tool provides a useful operational support to public buyers and constitutes a reference guide to public procurement.

Ireland: Booklet for spotting bid-rigging (thematic guidelines)

The Irish Competition Authority published a booklet in 2009, entitled "The Detection and Prevention of Collusive Tendering", which helps contracting authorities spot prevent the harm caused by collusive tendering. The booklet provides key information for public procurement practitioners, such as how to detect signs of potential bid-rigging and how to report it. It also describes the steps to be taken during the tender process to help prevent collusive tendering occurring.

Czech Republic: Online case-law library (guidance tool)

The Association for Public Procurement, a civil society platform for procurement stakeholders, has developed an online application that collects case-law on public procurement in a so-called Lexicon on Public Procurement Law. This tool allows contracting authorities and economic operators to better understand and interpret public procurement law, as they can search examples of case-law related to specific sections of the Public Procurement Act.

Netherlands: Library of product-specific green criteria (guidance tool)

To achieve its ambitious goal of implementing 100% green public procurement by 2010, the Netherlands introduced an inventory of ready-to-use environmental criteria for 80 product groups. The criteria are meant to be easy to use, but at the same time as ambitious as possible. They cover the most important environmental aspects and are characterised by legal soundness, user-friendliness, and the ambition to "exceed the minimum." Furthermore, considerations about the potential shortages of supply were taken into account when drafting the criteria and are assessed in depth.

STANDARDISED TENDER DOCUMENTS

Description

Standardised tender documents are ready-to-use templates of the main procurement documentation that contracting authorities can use and adapt to their needs, including contracts, contract notices, tender specifications, and contract awards. The goal of these documents is to allow contracting authorities to save time and avoid potential errors by using professional prepared and verified information.

Key success factors

- User-friendly and available in a commonly used electronic format;
- Clear instructions to procurers on how to use the standardised tender documents;
- Effective dissemination to inform contracting authorities about the existence of standardised tender documents or on their obligation to use them;
- Sufficient flexibility to allow the integration of specific needs of the contracting authority.

Examples

France: Standardised tender specifications and contract provisions

The Department for Legal Affairs of the Ministry of Finance has created several standardised tender documents which are being used by the vast majority of contracting authorities in the country. For instance, the standardised administrative specifications template is used in 90% of all tenders. Other standardised forms are meant to be used by economic operators and help streamline the preparation of offers.

In addition, five types of standardised contracts can also be used on a voluntary basis in the following fields: supplies and services, intellectual service, works, industrial procurement, IT and communication technology. They consist in a common skeleton contract which can be filled by selecting from a number of options according to the needs of the tender.

Luxembourg: Standardised tender specifications for public works

Standardised tender specifications for public works are available for all Luxembourgish contracting authorities. They aim to ensure the application of high-level technical requirements and management standards in the conduction of public works in the country. These include general administrative tender specifications as well as a complete set of specialised technical specifications for various types of public works, including structural works and buildings, technical installations and infrastructure works.

6.3. Professionalisation

CURRICULUM OF COMPETENCIES

Description

In an effort to ensure that procurement practitioners professionalise have the full range of skills they need to perform their assigned functions, some MS have developed specific curricula of competencies that define the set of skills and knowledge that procurers should master to carry out their work. For a practitioner or administrator working in procurement to advance their career, they must complete a specific training regime, acquire a certification, or otherwise demonstrate their mastery of the given competencies.

Making this curriculum explicit helps to ensure that both the administration staff have the skills they need to do their jobs, but also to better plan their training and capacity building activities.

Key success factors

- Training must be offered frequently enough to ensure that interested and qualified personnel can improve their skills;

- Training should be offered in a variety of geographic locations to reduce the cost of participation for regional and local practitioners;
- Competencies must be clear, and targeted to the roles associated with them;
- Certification must be based on more than participation, and should, where appropriate, be able to be fulfilled with practical experience as well as education.

Examples

Croatia: Certifying procurement practitioners

The Public Procurement Act states that at least one authorised representative of each contracting authority must possess a valid procurement certificate granted after an extensive training of 50 hours and a written exam. This aims at guaranteeing that every tender procedure can be conducted, or at least reviewed by a specialised and up-to-date skilled practitioner. The certificate is valid during three years and can be renewed by participating in an additional training of 32 hours.

United Kingdom: Commercial Skills and Competency Framework

The Commercial Skills and Competency Framework details an exhaustive set of competencies that procurement practitioners should acquire during their professional career. The framework covers the three main component of the procurement process: pre-market, sourcing and post-contract award, and includes such specific topics as systems and procedures, negotiation, and EU procurement rules. It can be used by different departments for designing their job descriptions, and as a tool for the assessment of development needs within government organisations.

Ireland: Go-2-Tender Training Scheme for SMEs

InterTradeIreland offers a number of tender supports and services targeted specifically at SMEs in order to help them compete in procurement markets. Among others, InterTradeIreland organises a two-day practical tender workshops, where SMEs are taught the knowledge and practical skills to be successful at tendering. The workshops are conducted by experienced bid specialists and gives insight into the procurement practices of public sector bodies in Ireland. Workshops are offered in various locations and participation fees in the range of EUR 50 to 100 apply. Since the programme was introduced in 2007, over 900 companies have completed the workshop and were able to win procurement contracts worth GBP 60/EUR 69 million.

6.4. Quality execution of public procurement

ANNUAL PLANNING OF PUBLIC PROCUREMENT

Description

In order to strengthen monitoring and oversight, and to promote more strategic thinking among contracting authorities, some MS require them to post their procurement plan in advance at least once a year. When made public, as they often are, this has the added value of allowing economic operators to better plan their businesses, and to prepare for large and complicated contracts. This is particularly true for SMEs, which often need more preparation time for submitting a bid, as e.g. they need to form a consortium or acquire greater capacity.

Key success factors

- Plan should be as detailed as possible, and should be updated regularly in order to reflect major changes;

- Plans should be published online and easily accessible to allow companies to take necessary action in advance.

Example

Latvia: Annual procurement plans

Latvia's Central Finance and Contracting Agency (CFLA) has recently made it mandatory for all authorities under its supervision to publish an annual public procurement plans indicating their needs and intentions to spend allocated funding. Through these procurement plans, the CFLA has added an additional layer of monitoring of EU funds expenditure, as the approval of the planning helps the CFLA to check that contracting authorities are not avoiding applicable procurement thresholds. Additionally, the planning helps with the coordination of the CFLA's own monitoring activity, in that it can select projects it intends to monitor more in detail. As a result, procurement plans are a useful tool to minimise non-compliance with requirements for EU co-funded projects.

OBJECTIVE EVALUATION OF TENDERS

Description

The objective evaluation of tenders is fundamental to the principles of equal treatment of tenderers and non-discrimination that underlie all procurement in the EU. That being said, there are a number of factors that undermine this goal, including the financial pressures on contracting authorities to minimise their costs, implicit preferences for a given contractor over others, and fear of audit decisions or legal actions in the case of misapplication of evaluation rules. As a result, it is preferably where possible to remove or reduce the ability of evaluation committees to take discriminatory information into account during their assessments, e.g. by requiring that technical and financial offers be submitted and evaluated separately.

Key success factors

- The use of quality-based award criteria (MEAT) is a pre-condition for this good practice;
- Quality criteria must be precise, and clearly linked to the subject matter of the contract.

Examples

Spain: Separate technical and financial offers

Under article 150.2 of the Spanish Public Procurement Law, bidders are obliged to submit the technical and financial offer in two separate envelopes in order to create two-staged evaluation process. The contracting authorities reviews first the technical offer and only in a second step the financial one. As a result, biases towards lowest price are minimised.

6.5. Review

FEED-BACK CHANNEL

Description

To ensure continuous improvement of public procurement processes and gather feedback of a variety of relevant stakeholders, some countries have introduced specific channels through which economic operators and contracting authorities can share opinions and perceptions, flag possible dysfunctions and irregularities and provide recommendations based on their experiences.

Key success factors

- Interaction of contracting authorities and economic operators without fear of retribution;
- Perception of contracting authorities and economic operators that they can really contribute to the improvement of the public procurement system.

Examples

France: Qualitative monitoring of public procurement

The Rhône-Alpes Regional Council has put in place a qualitative monitoring of public procurement, which consists in gathering feedback from economic operators and operational services of the regional administration for up to 20% of their annual tender procedures. Feed-back is gathered through dedicated questionnaires at three stages of the procurement process: at the end of the tender procedure, during the execution of the contract, and after the finalisation of the implementation. These qualitative assessments are launched on a voluntary basis if the operational service in charge of the tender decides to do so.

United Kingdom: Mystery Shopper Service

Through this service, public sector suppliers can anonymously report on their experiences with the government and any issues they encounter therein. Public authorities can then investigate and resolve these concerns, and in some cases, also conducts on-the-spot checks on government procurers.

The primary goal of this initiative is to continuously improve public procurement in particular to increase competition and participation of SMEs. The results of the Mystery Shopper service are regularly monitored and published on a quarterly basis.

By July 2015, the Mystery Shopper service had investigated 827 cases, of which an average of 20% resulted in a positive outcome where changes were made to existing procurements or recommendations were accepted for future contracts. This resulted in the contracting authorities changing current processes and the economic operator gaining a better understanding of the tender procedure and implementation.

MEDIATION

Description

A major burden on procurement systems in a number of MS has to do with the disruption and delay caused by the appeals process. This is particularly the case in MS where appeals frequently result in the halting of ongoing procurement procedures. One approach to reduce the workload on the appeals system and reduce unnecessary delays is to redirect some appeals into a separate appeals process. Some MS have done this through the creation of a mediation system. Mediation involves the use of impartial arbiters who, with the priori agreement of both parties, can settle disputes between economic operators and contracting authorities by imposing non-binding judgements, resulting in significant time and cost savings.

Key success factors

- Contracting authorities and economic operators must be aware of the mediation services available and how to engage them;
- Guarantee of the neutrality, impartiality and independence of the mediators;
- Flexibility of the mediation process, in comparison with the judicial intervention;
- Mediation services should be offered at a cost that is comparable or less than judicial proceedings.

Examples

France: Bidder advocates

Commonly referred to as the “mediators”, they form part of the Public Procurement Mediation, which was created in 2012 by the Ministry of Finance (*Minefi*) to help economic operators’ access public contracts. Their role is to provide guidance on how to navigate the procurement process, and to intervene as impartial, neutral and independent conciliators in the event that disputes arise between contracting authorities and suppliers, especially SMEs. In 2013, 231 cases were examined by the mediators of which 73.5% had a favourable outcome and avoided judicial appeal.

Netherlands: Commission of Tender Experts

The Commission of Tender Experts was created by the Ministry of Economic Affairs to improve public procurement processes. As an independent and impartial body, it acts as mediator between contracting authorities and economic operators and issues non-binding advice. The Commission only takes cases upon three conditions: if the economic operator has informed the contracting authority of its complaint, if the contracting authority has had enough time to respond to the complaint, and if the response did not lead to a withdrawal of the complaint.

Between March 2014 and March 2015, the Commission received 102 complaints, of which 80 were filed by SMEs, 15 by large enterprises and 7 by a business organisation on behalf of SMEs. The complaints were dealing mainly with the assessment of bids, the award decision and with the poor communication of the contracting authority. The Commission of Tender Experts itself is currently being evaluated by independent experts in the framework of the overall reform of the Public Procurement Act.

SPECIALISED COURTS ON PUBLIC PROCUREMENT

Description

These specialised courts are administrative tribunals that only deal with public procurement disputes. Their main added-value over ordinary administrative courts is that they reduce the duration of judicial procedures and they foster the specialisation and professionalisation of public procurement magistrates and lawyers.

Key success factors

- Sufficient lawyers and magistrates specialised in public procurement disputes;
- Faster pace of the specialised courts over ordinary jurisdictions.

Examples

Germany: Specialised administrative public procurement tribunals

In Germany, specialised administrative public procurement tribunals have been set up at the federal and State levels to deal with procurement complaints above EU thresholds. Review procedures are carried out quickly according to the principle of urgency and the decisions issued consist in administrative acts.

Since the set-up of these tribunals, the jurisdiction and legal certainty around procurement has evolved very positively. In fact, the quality of judgement is very high and ensures a high degree of legal protection to participants. Furthermore, the specialisation of the tribunals has fostered the professionalisation of lawyers in matters procurement.

Spain: Specialised administrative court on public procurement

A national administrative court specialised in public procurement, the Central Administrative Court of Contractual Appeals (TACRC), was created in 2010 to improve oversight of contracting authorities at all levels. The majority of sanctions imposed on contracting authorities involve the invalidation of contracts. The TACRC is also authorised to impose fines on the grounds of bad faith and recklessness when challenging the award.

In addition, seven autonomous communities have created their own Territorial Administrative Courts of Contractual Appeals which operate independently at regional level and might provide different interpretations of the law.

In 2014, 1,117 appeals were brought before the TACRC, an average of 93 per month, and were decided within 26 days on average.

Slovenia: Specialised National Review Committee

Slovenia's review body, the National Review Committee (*DKOM*), is comparable to a judicial authority, but is specialised in procurement. It is an independent State institution tasked with the provision of legal protection of bidders. Its specific focus on procurement allows for expertise in the subject matter and quick decision-making.

Its decisions are taken in around 13 working days, which compares very well with the EU average. The decisions by the *DKOM* are final and no further legal means apart from action against damages can fight it.

6.6. Simplification and efficiency**INTEROPERABILITY (AUTO-FILL)****Description**

One way in which administrations can reduce administrative burden on economic operators, and avoid potential errors in data entry, is by fostering interoperability between their data systems. Interoperability refers to the ability of disparate systems to interact directly with each other. In the case of procurement, this could be used to link e-submission forms to other government databases, allowing the system itself to auto-fill different elements of a tender document using data from other administrations. For example, an economic operator could provide their business's identifier, and the system would verify their status as an SME.

Key success factors

- Wide access to government data sources;
- Possibility for the economic operators to check their data and to appeal in case of mistakes;
- Need for economic operators to consent to treatment and transfer of their data to other administrations.

Example**Portugal: Auto-fill fiscal information**

The Portuguese system has notably brought down the costs for bidders, and at the same time reduced errors, by connecting the e-procurement online applications to the databases of the fiscal authority, making them interoperable. Thus, when an economic operator prepares to submit a bid, they only have to provide a single tax identification number and the system automatically accesses the interoperable databases and fills in the relevant fields of their application with their fiscal information. This not only saves time and reduces the opportunity for error in data entry, it eliminates the need for the

bidder to personally obtain support documentation from the fiscal authority themselves.

Portuguese procurement policy makers have been quite pleased with the results of this system, and are currently working to expand interoperability to involve other administrations.

LEAN PROCESSES

Description

LEAN is a management methodology focused on the reduction of unnecessary costs, in particular waste, and on the increase of value from the perspective of the client. While LEAN originated in manufacturing, its principles can be transposed to the procurement cycle for its optimisation. The application of the LEAN principles to the procurement process has the objective of reducing waste at all stages of the procedure in order to increase efficiency and shorten the overall process. LEAN procurement can also be seen from the perspective of the supplier, e.g. simplification of the procurement system by having a single point of contact.

Key success factors

- Identification of key elements of procurement processes in order to focus improvement efforts on these;
- Inclusion of feedback from users in order to identify the components that add value to the processes;
- Wide implication of public procurement stakeholders in the LEAN processes in order to manage properly the organisational and cultural change.

Example

United Kingdom: LEAN approach to procurement

The UK adopted the LEAN approach to procurement in order to significantly shorten the duration of the procurement processes. The procurement procedures were re-assessed, streamlined and standardised where possible, in order to meet the goal of 95 days from publication to award. A reduction in the length of pre-qualification questionnaires and increased training were two outcomes of the application of the LEAN approach. Furthermore, the Crown Commercial Service has developed guidance documents (i.e. templates and briefing packs) to help public buyers using LEAN sourcing.

PRE-QUALIFICATION OF ECONOMIC OPERATORS

Description

Pre-qualification means that economic operators have the opportunity to provide the necessary administrative documentation for participation in a tender procedure only once and are subsequently able to apply without having to provide the documentation again for each tender.

This reduces administrative burden for economic operators as well as potential errors and thus increases the overall efficiency of the procurement system.

Key success factors

- Reliable and up-to-date company information available to bodies that perform the pre-qualification;
- Knowledge and recognition of the pre-qualification by contracting authorities;

- Must be accessible for foreign companies, too, in order to ensure the functioning of the Single Market.

