



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

Final Report
Country Profiles

January 2016

*Regional and
Urban Policy*

Written by



EUROPEAN COMMISSION

Directorate-General for Regional and Urban Policy
Directorate E — Administrative Capacity Building and South-East Europe
Unit E.1— Competence Centre Administrative Capacity Building

Contact: Pascal Boijmans, Anna-Lena Zademach-Schwierz

E-mail: Pascal.Boijmans@ec.europa.eu, Anna-Lena.Zademach-Schwierz@ec.europa.eu

*European Commission
B-1049 Brussels*

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Luxembourg: Publications Office of the European Union, 2016

ISBN: 978-92-79-57754-3

doi: 10.2776/456668

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AUSTRIA

KEY FACTS AND FIGURES

Key Facts and Figures in Austria							
Overview	Total procurement 35,180,000,000€		Procurement % GDP 11%		2013 GDP 322,878,300,000€	Contracting authorities 5,600	
Procedures applied	Open 75%	Restricted 1%	Negotiated procedure with call 19%no call 3%		Competitive dialogue 0%	Direct award 1%	Other 1%
Share of contract notices by buyer	National 5%		Regional/local 30%		Body governed by public law 24%	Other 40%	
Contract type	Services 28%		Works 45%		Supplies 27%	Framework agreement 11%	
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met	
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Voluntary	Uptake rate 8%	
Perceived corruption	Corruption widespread in society		Corruption widespread in procurement				
	Businesses 78%		Individuals 66%		At national level 50%	At local/regional level 48%	
TED indicators	Value of tenders 4,157,752,573€		Of total procurement 12%		# contract notices 2,956	# contract awards 2,315	
Other indicators	Received single bid 12%		# days for decision 63.0		Price only criteria 53%	MEAT criteria 47%	
	Won by foreign firms 6%		Related to EU funds 3%		Joint purchase 5%	Central purchasing Yes, BBG	

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Austria's public procurement system is quite streamlined and efficient thanks mainly to a simple and stable regulatory framework. As a result, reduced length of procurement procedures, just 63 days in 2014 compared with the EU average of 120 daysⁱ. Although public procurement is carried out at all different levels of government, an important share of purchases is centralised by the Federal Procurement Agency (BBG), which plays a central role in the efficiency and harmonisation of public procurement procedures as well as in the capacity building of public practitioners at federal, state, and local levels.

DESCRIPTION OF FEATURES

Legal features of public procurement system

In Austria, EU procurement directives are transposed by the 2006 Federal Procurement Act (*BVergG*), which regulates procurement above and below EU thresholds. The *BVergG* distinguishes between government authorities on federal, state and local levels and sectoral contractors. Above EU thresholds, open procedures or negotiated procedures with prior publication are mandatory. Below EU thresholds, Austrian legislation allows direct purchasing as well as negotiated procedure without prior notice for contract at value up to EUR 100,000 for supplies, services and works. Restricted procedure without prior publication are allowed for supplies and services up to EUR 100,000 and for works up to EUR 1 million.

In addition to the *BVergG*, regional public procurement provisions define the review procedures at federal states levelⁱⁱ.

Institutional system

The Federal Chancellery was the primary responsible for public procurement policy, and is thus in charge of drafting legislation, implementing EU directives, providing guidance, and performing monitoring and control functions.

The *BBG* is another essential player in Austria's public procurement system, acting as both central purchasing body and the body responsible for e-procurement. The *BBG* was established in 2001 to generate savings through to the bundling of procurement of the federal agencies. The *BBG* is responsible for purchasing standardised goods, the development of e-procurement tools, and the simplification of internal procurement processes. It manages contracts for approximately 270,000 products and services available not only to central federal bodies, for whom the use of *BBG* is mandatory, but also to federal states, municipalities, and public-owned bodies such as universities and healthcare services. In 2013, the *BBG* procured goods worth EUR 1.2 billion, generating estimated savings of EUR 253 millionⁱⁱⁱ.

In addition to the *BBG*, municipalities are increasingly taking advantage of their ability to form limited liability companies to do joint procurement. More and more municipalities work in the procurement area in the form of inter-municipal cooperation to support centralised procurement management at the local level.

The Austrian Court of Audit is in charge of supervising the economy, efficiency, and effectiveness of public expenditure at federal, state and local levels. Part of its activity is the supervision and control of the procurement practices of public authorities, and it regularly publishes its findings in thematic and annual reports.

The review system was reformed in 2013 in an effort to streamline the appeal procedure in the field of public procurement. Previously, dedicated review bodies were in charge of appeals both at federal and state levels. Since 2014, these competencies have moved to the Federal Administrative Court for federal matters, and to the respective administrative courts at the level of the federal states.

Key issues that have a bearing on administrative capacity

Human resources: The overall administrative capacity of procurement officials is high, as demonstrated by an above average procedural efficiency. This is facilitated by formal and informal mechanisms of communication and exchange federal and state authorities. For instance, an informal technical exchange between the Unit for General Affairs and Public Procurement at the Federal Chancellery and various state level authorities takes place regularly^{iv}. However, within the Federal Chancellery there are not sufficient human resources.

The *BBG* has a staff of approximately 80, and boasts a successful track record. Since its foundation in 2001 it carried out 1,636 procurement procedures and only 23 were annulled due to irregularities, a rate of less than 1.5%^v.

Administrative capacity for the management of EU Funds has been sufficient for the 2007-2013 programming period, but need for increased capacity is expected for 2014-2020, to be covered by increased staff or outsourcing^{iv}.

Structures: In Austria, many institutions support contracting authorities and economic operators in navigating public procurement, the *BBG* being the most active one. The Constitutional Service within the Federal Chancellery also gives legal counselling to contracting authorities. In addition, the Working Group Federation-States is responsible for fostering coordination and exchange on legal matters, including public procurement.

The *BBG* also has set up a procurement competence centre with a team dedicated to legal advice for contracting authorities. It cooperates with the Federal Attorney's Office and the Federal Chancellery to this purpose. The Austrian Economic Chambers also provides legal advice and other forms of support to their members.

Specialised bodies, such as the Service Centre for Innovation Procurement and the Service Centre for Sustainable Procurement, also support public procurement practitioners to foster the use of strategic procurement in the country.

Training: The *BBG* provides all employees of the public sector (federal, state, local and public-owned companies) with a dense program of training and information sessions on public procurement, as well as e-learning courses. It covers for instance basics on procurement law, introduction to procurement processes, electronic purchase, and thematic subjects such as procurement for healthcare services.

In addition, the Federal Academy of Public Administration (*BKA*) has a dedicated training programme on ESI Funds that includes public procurement.

Systems/tools: The *BBG* regularly organises the so-called weekly *BBG*-Forum that comprises seminars on procurement-related topics, presentations or “InfoDays” on available products and contracts, and discussions with procurement experts.

In the field of strategic procurement, the Service Centre for Innovation Procurement has developed four modules of tools that help to estimate the innovation potential of a good, evaluate the risks associated with that good and evaluate the innovation capacity of a contracting authority^{vi}. In addition, the Service Centre for Sustainable Procurement has set up a Help Desk as well as guidance material on best practices in sustainable procurement.

Furthermore, in accordance with the Federal Procurement Act of 2006, standardised tender documents have been developed in different areas of public procurement. For example, standardised terms of reference for construction and home automation are provided by the Federal Ministry for Science, Research and Economy,^{vii} and for transport and infrastructure by the Austrian Association for Research on Road-Rail-Transport.^{viii}

E-procurement

The *BBG* is the primary drive of the e-procurement policy. The E-procurement Master Plan for the Public Administration, developed in 2011, serves as the overall strategy and aims to make e-procurement a standard practice in Austria's public administration^{ix}.

Overall, the Austrian e-procurement infrastructure is well developed and contracting authorities have considerable experience with e-procurement. Based on a self-assessment, a majority of Austrian contracting authorities consider themselves as moderately or quite advanced in e-procurement matters^{ix}.

E-notification and e-access are mandatory, yet there is no single mandatory e-notification platform. Procurement entities publish their contract notices on a variety of different public and private platforms either at national, state or even on their own systems. Federal states are required to have a procurement platform for contract notification. So far, e-submission is only mandatory for dynamic purchasing systems and e-auctions, but otherwise it is voluntary. E-invoicing is mandatory at national level since 2014.

In addition, Austria participated to the PEPPOL project, concluded in 2012, which aimed at fostering European-wide interoperable e-procurement. Notably, it helped the *BBG* to develop e-invoicing facilities, e-catalogue and a bidders' registry enabling

economic operators to upload other technical and financial capacity documents in one single place.

Corruption

In Austria, two national bodies are in charge of the fight against corruption. First, the Federal Agency for Fighting and Preventing Corruption (*BAK*) was introduced in 2010, replacing the Office for Internal Affairs of the Ministry of the Interior. It is tasked with the fight against corruption at large, including bid-rigging and fraud in procurement. Second, the Prosecution Service for Corruption and White-Collar Crime (*WKStA*) is composed of specialists that are able to handle large-scale business and financial crime prosecution.

The recent uncovering of large-scale corruption cases in Austria resulted in reinforced measures to fight corruption. Penalties for corruption have been strengthened and the legal definition of corruption has been expanded^x. Although it is not directly related to procurement, the new legislation has an impact on companies that interact with the public administration. For instance, the crime of "*anfütern*", i.e. maintaining personal relationships with public officials with the goal of influencing their behaviour, has become punishable under corruption legislation^{xi}. Another recent effort in the fight against corruption has been the introduction a Code of Conduct for civil servants^{xii}.

Europe 2020 Agenda

Austria is advanced with respect to strategic procurement. In fact, it is a frontrunner in green public procurement, has relatively high level of SME participation, and fosters the inclusion of social considerations in tender processes. Furthermore, the government is pushing for innovation in procurement and has introduced specific innovation criteria in the public procurement law^{xiii}.

Austria launched an Action Plan on Sustainable Procurement in 2010 to anchor sustainable procurement as a key practice, and to maintain Austria as a leading country in the field. The Action Plan defined key economic, environmental, and social criteria for 16 product groups and set up activities to coordinate and foster the use of these criteria by public administrations^{xiv}.

Compliance with social standards and labour market regulations in public procurement is mandatory in Austria. Furthermore, a promising initiative in Austria's socially responsible procurement is the SO:FAIR project. This project gathers public and private stakeholders who work on the definition of social criteria and undertake dissemination on socially responsible public procurement^{xv}.

The introduction of innovation aspects in public procurement, on the other hand, is a more recent development. In fact, the strategy for fostering innovation in public procurement was launched in 2012 and the Centre for Innovation in Public Procurement created in 2013^{xiii}. The latter offers services such as e-platforms, consulting, training, awareness activities, and event organisation. Political commitment for implementing innovative procurement has already resulted in some examples of good practices, such as the adoption of an innovation policy mix by Austria's highway operator ASFINAG or the start of a pilot project by utility company *Verbund*^{xvi}.

Compliance with social standards and labour market regulations in public procurement is mandatory in Austria. Furthermore, a promising initiative in Austria's socially responsible procurement is the SO:FAIR project. This project gathers public and private stakeholders who work on the definition of social criteria and undertake dissemination on socially responsible public procurement^{xvii}.

Austria's SME have an above EU average participation rate in procurement^{xviii}. Even though SMEs receive no special treatment under procurement law, the *BBG* has introduced measures to facilitate their participation such as the division of contracts into SME-friendly lots. As a result, about 70% of *BBG* suppliers are currently SMEs^{xix}.

Irregularities and findings of national audit authorities

With respect to public procurement, the Austrian Court of Audit carries out numerous ad-hoc audits and large-scale audits of federal administrations. Furthermore, it expresses general recommendations and key statements related to public procurement.

In 2013-2014, a specific audit of a federal Ministry uncovered shortcomings in a large number of cases. These shortcomings include lack of offers for comparison, wrong procedure chosen, insufficient documentation, missing or unjustified price ceilings, and inadmissible direct award. In addition, the Court noticed a relatively frequent disregard for internal procurement guidelines, in particular concerning the reporting duty to the internal audit unit^{xx}.

Finally, the Court has recently pointed out that there is potential for contracting authorities to improve procurement of public works. In particular, it highlights weaknesses in the preparatory phase, formal mistakes during the opening of offers, lack of sufficient documentation of the award process and lack of in-house skills to oversee the work execution^{xxi}. Audits conducted by DG REGIO in 2013 revealed irregularities similar to those previously noted by the Austrian Court of Audit and the Austrian Audit Authority. These include incorrect choice of procedure, insufficient documentation, missing evaluation reports, and unjustified use of direct award^{xxii}.

Outlook

The upcoming public procurement reforms related to the transposition of the new EU directives are happening in a context of longstanding efforts to reform the public administration encompassing many areas, including the development of e-government solutions and the overall simplification and streamlining of public governance.

Despite on-going complaints from business organisations^{xxiii}, Austria will also maintain its focus on strategic procurement. For instance, in order to complete the activities of the newly created Centre for Innovation in Public Procurement, there are commitments in place to set up innovative procurement "competence centres" across a number of different economic sectors.

ANALYSIS

Strengths

Austria has a well-functioning procurement system that ensures an efficient processing of procurement procedures. The central purchasing body *BBG* contributes not only to efficient procurement, but also to secondary goals such as sustainable development, innovation, social responsibility, and SME participation. The *BBG* is also leading in matters of e-procurement, not only at national but also at European level, thanks to its contribution to the PEPPOL project and its efforts to increase the adoption of e-procurement solutions. Furthermore, given its expertise, the *BBG* was tasked to coordinate the development of Austria's e-procurement Master Plan.

Strategic procurement is highly developed in tender procedures throughout the country. Innovation has been the most recent addition as a policy objective of the public procurement law and has led to the conduction of pilot projects and to the development of guidance and tools.

Weaknesses

Despite the overall strong performance of Austria's procurement system, there are still some areas in need of improvement. Though well-developed, e-procurement is still highly fragmented. The lack of a single mandatory centralised portal has led to the proliferation of numerous platforms at every level of governance. For suppliers, this implies potentially missing out on opportunities or incurring costs to monitor public procurement activities.

In addition, while Austria has recently strengthened its anti-corruption framework with the newly introduced anti-corruption bodies, initiatives that are specific to procurement, such as the division of procurement processes into various phases and the regular rotation of staff, have not been launched. Given that Austria has shown vulnerability to high-level corruption in recent years, corruption prevention in tender procedures needs to be high on the agenda.

Lastly, Austria has a low rate of publication of EU-wide public contracts, as assessed as part of Austria's Country-specific Recommendation in 2014. In fact, the value of contracts published in 2013 amounted to 1.9% of GDP compared to the EU average of 3.23%. As a consequence of low publication, Austria is foregoing welfare from increased competition.

Recommendations

- **Increasing administrative capacity:** Overall, administrative capacity for the management of EU Funds is considered sufficient for the previous programming period. However, it is anticipated that staff and/or outsourcing will be increased within the framework of the current programming period.
 - Develop and implement targeted trainings, particularly covering the management of EU funds, at all levels of governance.
- **Fragmented e-procurement:** E-procurement is fragmented between levels of government due to lack of a single mandatory e-procurement portal.
 - Consolidate or improve interoperability between the different public and private platforms at national and sub-national levels.
- **Corruption:** Austria's anti-corruption framework is strong, particularly following a number of recent reforms, yet corruption risk remains a concern.
 - Enact procurement specific anti-corruption measures, such as mandatory division of roles in the different phases of the procurement process, and regular staff rotation.
- **Insufficient number of EU-wide public contracts:** Austria stands out among EU Member States for its low rate of publication of EU-wide public contracts.
 - Incentivise EU-wide publication of procurement contracts through mandates and awareness-raising efforts.

ⁱ European Commission, Internal Market Scoreboard (2014), available at: http://ec.europa.eu/internal_market/scoreboard/performance_per_policy_area/public_procurement/index_en.htm
http://ec.europa.eu/internal_market/scoreboard/performance_per_policy_area/public_procurement/index_en.htm

ⁱⁱ Public Procurement Network (2010), Authority for the Supervision of Public Contracts, The comparative survey on the national public procurement systems across the PPN.

ⁱⁱⁱ BBG Bundesbeschaffung (2014), *Tätigkeitsbericht 2013* (Annual Activity Report 2013).

^{iv} Partnership Agreement of Austria for the implementation of the ESI Funds 2014-2020.

^v BBG Bundesbeschaffung (2014), Facts and figures, available at: <http://www.bbg.gv.at/ueber-uns/unternehmen/geschaeftsfelder/zahlen-daten-fakten/>

- ^{vi} Centre for Innovation in Public Procurement (IÖB), available at: <http://www.ioeb.at/downloads-links/ioeb-tools/>
- ^{vii} *Standardisierte Leistungsbeschreibungen*, website of the Bundesministerium für Wissenschaft, Forschung und Wirtschaft, available at: <http://www.bmfwf.gv.at/Tourismus/HistorischeBauten/Seiten/StandardisierteLeistungsbeschreibungen.aspx>
- ^{viii} *Standardisierte Leistungsbeschreibungen*, website of the Austrian Association for Research on Road - Rail – Transport, available at: <http://www.fsv.at/Leistungsbeschreibungen/default.aspx>
- ^{ix} E-Procurement Masterplan für die öffentliche Verwaltung (2011)
- ^x *Bundesgesetzblatt* (Official bulletin) (2012), *Korruptionsstrafrechtsänderungsgesetz* (Corruption Criminal Law Amendment), no 61/2012.
- ^{xi} European Commission (2014), DG HOME, EU Anti-corruption report, Annex Austria.
- ^{xii} *Bundeskanzleramt* (Federal Chancellery) (2012), *Die VerANTWORTung liegt bei mir : Verhaltenskodex zur Korruptionsprävention* (Guidelines for the prevention of corruption).
- ^{xiii} *Leitkonzept für eine innovationsfördernde öffentliche Beschaffung (IÖB) in Österreich* (Guide for the promotion of innovation in public procurement in Austria), available at: https://www.bmvit.gv.at/innovation/forschungspolitik/innovationsfoerdernde_beschaffung.html
- ^{xiv} Federal Ministry of Agriculture and Forestry (2010), *Umwelt und Wasserwirtschaft, Österreichischer Aktionsplan zur nachhaltigen öffentlichen Beschaffung* (Austrian Action Plan for sustainable public procurement).
- ^{xv} *Initiative für Soziale & Faire öffentliche Beschaffung in Österreich* (Initiative for social and fair public procurement in Austria), available at: <http://www.sofair.at/>
- ^{xvi} Federal Ministry of Economy, Family and Youth, Federal Ministry for Transport, Innovation and Technology (2012), *4 x Good Practice, Öffentliche Beschaffer als Innovationstreiber ASFINAG – VERBUND – BIG – BBG* (Public procurers as drivers of innovation).
- ^{xvii} *Initiative für Soziale & Faire öffentliche Beschaffung in Österreich* (Initiative for social and fair public procurement in Austria), available at: <http://www.sofair.at/>
- ^{xviii} European Commission (2014), DG ENTR, Small Business Act Fact Sheet
- ^{xix} *BBG Bundesbeschaffung* (2012), *KMU-Strategie der Bundesbeschaffung* (Strategy for federal procurement)
- ^{xx} Austrian Court of Audit (2013), *Bericht des Rechnungshofes* (Report of the Auditors), Reihe BUND 2013/2
- ^{xxi} Austrian Court of Audit, *Hauptprobleme der öffentlichen Finanzkontrolle: Verbesserungsmöglichkeiten bei der Vergabe öffentlicher Bauvorhaben* (Main problems of public audit: improvement in the award of public works)
- ^{xxii} European Commission (2013), Annex of the Commission decision of the 19.12.2013 on the setting out and approval of the guidelines for determining financial corrected to be made by the Commission to expenditure financed by the Union, available at: http://ec.europa.eu/regional_policy/sources/docoffic/cocof/2013/cocof_13_9527_annexe_en.pdf
- ^{xxiii} Public Procurement Network (2010), Authority for the Supervision of Public Contracts, Comparative survey on the transposition of the new EU public procurement package