Examples

Germany: System of pre-qualification of companies

The pre-qualification allows companies to file all their supporting documents with the Procurement Advisory Office. These are screened and if approved, a certificate is released to confirm that the company meets all required criteria. The company is then also registered in a Germany-wide database and receives a registration number. To send a bid, the company only has to present a copy of its certificate and the certification number. The certificate is valid for one year, afterwards the certification needs to be repeated.

Spain: Registry of tenderers and contractors

Spain's Official Registry of Tenderers and Contractors of the State (ROLECE), as per the corresponding official registries in each region, province and municipality, allows tenderers to register and provide administrative documentation necessary for a tender bid. Once registered, the company information is stored and available the next time the company wants to present a bid.

REDUCTION IN THE NUMBER OF CONTRACTING AUTHORITIES

Description

Rationalising and aggregating procurement to a reduced number of contracting authorities brings advantages related to efficiency and professionalisation of procurement. First, the aggregation of procurement demand to a smaller number of contracting authorities increases purchasing power that can drive down unit prices. Second, a reduced number of contracting authorities allows for greater specialisation and professionalisation of procurement practitioners and can help reduce errors and irregularities.

Key success factors

- Wide consultation and buy-in from stakeholders is key to introduce large-scale reform;
- Retaining knowledge of local markets while aggregating buyers;
- Maintain a focus on SME participation to public procurement.

Example

Ireland: Office of Government Procurement

In Ireland the main procurement functions have been consolidated in the Office of Government Procurement (OGP). As of 2014, the OGP acts both as policy institution and as well as the central purchasing body responsible for purchases of all goods and service on behalf of the Public Service. It acts in cooperation with four key sectors, i.e. health, defence, education and local government, in order to carry out the purchases needed.

Through the centralisation of procurement in one body, economies of scale, better coordination, and professionalisation are expected.

WINNER-ONLY HABILITATION

Description

The 2014 Procurement Directives make extensive provision for the implementation of a European Single Procurement Document (ESPD)²³, a standardised self-declaration form to be submitted by bidders instead of the commonly requested administrative habilitation documents. The idea is to avoid re-submission of documents, by ensuring that only the winner of a given tender provides full documentary evidence of its suitability and financial situation.

Although the ESPD is not yet fully in effect, several MS have already implemented comparable tools limiting the requirement to submit habilitation documents to winning bidders. One positive benefit has been the substantial reduction of the administrative burden relating to the submission of bids.

Key success factors

- Self-declaration form must be comprehensive and detailed to avoid ambiguity in what must be proven and how;
- Sanctions for winning bidders that cannot produce the required habilitation documents;
- Clear process for awarding the tender in case the winning bidder does not provide habilitation documents.

Examples

France: Specific Simplified Tender

A specific Simplified Tender procedure was launched in 2014 by the General-Secretariat for the Modernisation of Public Administration. This procedure consists in limiting the need to submit habilitation documents to the winning bidder. Under the simplified system, bidders must provide only their unique identification number (*SIRET*) and a declaration of honour along with their offers, substantially reducing the administrative burden for economic operators.

Simplified administrative procedures are not limited by price or type of contract, but are currently only available for a limited number of contracts published electronically. After a first pilot phase where simplified procedures were applicable below certain thresholds, the procedure can be mobilised for all public tenders and applies to all types of bidders including co-contractors and sub-contractors. During the first year, more than 1,800 tenders were submitted using this process with an estimate average of 2 hours of working time saved by company and by tender.

Portugal: Declaration of honour

In Portugal, the administration replaced the requirement to collect and submit proof of qualification to the winner of a contract award with a simple declaration of honour. The change was considered a substantial improvement by economic operators, and cases in which the winning bidder turned out not to meet the qualifications have been quite rare, due in part to the fact that misrepresentation of firm information is a crime. In such cases, the next highest rated tender is awarded the contract.

²³ Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0007&from=EN>

6.7. Transparency

REGULAR AND DETAILED DATA PUBLISHED ONLINE

Description

The online publication of detailed and regularly updated public procurement data is a key component of an effective monitoring and transparency system. This can benefit to a wide range of stakeholders, from the public authorities who can use this data to monitor and evaluate their own purchasing activities to economic operators who can better assess the public sector markets. Besides, the publication of public procurement data also helps civil society groups to conduct their oversight activities on public spending.

Key success factors

- Comprehensive and quality data covering various aspects of procurement (e.g. number, economic value, procedure);
- User-friendly and intuitive websites to easily access the data;
- Data made available online should be comparable, freely released, and downloaded in usable format;
- Regular update of the data published.

Examples

Spain: Public Contracts Registry

The Public Contracts Registry (RCP), created within the State Consultative Board on Administrative Procurement, centralises information on the awarded contracts for all contracting authorities of the country. However the information gathered is not entirely published and only statistical summaries are publicly available on-line.

In the framework of the 2013 Transparency Law, a new Transparency Portal also began publishing information on contracts awarded by the central administration, including contracting authority, title of contract, budget, and winning bidder. So far, the information cannot be downloaded in a usable format such as Excel, and the website does not enable user-friendly searches. Similar initiatives are also being developed in the autonomous regions.

Lithuania: Monitoring and publication of data on framework agreements

The Central Purchasing Organisation (CPO), which conducts centralised procurement on behalf of contracting authorities, operates an e-catalogue in which are stored the framework agreements that it negotiates for a wide range of products, services and public works. Highly detailed data is monitored and collected on these framework agreements and also published on a quarterly basis through monitoring reports.

Slovenia: "Supervizor" transparency tool

The Commission for the Prevention of Corruption has developed an online transparency tool called "Supervizor", which allows tracking transactions of public sector bodies. The application provides monthly updated data regarding these transactions, including information on contracting parties, recipients of funds, related legal entities, as well as dates, amounts and purpose of transactions. The data can be selected for specified periods of time and used to create graphs. This information is available to the public and media, and thus can also be used by oversight bodies.

During the first days after its launching in 2011, the website got more than 2,616,000 views. The data is now used as an everyday tool by citizens, researchers, journalists

and regulatory and supervisory government when investigating economic crime, public finance crime and corruption.

Portugal: BASE Public Contracts Portal

The BASE portal, which acts as single point of contact for economic operators, collects and publishes a great deal of data on each contract, including: calls for tenders, application, receipt and evaluation of tenders, as well as performance of contracts. BASE is the official repository of public procurement information in Portugal and is fed by inputs from the contracting authorities, the e-procurement platforms and the national electronic official journal.

Nonetheless, it faces some data quality issues due to the fact that there is no forcing mechanism to prevent contracting authorities from submitting forms with many fields blank. To prevent this, it is recommended to require that important files be completed, or blanks fields be justified and/or completed later, in order to successfully submit the required forms.

Slovakia: Single-stop online portal for public procurement analysis

Transparency International Slovakia has set up a single-stop online portal for public procurement analysis called “Open Public Procurement”. It provides detailed information from daily automatic downloads of tender notices from the Office for Public Procurement (UVO). It also provides easy-to-use tools allowing browsing and visualisation of procurement expenditures by procurers, suppliers, sectors and regions.

PUBLICATION OF MONITORING REPORTS IN ENGLISH

Description

Publishing public procurement monitoring reports in English has the advantage of allowing benchmarking among countries, as well as facilitating the evaluation of public procurement by external bodies.

Key success factors

- Minimised delay between publication of documentation in English and in national language;
- Completeness of documentation published in English;
- Full path to the translated information published online should be provided in English.

Example

Portugal: Make reports available in English

In Portugal, all major procurement-related reports are published in English as well as Portuguese. This has the advantage of facilitating outside groups benchmarking Portugal’s performance against other countries’, and is also a way for Portugal to ensure a certain promotion and dissemination of its public procurement recent reforms and activities.

7. CONCLUSION AND RECOMMENDATIONS

This section presents the main conclusions of the study as well as policy recommendations for both individual MS and the EC based on the information gathered through the desk research, the field visits conducted in 15 MS, the case studies and the survey of public procurement practitioners.

While country-specific recommendations are included in each country profile, a number of common issues and themes emerged during the course of the study that are broadly applicable to many MS. These are developed here.

It is important to note, however, that given the wide range of procurement laws, traditions, institutions, and systems currently existing in the MS and regions of the EU, there is no such thing as a one-size-fits-all solution. All of the good practices and recommendations put forward in this study have to be considered in the local context and, where applicable, adapted to that context in order to succeed.

In addition to the recommendations for MS, some recommendations specifically focus on the key role that the EC plays in improving public procurement practices in the EU and in helping MS tackle critical challenges in terms of administrative capacity, application of common rules and guidance, treatment of errors and irregularities or data collection and monitoring.

7.1. Human resources

Perhaps the most frequent issue to arise in this study is the lack of sufficient administrative capacity among contracting authorities, policy and executive agencies and oversight bodies to ensure the optimal functioning of the procurement system. But while the problem is nearly universal, the specifics of the shortcomings vary according to the kinds of administrative bodies in question, and the level of their involvement with the procurement system, and thus so do the potential solutions.

Dedicated national procurement offices, central purchasing bodies and oversight agencies frequently struggle to attract and retain the kinds of highly qualified professionals they need to operate. This is often due to the fact that the compensation offered in the public sector generally, and for procurement experts specifically, is not competitive with private sector positions requiring similar qualifications.

This is the case in Bulgaria and Slovakia. During the course of the field visits, these two MS were identified as offering lower pay and compensation to procurement specialists, such as lawyers and economists, than similarly qualified specialists in other fields. Bulgaria and Slovakia were also identified as MS where high turnover among procurement staff was a serious issue, a conclusion that was supported by the results of the online survey.

Another MS where procurement specialists are not well compensated, and that struggles with attracting specialised staff is Latvia. While Latvian survey respondents did not report that high staff turnover was a problem, they did indicate that lack of skilled staff is an issue, indicating that they have a problem attracting qualified staff in the first place.

Many budget-constrained central governments struggle to find individuals on the labour market with the specialised skills they need for the compensation they are able to provide. In order to address this gap, some MS have developed specialised training programmes, available either through public universities, or from authorised private training providers in order to build those skills internally.

In France for instance, civil service schools such as the National School of Administration (*ENA*), the National Institute of Territorial Studies (*INET*) and the School of Public Health (*EHESP*) offer procurement focused degree programmes.

Internally, each ministry has its own training organisation. For instance, the Institute for Public Management and Economic Development is in charge of the training and technical assistance to the Ministry of Economy and Finance.

In Spain, the Directorate for Public Procurement System offers specialised training programmes in the field of procurement, including training seminars and e-learning courses organised by the Institute for Public Administration and the regional training schools for public procurement practitioners and administrators on topics such as transparency, competition, green public procurement or innovation procurement.

The UK's Crown Commercial Service offers no less than 8 different one-day procurement skills training courses, available throughout the year in London, Birmingham, and Manchester, as well as a range of e-learning modules available on demand.

Survey respondents from MS with more rigorous training programmes were less likely to say that high turnover or a lack of skilled staff were major issues for them.

However, training needs to be tailored to its recipients to be fully effective. In fact, basic training on public procurement legislation and procedures is often not adapted to the needs of more experienced procurers who are already familiar with public procurement rules and practices and who need training on more complex and specialised topics.

The results of the online survey indicate that the more experience respondents have, the less likely they were to say that general topics needed to be better covered, and the more likely they were to say that they needed more support on more advanced topics such as procurement of innovation or socially responsible public procurement. Furthermore, several comments from the survey and from the field visit interviews express the desire of more experienced practitioners for training and guidance that is more advanced than currently offered, and that focuses on more practical examples.

Sweden is particularly a good example of a country providing advanced trainings focused on specific topics. Through its National Agency for Public Procurement, Sweden offers guidance and web trainings on green public procurement such as calculating life-cycle costs.

In addition to training, another approach that can be adopted to support the administrative capacity of practitioners, particularly of those that only procure infrequently, involves bringing in external assistance. This approach is taken in Croatia, where the law requires that every procedure be signed off on by a certified procurement expert. However, there is no requirement that smaller or less frequent procurers have such an expert on their staff, which allows them to bring in external capacity from other administrations only when needed.

One final approach to address weaknesses in administrative capacity is to devolve procurement responsibilities away from the least experienced or frequent practitioners. This strategy was pursued in Ireland and Italy, which substantially reduced the number of contracting authorities in the country by aggregating purchasing responsibilities. In other cases, joint procurement can be done voluntarily, or on a sector specific basis.

Common recommendations for Member States:

- Harmonise compensation for high skill positions such as lawyers and economists with other central government jobs;
- Increase specialisation of tasks and conduct targeted trainings to allow less highly skill candidate to perform day-to-day tasks;
- Offer procurement degree programmes or coursework via administrative schools;

- Offer advanced training for experienced procurers focused on specific functions and approaches e.g. the use of a specific procedure or of a specific criteria such as life-cycle costing;
- Develop practice-oriented training sessions based on exchange of experiences between practitioners and real-life case studies;
- Authorise outside public or private professionals to assist infrequent procurers;
- Devolve contracting authority responsibilities to a smaller number of regional or joint procurement bodies.

Specific recommendations for the EC:

- **Provide on-site expertise:** In cases where an MS faces particular challenges and needs extra support, a specific on-site assistance by EC experts can substantially help the MS conduct a reform and reinforce its administrative capacity. For instance, the EC can build on the model of the Task Force for Greece (TFGR) which supported the Greek public authorities in implementing a number of reforms under the economic adjustment programme. Such support should not be permanent but aimed at supporting MS to develop their internal capacity.
 - Send technical experts to certain MS for the provision of on-the-spot assistance in the field of public procurement and the related ESI Funds management and control.

7.2. Systems and tools

Providing practitioners with up-to-date and relevant systems and tools is often a simple but effective solution to make the job easier for procurement officials and in turn strengthen the overall performance of the procurement system. Support can be provided in the form of regularly updated procurement material, guidance documents, standardised tender documents and ad hoc support.

Contracting authorities at the central government level, and often at the regional level, are typically quite specialised, and often have substantial experience with both the procurement system and the specific markets they purchase in. However, they often struggle to keep up to date with frequent changes to laws and regulations, to implement new and innovative practices, and to handle those tasks falling outside their experience. Specifically, many contracting authorities are wary of implementing concepts like MEAT criteria or GPP standards for fear of exposing themselves to legal appeals or audit sanctions.

France, Poland, Luxembourg, and Finland are examples of countries publishing frequent updates on their main procurement web portals in order to keep practitioners up to date. For example, from September to December 2015, the Polish PPO posted 17 updates to their website, while the website of the French Affairs Directorate (*DAJ*) put up 11 posts. These two countries are also leaders in providing support material with the example of the *Vade-Mecum* manual for France and the good practices manuals as well as an available online searchable case law library for Poland.

With the recent creation of the ANAP, Romania has also been making more regular updates to their new website, including 13 updates related to procurement legislation from September to December.

The Netherlands take a different approach to keeping practitioners up to date by hosting a procurement message board on the PIANOo website. In addition to consulting their peers, and the moderators of the site, through the PIANOo Forum message board, Dutch practitioners also have access to PIANOo experts via an online helpdesk. Other MS, including Bulgaria, Finland and Slovenia, operate dedicated telephone hotlines. Both the interviews conducted with the field visits and the

responses of survey participants indicate that when such ad hoc support channels are made available, procurement practitioners make substantial use of them.

The UK approach to equipping their public buyers with the knowledge and skills they need includes offering a number of general and topic specific trainings. Survey respondents indicated that the most important barriers to participating in surveys were the cost involved, and the time required to participate. In order to minimise these barriers, the UK offers each training several times a year, and in multiple locations throughout the country to reduce travel costs and time. Participation is free of charge.

Furthermore, one of the best identified ways to provide contracting authorities with the confidence to implement more complex elements, such as green and socially responsible criteria in their tender documents, is for the administration to provide detailed, topic specific guidance and pre-approved sample or template documents. The Swedish National Agency for Public Procurement and Dutch PIANO websites both offer comprehensive sections dedicated to providing their contracting authorities with enough information and examples to incorporate non-price criteria into their tender documents.

The experience of the Czech Republic helps to underline what happens when governments do not provide practitioners with the tools they need to be aware of, interpret and implement legislative changes with confidence. As detailed in the Czech Republic case study, the government enacted significant reforms to the procurement law in 2012, but failed to produce updated, comprehensive guidance materials until 2014. As a result, use of non-price criteria declined significantly as contracting authorities attempted to protect themselves from audits and appeals, negatively affecting value for money.