BELGIUM

KEY FACTS AND FIGURES

Key Facts and Figures in Belgium						
Overview	Total procurement 52,010,000,000€		Procurement % GDP 14%		2013 GDP 395,242,000,000€	Contracting authorities 5,000
Procedures applied	Open 77%	Restricted 3%	Negociated procedure with call 15%no call 3%		Competitive dialogue 0%	Direct award 2%Other 1%
Share of contract notices by buyer	National 14%		Regional/local 37%		Body governed by public law 12%	Other 37%
Contract type	Services 44%		Works 10%		Supplies 46%	Framework agreement 15%
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Mandatory	Uptake rate 3%
Perceived corruption	Corruption widespread in society Businesses 47%		Individuals 67%		Corruption widespread in procurement At national level 45%	At local/regional level 45%
TED indicators	Value of tenders 9,912,383,556€		Of total procurement 19%		# contract notices 5,001	# contract awards 3,138
Other indicators	Received single bid 13%		# days for decision 91.1		Price only criteria 36%	MEAT criteria 64%
	Won by foreign firms 5%		Related to EU funds 5%		Joint purchase 15%	Central purchasing Yes, CMS-FOR

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Belgium is a federal state with decentralised authority, including over procurement, shared among the central government and the three regions: Wallonia, Flanders, and the Brussels-Capital Region. Public procurement is regulated at the federal level by a procurement law, and each region has a certain level of flexibility for interpreting and implementing the legislation.

Belgium is one of the pioneers for e-procurement in Europe. Although e-submission is not yet mandatory throughout the country, the public procurement system is developing towards this goal. Flanders has already implemented mandatory e-procurement for both economic operators and purchasers in 2012. Wallonia and the Brussels-Capital Region are still in the planning phase for e-procurement implementation.

DESCRIPTION OF FEATURES

Legal features of public procurement system

The Belgian procurement system operates under a legislative framework that splits authority between the federal and regional governments. The EU public procurement Directives are transposed at the federal level through the Law of 15 June 2006 that entered into force in 2013. It is applied to contracts above and below the EU thresholds. Regional governments, which carry out roughly one third of all procurement by volume, are given substantial freedom to interpret this legislation and define their own implementation rules.

The Council of Ministers has formulated a draft law transposing the 2014 Public Sector and Utilities Directives into Belgian law and sent it to the State Council for review and approval¹. A draft law transposing the Concessions Directives is awaiting approval by the Council of Ministers and ultimately by the State Council. A decision has not been

taken yet whether Public-Private Partnerships (PPPs) will be subject to the concessions law, or to the Public Sector Directive lawⁱⁱ.

Institutional system

Belgium's federal system disperses procurement authority across approximately 5,000 contracting authorities spread among the three regions, the provinces, the municipalities, and at least 26 public entitiesⁱⁱⁱ. At the federal level, several bodies are in charge of public procurement: the Federal Public Service Chancellery of the Prime Minister, the Central Procurement Body for the Federal Services, and the Purchasing Advice and Policy Unit (*ABA-CPA*).

The Federal Public Service Chancellery of the Prime Minister is responsible for the preparation, coordination, and monitoring of public procurement legislation, as well as the transposition of EU Directives into national law and the development of e-procurement. In particular, the Chancellery acts as a secretariat of the Commission for Public Procurement which is a specialised advisory body composed of representatives from the federal authority, federated entities, public corporations, supervision bodies, and representatives of businesses and trade unions.

The Central Procurement Body for the Federal Services (*CMS-FOR*) negotiates contracts on behalf of the federal state. It is composed of 11 sector specific units specialising in insurance, fuel, hygiene, IT, furniture, office supplies, telecommunication, drinks and snacks, cars, and light commercial vehicles.

The *ABA-CPA* gives support to the federal staff and accompanies them through the contracting process by providing advice to purchasing departments^{iv}.

The Belgian Court of Audit is responsible for controlling public federal, communities, regional and provincial finances. Among its wide range of activities, it regularly carries out public procurement audits^v.

According to the public procurement law, the Belgian Council of State and the civil courts are the judicial bodies responsible for the review of public procurement procedures. Reviews may result in suspension of an award a suspending procedure, penalties of up to 15% of the contract value or cancellation of the contract. The Belgian Council of State and the civil courts can add a default fine to their suspension. Unlike other MS, the judgment of the Belgian Council of State is not subject to appeal^{iv}.

Key issues that have a bearing on administrative capacity

Human resources: The number and skill level of employees working on public procurement varies substantially among regions. At the federal level, *CMS-FOR* is composed of 11 members. At regional level, for instance in Flanders there are more than 1,000 civil servants trained in the modalities of e-submission.

Structures: Several entities at federal and regional levels are responsible for capacity building in public procurement. The Federal Public Service Personnel and Organisation (FPS P&O) handles the recruitment, remuneration and training of federal agents through the Training Institute of Federal Administration (IFA). In addition, each region develops its own programmes to train and support public procurement practitioners.

Training: The IFA develops training courses and e-learning on several aspects of public procurement: basic introduction to the legal framework, e-procurement, and specialised courses on works, supplies and services procedures. It also offers trainings to facilitate SMEs use of e-procurement.

The Court of Audit also organises training sessions to keep its agents up-to-date in terms of public procurement legislation^v. In addition, the *ABA-CPA* provided 84 trainings to the federal administration in 2014, including 964 participants.

In each region, trainings are provided for ministry officers by administration agents or by private professionals, such as lawyers specialised in public procurement.

Systems/tools: FPS P&O has developed manuals on different aspects of public procurement, and several tools to foster the use of e-procurement^{vi}. These tools are organised around 5 different modules: e-notification, e-tendering, e-catalogue, e-awarding, and e-auctions. They are free to use, and aim at benefiting both economic operators and contracting authorities.

There are also support tools in place at the regional and federal levels such as a help desk for e-procurement, standardised tender documents, information notes, as well as guidelines on green and social public procurement.^{vii}

E-procurement

The adoption of e-procurement is advancing in stages in Belgium, with e-notification for contracts above EU thresholds mandatory since 2013 for all levels (federal, regional and local), and mandatory e-submission being phased in over time starting with federal authorities in 2012^{vii}. The Flemish Region aims to receive and process all invoices electronically by 2015, through the “e-invoicing” module. E-evaluation is available for ministries at federal and regional levels but not yet for local governments. E-auction, e-awarding, and e-catalogue have been available since 2011.

Two e-procurement portals are currently active in Belgium. The central e-procurement platform is used by the federal administration as well as the Brussels-Capital and Flanders Regions^{viii}. On the other hand, Wallonia has developed its own portal, which can be used by all French-speaking authorities and is partially integrated with the federal one. The federal government recently estimated that the use of e-procurement saves 85% of administrative costs related to traditional tender procedures^{ix}.

Corruption

Belgium enjoys relatively low levels of perceived corruption^x, but maintains an active anti-corruption policy that focuses on procurement as an area susceptible to corruption. Both perceptions of corruption and the policy response vary substantially by region. Flanders Region scores relatively low and has a more developed anti-corruption policy than Wallonia^{xi}. In addition, some sectors in the economy such as building and road construction are more vulnerable to corruption than the others.

At the federal level, the anti-corruption policy is coordinated by the Office of Administrative Ethics and Deontology. This body only has an advisory function and limited financial and human resources, with just 5 staff members. Enforcement is led by a special unit of the Belgian Federal Police called the Central Office for the Repression of Corruption (*OCRC*), which dedicates one of its three units exclusively to procurement investigations. At the regional level, both Flanders and Wallonia regions have adopted rules of ethics to be applied by elected representatives and civil servants^{xii}.

Europe 2020 Agenda

Belgium has introduced a number of initiatives in the field of public procurement within the scope of the Europe 2020 Agenda. Unlike the majority of MS, these initiatives are designed in an integrated way and mainly focus on promoting environmental and social considerations in public procurement, as well as the participation of SMEs to tender procedures^{xiii}.

At the federal level, the Ministry of Environment and Sustainable Development has developed an Action Plan for Sustainable Procurement, in cooperation with regional authorities. In this context, a specific circular was published in 2014 to integrate sustainable development in public procurement legislation, including social clauses and measures favoring the participation of SMEs by federal contracting authorities^{xiv}. In addition, Belgium established comprehensive channels for dialogue between the government, companies, and purchasing units, which contributed to the constant improvement of the national sustainable public procurement policy^{xv}.

Moreover, the Federal Institute of Sustainable Development provides public procurement practitioners with manuals to foster sustainable purchase including detailing labels, environmental and social criteria for specific products and services as well as the use of life-cycle costing.

The Flanders Regional Government has its own Flemish Action Plan on Sustainable Public Procurement^{xvi}. Its objective is to reach 100% sustainable public procurement by 2020. The goals fixed in the 2009-2011 Action Plan were achieved, resulting in a better structured sustainable procurement process, as well as in more effective dialogue between the parties implicated in the policy making process. The second Action Plan of 2012-2014 specifies actions and measures in order to accelerate the implementation of sustainability criteria in public contracts. These measures consist in monitoring the sustainable procurement process, including aspects such as sustainable innovation and social considerations, which can furthermore contribute to sustainable materials management^{xvii}.

The government of the Brussels-Capital Region has adopted a recommendation concerning the use of social considerations, such as the consideration of working conditions in public procurement, on the example of fair trade. More specifically, Brussels Capital contracting authorities introduced social considerations as award criteria or conditions when performing a contract^{xviii}.

The Wallonia region has also developed a methodological guide on sustainable public procurement covering the inclusion of environmental, social and ethical considerations in public tenders and promoting the access for SMEs. Practical tools for public procurement practitioners are also provided in the regional e-procurement portal^{xix}.