For contracting authorities at the local and regional levels, who procure infrequently, and for whom procurement may not even be their primary responsibility, training is unlikely to be either an efficient or effective solution. The goal should be to help them keep their skills sharp within their core competencies, make it possible to perform straightforward procedures with confidence, and otherwise to shift the responsibility to a more experienced buyer.

One of the best ways to support infrequent procurers is to publish standardised tender documents for commonly purchased products and services that can be customised to suit the individual procurer's needs. Luxembourg, Romania, and Spain are examples of countries offering standardised documents, especially in the field of construction, which contributes to facilitating the procurement process.

Ad hoc support channels are another important support tool. Survey respondents clearly showed that practitioners with less experience, or who procure less frequently are more likely to respond that they use ad hoc support for every procurement procedure than those with more experience.

Common recommendations for Member States:

- Publish regular updates on procurement issues including upcoming changes to laws and regulations, and recent developments in case law; host a searchable archive of past examples online;
- Offer regular awareness raising and training events focused on new developments in the procurement field; events should be geographically convenient to the broadest share of contracting authorities possible;
- Publish clear, easy to follow and regularly updated guidance materials online; the goal is to give buyers a degree of legal certainty;
- Publish standardised tender documents templates for a range of common types of goods/services/works, particularly targeting those purchased at the local level;
- Set-up and staff a hotline or dedicated e-mail inbox to take *ad hoc* questions.

Specific recommendations for the EC:

- **Rationalise EU audit rules:** An important source of uncertainty for national stakeholders comes from discrepancies between the ECA and the various DGs of the Commission when auditing public procurement. Inconsistencies in the interpretation of the rules between national and EU institutions, and among EU institutions, is an issue for practitioners in all 28 MS. As such, reforms at the EU level could help reduce uncertainty. The point was emphasized by a number of field visit interview subjects, and included in comments by survey respondents, that the outcomes of EU audit decisions were difficult to predict, and could vary depending on where, when, and by whom they were applied. This unpredictability poses a major challenge for MS authorities making a good faith effort to fulfil their ESIF management and control responsibilities.
 - Clarify and harmonise audit and control practices between EC auditors and the ECA so that there is clarity on the correct interpretation of the rules and on the risks of non-compliance.
 - Improve the clarity of ESI Funds audit guidance, notably the COCOF guidelines for determining financial corrections, to increase the clarity in how specific irregularities should be treated so that Audit Authorities can apply the rules confidently and consistently with EU standards.
- **Give priority to audit findings with financial impact:** Another frequently expressed comment from national stakeholders is that EC regulations and oversight are strongly focused on process and formalities, at times to the exclusion of other priorities such as outcomes, policy goals such as strengthening the Single Market, or the core principles of transparency, non-discrimination and equal treatment. Specifically, national stakeholders felt that EC auditing practices do not take sufficient account of the impact of an identified irregularity on the outcome of a procedure, meaning that an MS could face financial corrections or other sanctions due to irregularities that have demonstrably not undermined the principles underlying EU procurement policy.
- **Provide clearer guidance:** MS still lack clear and consistent guidance materials for EU regulations and directives related to public procurement and ESI Funds management.
 - Expand and clarify existing guidance material on implementation rules, focusing primarily on the interpretation and application of the new Public Procurement Directives in the context of ESI Funds management.
 - Define a common list of recognised standards and certifications at EU level to foster the promotion of strategic policy goals via procurement such as environmental and social criteria so that contracting authorities can more confidently promote these important EU policy goals.
 - Create a one-stop shop for procurement information online to facilitate Member States authorities' access to official guidelines and tools.
 - Provide standardised tender documents such as contract notices, but also criteria, e.g. for more sophisticated types of procurement such as social, innovation and environmental criteria.

7.3. Governance structures

Governance structure are another key element to a well-functioning procurement system. This is true from a top-down perspective in the sense that how roles and responsibilities are distributed can help or hinder practitioners in fulfilling their responsibilities. From a bottom-up perspective, it is important to keep in mind that some of the best ideas start at the local and regional level, and not only in the state administrations and EU institutions.

An important way in which the nature of the legal and regulatory system contributes to inefficiency and uncertainty for contracting authorities is by distributing policymaking, executive and oversight authorities among multiple institutions. This is particularly problematic when the jurisdictional borders between administrative bodies are less than crystal clear, resulting in multiple, and sometimes conflicting interpretations of policies. In order to provide clarity to contracting authorities, administrations should streamline both the rules, and the institutions that make them.

In the case of Romania, field visit interview subjects referred to overlapping requirements of the former National Authority for Regulating and Monitoring Public Procurement (ANRMAP) and its Unit for Coordination and Verification of Public Procurement (UCVAP), particularly in the area of *ex ante* verification and monitoring. These two bodies have subsequently been merged to form a single National Public Procurement Agency (ANAP). The goal of this merger was in part to eliminate the overlap in responsibilities.

The rationalisation of governance structure can apply to remedies bodies, as well. The existence of multiple appeal bodies may lead to conflicting interpretations of the law and thus undermine legal certainty for contracting authorities and business operators. This is for instance the case in Poland, where the complex set-up of the remedies structure leads to institutional overlaps and inconsistent interpretations of the law. According to the field visit interviews, the first instance review body, the National Appeal Chamber (*KIO*) reports to the Public Procurement Office. Yet, the decisions of the *KIO* can be appealed by the President of the Public Procurement Office as the suing party, which is often a cause for institutional frictions and conflicting interpretations of rules.

In addition to governance structures at central level, subnational administrations often play an important role in developing good practices that can potentially be scaled up at national level. It is frequently assumed that training, guidance materials and support for procurement practitioners should come from the top down, flowing from central governments to regional government to individual contracting authorities, however, this is not always the case. Some of the best practices identified in this study were developed and implemented on the regional or municipal level first.

For example, during the French field visits, participants spoke about a number of successful initiatives which were developed at the regional or local level such as the Rhône-Alpes centre of excellence for innovation. Furthermore, throughout the EU, local and regional organisations are developing tools, templates and support networks not supplied by higher level administrations, or tailored to their own specific circumstances. Those administrations should take advantage of this kind of entrepreneurship to identify what works so that others can benefit.

Common recommendations for Member States:

- To the extent possible, procurement policy, executive, purchasing, and oversight functions should be concentrated in a single body; this body then acts as the unique source for the laws, regulations and guidance materials for contracting authorities;
- The primary procurement agency should publish detailed and practical guidance materials rooted in the experiences of practitioners that provide some certainty about how they should act and what the limits are;
- The remedies process should be similarly streamlined within administrative or judicial courts;
- Create incentives for entrepreneurial contracting authorities to put their tips forward and tools to facilitate the identification of locally grown solutions;
- Promote proven initiatives through a unique channel of communication, for instance through a one-stop-shop set up at national level.

Specific recommendations for the EC:

- **Rationalise EU responsibilities:** Several field visits interviewees commented on receiving mixed and sometimes contradicting information from various DGs on procurement related issues, resulting in confusion. As it is true at MS level, centralising procurement responsibilities currently spread among several DGs could reduce the existence of mixed signals.
 - Centralise public procurement support to MS to ensure that the Commission speaks with one voice, in particular when it comes to the equal treatment of similar cases.
- **Foster knowledge transfer at EU level:** Knowledge transfer at EU level, including the exchange of experiences and good practices, needs to be further developed in a practical and user-friendly manner.
 - Collect examples in all MS to illustrate how European public authorities have successfully implemented public procurement practices, from simple initiatives to more sophisticated tools, and publish the information online.

7.4. Better policy making

The most important lessons learnt from the case studies of reform in Portugal and the Czech Republic had little or nothing to do with procurement policy *per se*. Instead, they served as a reminder that the process by which policy changes are deliberated, agreed upon, and implemented are crucial to the success of those policies.

Given the vast range of institutions, market sectors, stakeholders and geographic regions affected, it is simply not possible for a small group of experts, no matter how qualified, to design sound procurement policy in a back room of the capital. It is similarly infeasible to develop successful reforms in the span of a few weeks, or even months.

By expanding the time and energy necessary to develop sufficiently robust procurement policies, governments not only reduce the need for repeated delays or problem solving, but they can also build buy-in for the planned reforms among those who will be required to implement them, facilitating the implementation process.

As shown in the Portuguese case study, the process was both quite extensive and highly inclusive. As a result, because stakeholders felt that their concerns had been taken into account, after the new reforms were enacted, private sector groups actively helped to promote and disseminate information on the new rules.

On the contrary, following the comparatively hasty passage of the 2012 Czech procurement reforms, many stakeholders were uncertain about the new system, resulting in a surge in publication of contract notices in the weeks leading up to the implementation date as contracting authorities tried to avoid having to comply with the new regime. Following implementation, contracting authorities reverted to using price only criteria for fear of misinterpreting the new rules.

Common recommendations for Member States:

- Procurement reform needs to be an inclusive process that involves representatives of the affected ministries, regional and local governments, academics and experts in law, administration and economics, trade associations, and the business community;
- Reforms must be allocated sufficient time to design proposed changes and to circulate them for comments from the public;

- Once adopted, sufficient time should be allocated for awareness raising, training events, and drafting/updating guidance materials so that practitioners are able to apply the new rules when they go into effect.

7.5. Law enforcement

Another common issue identified during the desk research and reinforced by field visits interviewees is that the legislative and regulatory framework in place for procurement is sufficient, but not sufficiently enforced in practice. Specifically, many see sanctions for violations of procurement rules as not severe enough, and applied too inconsistently to have a deterrent effect. This is particularly the case in MS where corruption in public procurement is an issue of concern, too. The lack of a sanctioning mechanism often contributes to a culture of impunity that undermines the principle of the rule of law.

In addition to sanctions being too low or not applied, there are instances where oversight bodies do not have the authority to impose sanctions and thus have to rely on other bodies for the law enforcement. In Bulgaria, for instance, the National Audit Office only has limited ability to sanction and refers its cases to the State Financial Inspection Agency. The Czech Republic presents a similar set-up, whereby the Supreme Audit Office has no ability to sanction, while the Office for the Protection of Competition may impose sanctions but lacks a full mandate to investigate economic efficiency of procurement.

Another issue that can prevent effective application of existing laws and sanctions is the lack of specific experience or technical procurement-related knowledge among law enforcement personnel, making it difficult for them to investigate and prosecute complex bid-rigging cases and other procurement specific violations.

Italy has recently made an important step towards the strengthening of law enforcement and tackling corruption by creating a specialised anti-corruption body that incorporated the previous procurement oversight authority. As a result, the new National Anti-Corruption Authority (ANAC) has both a strong mandate to tackle corruption in public procurement and also the specific technical skills to do so.

Furthermore, oversight and enforcement bodies frequently complain that they are hindered from accessing information on the workings of the procurement system by technical issues, data protection laws, or simple jurisdictional squabbles.

In Portugal the limitations to law enforcement resulting from the lack of interoperability are clearly visible. On the one hand, Portugal disposes of a wealth of electronic data on procurement due to the fact that it has mandated e-procurement. On the other hand, procurement oversight bodies such as the Portuguese Competition Authority and the Inspectorate General of Finance do not have direct access to this procurement data, which limits their ability to generate automatic red flags and the effectiveness of prosecution.

The benefits of interoperability are highlighted by a best practice of the Ministry of the Interior in Germany, whereby the dedicated unit for prevention of corruption is able to monitor data related to public procurement without the contracting authority being aware of the fact that it is being monitored.

Failure to effectively enforce the law erodes public trust in the procurement system, discouraging businesses from participating in the public markets and thereby undermining the primary goal of the procurement process.

Common recommendations for Member States:

- Increase sanctions for violations of procurement rules commensurate with their severity so that waste, fraud and abuse have a cost;

- Incorporate the concept of interoperability into the national e-procurement system to ensure that oversight bodies have direct access to tender documentation in real time.

7.6. Data collection

Data collection and comprehensive monitoring on public procurement still represents an area in need of improvement in many MS. Comprehensive procurement data can be an invaluable tool for policy makers, oversight and anti-corruption bodies, and for transparency advocates. Difficulties in data collection are often linked to decentralised or federal governance structures, which makes it more difficult to aggregate data at national level. In Austria, for instance, federal states are required to transmit data on their procurement expenditure only above EU thresholds. As a result, the national government has estimates of the value of total public purchasing, but little or no comprehensive statistics on below threshold procurement.

In this respect, the move towards e-procurement represents an important opportunity for improving data collection systems and ultimately allowing better policy making on the basis of factual information. For example, Germany, which also has a federal government structure, is implementing mandatory and automatic data collection as part of the transposition process of the 2014 EU Directives. Until now, Germany, too, lacks comprehensive statistics on its procurement below and above EU thresholds.

The usefulness of procurement data collection depends in large part on the kind of data that is collected. It may be possible to comply with the e-procurement mandates in the 2014 EU Directives by collecting just a few key data points per contract, i.e. contracting authority, title, value etc. However, by designing digital procurement documents to track additional information, such as whether the bidder is an SME, or has a recognised sustainability certification, the value of these systems can be dramatically increased.

Failure to incorporate this kind of data tracking can result in unnecessary administrative burden in complying with other tracking responsibilities. In Spain, contracting authorities are able to 'tick' a box in the e-procurement portal if the tender corresponds to public procurement for innovation. While this information is not currently used for monitoring purposes, the availability of this information should greatly simplify future monitoring by eliminating the need for additional data collection.

That being said, a balance needs to be struck between the desire to collect more data and the administrative burden imposed on procurement practitioners and bidders to collect it. During the field interviews, interviewees in Hungary and other MS complained about the excessive amount of paperwork required to conduct procurement procedures. To that end, procurement processes in general, and collection of non-essential data in particular, should be designed to be simple, intuitive, and where possible, automatic.

One of the best ways to generate valuable data without increasing administrative burdens is to digitise as much of the procurement process as possible, making a wealth of data computer searchable, and leaving the burden of identifying specific information on the person searching for it rather than the procurement practitioner. This is one of the features of the Portuguese reform of 2008, which was specifically designed to dematerialise the procurement system. Having all documents available in machine readable format makes future analysis much easier, even when multiple formats are used as in some of the federal MS mentioned above.

Finally, data on the remedies process could also contain valuable information for policy making. In the Czech Republic, for example, the Office for Protection of Competition publishes some statistics on appeals proceedings and judicial review in its annual report, which cover elements such as the number of first instance decisions issued, the number of appeals filed against first-instance proceedings, the decisions upheld or

cancelled as well the number and amounts of fines imposed, allowing observers to identify key problem areas and patterns over time. However, many MS do not make this kind of information easily accessible.

Common recommendations for Member States:

- All documents related to the procurement procedure should be digitised and entered into the system to ensure that all data which is currently being produced can be saved and monitored;
- The use of national registries of contracts should be generalised to ensure a unique source of information on public procurement per MS that can provide consistent and comparable data within a country;
- Procurement documents should be designed to track key policy issues, such as the use of environmentally sustainable criteria to enable data-driven policy decisions;
- A balance must be struck between the desire to collect and monitor data, and the need to minimise the administrative burden associated with procurement. This can be assisted by upholding the “Once and Only Once” principle, which states that a single piece of information should not be repeated within a software or IT system, ensuring that relevant databases and management software like Enterprise-Resource-Planning are connected;
- Remedy bodies could be asked to produce statistical data when reporting findings of public procurement audits in order to track the main errors and irregularities and thus help policy makers improve prevention measures and sanctions.

Specific recommendations for the EC:

- **Expand ESI Funds monitoring and reporting:** The current monitoring and control processes of the ESI Funds programmes do not specifically track public procurement data and irregularities.
 - Develop a database on irregularities on public procurement, to extent possible in existing EU and related national information systems, including those for ESIF. This could allow the collection and aggregated analysis of public procurement data as well as recurrent issues and needs.

7.7. Transparency

The move of many MS to publish procurement data online has been a major step forward for transparency. However, in order to turn that content from raw data into meaningful, usable information, it needs to be in a clear, well organised and machine readable format.

This is not the case in Hungary, for example, where monitoring data published by the Public Financial Inspection Agency presented in an inconsistent and difficult to access format, making analysis unnecessarily burdensome. There is a database of public contracts, but it was designed for budgetary rather than procurement oversight, and is thus of little use for oversight of procurement in terms of both content and timing.

The UK’s Contract Finder tool and Portugal’s BASE portal, in contrast, are both user-friendly and intuitive. For more advanced users, the BASE portal, like the TED database, also includes a built in interface for conducting more advanced searches.