Irregularities and findings of national Audit Authorities

The Court of Audit conducts controls of public procurement of goods, works and services. At federal level, tender procedures are generally adequate. Yet certain operational risks are currently not entirely covered by the internal control procedures, and could be reduced thanks to more formalised implementation processes, centralised purchases, and fewer systematic extensions of contracts in particular in the field of public works.

In the Brussels-Capital Region, identified irregularities include a lack of transparency and use of negotiated procedure although the legal conditions were not fulfilled^{xx}.

In Wallonia, the Court of Audit came across irregularities such as limitation of competition, weakness of control, and several errors and gaps in procurement documents^{xxi}.

In addition, the Federal Police Annual Report gives an overview of the main fraud cases occurring in public procurement^{xxii}. The most common types of fraud identified were undeserved and irregular award of contracts to a tenderer and maximising the benefit of the contractor by using fraudulent means. The contracting authorities currently blacklist companies involved in procurement fraud, but this initiative would need a more centralised approach in order to be more efficient.

Outlook

In terms of legislation, the 2014 EU Directives were implemented as the Small Business Act 2014, which will be implemented nationally by 18 April 2016. The implementation of these Directives also fits in the Europe 2020 strategy to improve innovation, encourage SMEs' participation in the economy, and to consider the social award criteria for their procurement processes^{xxiii}. As it was opted to draw up four consecutive action plans, each of which covers a three-year period (2009-2011, 2012-2014, 2015-2017 and 2018-2020), the Action Plan 2012-2014 will be followed by 2 other plans which will further develop and adjust the policy.

Given the progress already made in terms of e-procurement at a national level, the goal of achieving a 100% electronically processed procurement process can be considered as realistic. Belgium is looking into improving e-procurement capacities on a continuous basis, notably through the development of the electronic tools e-notification, e-tendering, e-auction, e-catalogue, and e-invoicing. For instance, as regards e-invoicing, the Flemish region seeks to receive and process invoices electronically by January 2015, and to provide entirely digitalised invoices as well as billing information by January 2017^{xxiv}.

ANALYSIS

Strengths

Public procurement processes are generally adequate in Belgium particularly thanks to the development of e-procurement. Indeed, the progress of the e-procurement system has led to a facilitated use of procurement submissions and it has allowed for more transparency, thanks to the publicly open access to tenders. Between 2004 and 2012 the number of notices published on e-notification platforms rose from 213 to 29,499. Between 2007 and 2012, the number of contracting authorities using e-tendering rose from 8 to 3,279. In the Flanders region e-submission became mandatory for contracting authorities in January 2012.

Belgium's integrated and collaborative approach to strategic public procurement is also quite unique. Environmental, social, and innovative criteria are part of integrated sustainable procurement initiatives at both federal and regional levels. And there is regular consultation between the different stakeholders involved in strategic procurement within federal and regional administrations.

Weaknesses

Belgium's regional autonomy means that implementation of procurement measures varies substantially across the country. For instance, Flanders already has mandatory e-procurement, whereas Wallonia and the Brussels Capital Region are still planning the implementation of e-procurement procedures.

Furthermore, there remains rooms for improvement in the oversight system for public procurement at the federal and regional levels. First, there is a considerable lack of human and financial resources in different federal units to carry out internal control and anti-corruption measures, worsened by the constrained budgets in the aftermath of the 2009 financial crisis. The judicial system also lacks expertise in corruption. This challenge exists also at the regional level. For instance, the Flemish region has just

one integrity coordinator, in charge of the integrity policy of all administrations including approximately 50,000 civil servants.

Recommendations

- **Improve oversight:** Public procurement oversight at the federal and regional levels is limited by human and financial resource constraints.
 - Increase staffing levels within oversight entities.
 - Improve internal control procedures at federal level.
 - Implement more formalised processes and work towards aggregation of oversight.
- **Promote e-procurement:** Implementation of e-procurement is proceeding unevenly across Belgium's three regions, and the different levels of government.
 - Increase interoperability between the central e-procurement platform and Wallonia's e-procurement system.
 - Foster greater use of e-procurement in Wallonia and the Brussels Capital Region, notably by raising awareness among contracting authorities.
 - Develop a plan to implement e-evaluation at local government level.

ⁱ Press release following the Belgian Council of Ministers (24/09/2015), available at:

<http://www.presscenter.org/fr/pressrelease/20150924/transposition-de-deux-directives-europeennes-en-matiere-de-marches-publics>

ⁱⁱ SIGMA (2014), Brief 31 on Public Procurement "2014 EU Directives: Concessions", available at:

<http://www.sigmaweb.org/publications/EU-Directives-Concessions-2014.pdf>

ⁱⁱⁱ European Commission (2012), Annual Public Procurement Implementation Review 2012.

^{iv} Public Procurement Network (2010), Authority for the Supervision of Public Contracts, The comparative survey on the national public procurement systems across the PPN.

^v National Court of Audit (2014), *Rapport de la Cour des Comptes transmis à la chambre des représentants* (Annual report 2013).

^{vi} Federal Public Service Personnel and Organisation (FPS P&O) (2013), Electronic public procurements contracts for the public and private sectors alike

^{vii} E-procurement helpdesk, available at: <http://www.publicprocurement.be/fr/contact/questions-relatives-e-procurement>

^{viii} European Commission (2013), DG MARKT, E-procurement state of play report.

^{ix} Federal government and the governments of the Regions and Communities of Belgium (2014), National Reform Programme 2014.

^x European Commission (2014), DG HOME, EU anti-corruption report, Annex Belgium.

^{xi} GAN Integrity Solutions, Business anti-corruption portal, available at: <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/belgium/show-all.aspx>

^{xii} European Commission (2014), DG HOME, EU anti-corruption report, Annex Belgium.

^{xiii} *Regeerakkoord - Accord de Gouvernement* (Government Agreement), 9 October 2014.

^{xiv} Federal Service of Justice (2014), *Intégration du développement durable, en ce compris les clauses sociales et les mesures favorisant les petites et moyennes entreprises, dans le cadre de marchés publics passés par les autorités adjudicatrices fédérales* (Consideration for sustainable development, including social criteria and measures promoting SME, in public procurement), Circular 16 October 2014.

^{xv} OECD (2015), Smart procurement – Going green: best practices for green procurement, public governance committee, available at: http://guidededesachatsdurables.be/sites/default/files/content/download/files/2015_oeso_document_smart_procurement.pdf

^{xvi} SCP Clearinghouse (2014), Sustainable Public Procurement in Flanders.

^{xvii} Department of the Flemish Government – Public Governance – (2012), Flemish Action Plan for Sustainable Public Procurement 2012-2014.

^{xviii} Law Business Research Ltd (2014), The Government Procurement Review, Second Edition.

^{xix} Service public de Wallonie (2014), *Intégration de clauses environnementales, sociales et éthiques dans les marchés publics et promotion de l'accès aux pme- Note de cadrage et conseils juridiques à l'attention des praticiens des marchés publics, version 2* (Integration of environmental, social and ethical criteria in public procurement – Methodological guide and legal advice for public procurers).

^{xx} National Court of Audit (2013), 20th Report of the Court of Audit presented to the Parliament of the Brussels-Capital Region and to the Brussels' United Assembly of the Joint Commission for Community matters.

^{xxi} National Court of Audit (2015), 26th Report of the Court of Audit, Comments and documents presented to the Parliament of the Walloon Region.

^{xxii} Federal Police (2013), Department of Financial and Economic Crime, Annual Report 2013, available at:
http://www.polfed-fedpol.be/pub/rapport_activites/pdf/2013/ecofin/RAecofin2013-fr.pdf

^{xxiii} Chamber of representatives of Belgium (2014), Federal Public Service Chancellery of the Prime Minister, General policy note of 21 November 2014.

^{xxiv} Partnership Agreement (2014) for Belgium, in accordance with Articles 14 and 15 of Regulation (EU) N.1303/2013 of the European Parliament and of the Council of 17th December 2013:
http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/files/countries-sheets/2014/slovakia_en.pdf

BULGARIA

KEY FACTS AND FIGURES

Key Facts and Figures in Bulgaria							
Overview	Total procurement 4,810,000,000€		Procurement % GDP 12%		2013 GDP 41,047,900,000€	Contracting authorities 4,514	
Procedures applied	Open 84%	Restricted 0%	Negotiated procedure with call 7%no call 7%		Competitive dialogue 0%	Direct award 1%	Other 0%
Share of contract notices by buyer	National 23%		Regional/local 17%		Body governed by public law 41%	Other 19%	
Contract type	Services 35%		Works 8%		Supplies 57%	Framework agreement 2%	
Ex ante conditionality criteria as of 2014	EU rules Not met		Transparency Fully met		Training Not met	Admin. capacity Not met	
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Voluntary	Uptake rate 0%	
Perceived corruption	Corruption widespread in society				Corruption widespread in procurement		
	Businesses 89%		Individuals 84%		At national level 66%	At local/regional level 78%	
TED indicators	Value of tenders 3,104,805,112€		Of total procurement 65%		# contract notices 3,083	# contract awards 4,665	
Other indicators	Received single bid 24%		# days for decision 141.9		Price only criteria 62%	MEAT criteria 38%	
	Won by foreign firms 1%		Related to EU funds 9%		Joint purchase 1%	Central purchasing Yes, CFCUD	

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Bulgaria's public procurement system has traditionally been comparatively centralised. However, the number of contracting authorities has substantially risen in recent years due to a push to increase local control by decentralising budgets. The result has been to put more procurement contracts under the control of mayors, school administrators, and other municipal officials, who often lack procurement expertise.

In legal and regulatory terms, public procurement in Bulgaria is highly complex and continuously changing. Frequent reforms have been initiated to address persistent irregularities and corruption-related issues, which impact all spheres of the procurement cycle, including oversight and law enforcement. Administrative capacity is another challenge for the procurement system, causing formal errors and delays particularly prejudicial to the use of EU Funds. Persistent weaknesses also relate to the lack of consistency and 'formalistic' *ex ante* and *ex post* controls of procurement proceduresⁱ.