Another important feature of public procurement databases is the ability to download data in bulk in a machine-readable format, as this allows further analysis by third parties such as academics and NGOs. Portugal and the UK already provide this functionality on their e-procurement portals. However, it must be noted that the data available in the UK is not complete, as only past contract notices for the period 2011 to January 2015 are available for download. The open contracts portal in Slovakia, on the other hand, provides easy-to-search access to procurement data through 2012, but there is no option for bulk downloading, limiting its usefulness for further analysis.

One way in which MS can ensure that the most up to date is available is by making the exchange of information between internal systems and external databases automatic. In Spain, for example, the national e-procurement platform PLACE is linked automatically to the State Official Journal as well as to TED. However, contracting authorities may publish their tenders on competing platforms at regional and local level, thus limiting the benefits of the interoperability of PLACE.

There is also a benefit in collecting and publicising information not directly related to a specific procedure. For example, some MS, such as Latvia, Spain and Slovakia, require contracting authorities to publish pipelines of up-coming contracts, which can be invaluable tools for bidders to manage their businesses plans and prepare their most competitive offers.

Common recommendations for Member States:

- Integrate interoperability with the online publication system into the national e-procurement system so that the relevant data is automatically uploaded to the public website, minimising delays in publication;
- Incorporate a comprehensive and user friendly search engine in any online database so that users can identify the information that is relevant to them;
- Allow users to download search results in at least one commonly used and machine readable format such as CSV or Excel;
- Contracting authorities should be required to submit preliminary data on upcoming projects, either via an annual procurement plan, or an advanced notification requirement for major and recurring contracts.

Specific recommendations for the EC:

- **Strengthen the TED database:** Although publication of tenders on the TED database is optional below EU thresholds, and thus the data is far from comprehensive, it remains a critical data source for public procurement in the EU. Also, any move to increase the number of tenders posted on TED will have the added benefit of increasing cross-border competition for tenders.
 - Work with MS authorities to incentivise links between national platforms and TED to increase the share of below threshold tenders published on TED.
 - Include additional fields to the standards forms to be filled in by contracting authorities in order to capture more information on tender procedures such as, if relevant, type of EU Funds used or use of strategic criteria.

8. APPENDIX

8.1. Appendix 1: Data tables

Included below are data tables presenting the information included in the key facts and figures tables found in each of the individual country profiles.

Overview					Other indicators
	Total public procurement (excluding utilities)	Procurement as % of GDP (excluding utilities)	2013 Nominal GDP, in Euros	# of contracting authorities	Central purchasing body/ies
Sources	DG GROW 2013 Public Procurement Indicators report	DG GROW 2013 Public Procurement Indicators report	Eurostat	DG GROW 2013 Public Procurement Implementation review	National sources
Austria	35,180,000,000	11%	322,878,300,000	5,600	Yes, <i>BBG</i>
Belgium	52,010,000,000	14%	395,242,000,000	5,000	Yes, <i>CMS-FOR</i>
Bulgaria	4,810,000,000	12%	41,047,900,000	4,514	Yes, <i>CFCUD</i>
Croatia	5,300,000,000	12%	43,561,500,000	1,811	Yes, CPO
Cyprus	1,090,000,000	7%	18,118,900,000	700	None
Czech Republic	21,480,000,000	14%	156,932,600,000	1,989	None
Denmark	33,800,000,000	14%	252,938,900,000	469	Yes, SKI
Estonia	2,450,000,000	13%	18,738,800,000	1,364	Yes
Finland	34,460,000,000	18%	202,743,000,000	540	Yes, <i>Hansel Oy</i>
France	306,980,000,000	15%	2,116,565,000,000	132,652	Yes, <i>UGAP</i>
Germany	401,730,000,000	15%	2,809,480,000,000	30,000	Yes, multiple
Greece	16,230,000,000	9%	182,438,300,000	N/A	None
Hungary	13,730,000,000	14%	100,536,500,000	13,000	Yes, <i>KSF</i>
Ireland	15,540,000,000	9%	174,791,300,000	3,319	Yes, the NPS
Italy	157,230,000,000	10%	1,609,462,200,000	30,000	Yes, <i>Consip</i>
Latvia	2,660,000,000	11%	23,265,000,000	2,258	None
Lithuania	3,420,000,000	10%	34,955,600,000	7,703	Yes, the CPO
Luxembourg	5,470,000,000	12%	45,288,100,000	N/A	None
Malta	700,000,000	10%	7,508,300,000	152	Yes, the DoC
Netherlands	136,320,000,000	23%	650,857,000,000	7,500	None
Poland	46,970,000,000	12%	396,111,500,000	14,000	None
Portugal	17,290,000,000	10%	169,394,900,000	4,467	Yes, <i>eSPap</i>

Romania	15,980,000,000	11%	144,282,200,000	13,524	None
Slovakia	8,480,000,000	12%	73,593,200,000	2,919	Yes, <i>EKS</i>
Slovenia	4,450,000,000	13%	36,144,000,000	3,000	None
Spain	99,600,000,000	10%	1,049,181,000,000	8,339	Yes, <i>DGRCP</i>
Sweden	68,680,000,000	16%	436,342,400,000	3,700	Yes, <i>Kammerkolegiet</i>
United Kingdom	274,600,000,000	14%	2,017,193,800,000	5,000	Yes, the CCS

	Procedures applied						
	Open	Restricted	Award without publication of notice (direct award)	Negotiated procedure with call	Negotiated procedure without call	Competitive dialogue	Other
Sources	TED database						
Austria	75%	1%	1%	19%	3%	0%	1%
Belgium	77%	3%	2%	15%	3%	0%	1%
Bulgaria	84%	0%	1%	7%	7%	0%	0%
Croatia	88%	1%	1%	1%	10%	0%	0%
Cyprus	77%	0%	0%	0%	23%	0%	0%
Czech Republic	72%	3%	3%	5%	18%	0%	0%
Denmark	50%	29%	9%	10%	3%	0%	0%
Estonia	65%	1%	22%	3%	9%	0%	0%
Finland	76%	12%	0%	7%	2%	1%	1%
France	76%	3%	9%	8%	4%	1%	0%
Germany	74%	2%	4%	14%	6%	0%	1%
Greece	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Hungary	67%	1%	5%	12%	12%	0%	3%
Ireland	68%	14%	0%	15%	0%	1%	1%
Italy	76%	5%	3%	6%	9%	0%	2%
Latvia	72%	1%	15%	3%	9%	0%	1%
Lithuania	87%	1%	5%	1%	7%	0%	0%
Luxembourg	82%	10%	1%	6%	1%	1%	0%
Malta	100%	0%	0%	0%	0%	0%	0%
Netherlands	71%	14%	10%	2%	3%	1%	0%
Poland	87%	3%	3%	1%	5%	0%	1%
Portugal	48%	3%	5%	1%	0%	0%	44%
Romania	77%	1%	0%	6%	16%	0%	0%
Slovakia	77%	6%	0%	1%	16%	0%	0%
Slovenia	69%	3%	1%	11%	17%	0%	0%

Spain	82%	2%	2%	4%	10%	0%	0%
Sweden	88%	2%	3%	7%	0%	0%	0%
United Kingdom	45%	37%	4%	8%	2%	2%	1%

Ex-ante conditionality criteria as of 2014					Other indicators			
	Application of EU rules	Transparent procedures	Training in ESI Funds	Admin. capacity	Average # days for decision	% received single bid	% price-only criteria 2014	MEAT criteria
Sources	Partnership Agreements between EC and MS				TED database			
Austria	Fully met	Fully met	Fully met	Fully met	63	12%	53%	47%
Belgium	Fully met	Fully met	Fully met	Fully met	91	13%	36%	64%
Bulgaria	Not met	Fully met	Not met	Not met	142	24%	62%	38%
Croatia	Fully met	Fully met	Not met	Not met	78	45%	95%	5%
Cyprus	Fully met	Fully met	Fully met	Fully met	109	31%	92%	8%
Czech Republic	Partially met	Fully met	Fully met	Partially met	104	19%	82%	18%
Denmark	Fully met	Fully met	Fully met	Fully met	49	7%	27%	73%
Estonia	Fully met	Fully met	Fully met	Fully met	60	20%	81%	19%
Finland	Fully met	Fully met	Fully met	Fully met	65	13%	47%	53%
France	Fully met	Fully met	Fully met	Fully met	91	14%	4%	96%
Germany	Fully met	Fully met	Fully met	Fully met	58	12%	52%	48%
Greece	Not met	Not met	Fully met	Not met	N/A	N/A	N/A	100%
Hungary	Not met	Not met	Not met	Not met	69	36%	65%	35%
Ireland	Fully met	Fully met	Fully met	Fully met	148	8%	16%	84%
Italy	Partially met	Partially met	Partially met	Partially met	183	31%	45%	55%
Latvia	Not met	Fully met	Fully met	Fully met	66	33%	80%	20%
Lithuania	Fully met	Fully met	Fully met	Fully met	61	14%	89%	11%
Luxembourg	Fully met	Fully met	Fully met	Fully met	84	7%	79%	21%
Malta	Fully met	Fully met	Fully met	Not met	115	11%	97%	3%
Netherlands	Fully met	Fully met	Fully met	Fully met	64	8%	10%	90%
Poland	Not met	Fully met	Fully met	Fully met	43	45%	83%	17%
Portugal	Fully met	Fully met	Fully met	Fully met	94	15%	56%	44%
Romania	Not met	Not met	Not met	Not met	51	31%	90%	10%
Slovakia	Not met	Not met	Not met	Not met	122	34%	88%	12%

Slovenia	Not met	Fully met	Fully met	Not met	64	34%	78%	22%
Spain	Fully met	Fully met	Fully met	Fully met	107	19%	24%	76%
Sweden	Fully met	Fully met	Fully met	Fully met	62	11%	55%	45%
United Kingdom	Fully met	Fully met	Fully met	Fully met	84	10%	7%	93%

	E-procurement				Share of contract notices by buyer			
	E-notification	E-access	E-submission	Uptake rate	National	Regional	Body governed by public law	Other
Sources	IDC - Study on e-procurement measurement and benchmarking, DG MARKT 2013				TED database			
Austria	Mandatory	Mandatory	Voluntary	8%	5%	30%	24%	40%
Belgium	Mandatory	Mandatory	Mandatory	3%	14%	37%	12%	37%
Bulgaria	Mandatory	Mandatory	Voluntary	0%	23%	17%	41%	19%
Croatia	Partially mandatory	Partially mandatory	Partially mandatory	N/A	15%	14%	54%	17%
Cyprus	Mandatory	Mandatory	Voluntary	1%	84%	3%	10%	3%
Czech Republic	Mandatory	Mandatory	Partially mandatory	0%	25%	25%	24%	26%
Denmark	Mandatory	Voluntary	Partially mandatory	6%	16%	42%	22%	20%
Estonia	Mandatory	Voluntary	Mandatory	2%	34%	10%	44%	12%
Finland	Mandatory	Voluntary	Voluntary	5%	12%	52%	15%	21%
France	Mandatory	Mandatory	Voluntary	2%	7%	37%	22%	33%
Germany	Mandatory	Partially mandatory	Mandatory	10%	8%	43%	20%	29%
Greece	Mandatory	Mandatory	Planned	N/A	N/A	N/A	N/A	N/A
Hungary	Mandatory	Voluntary	Voluntary	N/A	16%	16%	26%	42%
Ireland	Mandatory	Mandatory	Voluntary	22%	34%	11%	40%	15%
Italy	Mandatory	Mandatory	Partially mandatory	2%	8%	40%	21%	31%
Latvia	Mandatory	Mandatory	Mandatory	N/A	38%	12%	18%	33%
Lithuania	Mandatory	Mandatory	Partially mandatory	55%	22%	18%	45%	16%
Luxembourg	Mandatory	Mandatory	Voluntary	N/A	38%	13%	9%	41%
Malta	Mandatory	Mandatory	Mandatory	1%	86%	0%	3%	11%
Netherlands	Mandatory	Mandatory	Voluntary	7%	18%	44%	28%	10%
Poland	Mandatory	Partially mandatory	Voluntary	0%	9%	17%	30%	45%
Portugal	Mandatory	Mandatory	Mandatory	41%	7%	12%	68%	13%
Romania	Mandatory	Mandatory	Mandatory	6%	29%	19%	9%	43%
Slovakia	Mandatory	Mandatory	Voluntary	N/A	23%	10%	37%	31%
Slovenia	Mandatory	Voluntary	Voluntary	1%	18%	12%	39%	32%
Spain	Mandatory	Voluntary	Mandatory	N/A	15%	40%	16%	29%

Sweden	Mandatory	Voluntary	Voluntary	34%	23%	64%	1%	13%
United Kingdom	Voluntary	Voluntary	Voluntary	31%	13%	38%	34%	14%

	Perceived corruption				% of awarded contract		
	General (companies)	General (individuals)	National procurement	Regional/local level	Awarded foreign firm	Joint purchase	Related to EU funds
Sources	2014 Eurobarometer Flash Report 374 (Business), 2014 Flash Report 379 (Individuals)				TED database		
Austria	78%	66%	50%	48%	6%	5%	3%
Belgium	47%	67%	45%	45%	5%	15%	5%
Bulgaria	89%	84%	66%	78%	1%	1%	9%
Croatia	90%	94%	64%	63%	1%	9%	2%
Cyprus	85%	78%	67%	61%	5%	15%	5%
Czech Republic	94%	96%	77%	67%	5%	5%	42%
Denmark	10%	20%	14%	20%	4%	14%	2%
Estonia	57%	65%	28%	35%	7%	4%	31%
Finland	27%	29%	19%	15%	1%	10%	3%
France	63%	68%	50%	56%	2%	5%	6%
Germany	58%	59%	37%	49%	2%	4%	5%
Greece	99%	99%	76%	94%	N/A	N/A	N/A
Hungary	91%	89%	47%	48%	2%	10%	20%
Ireland	49%	81%	39%	39%	11%	9%	2%
Italy	97%	97%	70%	69%	1%	10%	6%
Latvia	79%	76%	66%	58%	4%	15%	19%
Lithuania	89%	95%	48%	51%	1%	6%	7%
Luxembourg	25%	42%	20%	31%	16%	5%	11%
Malta	74%	83%	57%	50%	10%	71%	49%
Netherlands	75%	61%	33%	52%	3%	3%	1%
Poland	86%	82%	65%	67%	1%	3%	15%
Portugal	90%	90%	78%	83%	1%	2%	27%
Romania	91%	93%	64%	59%	1%	1%	4%
Slovakia	92%	90%	66%	70%	5%	6%	28%
Slovenia	94%	91%	77%	71%	2%	12%	5%

Spain	97%	63%	83%	90%	1%	2%	12%
Sweden	43%	40%	22%	33%	1%	10%	1%
United Kingdom	46%	64%	38%	37%	2%	21%	13%

Sources	TED Indicators							
	Total value of notice on TED (EUR)	Share of total procurement	# contract notices	# contract award notices	Share of Services	Share of Works	Share of Supplies	Share of Framework agreement
	TED database							
Austria	4,157,752,573	12%	2,956	2,315	28%	45%	27%	11%
Belgium	9,912,383,556	19%	5,001	3,138	44%	10%	46%	15%
Bulgaria	3,104,805,112	65%	3,083	4,665	35%	8%	57%	2%
Croatia	1,329,344,192	25%	1,581	1,363	36%	3%	61%	29%
Cyprus	320,293,263	29%	301	334	24%	6%	70%	3%
Czech Republic	6,083,478,093	28%	5,376	5,951	33%	17%	50%	8%
Denmark	12,601,665,497	37%	2,694	2,062	47%	15%	38%	37%
Estonia	769,787,356	31%	1,048	1,012	33%	6%	60%	20%
Finland	6,503,196,120	19%	3,364	2,567	57%	11%	32%	27%
France	56,730,388,641	18%	40,516	32,921	52%	17%	31%	1%
Germany	25,691,160,679	6%	24,960	20,734	29%	44%	27%	13%
Greece	3,398,202,777	21%	N/A	N/A	N/A	N/A	N/A	6%
Hungary	7,130,872,369	52%	1,936	1,972	37%	10%	53%	3%
Ireland	2,434,831,083	16%	1,279	763	61%	9%	30%	24%
Italy	30,716,039,658	20%	8,733	7,214	58%	6%	36%	13%
Latvia	1,379,839,659	52%	1,123	1,233	33%	7%	60%	4%
Lithuania	1,296,969,175	38%	2,326	2,078	43%	3%	54%	4%
Luxembourg	566,767,272	10%	470	353	22%	59%	19%	0%
Malta	250,053,909	36%	314	208	21%	9%	70%	5%
Netherlands	10,359,452,963	8%	3,874	3,412	56%	11%	33%	15%
Poland	22,318,884,373	48%	22,210	22,308	45%	7%	48%	1%
Portugal	2,720,222,950	16%	1,599	2,026	28%	6%	66%	6%
Romania	4,612,543,166	29%	3,755	3,951	34%	8%	59%	42%
Slovakia	4,836,983,562	57%	1,565	1,303	49%	4%	46%	42%

Slovenia	2,141,795,456	48%	1,260	1,324	42%	9%	50%	2%
Spain	13,350,010,157	13%	8,706	9,088	55%	4%	41%	8%
Sweden	15,653,246,403	23%	6,382	3,795	53%	11%	35%	2%
United Kingdom	90,349,740,982	33%	10,159	7,681	62%	9%	30%	43%

8.2. Appendix 2: Individual country profiles

The individual country profiles are attached in a separate document in the following order:

- Austria;
- Belgium;
- Bulgaria;
- Croatia;
- Cyprus;
- Czech Republic;
- Denmark;
- Estonia;
- Finland;
- France;
- Germany;
- Greece;
- Hungary;
- Ireland;
- Italy;
- Latvia;
- Lithuania;
- Luxembourg;
- Malta;
- Netherlands;
- Poland;
- Portugal;
- Romania;
- Slovakia;
- Slovenia;
- Spain;
- Sweden;
- United Kingdom.