Bulgaria's substantial difficulties related to public procurement had adverse consequences on the use of EU Funds during the 2007-2013 programming period. For instance, shortcomings in public procurement resulted in flat rate financial corrections by the Commission in 2014.ⁱⁱ Moreover, systematic appeals against co-financed projects contribute to the slow absorption of funds. A series of actions aimed at strengthening management and control systems have been implemented, notably the introduction in 2009 of *ex ante* controls performed by the Public procurement agency of bidding documentation for EU sponsored projects, with limited impact on the reduction of mistakes that could lead to financial corrections.

DESCRIPTION OF FEATURES

Legal features of public procurement system

The Public Procurement Law (BG OJ No. 28 of 6.4.2004, or PPL) is the primary vehicle for transposing the EU Directives into Bulgarian law. The PPL was substantially overhauled in 2006 as part of Bulgaria's accession to the EU, and has been amended frequently since, most recently in 2014. In addition to the main law, there is some key secondary legislation governing public procurement, including the Rules for the Implementation of the Public Procurement Law.

Bulgaria's national procurement law has four levels of sub-thresholds below the EU thresholds. Direct awarding is allowed for contracts worth less than EUR 30,600 for works, EUR 10,200 for supplies and services and EUR 33,600 for design contests. Tender procedures can be conducted through public request for proposals for contracts worth between EUR 30,600 and EUR 134,900 for works, between EUR 10,200 and EUR 33,600 for supplies and services, and design contests. Any procedures can be used for contracts worth more than EUR 134,900 for works and EUR 33,600 for goods, services and design contests, with a possibility of simplifications for contracts below EUR 1,347,000 for works, EUR 129,700 for goods, services and design contests and EUR 391,160 for telecommunications services.

Bulgaria has a mandatory two-envelope system that entails the separation of the technical and the financial offer in two different envelopes to be opened at different times for all tender proceduresⁱⁱⁱ.

In addition, contracting authorities may require tenderers to provide a guarantee as a condition of participating in a tender procedure. They determine the terms and the amount of the guarantee as a fixed sum of money, which may not exceed 1 per cent of the value of the tender.

Finally, the same remedies procedure applies below and above EU thresholds. The first instance appeal body is the Commission on Protection of Competition, a specialised administrative body authorised to apply the Protection of Competition Act, the Public Procurement Act and the Concessions Act. The second and highest instance for judicial review of public procurement disputes is the Supreme Administrative Court.

Institutional system

The main body responsible for public procurement in Bulgaria is the Public Procurement Agency (PPA), an independent body under the Ministry of Economy. A wide range of tasks fall under the mandate of the PPA, including drafting law on public procurement, giving methodological and other forms of guidance, performing mandatory *ex-ante* controls for all ESI Funds co-funded procurement procedures valued above EUR 1.3 million, and for non-EU funded works contracts worth over EUR 5 million, monitoring and analysing procurement markets, alerting supervision authorities on possible irregularities, and maintaining the Public Procurement Register (PPR). The PPR is an electronic database with information on all procurement procedures that contracting authorities are required to submit.

The Central Financing and Contracting Unit Directorate within the Ministry of Finance acts as the central purchasing body for the central administration. It plans and carries out centralised procurement and manages a number of framework contracts for certain products, such as office supplies, fuel, utilities, and maintenance services.

The Commission for the Protection of Competition (CPC) is another important body in Bulgaria's procurement system. It is charged with implementing the Law on Protection of Competition, as well as with control of procedures under the PPL and the Concessions Law. As the first instance review body, it examines and decides on claims

of irregularities in public procurement and may interrupt public procurement procedures and impose sanctions for non-compliance.

The National Audit Office (NAO) performs independent audits of national public finance for legality, efficiency and effectiveness in the use of public funds. It regularly audits contracting authorities at the central and local levels. However, it has limited ability to sanction, and can only forward its findings to the State Financial Inspection Agency.

Under the Ministry of Finance, the Public Financial Inspection Agency is an entity set up in 2006 to ensure the protection of public financial interests. It carries out inspections of the budget, and the financial-economic and accounting activities of public bodies, and it has the authority to impose sanctions.

In addition, the Managing authorities of each individual operational programme, under the supervision of the Certifying authority and the EU Funds Audit Executive Agency, carry out audits and controls on the distribution and use of ESI funds in Bulgaria. These activities particularly involve the control of public procurement procedures as an area highly exposed to the risks of fraud.

Key issues that have a bearing on administrative capacity

Human resources: The PPA is staffed by 75 personnel, out of which 56 are civil servants and 19 are employees.^v The team dealing with *ex-ante* checks of procurement procedures is 30 people, 10 of which are employed through OP Technical Assistance.^{iv} Over the years, the Agency has built a highly specialised team well versed in national as well as EU public procurement, but acknowledges that their number is too low given the quantity of procurement contracts processes per year. Retaining a qualified workforce is a challenge in times of tightening public budgets, and the PPA considers the retention of skilled personnel one of the main risks to the performance of the Agency.^v

Administrative capacity is a challenge for contracting authorities at all levels of government. Insufficient number of staff, frequent turnover, low salary levels and lack of qualified personnel and of adequate training are among the difficulties that contracting entities face, most notably at municipal level.^{vi} At the central level, there is substantial variance in staffing levels. Some ESI funds Managing Authorities (MA) have personnel dedicated to procurement, while others lack procurement-specific staff entirely.^{vii}

Contracting authorities often turn to outside consultants to manage the procurement process, but review by the PPA indicates that even this is no guarantee of success.

Auditors at the NAO need a university degree, three years of work experience, and have to pass a competition in order to qualify for the job. Economists and lawyers are the most common types of backgrounds at the NAO.

Structures: The PPA performs a number of supportive functions to contracting authorities and economic operators. The most important of these is providing written answers to contracting authorities and tenders' procedural questions. In 2013, the PPA provided 230 such opinions on a range of issues, which are then posted on the Public Procurement Portal. PPA also publishes step-by-step methodological walkthroughs, and offers direct consultation, including through a telephone hotline. The PPA estimates that on average, they provide some sort of assistance 23 times a day.^{viii}

Training: The Bulgarian Institute of Public Administration (IPA) offers a number of compulsory and voluntary trainings to employees of the public administration. However, training specifically dedicated to public procurement is seriously limited, with only one course offered in 2014.^{ix} This is partly due to a lack of sufficient information on training needs, or of monitoring of training outcomes. The IPA is currently

developing a more robust procurement training program, with the goal of making successful completion of course work mandatory for newly hired staff, and to be updated periodically for long-term employees.

Some training is offered by commercial organisations, but in the absence of a certification system for either trainers or curricula, the quality of the programmes on offer is highly varied.

The PPA is involved in training as well, notably by lecturing on topics such as green public procurement and procurement legislation.

The NAO, too, organises regular trainings on public procurement for its staff with a focus on new developments in the legislation and in practice.

Systems/tools: The PPA issues a Public Procurement Handbook that contains over 1,000 legal guidelines on public procurement. The PPA also runs a telephone hotline as part of its assistance functions. In 2013, it received 5,400 calls.^x

As mentioned above and according to the Bulgarian PPA, the PPR is a centralised register that tracks information on procurement for both the classical and utilities sectors and also provides information on all types of public procurement procedures. In particular, the PPR makes sure that all information respects European standards.

E-procurement

Bulgaria's e-procurement system is not yet fully developed, but takes a prominent role in the National Strategy for the Development of the Procurement Sector 2014-2020. In fact, Bulgaria has implemented a national one-stop portal¹ managed by the PPA that includes the Public Procurement Register, a module for small notices, and other functions.

E-notification has been mandatory for all contracting authorities since 2004 and 87% of contract notices were in fact published online in 2013.^{xi} Furthermore, the procurement portal has an e-Sender functionality that simplifies the submission of contract notices to the PPA and TED. E-access has been obligatory since October 2014.

E-submission functionality is not yet available on the national portal. Bulgaria has set a goal of implementing fully digitized procurement system by the end of 2016, including e-submission, based on the best practices within the EU.

Corruption

Bulgaria struggles with corruption issues in many aspects of the political-economic system of the country, and procurement is a critical area in this respect.

Public procurement has been identified as a high-risk area in terms of corruption by the Cooperation and Verification Mechanism (CVM), the special mechanism established by the EC in 2006 for cooperation and verification of Bulgaria's progress as regards the implementation of specific reforms in the areas of justice and rule of law. As pointed out in the CVM's 2015 annual report^{xii}, the public administration still lacks a comprehensive mandatory monitoring system to track anti-corruption initiatives and report them to a central point, while systems to check procurement procedures would merit strengthening. Some of the measures recommended to curb corruption in public

¹ www.aop.bg

procurement include to strengthening *ex-ante* and *ex-post* controls, as well as effectively applying sanctions.^{xiii}

Moreover, corruption particularly affects the procurement process at local level, where contracting authorities are vulnerable to the influence of organised crime groups, often associated with threats of violence and collusion with local politicians.^{xiv} Furthermore, despite the increased openness of the Bulgarian procurement market, it remains true that a large share of contracts are still awarded to a few large companies. At least some of this concentration effect is believed to be the result of legitimate specialisation, *i.e.* by the successful competition by firms whose business model focuses on winning public contracts. However, the high concentration of funds going to these companies may be both an indicator of corruption, and a risk factor in the development of corruption, and thus merits further scrutiny.^{xxxvi}

Concerns about improper channelling of contracts to favoured providers focus on the use of tailor-made selection and award criteria.^{xv} Despite these concerns, high-level cases of alleged corruption, particularly in infrastructure and public works, are rarely investigated, prosecuted or sanctioned, contributing to a culture of impunity. The widespread perception of corruption contributes to a belief among private sector suppliers that it is not possible to win a tender via 'clean' means.^{xv}

Bulgaria has established multiple institutions to fight corruption, such as the Prosecutor's Office, the Ministry of the Interior, the Commission for Prevention and Countering of Corruption, the State Agency for National Security (*DANS*), the Commission for Prevention and Ascertainment of Conflict of Interest, and the Centre for Prevention and Countering Corruption and Organized Crime (*CPCCOC*). Bulgaria recently introduced a new National Anti-corruption Strategy that focuses on the investigation of conflict of interest of high level officials.^{xvi}