8.3. Appendix 3: Country-specific recommendations

In the following, the country-specific recommendations of each individual country profile are summarised according to the following categories:

- Human resources;
- Systems and tools;
- Policy and governance structures;
- Accuracy and efficiency;
- Transparency and law enforcement.

	Austria	Belgium	Bulgaria	Croatia
Human resources	<ul style="list-style-type: none"> • Develop and implement targeted trainings, particularly covering the management of EU funds 	<ul style="list-style-type: none"> • Increase staffing levels within oversight entities 	<ul style="list-style-type: none"> • Accelerate hiring of additional staff, including the PPA • Expand training curriculum to cover MEAT criteria, anti-corruption policies, and ESI funds management and control 	<ul style="list-style-type: none"> • Accelerate hiring of qualified experts at the DPPS • Increase staffing levels at CPO and oversight bodies • Develop staff retention policies
Systems and tools			<ul style="list-style-type: none"> • Set up a telephone and e-mail hotline to provide ad hoc support • Minimise out of pocket costs and other barriers to attending trainings • Develop better guidance documents 	<ul style="list-style-type: none"> • Develop a robust training plan covering market assessment, MEAT criteria, and e-procurement • Distribute more timely updates on procurement issues
Policy and governance structures			<ul style="list-style-type: none"> • Overhaul the legal framework • Limit the frequency of legal reforms • Accompany legal reforms with awareness-raising and guidance materials • Improve coordination and harmonisation among policy, administrative and oversight bodies 	
Accuracy and efficiency	<ul style="list-style-type: none"> • Consolidate or improve interoperability between e-procurement platforms 	<ul style="list-style-type: none"> • Foster greater use of e-procurement in Wallonia and the Brussels Capital Region • Increase interoperability between the central e-procurement platform and Wallonia's e-procurement system 	<ul style="list-style-type: none"> • Reduce the burden of bidding • Reform mandatory bank guarantees 	<ul style="list-style-type: none"> • Enhance the use of the EOJN by making it free of charge
Transparency and law enforcement	<ul style="list-style-type: none"> • Enact procurement specific anti-corruption measures • Incentivise EU-wide publication of procurement contracts 	<ul style="list-style-type: none"> • Improve internal control procedures at federal level • Implement more formalised processes and work towards aggregation of oversight 	<ul style="list-style-type: none"> • Consolidate anti-corruption efforts into one or two bodies • Increase the independence of oversight bodies • Strengthen ex ante, ex post controls • Mandatory referral of violations for investigation • Publish a pipeline of upcoming tenders online 	<ul style="list-style-type: none"> • Empower DKOM to initiate investigations ex officio • Increase protections for whistleblowers • Strengthen the Anti-Corruption Task Force • Introduce sanction for infractions of procurement rules

	Cyprus	Czech Republic	Denmark	Estonia
Human resources	<ul style="list-style-type: none"> • Increase the pool of highly-skilled staff within the CBB • Better promote training opportunities • Reduce the number of contracting authorities 		<ul style="list-style-type: none"> • Strengthen business skills through market research and dialogue with the private sector 	<ul style="list-style-type: none"> • Dedicate greater resources to the RRO for better oversight
Systems and tools	<ul style="list-style-type: none"> • Make training organised more accessible to municipal practitioners • Promote use of standardised tender documents 	<ul style="list-style-type: none"> • Develop more practical guidance materials • Provide ad-hoc support via telephone hotline or a helpdesk 	<ul style="list-style-type: none"> • Improve guidance and support to contracting authorities 	<ul style="list-style-type: none"> • Set down precise objectives for environmental, social and innovative procurement
Policy and governance structures	<ul style="list-style-type: none"> • Develop and implement a comprehensive anti-corruption strategy 	<ul style="list-style-type: none"> • Reduce reform efforts to fewer large-scale reforms • Accompany the reform process with adequate guidance • Clearly define procedural steps of each type of procurement • Improve coordination between ESI Funds management and oversight bodies 	<ul style="list-style-type: none"> • Streamline and simplify the legislative framework 	
Accuracy and efficiency	<ul style="list-style-type: none"> • Implement targeted ex ante controls 	<ul style="list-style-type: none"> • Strengthen ex-ante assessments • Set up anonymous feedback channels for bidding • Improve user-friendliness of e-procurement tools 	<ul style="list-style-type: none"> • Open up in-house public service contracts to competition • Increase the share of procured expenditure • Encourage contracting authorities to make greater use of available framework contracts 	
Transparency and law enforcement	<ul style="list-style-type: none"> • Develop and implement a comprehensive anti-corruption strategy 	<ul style="list-style-type: none"> • Implement harsher sanctions • Improve the enforcement capacity of the OPC • Define stricter rules for additional works 		<ul style="list-style-type: none"> • Implement declarations of honour to prevent conflicts of interest • Develop corruption risk assessment tools at every level of government

	Finland	France	Germany	Greece
Human resources	<ul style="list-style-type: none"> • Devote resources to market research to identify emerging technologies 			<ul style="list-style-type: none"> • Implement comprehensive education and training program covering on: procedures, ESI funds, and anti-corruption policies
Systems and tools	<ul style="list-style-type: none"> • Promote SME-friendly tender design (e.g. breaking large contracts into lots, making it easier to form consortia, and publishing info on the pipeline of upcoming major projects) 	<ul style="list-style-type: none"> • Designate a one-stop shop for procurement information • Develop more extensive suite of guidance materials • Integrate e-procurement into the DAJ's existing website 		<ul style="list-style-type: none"> • Develop a comprehensive GPP plan
Policy and governance structures		<ul style="list-style-type: none"> • Streamline the Procurement Code • Clarify the responsibilities of various state-level organisations 	<ul style="list-style-type: none"> • Align direct award thresholds with EU norms nationwide • Incentivise greater coordination on procurement issues between the federal and federal state level government levels 	<ul style="list-style-type: none"> • Enact regulations and secondary legislation needed to implement the 2014 reform law • Develop feedback channels for stakeholders to be heard • Improve harmonisation, or consolidate audit and control functions
Accuracy and efficiency	<ul style="list-style-type: none"> • Implement feed-back channels for stakeholders to report on their experiences Detail the strategy to implement e-submission functionality 	<ul style="list-style-type: none"> • Improve integration of e-procurement platforms • Improve e-procurement tools and promote its use 	<ul style="list-style-type: none"> • Develop interoperability among the various e-procurement platforms • Incentivise increased publication of tenders on EU-wide platforms 	
Transparency and law enforcement	<ul style="list-style-type: none"> • Incorporate data collection and publication into the design of the e-procurement environment 	<ul style="list-style-type: none"> • Expand OEAP data collection and reporting mandate 	<ul style="list-style-type: none"> • Implement a nationwide data collection system 	<ul style="list-style-type: none"> • Incorporate data collection and publication into the design of the e-procurement system • Make the SAO accountable to Parliament only • Require declarations of honour from evaluation committee members • Increase sanctions for violations

	Hungary	Ireland	Italy	Latvia
Human resources	<ul style="list-style-type: none"> • Institute mandatory, rigorous training regime for all new procurement practitioners • Develop staff retention and motivation policy • Increase procurement staff at the PMO 	<ul style="list-style-type: none"> • Make training available to sub-national practitioners 	<ul style="list-style-type: none"> • Incentivise the development of business skills 	<ul style="list-style-type: none"> • Increase resources to ex ante controls of tender documents • Increase compensation for high skilled procurement staff
Systems and tools	<ul style="list-style-type: none"> • Develop training and guidance materials on the use of non-price criteria in tender selection • Promote innovative, sustainable and inclusive procurement 	<ul style="list-style-type: none"> • Develop more standardised documents and guidance materials • Establish a telephone and e-mail helpdesk 	<ul style="list-style-type: none"> • Provide standardised tender documents 	<ul style="list-style-type: none"> • Develop guidance materials on the preparation of tender documents • Set up an environmental, social and innovative criteria library • Promote MEAT criteria • Introduce dedicated e-procurement trainings and guidance materials
Policy and governance structures		<ul style="list-style-type: none"> • Incentivise SMEs to form consortia to compete for larger contracts 	<ul style="list-style-type: none"> • Rationalise and simplify the law • Restrict exemptions and loopholes • Introduce strict ex post controls for any exemption • Establish a specialised court on public procurement • Streamline procedures to increase efficiency 	<ul style="list-style-type: none"> • Extend the IUB's authority to the full project lifecycle
Accuracy and efficiency	<ul style="list-style-type: none"> • Restricting the use of direct award • Reduce reliance on negotiated procedures in favour of more competitive alternatives • Increase the uptake of e-procurement 	<ul style="list-style-type: none"> • Improve user-friendliness of e-procurement tools 	<ul style="list-style-type: none"> • Increase focus on value for money • Introduce "winner-only habilitation" 	<ul style="list-style-type: none"> • Create a comprehensive e-procurement platform • Develop a plan for e-procurement implementation
Transparency and law enforcement	<ul style="list-style-type: none"> • Consolidate oversight and anticorruption efforts • Implement the Open Contracting initiative • Reduce the cost of appealing decisions • Incorporate data collection into the design of the e-procurement system 	<ul style="list-style-type: none"> • Publish the project pipeline • Delegate anti-corruption efforts to a politically independent organisation • Improve public access to procurement data • Increase collaboration with civil society groups 	<ul style="list-style-type: none"> • Reduce the use of additional works • Limit design and build contracts • Enhance transparency of contracts with in-house firms • Reduce lag times between violations and convictions • Improve risk management tools • Enhance legal liability for completion of projects 	<ul style="list-style-type: none"> • Develop risk-management tools • Increase transparency for below EU threshold tenders • Increase the transparency of in-house contracts • Mandatory publication of annual procurement plans • Bring legal definition of fraud into line with the EU's definition

	Lithuania	Luxembourg	Malta	Netherlands
Human resources	<ul style="list-style-type: none"> • Improve enforcement by increasing resources or better targeting the efforts of the PPO anti-corruption staff 		<ul style="list-style-type: none"> • Institute the long-term procurement diploma program for civil servants • Expand education and training on procurement of innovation to local practitioners • Enact the DoC's extended training program for newly hired staff • Introduce targeted trainings on ESI funds management and control 	
Systems and tools		<ul style="list-style-type: none"> • Develop guidance documents on the use of e-procurement tools • Define environmental, social and innovative procurement objectives • Produce practical guidance on how to implement them, e.g. criteria library 	<ul style="list-style-type: none"> • Offer dedicated trainings and guidance documents on e-procurement 	<ul style="list-style-type: none"> • Conduct awareness-raising campaign on the benefits of e-procurement • Develop e-procurement guidance materials
Policy and governance structures	<ul style="list-style-type: none"> • Enhance political independence of anti-corruption bodies 		<ul style="list-style-type: none"> • Standardise procurement procedures across levels of government to be faster and less burdensome • Improve communication between the DoC and other practitioners 	
Accuracy and efficiency		<ul style="list-style-type: none"> • Promote the use of the PMP e-procurement portal 	<ul style="list-style-type: none"> • Follow-up on the implementation of e-procurement 	<ul style="list-style-type: none"> • Promote the use of more openly competitive procedures • Streamline the process for obtaining a "Declaration of conduct"
Transparency and law enforcement	<ul style="list-style-type: none"> • Enact stiffer sanctions for violations of procurement rules • Improve risk management tools to better target oversight efforts • Improve coordination with civil society groups 	<ul style="list-style-type: none"> • Increase data collection and monitoring by the MDDI 	<ul style="list-style-type: none"> • Improve data collection and transparency on below thresholds contracts • Develop monitoring systems that can detect contracting spilling and other irregularities 	<ul style="list-style-type: none"> • Put in place a centralised data collection system • Increase transparency through publication of below-threshold contracts

	Poland	Portugal	Romania	Slovakia
Human resources		<ul style="list-style-type: none"> Targeted trainings on writing technical specifications 	<ul style="list-style-type: none"> Encourage greater use of centralised purchasing 	<ul style="list-style-type: none"> Make UVO's compensation and working conditions more competitive Introduce more comprehensive training programme for newer hires
Systems and tools	<ul style="list-style-type: none"> Create an online one stop shop Develop more standardised tender documents Expand guidance on the use of non-price criteria Implement two-envelope bids Promote strategic procurement, e.g. life-cycle costing Improve the PPO's case law library to be more user friendly and intuitive 	<ul style="list-style-type: none"> Promote the use of MEAT criteria through improved guidance Use BASE/eSPap as one-stop shop for procurement information 	<ul style="list-style-type: none"> Produce clear and practical guidelines materials Offer training and ad-hoc support 	<ul style="list-style-type: none"> Publish a comprehensive methodology Produce standardised tender documents
Policy and governance structures	<ul style="list-style-type: none"> Simplify and clarify the PPL Consolidate oversight responsibilities Reduce the frequency of legal amendments Make the KIO fully independent 	<ul style="list-style-type: none"> Make central purchasing optional Shorten framework agreements 	<ul style="list-style-type: none"> Enact fundamental reform of the procurement legal structure Limit the frequency of future legal changes Strengthen the independence of ANAP Better target ex ante controls Strengthen enforcement powers 	<ul style="list-style-type: none"> Clarify competencies, or consider further consolidations, between procurement policy and administrative bodies
Accuracy and efficiency	<ul style="list-style-type: none"> Develop high quality, centralised e-procurement platform at the ePUAP portal Conduct e-procurement awareness-raising and training campaign 	<ul style="list-style-type: none"> Reduce direct award thresholds 	<ul style="list-style-type: none"> Reform the tendering process with the bidders perspective in mind to reduce the burden of participating in the procurement process Introduce "winner-only habilitation" to reduce unnecessary burden on economic operators 	<ul style="list-style-type: none"> Promote use of e-procurement Integrate existing e-procurement platforms Develop a comprehensive e-procurement transition strategy
Transparency and law enforcement	<ul style="list-style-type: none"> Enhance ex ante and ex post checks of procedures Raise awareness of existing anti-corruption tools Strengthen the capacity of dedicated bodies such as CEUTP's bid-rigging unit Publishing more extensive data online Strengthen enforcement of existing rules 	<ul style="list-style-type: none"> Increase prosecutions of bid-rigging, conflict of interest, etc. Implement declarations of honour to reduce conflict of interest Incentivise reporting and whistle-blowers and establish channels to report suspected corrupt practices Reduce the ability of appeals to halt a tender Increase fees for filing appeals, create penalties for abuse Improve inter-agency access to procurement data 	<ul style="list-style-type: none"> Increase enforcement, harsher penalties for violations Improve the complaint resolution mechanism Strengthen enforcement of court decisions Bring the definition of conflict of interest to be in line with EU norms Develop prevention and control mechanisms to detect high-level corruption 	<ul style="list-style-type: none"> Ramp up enforcement of procurement violations and suspected corruption Increase coordination among existing anti-corruption bodies Limitations the cancellation of procedures pre-award Incentivise citizens to report fraudulent practices Expand the use of ex ante controls

	Slovenia	Spain	Sweden	United Kingdom
Human resources		<ul style="list-style-type: none"> • Make trainings accessible to local practitioners 	<ul style="list-style-type: none"> • Consolidate centralised purchasing and support activities 	<ul style="list-style-type: none"> • Incorporate market knowledge and business orientation into hiring priorities and training curriculum
Systems and tools	<ul style="list-style-type: none"> • Establish a live help desk • Develop a template tender documents • Produce training and guidance materials on document preparation • Promote sustainable procurement and non-price criteria 	<ul style="list-style-type: none"> • Improve ESI funds guidance materials • Develop standardised tender forms and documents • Create a one-stop shop portal for public procurement info 		
Policy and governance structures	<ul style="list-style-type: none"> • Simplify and clarify the legal framework • Allow for appeals of DKOM decisions 	<ul style="list-style-type: none"> • Increase coordination between courts of contractual appeals, consultative boards and oversight bodies at regional and national levels 	<ul style="list-style-type: none"> • Conduct a review of procurement laws, regulations and procedures from the perspective of contracting authorities and economic operators 	<ul style="list-style-type: none"> • Incorporate EU standards and regulations into the UK system in a more systematic way
Accuracy and efficiency	<ul style="list-style-type: none"> • Accelerate the development of the planned e-procurement modules and functionalities • Prepare practitioners for the implementation of new e-procurement tools 	<ul style="list-style-type: none"> • Increase interoperability among e-procurement tools • Integrate the various bidders' registries 		<ul style="list-style-type: none"> • Enhance the harmonisation of systems between the CCS and other central government agencies • Continue efforts to streamline administrative burdens, including PQQs
Transparency and law enforcement	<ul style="list-style-type: none"> • Increase the use of targeted ex ante controls • Enhance internal control mechanisms and strengthen the role of the KPK • Facilitate oversight by civil society groups 	<ul style="list-style-type: none"> • Publish annual procurement planning • Increase sanctions for violations of procurement rules • Enhance monitoring and control of the execution of contracts 	<ul style="list-style-type: none"> • Build a central search portal for all online notifications 	<ul style="list-style-type: none"> • Prioritise transparency and recordkeeping

8.4. Appendix 4: Field visit takeaways

The first phase of the study consisted in building a comprehensive overview of the lay of the land of public procurement in the EU MS based on a desk review of publicly available data.