The BORKOR project, developed by *CPCCOC*, is meant to develop a standard for a measurable intervention system against corruption.^{xvii} BORKOR uses hardware and software technology in order to identify corruption risks, notably in procurement. However, various assessments of this initiative have concluded that so far the results have not met the expectations.^{xviii}

Europe 2020 Agenda

Bulgaria's strategic orientation of public procurement is limited to efforts in green public procurement and in SME participation. The National Action Plan for Stimulating Green Public Procurement (GPP) for the period 2012-2014 is primarily focused on fostering awareness, but does also introduce compulsory requirements for a set of product categories. Moreover, the government plans to strengthen environmental considerations through cooperation with leading countries in the field as well as introducing guidance in the form of a handbook.^{xix}

The share of contracts awarded to SMEs in Bulgaria over 50%, far exceeding the EU average. However, the number of businesses that participate in tender processes is quite low, indicating that a small number of firms are winning a large share of procurement contracts.^{xx} One way that SME participation in public procurement is fostered is by publishing notices for small value contracts on the procurement portal.^{xxi}

Irregularities and findings of national Audit Authorities

In 2013, the NAO carried out audits of 184 budget organisations, including ministries, departments and municipalities. The audits uncovered widespread irregularities and violations of procurement rules. Information on violations of procurement procedures was sent on to the Public Financial Inspection Agency and the PPA for further action. Common irregularities include procedural and formal errors by contracting authorities, as well as serious violations such as failure to apply tender procedures and use of

tailor-made criteria. Furthermore, contracting authorities frequently failed to design assessment methodologies that are compliant with public procurement legislation, in particular with respect to the implementation of “most economically advantageous tender” award criteria.

In a review of the NAO’s results, the PPA concluded that *ex-ante* controls have had a positive impact in the reduction of irregularity risks and in strengthening the capacity of contracting authorities.^{xxii} However, *ex-ante* controls do not guarantee compliance.^{xxiii} Furthermore, these controls are often more formalistic than substantive, and thus of limited benefit^{xxiv}.

Along the same lines, the Public Financial Inspection Agency, which is responsible for *ex-post* controls of public procurement, provides a wealth of information on the violations of procurement regulations detected in the course of its inspection activities. A large proportion of violations include failure to apply procurement procedures, use of tailor-made criteria strongly favouring specific bidders, and unjustified use of negotiated procedure instead of open tender. Other irregularities involve procedural violations, such as failure to meet deadlines or to submit information to the Public Procurement Register. Overall, violations were found in over 55% of the 384 contracts reviewed, worth EUR 508 million. Administrative and judicial proceedings initiated as a result of inspection activities resulted in the issuance of 1,751 penalty decrees and imposed fines of EUR 2.3 million. The key takeaways for the Public Financial Inspection Agency are that *ex-post* controls have a dissuasive function and need to be strengthened.^{xxv}

Complaints filed with the Commission for Protection of Competition also highlighted discriminatory conditions for bidders, unlawful exclusion of candidates, and arbitrary assessment of tenders and selection of contractors.^{xxvi}

Furthermore, audits of ERDF and CF funded projects have uncovered major shortcomings in public procurement practices, which need to be addressed with specific measures foreseen in the *ex-ante* conditionalities public procurement action plan for the use of ESIF 2014^{xxvii}. While not the only factor, procurement-related weaknesses, primarily associated with weak administrative capacity, contribute to one of the lowest EU funds absorption rates in the Union.

Outlook

The National Strategy for the Development of the Procurement Sector 2014-2020 outlines a comprehensive package of reforms to be implemented in the coming years that includes streamlining the legislative and regulatory framework, strengthening preventive measures to avoid irregularities related to the procurement process, and developing a fully functioning e-procurement system. The Strategy also calls for greater centralisation of contract management both by expanding the portfolio of the Central Financing and Contracting Unit, and by encouraging local level contracting authorities to establish shared procurement bodies along territorial or sectoral lines. Another priority for public procurement reform is the reduction of the administrative burden for both contracting authorities and economic operators through the development of tools and optimisation of processes.

In order to fulfil *ex-ante* conditionalities of the 2014-2020 programming period, Bulgaria has introduced an Action Plan for the strengthening of public procurement. A total of eight actions have been devised that cover the legal system, training and dissemination of information as well as administrative capacity. Actions aimed at improving the legal framework include simplified legislation, strengthening management and control of EU Funds, and tackling the appeal system. In terms of training and dissemination, the Action Plan foresees a training and development programme for ESIF staff as well as the establishment of a system of dissemination of information in order to foster a uniform procurement practice. Not least, increased

staffing at the PPA and technical assistance for those who apply public procurement rules are aimed at increasing administrative capacity.^{xxviii} However, delays in the implementation of the planned measures have already occurred.^{xxix}

In addition, an E-governance Development Strategy 2014-2020 is currently being drafted. It will encompass the development of e-submission for both national and local contracting authorities in accordance with the targets set in the 2014 EU Directives. The draft E-governance Development Strategy 2014-2020 anticipates the following levels of uptake in the next years: 50% electronic procedures of state and municipal administrations by 2017 and full transition to e-procurement by 2020.^{xxx}

Finally, a newly created Specialised Anti-Corruption Unit recently started operating in order to tackle corruption among high level officials. It employs 50 people including investigators and prosecutors. The unit is part of the Prosecutors Office of the City of Sofia and will work in close cooperation with the State Agency for National Security.

ANALYSIS

Strengths

Since accession to the EU, Bulgaria has continuously reformed its public procurement system in an effort to make it both compliant with the EU *acquis* and improve performance in terms of competition, openness and transparency. Some of the main reforms aimed at harmonising Bulgarian law with EU Directives, including the 2006 and 2010 amendments to the PPL. Moreover, a number of reforms were introduced in the areas of anti-corruption and transparency, such as the 2008 Law on Prevention and Disclosure of Conflicts of Interests, the granting of *ex-officio* powers to the Public Financial Inspection Agency, the strengthening of internal inspectorates in the public administration, and the set-up of numerous body for combating corruption.

A third set of reforms, launched more recently, strives to simplify public procurement procedures. Notably, 2012 amendments to the PPL that unified the tender processes and harmonised procurement forms, and 2014 reforms that target administrative burden and SME participation.

Weaknesses

The ever-changing legislative framework poses the biggest difficulty to the performance of the public procurement system. On the one hand, it is a source of errors and irregularities for the administration, as demonstrated by the high incidence of procedural mistakes. On the other hand, it reduces legal certainty for potential bidders, discouraging participation in public markets. The instability of the legal framework is also reflected in the different interpretations of cases with irregularities applied by local and regional courts.

Corruption affects Bulgaria in all domains and is an important obstacle to improving the fairness and efficiency of the procurement system, despite years of efforts to contain it.^{xxxi} A significant weakness in Bulgaria's anti-corruption efforts is the patchwork of institutions and functions that have been erected. Spreading responsibilities out among so many bodies increases coordination costs and weakens accountability, resulting in insufficient oversight and enforcement.

For instance, the State Agency for National Security was originally created to fight corruption, but has gradually shifted focus to intelligence work to the detriment of its anti-corruption efforts.^{xxxii} At the same time, both the Commission for Prevention and Ascertainment of Conflict of Interest and CPCCOC have been implicated in controversy.^{xxxiii} The National Audit Office focuses on the legality of procedures as opposed to efficiency in spending, and has no power to impose sanctions. The Public Financial Inspection Agency is empowered to sanction, but is vulnerable to undue

political interference. As a result, it tends to avoid large-scale projects and concentrate on small contracts.^{xxxiv} The Commission for Protection of Competition also faces allegations of undue influence on its work. And the judiciary is one of the least trusted institutions in Bulgaria, due in part to the fact that many of the high-profile corruption cases that do make it to court result in non-guilty verdicts.^{xxxv} Simply put, existing oversight and law enforcement mechanisms are inadequate to the task of preventing corrupt procurement practices.

While transparency around public contracts does exist, its effectiveness as a tool for oversight of the procurement is limited by the fact that it was designed primarily for budgetary purposes. As such, details are only published once the expenditure has been made, long after the procurement process has ended. Other, potentially more relevant data published by the Public Financial Inspection Agency, is inconsistently presented and not conducive to efficient analysis.^{xv} Available IT tools, data bases and information should be shared more systematically to build a common knowledge base between practitioners and institutions as foreseen in the ex-ante conditionalities public procurement action plan for the use of ESIF 2014-20. A proper monitoring system of public procurement practices based on key performance indicators² with relevance for all institutions involved in *ex-ante* and *ex-post* controls would help to reinforcing cooperation between said institutions.

Weak administrative capacity has been identified as a major hurdle to the performance of the public procurement system as well as for the disbursement of EU Funds. Contracting authorities often lack the legal and technical knowledge to carry out their functions properly, particularly at municipal level. Retention of skilled staff is a further challenge, as expert personnel have an incentive to move to better paid private sector jobs.^{xxxvi} Tightening government budgets in the wake of the economic crisis have further exacerbated administrative capacity shortages.

Furthermore, from the business perspective, there is a general lack of trust in the Bulgarian public procurement system, which is driven in part by the perception that a few companies dominate the market. This situation is both an indicator of possible abusive or corrupt practices, and a possible risk factor. Furthermore, many businesses consider the procurement system to be overly burdensome and lacking in transparency. The lack of confidence in the system limits its ability to attract high quality bidders and thus the efficiency of public spending.

Recommendations

- **Fight corruption:** Corruption is among the most serious issues affecting the procurement system. Bulgarian anti-corruption efforts suffer from diffuse and un-coordinated institutions and a legal system that is overly complex and full of loopholes, resulting in persistent occurrences of tailor-made criteria, unlawful exclusion of bidders, and arbitrary assessment procedures.
 - Consolidate anti-corruption efforts currently spread out over multiple institutions into one or two bodies with clearly delineated responsibilities.
 - Increase the independence of oversight and control bodies, including anti-corruption agencies, by depoliticising senior appointments in anti-corruption institutions through a transparent, merit-based procedure.
 - Strengthen ex-ante controls of tender documentation, including authorising the PPA to halt procedures with significant violations.
 - Strengthen ex-post controls of exclusion and award processes.
 - Introduce mandatory referral of serious violations to independent anti-corruption agency for investigation.