The second phase of the study was to delve deeper into the issues identified during the desk research for a sample of 15 MS through interviews with a range of procurement and ESI Funds management stakeholders.

In total, 94 interviews have been conducted between April and June 2015 with the following types of stakeholders:

- Public procurement policy bodies;
- Public procurement oversight bodies;
- ESI Funds MAs;
- Central purchasing bodies;
- Regional or local contracting authorities;
- Business organisations and chambers of commerce;
- NGOs acting in the field of transparency and good governance;
- Academics.

The objective of these field visits was to get a more detailed, nuanced and practical understanding of the key issues facing public procurement in each MS. In particular, they were designed to collect the kinds of information that cannot be found in official documents and reports, but comes only through the experiences the key stakeholders who work in procurement day to day. This includes the broader economic, political, administrative and cultural context in which procurement takes place, key factors to the success or failure of reforms and ongoing initiatives and reforms.

The present section includes the main takeaways from the field visits for each of the 15 MS, including the good practices identified, the areas for improvement and recommendations for the MS and for the EC.

BULGARIA

Good practices

One area that the interviews identified Bulgarian institutions as promoting best practices is in their educational and awareness-raising efforts around *ex ante* controls:

- **Training on ex ante controls:** Public procurement practitioners at the Public Procurement Agency (PPA) are teaching municipalities on how to comply with *ex ante* controls, explaining how the *ex ante* review of procurement works and to which specific elements contracting authorities need to pay attention.

Areas for improvement

The field visit and interviews with stakeholders highlighted several areas for improvement in the public procurement process in Bulgaria:

- **Inconsistent application.** Contracting authorities in Bulgaria do not have a stable or consistent legal framework to work in due to frequent amendments to procurement laws, and to the divergent and often contradictory rulings of the

various bodies involved. There are more than one hundred local and regional courts with jurisdiction over procurement.

- **Enforcement authority.** In cases where irregularities are identified by *ex ante* controls, the PPA has little power to motivate contracting authorities to address them beyond issuing recommendations or referring them to the National Audit Office, the State Financial Inspection Agency and the respective MA. Expanded authority, such as the power to halt procedures for the more severe issues, could substantially reduce irregularities.
- **Ineffective data transparency.** Even though the PPA possesses significant data on procurement tenders, it does not publish this data in a user-friendly format conducive to search and analysis, limiting the ability of organisations, such as civil society groups to conduct oversight.

The interviews with stakeholders highlighted the perspective of businesses operating in public markets. The main messages were related to the following points:

- **Lack of trust.** Businesses overall perceive public procurement as being discriminatory, burdensome, lacking transparency, and not taking quality aspects into account. In particular, foreign businesses consider the obligatory bank guarantee as an unnecessary barrier to participation. Some even expressed a fear of retaliation in case of complaint. The impression from the business side is that contracting authorities often have a preferred candidate, and procedures are manipulated, e.g. through the use of tailor-made award criteria, to ensure they win. In case the preferred candidate does not win the contract, the winner is pushed to withdraw his bid or face unnecessary difficulties during the execution of the contract.
- **No visibility of project pipeline.** Companies often lack information regarding the public administration's project pipelines and therefore often have only short timeframes to prepare offers. When contracts are announced, the timing to prepare offers is very tight. Increased visibility over the project pipeline would allow economic operators to prepare ahead and improve offers.

Finally, administrative capacity has a bearing on the effective functioning of public procurement:

- **Technical expertise.** Preparing tender documents, in particular for technical domains, requires substantial skills that contracting authorities often lack. This may lead to poor tender documentation and jeopardise the quality of implementation. Above and beyond, many tenders are evaluated mostly on the basis of the lowest price and fail to sufficiently take into account quality aspects.
- **Recruitment and retention.** Retaining qualified staff is a challenge for procurement bodies, as the public administration struggles to offer competitive compensation. Staff has an incentive to move to better-paid private sector jobs as soon as they have acquired key skills. As a result, building capacity in the public administration is difficult.

For the Commission:

- **Clarity on guidance.** The National Audit Office sees the need for greater clarity and non-contradictory statements on behalf of the separate Commission services on aspects such as equal treatment of similar cases.

CROATIA

Good practices

Some important improvements in the public procurement procedures have been achieved in Croatia through the employment of good practices, such as:

- **Open days.** In order to make themselves and their expertise more accessible to stakeholders, the Directorate for the Public Procurement System (DPPS) holds an open day once a month to field questions.
- **Hotline.** The DPPS also operates a dedicated phone line available Tuesday and Thursday mornings and an e-mail channel as well. The e-mail address alone received 3,000-4,000 requests annually.
- **Plan ahead.** Contracting authorities are required to publish annual procurement plans online within 60 days of passage of the budget, and update them every six months.
- **Building expertise.** Croatia created a network of coordinators for public procurement, professionals from various agencies that handle ESI funds who meet on a monthly basis to discuss practical issues and share best practices
- **Independent scrutiny.** In an effort to strengthen independent oversight, the public procurement process is scrutinised by the Ministry of Justice (MoJ), for the legality of procedures, and to ensure transparency of public authorities.

Areas for improvement

The Croatian legal framework for public procurement and the oversight of the public procurement process could be improved in the following areas:

- **Empower the DKOM.** The State Commission for Supervision of Public Procurement (DKOM), which acts as Croatia's procurement remedies body, could have its jurisdiction expanded to allow it to initiate investigations *ex officio*.
- **Promote MEAT criteria.** The use of non-price criteria in tender evaluations remains limited in Croatia. Greater awareness raising efforts and guidance materials need to be developed in order to implement "MEAT standards.
- **Fight corruption.** Corruption has repeatedly been identified as a significant issue affecting the procurement process. Despite repeated efforts at reform, systemic problems remain. Therefore, anti-corruption task force and relevant policy needs to be strengthened. In addition, measures should be taken to better protect whistle-blowers who report corruption, and to educate people on the importance of reporting suspected corruption to officials.

The administrative capacity for public procurement in Croatia stands to be improved in the following area:

- **Training and education.** Croatian procurement practitioners face persistent administrative capacity issues. This is in part due to hiring and retention issues, but even more so to the lack of adequate training and education of staff. On a broad range of specialised topics, such as cost-benefit analysis, financial evaluation and GPP, more resources need to be dedicated to skills building.

CZECH REPUBLIC

Good practices

As the interpretation of the law may pose a challenge in the Czech Republic, the following tool has been developed in order to support contracting authorities and economic operators:

- **Lexicon on Public Procurement Law.** The Lexicon serves as a virtual library on case law related to public procurement. It has been created by the Association for Public Procurement, a civil society platform for procurement stakeholders and its use is offered to members or for a small fee. Contracting authorities and economic operators can search the Lexicon for case law on specific sections of the Public Procurement Act, allowing a better understanding and interpretation of the law.

Areas for improvement

The Czech legal framework for public procurement could be improved in the following areas:

- **Stability of the legal framework.** Numerous amendments and repeals of the legal basis have undermined legal certainty for contracting authorities and economic operators, most strikingly in the wake of the 2012 reform process. This difficulty has been exacerbated by the long delay between enactment of changes and publication of updated guidance materials.
- **More “MEAT”.** Due in part to the legal uncertain issue introduced above, the use of MEAT criteria has decreased substantially in recent years in favour of lowest price, which is easier to implement and easier to defend from legal challenges. Contracting authorities need to have confidence that implementing quality standards will not expose them to greater liability.
- **Inclusive policymaking.** The 2012 reform was characterised by the fast introduction of a series of large-scale reforms aimed at reducing corruption. However, the reform process was carried out too quickly without proper consultation of key stakeholders. While valuable in theory, many of the implemented amendments did not prove viable in practice and had to be repealed shortly after their introduction. In addition to fostering buy-in, large and open consultations prior to the reform process can reduce the risks of introducing impractical provisions.
- **Harmonise oversight standards.** In the context of EU co-financed projects, the authorities involved (e.g. Managing Authorities, Audit Authorities, Office for Protection of Competition) can decide independently and differently on the interpretation of procurement rules, leading to a situation where a procedure may be marked as correct by the Managing Authority but is then contested in subsequent audits. Beyond ESI Funds-related procurement, there is a general need for a more uniform interpretation of procurement law, as it presents an area of difficulty for contracting authorities.
- **Simplified regulation.** The Czech procurement regulation is considered by many to be overly complex and burdensome. With the transposition of the 2014 procurement Directive, the Czech legislature has made a priority of simplifying the law, and introducing greater flexibility in how it is implemented.

In addition, the following issues were identified in the oversight process:

- **Sanctions lack deterrent effect.** Current sanctions for violations of national procurement law are considered to be too low, and too infrequently applied to serve an adequate deterrent function.
- **Exploitation of provisions for additional works.** Under Czech law, the supplier is allowed to charge up to 50% of additional works to the initial contract. This provision has been misused by unscrupulous bidders winning contracts with artificially depressed prices, counting on the 50% increase in contract value. Prosecution of this practice is low.

- **Lax audits.** The first level controls by MAs have been criticised for being insufficiently vigorous, weakening the management and controls system and resulting in some cases, in diverging interpretation by different authorities.

The administrative capacity for public procurement in the Czech Republic could be improved through:

- **Strengthen local capacity.** Public procurement practitioners at the local level often lack skills in critical areas such as the assessment of cost-benefit analysis, identification of business conditions in agreements, and selection of contracts based on value rather than simply cost. This is particularly the case for small municipalities, where administrative capacity is weak and they lack the funds to make use of professional services.
- **Increase accountability.** In order to reduce irregularities and improve value, procurement practitioners should be given greater responsibility for the outcomes of their work. This should include, among other things, making individuals personally liable for violations of procurement law.
- **Applied guidance.** Much of the guidance materials published by the central government is criticised as being too theoretical, and updated too infrequently. In order to correctly and confidently apply/implement the rules, contracting authorities need hands-on, up-to-date guidance.

FRANCE

Good practices

The French field visits have revealed specific measures that represent good practices at national level, one of them:

- **Call centre.** The Ministry of Finance (Minefi) operates a call centre with a staff of 10 to respond to questions from public buyers at local and regional level, including State administrations in the regions. Questions are accepted by phone or by e-mail with the goal to provide a response to most questions either on the spot by phone, or in writing within 48 hours. Questions that require legal interpretation are forwarded to Minefi staff lawyers who are to provide written responses within 40 days. The advice provided by the call centre is in high demand, fielding as many as 30 to 35,000 inquiries per year.
- **Simplified administrative procedure.** Starting in 2014, the State introduced a simplified administrative procedure "*Marché Public Simplifié*" (MPS) which limits the need to submit habilitation documents to the winning bidder. Under the simplified system, bidders must provide only their unique fiscal identification number (SIRET) and a declaration of honour along with their offers, substantially reducing the administrative burden for economic operators.

Simplified administrative procedures are not limited by price or type of contract, but are currently only available for a limited number of contracts published electronically. Functionality will soon also be expanded to joint tenders. In the first year of operation, more than 1,800 tenders were submitted using this process.

- **Bidder advocates.** In 2012, France established the Public Procurement Mediation to improve support to economic operators and improve their access to public contracts. Representatives of the service provide guidance on how to navigate the procurement process, and can act as impartial, neutral and independent conciliators in the event that disputes arise between contracting authorities and suppliers, especially SMEs. By way of indication, the mediators examined 231 cases in 2013 (of which 73.5% had a favourable outcome after the procedure).

- **Video guidance.** The SAE has produced a series of short informational videos and e-learning for public procurement practitioners and economic operators presenting guidance on a number of topics including the use of e-procurement platform and simplified administrative procedures procedure in an easy and intuitive way.

On the other hand, the field visits have highlighted the following features that simplify procedures for economic operators at regional level:

- **Sustainable Purchase Innovation Lab.** In 2012, the Rhône-Alpes Regional Council organised a unique three-month long “Sustainable Purchase Innovation Lab” to explore opportunities to spur sustainability using procurement. It consisted of setting up a collaborative platform bringing together administrators, architects, sociologists, and researchers to explore various topics such as the inclusion of specific clauses and conditionalities in tenders to promote sustainability and the definition of needs for public procurement practitioners. The event was a major step forward in building awareness on the topic of sustainable procurement, and resulted in the development of concrete tools and best practices for contracting authorities.
- **Quality review.** In an effort to better tailor their procurement system to the needs of stakeholders, the Rhône-Alpes Regional Council solicits feedback from economic operators and operational services for up to 20% of their annual procedures. Participation is voluntary, and tenders are selected by the Operational Directorate in charge of the tender.

Areas for improvement

Field visits also identified a number of areas for potential improvement for France:

- **Reduce complexity.** Public procurement in France continues to be characterised by high complexity of rules and overlapping responsibilities of the various supportive bodies. The former is a key driver of administrative burden, and uncertainty, and contributes to inconsistency in the application of public procurement rules. To address this, many contracting authorities and economic operators support streamlining the Public Procurement Code (CMP).

In the case of organisational complexity, this results both in inefficiencies due to lack of clarity, as well as the possibility for manipulation of the procurement process. In many MS, this issue is addressed by consolidating procurement responsibilities into a single body. Failing this, progress could be made by better clarifying responsibilities, or by establishing a single point of contact to prevent opportunities for arbitrage.

- **Expand data collection and monitoring.** Procurement data collection is currently being done by the Economic Observatory of Public Purchase (OEAP), is limited to tenders above EUR 90,000, and covers a limited number of topics. As a result, the analysis they produce is far from comprehensive. Expanding the scope of data collection to include tenders of all sizes and issues such as strategic use would substantially increase the value of the data collected for both policy making and oversight purposes.
- **More practical tools.** Insufficient administrative capacity remains an issue among many contracting authorities, but interview subjects expressed the concern that additional trainings were not an effective approach due to high turnover and infrequent procurement. Greater availability of practical tools that can be consulted at the practitioner’s discretion, such as methodologies, informational videos, or e-learning courses, might be a more effective approach.
- **Low adoption of e-procurement.** Although it was introduced nearly a decade ago, e-procurement adoption has been sluggish due to resistance from contracting authorities who see it as burdensome. For example, tenders processed online still

require a substantial amount of administrative paperwork to be completed, resulting in redundancies. Furthermore, the multitude of disconnected platforms often means that a practitioner must learn several new systems or interfaces. While use of e-procurement will be made mandatory in the coming years, reforms of the administrative procedures and increased interoperability and standardisation of tools would greatly facilitate adoption.