² With targets as regard: i) reduction of error rates and appeals; ii) openness of markets to competition; iii) fight against corruption (red flags).

- Implement feed-back channels through which relevant stakeholders will be able to report on any type of issues they encounter while procuring.
- **Increase transparency:** Lack of frequent and timely publication of procurement documentation substantially hinders the ability of independent organisations and the public to conduct effective oversight of procurement procedures.
 - Implement a system for timely and frequent online publication of procurement information, including tender notifications, contract award notifications, and implementation information.
 - Design a public interface that is complete, easily searchable, and allows for the export of data in common, machine-readable formats.
 - Make the online portal and files available in English, within a reasonable delay, to facilitate oversight by international organisations.
- **Solid legal framework:** The complexity, and frequent changes to the legislative framework, have resulted in inconsistent application by authorities, a lack of confidence by economic operators, and substantial potential for abuse.
 - Overhaul the Public Procurement Law and its associated regulations to create a simpler, clearer, and more uniform system.
 - Limit the frequency of future amendments by occasional (no more than annual) reform package.
 - Accompany legal reforms with awareness-raising efforts and timely, comprehensive and uniform guidance and support materials to ensure procurement practitioners are equipped to implement the changes.
 - Implement regular and systematic coordination channels among policy, executive and oversight bodies to ensure better dissemination of information and a more uniform implementation of decisions.
- **Strengthen administrative capacity:** Capacity bottlenecks such as lack of legal and technical knowledge, staff rotation, and difficulties in hiring and retaining highly-skilled staff, continue to undermine the performance of the procurement system, as well as the absorption of EU Funds.
 - Accelerate hiring of additional staff at procurement policy, executive and oversight agencies, including the PPA.
 - Expand training curriculum to cover greater range of topics, including MEAT criteria, anti-corruption policies, and ESI funds management and control.
 - Organise trainings to minimise out of pocket costs and other barriers by hosting them in multiple locations throughout the year, and making participation free of charge for the widest audience possible.
 - Publish comprehensive, definitive, and easy to find guidance documents to give contracting authorities and economic operators more clarity on how the system is supposed to work.
- **Improve the business environment:** Many economic operators view the procurement system as overly burdensome to participate in, lacking in basic transparency and fundamentally unfair, discouraging participation by potential bidders and thus weakening competition for public contracts.
 - Overhaul the tendering process with the bidders' perspective in mind to reduce the burden of participating in the procurement process.
 - Reform the use of mandatory bank guarantees to limit financial burden of participating and reduce barriers to foreign competition.
 - Publish a pipeline of upcoming tenders online, particularly for larger contracts, to give potential bidders more time to prepare their offers.
 - Set up and monitor key performance indicators on openness to competition of the Bulgarian public procurement market.

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- ^{iv} Public Procurement Agency 27/05/2015 Interview with PwC
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- ^{vii} Annex 3, Partnership Agreement Of The Republic Of Bulgaria Outlining Aid From The European Structural And Investment Funds For 2014-2020, July 2014
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- ^{xiii} European Commission (2014), Assessment of the 2014 national reform programme and convergence programme for BULGARIA
- ^{xiv} European Commission (2014), DG HOME, EU anti-corruption report, Annex Bulgaria
- ^{xv} ALEXANDER STOYANOV, RUSLAN STEFANOV AND BORYANA VELCHEVA (2014) "Bulgarian Anti-Corruption Reforms: a Lost Decade?" in The Anticorruption Frontline: The Anticorruption Report Volume 2
- ^{xvi} НАЦИОНАЛНА СТРАТЕГИЯ ЗА ПРЕВЕНЦИЯ И ПРОТИВОДЕЙСТВИЕ НА КОРУПЦИЯТА В РЕПУБЛИКА БЪЛГАРИЯ 2015 –2020 г. (National Strategy Prevention And Anti-Corruption Republic Of Bulgaria 2015 - 2020)
- ^{xvii} Centre for Prevention and Countering Corruption and Organized Crime, available at: <http://borkor.government.bg/en/page/11>
- ^{xviii} European Commission (2015), Commission Staff Working Document BULGARIA: Technical Report Accompanying the document Report From The Commission To The European Parliament And The Council on Progress in Bulgaria under the Co-operation and Verification mechanism
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CROATIA

KEY FACTS AND FIGURES

Key Facts and Figures in Croatia						
Overview	Total procurement 5,300,000,000€		Procurement % GDP 12%		2013 GDP 43,561,500,000€	Contracting authorities 1,811
Procedures applied	Open 88%	Restricted 1%	Negotiated procedure with call 1% no call 10%		Competitive dialogue 0%	Direct award 1% Other 0%
Share of contract notices by buyer	National 15%		Regional/local 14%		Body governed by public law 54%	Other 17%
Contract type	Services 36%		Works 3%		Supplies 61%	Framework agreement 29%
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Not met	Admin. capacity Not met
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Partially mandatory	Uptake rate N/A
Perceived corruption	Corruption widespread in society			Corruption widespread in procurement		
	Businesses 90%		Individuals 94%		At national level 64%	At local/regional level 63%
TED indicators	Value of tenders 1,329,344,192€		Of total procurement 25%		# contract notices 1,581	# contract awards 1,363
Other indicators	Received single bid 45%		# days for decision 77.8		Price only criteria 95%	MEAT criteria 5%
	Won by foreign firms 1%		Related to EU funds 2%		Joint purchase 9%	Central purchasing Yes, CPO

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Croatia is a unitary state with three levels of governance presiding at the central, regional, and local levels. There are 21 regional or “county” government units. At the local level there are 128 towns and 428 municipalities.

The first public procurement law based on EU Directives was enacted in 2001. However, the current legal structure was largely put in place in 2012 as a condition of Croatia’s accession to the EU. However, the extensive use of state-owned companies limits the impact of ongoing procurement reforms to promote competition for public funds, and increases the risk of conflicts of interests. Despite major progress in increasing transparency, corruption remains a significant challenge.

Croatia also has one of the most highly developed legal and institutional structure for Public-Private Partnerships in the CEE region. While the total number of PPP projects completed remains modest, the use of the PPP model in infrastructure and urban development projects is growing, as is the capacity to improve on past experiences.ⁱ

DESCRIPTION OF FEATURES

Legal features of public procurement system

The Public Procurement Act of 2012 (PPA) is the foundational legislation for procurement in Croatia, transposing the EU directives and prescribing procedures for all categories of contracts. Below the EU thresholds, the PPA sets out national thresholds of approximately EUR 26,000 for goods and services and EUR 65,000 for works. Procedures very similar to those applied above the EU thresholds apply, with the exception of the shorter time limits for the receipt of tenders and shorter time limits for lodging an appeal. Below the national thresholds, PPA rules do not apply, and each contracting authority has the right and the legal obligation to set its own procedures.

Under the PPA, contracting authorities are required to publish their procurement plan on the online procurement portal within a period of 60 days from the day the budget is adoptedⁱⁱ. Contracting authorities are obliged to update procurement information on this register every six monthsⁱⁱ. Notices for individual tenders have to be published on the portal within one business day of being published.

The PPA also establishes the State Commission for Supervision of Public Procurement (*DKOM*) as an independent national body in charge of supervising public procurement procedures. In addition, a second act, namely the Act on *DKOM*ⁱⁱⁱ, defines and clarifies its jurisdiction and functioning. Since its implementation in 2003^{iv}, the Act on *DKOM* has been amended twice, once in 2010^v and more recently in 2013^{vi}. Ultimately, both the PPA and the Act on *DKOM* are based on the 2004 EU Public Procurement Directives^{vii}, and in particular the principles of transparency and legality.

Other legislation related to public procurement includes: the Act on Public Private Partnerships^{viii}; the regulation in the methodology for drawing up and handling tender documents and tenders; the regulation on public procurement notices; the regulation on control over the implementation of the PPA; the ordinance on training in the field of procurement; the ordinance on the application of the Common Procurement Vocabulary; the ordinance on the list of entities bound by the PPA; the Concessions Act^{ix}; the regulation on public procurement for defence and security purposes; and the Act on the State Commission for Supervision over Public Procurement Procedure^x.

In a further step toward increasing transparency in compliance with Directive 2003/98/EC, Croatia enacted the Law on the Right of Access to Information in 2013. This law requires the state to publish online, among other things, procurement and award information in a searchable, easily accessible database. It also establishes a process for citizens to request other non-classified information. The forms are made available on the website of the Central Procurement Office (CPO).

There has been a significant increase in appeal cases in recent years, which can be explained by the recent economic crisis and increased awareness among appellants of their rights as well as the procedures of legal protection in the public procurement. In fact, the *DKOM* received 2,298 cases in 2013, a 13% increase compared to the previous year^{xi}.

Furthermore, specific rules apply for grant beneficiaries who are normally not obliged to follow the PPA including SMEs and similar private law entities. These specific rules can be considered as a simplified version of the PPA, and form a special annex to the grant contract, making it a contractual source of law for said beneficiaries. The oversight of the utilisation of these rules rests with the contracting authority, as they are contractual rather than legal obligations. Nevertheless, these rules offer some guarantee that such public funds will be spent in accordance with the principles of public procurement.

Institutional system

There are five main public procurement authorities in Croatia. The primary policy organ is the Directorate for the Public Procurement System (DPPS) within the Ministry of Economy (MoE). It is in charge of the development, coordination and improvement of the public procurement system, harmonising the Croatian legal framework with EU legislation, as well as addressing any identified irregularities. The Ministry also issues opinions, instructions, and provisions of legal assistance linked to the PPA.

In addition to the Ministry, the key executive role is played by the CPO, which acts as a central purchasing body and carries out some monitoring and analysis duties. Its aim is to achieve savings by implementing a systematic approach to public procurement.