GERMANY

Good practices

Germany presents a well-developed and overall effective public procurement system. The field visits have highlighted the following institutional feature that works particularly well:

- **Specialised administrative public procurement tribunals.** Above EU thresholds, procurement complaints are handled by dedicated administrative public procurement tribunals (*Vergabekammern*). Since the set-up of these tribunals, the jurisdiction and legal certainty around procurement has evolved very positively. In fact, the quality of judgement is very high and ensures a high degree of legal protection to participants. Furthermore, the creation of these tribunals had positive spill-over effects in terms of professionalisation of procurement, as it has fostered the specialisation of lawyers.

In terms of specific policies that represent good practices, Germany has introduced measures to simplify procedures for economic operators on the one hand, and a system for the prevention of corruption on the other:

- **System of pre-qualification of bidders.** In order to reduce the administrative burden of filing individual tenders, bidders can file their administrative documentation in advance with their Public Procurement Advisory Office to receive a certificate of qualification that can substitute for individual paperwork submission. These certificates are valid nationwide for one year. A small fee is charged by the Public Procurement Advisory Office for this service.
- **Separation of the tender phases.** A principle of the prevention of corruption concerns the separation of the different tender phases, notably the preparation and planning, the purchasing and the settlement. This allows separating demand from actual purchase, i.e. the purchasing is carried out by a separate entity from the entity that has a specific need. Purchasing through the central purchasing body is the solution encouraged by the Ministry of the Interior responsible for prevention of corruption.
- **Corruption risk monitoring.** The Interior Ministry's corruption prevention unit developed an excel-based tool to estimate the risk of corruption for a given area of activity using a set of corruption red flags. These vulnerable areas of activity require special measures for hiring of staff and an assessment of whether safeguards are sufficient to mitigate corruption risks.
- **Direct access.** In order to carry out its responsibility to perform checks on specific tenders, the Unit for Prevention of Corruption has direct access to all official the relevant documents from every stage of the procedure. This allows them to control ongoing procedures in real time without notifying, and indeed, without the knowledge, of the contracting authorities responsible. Checks are performed both randomly, and in response to tip-offs from whistle-blowers.

Areas for improvement

The key areas of improvement in Germany concern data collection and the simplification of e-procurement:

- **Data collection and transparency.** Data collection in public procurement is scarce, fragmented and in some cases may lack entirely, notably at the level of municipalities. This has already been recognised as an area for improvement and the government is making important steps in the right direction. In fact, it has launched an ongoing project for the creation of comprehensive procurement statistics that aims at determining a model for data collection. Preliminary results will be available at the end of the year. Importantly, the draft legislation transposing the 2014 Directives introduces mandatory and automatic data collection. This data collection will concern information such as the volumes of procurement, information related to SME-procurement and strategic goals. Despite these positive developments, Germany scores low in terms of transparency of procurement due to concerns about data privacy.
- **Harmonisation of e-procurement.** E-procurement in its current shape is very fragmented and burdensome for both economic operators and contracting authorities. The main weakness derives from the fact that e-procurement is not sufficiently centralised, meaning that economic operators need to use multiple platforms at federal, State and local level, which is time-consuming and inefficient. Moreover, the transposition of the 2014 procurement Directives will not introduce a radical aggregation of e-procurement platforms. Some of the challenges to aggregation are structural and related to Germany's political system: each *Land* or municipality can set up its own e-procurement system, the federal central purchasing bodies are not allowed to offer services to *Länder*, and cooperation among federation and *Länder* raises questions of financing. Nonetheless, the user-perspective needs to be taken into greater account in order to generate real benefits from e-procurement. The project XVergabe as an interoperable standard for Germany's e-procurement platforms is as a step in the right direction, but an overall harmonisation of the system would benefit stakeholders.

For the Commission:

- **Take a more balanced approach to formal errors.** Under current practice, so-called formal irregularities in procurement procedures are counted against the MS's error rate. If this error rate exceeds 2%, a suspension of payments follows, necessitating a complex administrative process whereby the MA must craft an Action Plan in order to un-block the suspension of payments.

To the extent that this process is triggered by formal errors not affecting the outcome of the procedure, the associated administrative burden was described by some as being disproportional to the problem. This is underlined by the fact that, due to discrepancies between national and EC standards, such a process could be triggered by a procedure that was deemed to be fully compliant by the German Federal Court of Audit.

It was suggested that the EC adopt a more balanced approach to formal errors, similar to that of the ECA, under which a distinction is made between formal and substantial errors when calculating the error rate, and which takes into account the impact of a given breach of protocol on the outcome of the procedure.

- **Official database of certifications.** In their efforts to promote strategic goals in the procurement process, contracting authorities are stymied by the preponderance of standards and certifications. The availability of an EC-certified database attesting to the quality and rigor of existing standards would prove helpful in this regard.

GREECE

Good practices

There were no good practices identified during the Greek field visits.

Areas for improvement

Field visits identified a number of areas for potential improvement for Greece:

- **More training.** There is a shortage of training programmes for MAs and other actors involved in procurement. Progress could be made by developing comprehensive training aimed at strengthening the capacity of practitioners and oversight personnel.
- **Clarify roles of audit and control authorities.** The presence of numerous audit and control authorities involved in procurement, such as the Supreme Court of Audits, the MAs, and the Inspector of Public Works, contributes to confusion in the process. Adding to this, the roles and responsibilities between the different authorities are still not always articulated clearly.
- **Enhance oversight.** For many infractions, enforcement is non-existent or too modest to be a deterrent. What is more, the number of controls and audits performed by the Central Procurement Authority are limited. Harmonising the auditing procedures would therefore improve procurement-related internal control and oversight.

HUNGARY

Good practices

The following good practices were identified in Hungary through field visits and interviews with relevant stakeholders:

- **Enhance SMEs participation.** Some of the provisions contained in the New Act on Public Procurement (Act No. CVIII of 2011) are aimed at guaranteeing better access for SMEs to public tenders by: Including collecting data on SME participation in tenders, dividing-up large contracts into smaller lots to encourage competition, and providing opportunities for contracting authorities to conduct restrictive procedures directed at SMEs.
- **Free Admission.** One relatively simple step the administration has taken to increase participation in educational events and conferences is to keep the cost of attendance down by making admission free of charge.

Areas for improvement

Following the interviews with relevant stakeholders, Hungary stands to improve its public procurement by enacting improvements to the following areas:

- **Access to legal recourse.** Hungary reports a remarkably low number of legal challenges given the number of procedures executed compares with other MS. This is primarily attributed to the fact that the cost of submitting such an appeal can be prohibitively high due to court fees and other costs. This issue is expected to be addressed as part of the ongoing reform process.
- **Reduced administrative burden.** Existing regulation is extremely detailed and places a heavy administrative burden on both the contracting authorities and the bidders. The new legislation should hopefully help reduce the strain placed on these entities.
- **Inconsistent interpretation of the law.** Existing public procurement laws and regulations are generally ambiguous and unclear. Consequently, the application of the laws is also inconsistent. To address this, the Hungarian legislature is working to modernise and streamline public procurement legislation over the next few years.
- **Improved administrative capacity.** The capacity of the Prime Minister's Office, which is the ministry responsible for supervising public procurement procedures financed by EU cohesion policy or ESI Funds, should be increased so as to better meet their elevated workload.

ITALY

Good practices

Several good practices were identified in Italy following interviews with relevant stakeholders:

- **'Collaborative supervision'**. For procurement processes that are at high risk of corruption or are co-financed by the EU, contracting authorities can request additional oversight by the National Anti-Corruption Authority (ANAC). This collaborative system also allows for the accompaniment of contracting authorities in order to support them in the development phase of tenders and help provide preventative monitoring of possible irregularities.
- **Real-time data collection**. The Observatory of Public Contracts has been establishing direct data links with contracting authorities and Italy's regions in order to acquire real-time information on public contracts. This will allow archiving of contractual matters that can also be easily made available to the public upon request.
- **Rationalisation of procurement**. The simplification and streamlining of procurement processes through the set-up of 35 regional procurement aggregators is considered a very positive development by Italy's procurement stakeholders. The types of purchases to be carried out through the procurement aggregators will be decided by a working group together with ANAC. One of the priorities of the regional aggregation effort is to increasing SME participation.

Areas for improvement

Many of Italy's weaknesses are related to the Public Procurement Code, as described below:

- **Form over substance**. Italian legislation is perceived by many as too tied to the form rather than to the substance of procurement. Future procurement reform efforts need to take better account of outcomes, as well as procedures.
- **Improve legal certainty**. Frequent changes and additions to the procurement Code have resulted in a system that is both unstable and overly complex, creating confusion for practitioners.
- **No exemptions**. Given the excessive complexity of the procurement Code and accompanying regulations, many seek to sidestep the rules by applying for legal exemptions. While there is a place for expedited procedures in the case of, e.g. natural disasters, the number must be limited, and their use should be closely circumscribed.

Also in terms of administrative capacity, the Italian procurement system has room for improvement:

- **Better trained procurement practitioners**. It is important that the staff of public procurement authorities be better trained in order to improve their administrative capacity and provide them with a better understanding of the economic and legal facets of the process. Currently, procurement practitioners have a legal-administration background, but lack economic skills. Specifically, staff should be trained in areas such as public procurement law, ideally through the support of DG GROW.

For the Commission:

- **Strengthening coordination among EU auditors**. There is a widespread desire for more and better coordination both among EC services and between the EC and national authorities to ensure more harmonised and predictable auditing standards, and to support capacity building among beneficiaries.

LATVIA

Good practices

Interviews with Latvian procurement stakeholders identified a number of good practices, particularly in the oversight and obligations of Contracting Authorities to help reduce errors and irregularities:

- **Submission of annual procurement plans.** Contracting authorities that procure using ESI Funds are obliged to submit an annual procurement plan indicating their needs and intentions to spend their allocated funds. This has a two-fold beneficial effect: on the one hand, it increases the strategic planning of the contracting authority and may contribute to more efficient spending of EU money, on the other it enhances the visibility of the project pipeline for economic operators, allowing them to better prepare.
- **Continuous education in public procurement.** The Procurement Monitoring Bureau (IUB) regularly organises seminars on public procurement to inform industry practitioners on current issues and any changes within the law, as well as to train employees new to public procurement. The Latvian School of Public Administration (LSPA) also provides seminars on public procurement.
- **Improved preliminary checks through cooperative approach.** Public institutions involved in public procurement benefit from regular and seamless cooperation amongst each other when conducting preliminary checks. This has led to a decreasing number of irregularities detected.
- **Effective sanctions.** According to evaluation by the administration, supervisory decisions and administrative penalties imposed by IUB are succeeding in having a deterrent effect on contracting authorities, and are contributing to a reduction in errors and irregularities.

Areas for improvement

Latvia continues to struggle in a number of areas, including in the need to improve transparency, and to bring its legal framework more into line with EU norms. Outstanding issues in the legal system include:

- **Below threshold procedures.** Latvia applies a substantially looser legal requirements to contract below EU thresholds than above, particularly in the case of direct awards. Given the lack of oversight and transparency, a large proportion of tenders occur below these thresholds, and the overwhelming majority of legal challenges concern them as well. This issue is expected to be addressed in the upcoming legislative reforms.
- **Update Latvian definition of fraud.** The definition of fraud under Latvian criminal law needs to be brought into line with the EU's definition.

In terms of transparency, there is room for improvement on the following issues:

- **Improve transparency of in-house procurement.** Several business interlocutors proposed that the exemption of legal requirements for in-house procurement for municipalities is a big obstacle to transparency and competitive procurement in the public sector.
- **Publish documentation online.** To date, Latvian institutions are not obliged to publish their public procurement plans online, although some contracting authorities publish documentation online voluntarily.

Implementation issues for contracting authorities and oversight bodies:

- **Comprehensive oversight.** The IUB's mandate to oversee public contracts ends when the contract is signed. While contract implementation is subject to control by

the State Audit Office (SAO), audits are limited to a few randomly selected procurement procedures annually. Issues such as delays and additional works could be better addressed by extending the IUB's authority to the full project lifecycle.

- **Better risk management.** One of the reasons that the contract lifecycle requires more oversight is that there is insufficient risk management in the contract preparation phase. As a result, foreseeable issues often require contractual amendments contributing to delays, cost overruns, and additional works.
- **Competitive compensation.** A fundamental issue throughout the procurement system is the difficulty in attracting and retaining qualified staff. There is a shortage of already qualified workers on the market, meaning that most skills must be built-up internally through training and experience. But because compensation for procurement experts is among the lowest in the public administration high staff turnover is common, and undercuts the effectiveness of training programs.

For the Commission:

- **Clearer guidance.** There is a need for clearer guidance from EC on how to assess errors or irregularities.

POLAND

Good practices

Poland's public procurement system presents several important initiatives that support contracting authorities in procuring more effectively:

- **Case law archive.** A library of decisions of the National Appeal Board (KIO) dating back to 2009 is published online by the Public Procurement Office (PPO), which provides a tool for interpretation of the law. Although this online archive is not particularly user-friendly or easy to search, commercial providers have developed some more intuitive alternatives, though many require paid subscriptions to access.
- **Corruption Risk Barometer.** An NGO called the Batory Foundation, in cooperation with the PPO and the Office of Competition and Consumer Protection (UOKiK), is developing a platform aimed at detecting bid-rigging and other corruption issues using publically available data, such as PPO data.
- **Frequent controls.** Numerous controls of procurement contracts have led to a reduction in irregularities and mistakes. These controls are an effective means of educating beneficiaries, as they are able to draw lessons from them and improve according to their findings.

Areas for improvement

Despite some positive aspects of the Polish procurement system, many areas still face shortcomings. Many most critical aspects are related to legal uncertainty that is linked to different factors described below:

- **Institutional overlaps/conflicts.** The KIO, as the first instance appeal body, independently decides on procurement disputes. Yet, the KIO reports to the PPO, which limits its independence. Furthermore, the President of the PPO has the authority to contest a decision by KIO by engaging as the suing party in a legal case. The current set-up leads to institutional frictions and inconsistent interpretation of the law. Stakeholders lack clarity on which institution has the final decision-making power.

- **Align audit standards.** One of the key issues facing procurement oversight bodies is the inconsistency between national, EC and ECA definitions and standards. The disconnect between what is and is not an irregularity or violation according to the different authorities creates confusion among practitioners and national auditors alike.
- **Better award criteria.** While there has been a substantial increase in the use of non-price criteria since the amendment of the public procurement law in 2014, price remains the dominant criterion used to assess tenders. A combination of factors including insufficient administrative capacity, uncertainty about the legal framework, and fear of audits and appeals, make contracting authorities more reluctant to adopt quality award criteria.

A particular weakness in the Polish procurement system pertains to vulnerability to corruption and fraud, notably to bid-rigging:

- **Combat bid-rigging.** Bid-rigging constitutes a particular problem in the Polish procurement system, and it has recently contributed to the suspension of EU funds on three projects. In Poland, collusion between bidders and contracting authorities is considered a more serious issue than that among bidders. Bid-rigging is often difficult to detect. In order to strengthen efforts to combat the practice, the Centre for EU Transport Projects (CEUTP) has a specific unit dedicated to bid-rigging in the department of irregularities.

Finally, efficiency and transparency of the Polish procurement system would be strengthened with increased use of e-procurement:

- **Development of e-procurement.** The Ministry of Infrastructure and Development is working on a central e-procurement platform for small-scale contracts, but so far there has been no concrete progress. An e-catalogue is also being developed and should be implemented during the course of 2015.

For the Commission:

- **Align interpretation of rules at regional, national and EU level.** There is a need for clarity when it comes to the interpretation of the public procurement law. In case there is a divergence between the national and the interpretation by EU institutions, it needs to be clear which institution has the final say in order to settle the dispute. A decision should be taken as to whether disputes should either be settled by the Court of Justice of the European Union or if the resolution of disputes can be handled by national adjudications.
- **Proportionality of sanctions.** In addition to discrepancies between auditing standards from national to EU level, there is also a divergence on the application of these standards, with EC auditors typically applying rules more strictly than their national counterparts, resulting in uncertainty. Furthermore, the sanctions applied for what could be considered formal or minor infractions can be severe.

PORTUGAL

Good practices

There were two primary sources of good practices identified during the Portugal field visit. The first involves things that were implemented during the recent reform process and which have achieved desirable results. These include:

- **Limited habilitation.** From the economic operators side, one of the most popular reforms initiated was restricting the requirement to collect and submit proof of qualification to the winner of an award, which substantially reduces the cost of

submitting a tender by requiring only a declaration of honour pre-award. Cases in which the winning bid turned out not to meet the qualifications have been quite rare, due in part to the fact that misrepresentation of firm information is a crime. In such cases, the next highest rated tender is awarded the contract.

- **Let interoperability do the work.** Another way in which the Portuguese system has brought down compliance costs for bidders, and at the same time reduced errors, is by connecting their online applications to the databases of the fiscal authority, making them interoperable (IoP). Thus, when a bidder accesses the system, they provide a single tax identification number that automatically fills in the relevant fields of their application with their fiscal information.
- **Do it in English.** Portugal has made a habit of publishing all of the major procurement-related reports in English as well as Portuguese, albeit with a modest delay. This facilitates outside groups benchmarking Portugal's performance against other countries', a valuable form of feedback.

The second category of good practices was identified based on areas in which instituted reforms faced challenges, and thus are supported only by negative evidence. These include:

- **Required fields.** The BASE portal, which functions as a single point of entry for economic operators, collects and publishes a great deal of data on each contract, but does face some data quality issues due to the fact that there is no forcing mechanism to prevent submitting forms with many fields blank. To prevent this, it is recommended to require that important files be completed, or blanks fields be justified and/or completed later, in order to successfully submit the required forms.
- **Free to choose.** Portugal's e-Procurement environment is based on privately run platforms hosting contracting authorities' offers and processing submissions. This introduces competition for contracting authorities' business, but forces potential bidders to navigate as many as seven different interfaces in order to submit tenders. That is why Portugal is planning to reform the system to allow both contracting authorities and bidders to use the platform of their choice, with the state acting as a broker between them.
- **Don't lock out debtors.** In an effort to incentivise companies to settle their accounts with the government, Portuguese law currently precludes firms with public debts, such as unpaid back taxes, from submitting tenders. Ideally, such a system should make exceptions for relatively small debts conditional on an agreement that a share of the contract payments be set aside explicitly for repayment of the debt. This way, the state can increase the likelihood that debts will be repaid, and potentially save firms from unnecessary financial distress.

Areas for improvement

Field visits also identified a number of areas for potential improvement for both Portugal and the EC. For Portugal:

- **Improve interoperability.** Portugal's embrace of e-procurement has allowed the system to create substantial amounts of data on procurement in real time, but a number of legal and institutional roadblocks prevent it from being used to its full potential. For example, the Competition Authority and the Inspectorate General of the Ministry of Finance (IGF) are allowed to access the data for oversight purposes, but must make requests on a case-by-case basis. Increased interoperability (IoP) between these government agencies should allow them to do more systematic oversight.
- **Aggregation of Demand.** The eSPap central purchasing body's services are in strong demand, with large numbers of public bodies voluntarily purchasing via their framework contracts in addition to the central government bodies who are required

to. Yet the range of products eSPap covers is limited to just 10-15 contracts, and could be substantially expanded.

- **Less direct.** Portugal's remarkably high use of direct award is justified by cost reasons, and is paired with substantial transparency and anti-corruption policies. That said, by its nature, it limits the amount of competition per award, and thus could potentially be reduced.
- **De-weaponise the appeal process.** Insufficient legal clarity surrounding procurement procedures and the inefficiency of the system in processing claims allows firms to use the appeals process to disadvantage their competitors with little value to the fairness of rulings. This can be addressed through legal reforms that reduce the possibility of frivolous claims, and in reducing processing times.

For the Commission:

- **Clarify audit procedures.** At several points in the field visits, ESI Funds management bodies commented on how the lack of clarity/consistency in applying EC auditing standards cause problems. They asked for clearer guidance on how specific cases would be handled so that they could apply the EC's rules with confidence.
- **Give more flexibility to better performing MS.** Interview subjects universally believed that EC guidance played a crucial role in pushing Portugal to modernise and improve their procurement system. But now that they are up to standard, they see some of the EC's strictures as too inflexible, imposing costs with limited upside. As such, they recommend, where possible, reconsidering EU rules to allow more flexibility to MS without harming desired outcomes.

ROMANIA

Good practices

The following good practices were identified during the field visits:

- **Conflict of interest assessments.** The National Integrity Agency (ANI) is currently developing an IT-based system of *ex-ante* checks called "Prevent", which uses data from the trade registry and from tax authorities to identify any possible links between members of an evaluation committee and the companies tendering for a given contract. At first, Prevent will be applied only to EU co funded projects, with expansion to include all public procurement to follow.
- **Set deadlines.** In order to ensure the timely execution of public contracts, Romania instituted time limits on the whole litigation phase. Challenge and plea before a Court of Appeal against a decision of the National Council for Solving Complaints (CNSC) must be resolved within 30 days– the shortest in the EU.
 - **Targeted *ex ante* checks.** The National Authority for Regulating and Monitoring Public Procurement (ANRMAP) instituted mandatory *ex ante* controls of all procurement procedures to great effect, leading to the introduction of the guarantee of good conduct whose repeal is expected to happen soon. However, the administrative burden of the blanket controls was excessive. As a result, a risk assessment scale has been developed to better target future *ex ante* controls to where they may be most effective, freeing up resources for *ex post* checks and other oversight functions.

- **Training for judges.** In order to ensure a sufficient level of specialised knowledge of procurement, ANRMAP and National Council for Solving Complaints (CNSC) staff provide three trainings per year to judges from the courts of appeal.

Areas for improvement

The following areas for improvement have been identified in Romania:

- **Merger of ANRMAP and UCVAP into the ANAP.** The attributions of the two institutions overlapped in general, and both dealt with *ex ante* verification and monitoring. Many times contracting authorities got clearance from the ANRMAP for documentation but did not receive clearance from the Unit for Coordination and Verification of Public Procurement (UCVAP). This made the administrative process difficult and lengthy. Pursuant to the Government Emergency Ordinance No. 13 of May 20, 2015 (GEO 13/2015), the merger of these two entities into the ANAP should help overcome these shortcomings.
- **Encourage political independence.** The newly created ANAP will operate under the authority of the Ministry of Finance, which creates the potential for undue influence by the Ministry's politically appointed leadership. Granting ANAP a more independent status would help reduce this risk.
- **Implement FIDIC contract templates.** Representatives of the construction industry argue that adoption of internationally recognised standardised contract forms would facilitate smoother project execution. This would also facilitate the awards procedure as assessment criteria would be clearly stated under this system.
- **Improve public trust.** Public opinion on the procurement system is harmed by the perception that those who abuse the system are rarely punished, and when they are, receive nominal sanctions. In order to improve public trust, penalties need to be strengthened, and enforcement efforts increased.
- **Increase administrative capacity.** There is a need to better train small contracting authorities as these often struggle to adhere to qualitative procurement procedures. In addition, procurement authorities in general struggle because of a shortage of staff to handle the workload at peak times.

SLOVAKIA

Good practices

The Slovak field visits identified a number of good practices, including:

- **Online transparency.** The compulsory publication of contracts concluded by public authorities on a designated website, the Central Register²⁴, managed by the Office of the Government of the Slovak Republic, has been identified as a good tool for monitoring by the media, the general public, as well as other institutions including the police and audit bodies. The members of evaluations committees are also published.
- **E-access as guidance.** Contracting authorities also indicated that the publication of full tendering documentation (e-access) via the Electronic Contractual System (EKS), was a valuable source of information for procurers who are preparing their tender documents.

²⁴ <https://www.crz.gov.sk/index.php?ID=114372>

- **Including NGOs in evaluation committees.** As an anti-corruption measure, representatives of the NGO committee will be invited to participate in evaluation committees for ESI Funds co-funded projects.

Areas for improvement

Field visits also identified a number of areas for potential improvement for Slovakia:

- **Enforce public procurement rules.** The current legal framework appeared sufficiently strong to interview respondents, but lacks adequate controlling and enforcement mechanisms to achieve its goals.
- **Clarify jurisdictional boundaries.** Public procurement competencies are split between several institutions without clear borderlines. For example, the Office for Public Procurement (UVO) and Ministry of Interior (MoI) operate separate e-procurement platforms. However, UVO has sole responsibility for hearing claims for both systems without having rights of access to MoI's EKS platform.
- **Reduce cancellations.** It is estimated that some 10% of contracts are cancelled before they are awarded, and changes to tender conditions after publication are common as well. Furthermore, individual tenders are frequently excluded for non-material formal mistakes. The lack of certainty has a negative impact on the willingness of economic operators to invest time and energy in the bidding process.
- **Staff turnover.** The UVO struggles to retain qualified professional staff, and to provide sufficient training opportunities for less qualified hires. This issue must be addressed in order to improve the administrative capacity of the organisation.

SLOVENIA

Good practices

Slovenia's public procurement system struggles with various challenges mostly related to lack of adequate administrative capacity and professionalisation as well as corruption. Nevertheless, there are some areas in which Slovenia is performing well and that can serve as an example for other EU MS.

Public procurement in Slovenia benefits from the following good practices:

- **Specialised review body.** Slovenia's review body, the National Review Committee (DKOM) is comparable to a judicial authority, but deals exclusively with public procurement. This allows for greater expertise on the subject matter and quick decision-making. Decisions by the DKOM are taken in around 13 working days, which compares very well with the EU average.
- **Legal protection for bidders.** Slovenia grants a high degree of legal protection to applicants, as they have the right to request an audit of the procedure. Previously, candidates were allowed to request multiple audits of the same procedure. It must be noted, however, that such audits interrupts the procedures, as the contracting authority cannot sign a contract when the audit is in course. The cost of requesting the audit is relatively high for the applicant.
- **'Supervisor' transparency tool.** The Commission for the Prevention of Corruption has set up an online transparency tool called 'Supervisor' that allows tracking transactions of public sector bodies, including public contracts.
- **Ex-ante review of tender documents.** For projects co-financed by EU Funds, a review of tender documentation before official publication is foreseen. On the one hand this prolonged the procedures, but it to reducing errors at very early stage. Throughout the 2007-2013 programming period the identified errors diminished. For the 2014-2020 programming period, Slovenian authorities are planning to

enhance the prevention of irregularities through a helpdesk instead of a formal review.

Areas for improvement

In terms of procurement legislation, the following areas for improvement were identified in Slovenia:

- **Participation of stakeholders in the legislation process.** In order to introduce a long-lasting and successful reform, key stakeholder need to be included in a systematic way. If reforms are conducted in a non-inclusive and hasty manner, these can have a detrimental effect on legal certainty or — in the worst case — may lead to failure. As an example, the rapid set-up of Slovenia's Public Procurement Agency lacked sufficient planning and resulted in its dismantling in less than two years.
- **Complexity of public procurement legislation.** The Slovenian procurement law aims at regulating public procurement in great detail. However, this often has a counter-productive effect and does not lead to greater clarity. On the contrary, many 'fixes' aimed at correct specific areas impact other articles of the law, which need to be amended in turn. Repeated amendments and overall lack of clarity are the consequence of the attempts to spelling out every detail. A simplified legislation that is comprehensive in all major aspects of procurement, but does not try to regulate minutiae would be more effective.

Public procurement in Slovenia stands to benefit from greater efficiency, which could be achieved by tackling the following aspects:

- **Duration of procedures.** The signature of a public contract may take up to two years in Slovenia. Factors that contribute to lengthiness of procedures are the *ex ante* review of tender documents and the interruption of the procedure during the appeal process.

Weaknesses in administrative capacity also affect the public procurement system:

- **Poor tender specifications.** Contracting authorities have challenges in preparing high quality tender specifications, which may have a negative impact throughout the procurement procedure. In some cases, the characteristics of the project may be only vaguely defined, potentially leading to weak implementation. Another issue may arise if tender requirements are so technical and complex that the contracting authorities have difficulties in evaluating them.
- **Municipalities 'compete' for EU Funds.** Municipalities are subject to a skewed incentive system, whereby they try to maximise their share of EU funding submitting the highest amount of tenders possible, often to the detriment of the quality of the tender. This practice often results in problems both at procedural and implementation level.

For the Commission:

- **Foster knowledge transfer at EU level.** Slovenia's procurement authorities consider that knowledge transfer including the exchange of experiences and best practices could be strengthened at EU level. In this regard, the EC could play a significant role in coordinated a single point of contact dedicated to public procurement.

SPAIN

Good practices

In terms of specific initiatives that represent good practices, Spain has introduced measures to improve the monitoring of public contracts and streamline tender procedures as well as judicial review processes:

- **Registries of tenderers and contractors.** The Ministry of Finance and Public Administration has developed at state level an official registry of tenderers and contractors of the State (ROLECE). As per the corresponding official registries in each region, province and municipality, it allows tenderers to register and provide a set of documentation which is usually required in tender procedures so that they do not have to provide it each time they present a bid.
- **Public Contracts Registry (RCP) and Transparency Portal.** The Public Contracts Registry, created within the State Consultative Board on Administrative Procurement, centralises information on the awarded contracts for all contracting authorities of the country. The information gathered is not entirely published and only statistical summaries are publicly available on-line. Recently, in the framework of the 2013 Transparency Law, a new Transparency Portal began publishing information on contracts awarded by the central administration, including contracting authority, title of contract, budget, and winning bidder. So far, the information cannot be downloaded in a usable format such as Excel, and the website does not enable user-friendly searches.
- **Submission of technical and financial offers in separate envelopes.** The Public Procurement Law (article 150.2) introduces the obligation for tenderers to submit technical and financial offers in separate envelopes. This system allows for a more objective evaluation of tenders as the technical offers have to be evaluated in a first stage regardless of the financial offers, which will be considered in a second stage.
- **Specialised court on public procurement.** The Central Administrative Court of Contractual Appeals (TACRC) is a unique administrative court specialised in public procurement. It was created in 2010 to improve oversight of contracting authorities at all levels. In 2014, 1,117 appeals were brought before the TACRC, an average of 93 per month, and were decided within a short timeframe (26 days on average). In addition, 7 autonomous communities have created their own Territorial Administrative Courts of Contractual Appeals which operate independently at regional level and might provide different interpretations of the law. The main added value of these specialised courts is that they reduce the duration of judicial procedures and they foster the professionalisation of public procurement magistrates and lawyers.

Areas for improvement

Field visits also identified a number of areas for potential improvement for both Spain and the Commission.

For Spain:

- **Lack of uniformity and standardisation.** The decentralisation of public procurement bodies, consultative boards, public training schools, e-procurement platforms, judicial courts and oversight bodies leads to a high diversity of implementation rules and interpretation of the single legal framework of public procurement. This situation creates confusion not only for contracting authorities applying the law but also for businesses operating in multiple regions. With the exception of the road construction's sector for which Spain has developed a

standardised administrative tender document that can only be used by the Directorate General of Roads of the Ministry of Public Works²⁵, no other standardised tender forms or documents have been developed so far to support contracting authorities and in particular non-frequent procurers operating mostly at local level.

- **Harmonise ESI Funds control rules and practices.** Internal and external oversight of ESI Funds management and expenditure is carried out at regional level by Intermediate Bodies and regional comptrollers respectively. Thus oversight can often be inconsistent from region to region. At national level, the MAs who are ultimately responsible for the proper implementation of these funds only verify the quality of regional controls processes and do not issue common instructions or guidelines which could contribute to more harmonised and standardised rules and practices.
- **Reduce recurrent irregularities.** The persistence of a number of recurrent irregularities in recent years indicates that controls and sanctions currently in place are not effective. The issues identified include artificial splitting of tenders, irregular modifications of contracts, errors in assessment of bids, and inappropriate selection and award criteria. In addition to recently adopted increases in penal sanctions for public officials, further measures should be taken to reinforce controls of public procurement, including conducting on-site checks of the execution and performance of contracts.
- **Better training and support at local level.** Unlike for the State administration and to a lesser extent for regional administration, public procurement practitioners at local level have limited access to training and support opportunities. Because local level contracting authorities procure less frequently, and are less likely to have specialised personnel on staff, the need for training and support is perhaps greater than at higher levels of government.
- **Improve monitoring and reporting.** The present monitoring of ESI Funds programmes conducted by MAs and the MS and reported to the EC through the SFC tool and the related national IT systems (*Fondos 2020* and *Fondos 2007* for the former programming period) does not track public procurement irregularities and therefore does not allow for an aggregated analysis of recurrent issues and needs.

For the Commission:

- **Greater clarity on implementation.** ESI Funds management bodies feel they lack sufficiently clear implementation rules and guidance from the EC for the interpretation and application of the new Public Procurement Directives in the context of ESI Funds management.

²⁵ <http://www.fomento.gob.es/NR/rdonlyres/1B841B91-6DAF-4940-A397-EF1C055E7D30/26181/PliegotipoA1GAbril2007.pdf>

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