The Ministry for Regional Development and EU Funds is in charge of setting priorities for the use of financial resources from EU funds. This Ministry monitors the management and allocation of these funds.

The primary internal supervision body for procurement is the *DKOM*^{xii}, which acts as both a judiciary and administrative body answering to the Croatian Parliament. It operates as a remedies body for those with claims against a procurement decision, and publishes a database of its past decisions, as well as detailed annual reports on complaints, irregularities and appeals. The Administrative Court is the second instance body for appeals. Furthermore, the State Audit Office (SAO) is a politically independent audit supervising body that conducts external controls of procurement for compliance with the PPA. In order to be in line with EU and international standards, the National Audit Office of the UK supports the SAO in capacity building measures^{xiii}.

In the implementation system of the EU funded programmes, the Agency for the Audit of European Union Programmes Implementation System (*ARPA*) has the role of independent audit authority.

Key issues that have a bearing on administrative capacity

Human resources: Under Croatian law, procurement procedures must be carried out by authorised representatives of the contracting authority, of which at least one must hold a valid procurement certificate. The certificates are granted only after extensive training and a written exam. In this manner, the government ensures a basic level of training is applied in all contracts. There is no requirement that the certified representative be an employee of the contracting authority, thus non-employees can be engaged to fulfil the requirement^{xiv}.

The number of employees charged with overseeing the procurement system is comparatively limited, with less than 100 dedicated individuals spread out among the various oversight, audit, and anti-corruption agencies involved.

The DPPS's staff are considered as highly qualified. It does, however, struggle with high staff turnover and has subsequently lowered its hiring standards in response to an inability to attract sufficiently qualified applicants. Currently, out of 19 DPPS employees, only 8 are working directly on public procurement.

Structures: Two bodies are responsible for disseminating information on public procurement. The first is the CPO, which publishes information about procurement law and regulations, and provides summaries and bulletins on recent and ongoing changes. The second, the DPPS, is more focused on the application of procurement law. It is also responsible for authorising private sector professional training organisations to offer coursework for new and continuing procurement practitioners. In addition, the DPPS manages the Portal of Public Procurement¹, another valuable source of information about the laws and regulations.

Training: Procurement certification training is offered by companies authorised and organised by the MoE, and by the Ministry of Public Administration, as the central government body in charge of civil service affairs, which implements the program for civil servants in accordance with special regulations. Before passing the exam, the trainees must follow a basic 50-hour training program. The certificates are valid for three years, and can be renewed by participating in an additional 32-hour training. The MoE also cooperates with the Croatian Chamber of Commerce in organising workshops for economic operators and procurement practitioners. The cost of attending trainings is approximately EUR 430^{xv}.

¹ <http://www.javnabjava.hr/>

The Portal of Public Procurement provides concrete data on these trainings, stating that 4,402 persons are certified, 190 persons are trained, 481 applications have been registered for renewal of certificates since July 2014, as well as 60 workshops were implemented in 2014 with 2,229 people attending.

Systems/Tools: The MoE provides practical information for contracting authorities and tenderers, including answers to frequently asked questions, a step-by-step manual for contracting authorities covering the entirety of the procurement process, and another for the business community. An updated draft is currently under development. MoE also publishes a variety of template documents that contracting authorities adopt to their specific needs.

In addition, the DPPS operates a phone helpline two mornings a week offering information and advice on procurement procedures, maintains a dedicated e-mail inbox, and invites procurement stakeholders to participate in monthly open day events where they can interact directly with DPPS staff. Demand for DPPS support is high, with the e-mail account alone fielding as many as 4,000 inquiries per year.

Furthermore, the United Nations Development Programme in Croatia, which is a key support institution in implementing Croatia's Green Public Procurement 2020 initiative, offers a helpdesk to support contracting authorities looking to incorporate green and low-carbon intensity procurement practices^{xvi}. They also disseminate GPP 2020 best practices via a database of educational and training materials, workshops, and GPP events.

E-procurement

In Croatia, e-procurement has been in place since 2008. However, its mandatory use is restricted and its uptake has largely been limited to contracting authorities that handle large contracts. The adoption of a single, centralised portal featuring a searchable database, the Electronic Public Procurement Classifieds (*EOJN*) facilitates the uptake process. E-notification on the *EOJN* is mandatory for all tenders within one business day of publication, and the platform is integrated with TED. E-access is also mandatory since 2014.

E-submission through the *EOJN* has been available since 2014 and mandatory for contracts above the EU threshold since 1 January 2015, and below the EU threshold starting 1 July 2015. Information on tenders are accessible on the internet and bids can be tracked in real time. The platform is free of charge for economic operators, whereas contracting authorities have to pay a fee to use it.^{xvii} The legislative and regulatory framework for e-invoicing has been established, and is aligned with the latest EU e-invoicing legislation, Directive 2010/45/EU, which has been transposed via the national VAT legislation.

Corruption

Public procurement is a major concern area for corruption in Croatia, particularly in the construction sector. Perceptions of corruption among businesses and the wider public are well above EU averages, and there is an acknowledgement within the public administration that something must be done about the issue. One of the key challenges, particularly at the local level, and in the work of publically owned companies, is the prevalence of conflict of interest concerns^{xviii}.

Several anti-corruption strategies have been implemented in Croatia in recent years, often accompanied by action plans, which are frequently updated. The most recent Action Plan has shifted its emphasis relative to previous efforts from a preventative to prosecutorial approach. A new Anti-Corruption Strategy 2015-2020 has already been planned.

Croatia has established a number of agencies with dedicated anti-corruption mandates. Specific to procurement is the Commission for the Resolution of Conflict of Interest, which was recently reorganised in response to a number of legislative reforms.^{xix} Within the criminal justice system, there is the Bureau for Combating Corruption and Organised Crime (*USKOK*), part of the State Prosecutor's Office. This is a prosecutorial body, and thus uses investigative methods^{xx}. Its results in terms of records of investigations into alleged corruption are encouraged by the EC and the US Department of State Report 2013, which both highlight its successful prosecutions^{xxi}. Regional Anti-corruption courts were also adopted before Croatia's accession to the European Union^{xxii}.

The legal environment for anti-corruption has also undergone a rapid change in recent years. Dozens of changes related to anti-corruption have been made annually to laws regulating conflict of interest, public procurement, electoral campaign finance, criminal procedure law, and civil service law. The Croatian Parliament also enacted a new criminal code introducing harsher penalties for corruption crimes.

Civil society has been active to hold public officials accountable for their contracting activities. In 2011, a web portal called the 'Croatian WikiLeaks' was created by the NGO the Windmill Association^{xxiii} to facilitate public oversight of the government's procurement contracts and tenders and to check the assets and interests of public officials^{xxiv}. This website aims to draw attention to public procurement and the irregularities in procurement procedures.

Another example of civil society's involvement is the Partnership for Social Development with its Building Business Incentive for Fight Against Corruption project and the Anti-Corruption Response to Implementation of the Procurement Policies. They have also developed the Integrity Observers database, which enables verifications and cross-checks on procurement activities, real-time monitoring and analysis of public procurement in Croatia. DG Migration and Home Affairs recognised it as a good practice among MS^{xxviii}.

The government is also working with civil society groups to improve transparency in the procurement system by developing a National Action Plan for implementing the Open Government Partnership in 2014-2016. The Open Government Partnership is an initiative launched by the government and civil society to ensure transparency, open data and to fight against corruption with a focus on access to information.

Europe 2020 Agenda

The Croatian government is currently pursuing a number of means to promote environmentally friendly policy goals via their procurement system, including the Third National Energy Efficiency Action Plan of the Republic of Croatia for the period 2014-2016. The PPA itself promotes the voluntary use of environmental certifications and other environmental criteria in the technical specifications of tenders, and provides a number of tools to facilitate their implementation. For example, in order to replace old household appliances, the Environmental Protection and Energy Efficiency Fund will create a co-financing programme for procurement of the most efficient appliances available on the market.

Sustainable procurement is also a key priority at the CPO. However, as these techniques are still relatively new to Croatia, their use is not yet widespread. In this regard, local and national officials are being supported by the UNDP to carry out the EU-wide Green Public Procurement 2020 project, which aims to lower the carbon intensity of procurement^{xxv}.

The Croatian PPA does not include provisions specific to SME promotion, but does employ a number of practices that are friendly to entrepreneurs. First, there is a policy of breaking larger supply contracts down into lots, which can make smaller firms more competitive. Second, minimum annual turnover requirements are comparatively low,

meaning that fewer SMEs are disqualified by their size alone. Finally, the availability of the DPPS helpline can help smaller businesses with more limited administrative support staff navigate the complexities of tendering.

Irregularities and findings of national Audit Authorities

Based on appeals and decisions made in 2013, the *DKOM* identified a number of key irregularities at each stage of the procurement process. In the tender specification stage, documents were found to be unclear and contradictory, included specific requirements designed to favour a single potential bidder over others, such as requirements unrelated to the subject of the tender. There were also irregularities in the receiving phase, such as opening bids before the application deadline, and failure to open bids publically. In the award phase, tenders were found to be eliminated without justification or evaluated on criteria not included in the technical specifications, and procedures were unlawfully cancelled.^{xxvi}

The SAO conducted 673 national level procurement audits in 2013, uncovering irregularities in 3.2% of cases examined^{xxvii}. These include awarding of specific contracts after the relevant framework had been closed, or contracts awarded on receipt of the desired product or service without the required procurement procedure. At the local level, a number of municipalities failed to draw up and publish a procurement plan, and subsequently purchased above the minimum threshold without applying procurement procedures as required.

System audit reports submitted by Croatia to the Commission have not revealed any particular deficiency to be reported in the 2013 report. In addition, the Commission services have analysed the annual audit activity reports and opinions submitted by Croatia. The conclusion is that the audit work of audit authorities can be relied upon. However, some improvements are needed in the determination and quantification of error rates.^{xxviii} As regards the misuse of EU funds, between 2008 and 2009 there were 13 cases of EU misuse funds reported, most of them linked to public procurement.

Outlook

In Croatia, the near-term agenda is strongly focused on a number of initiatives designed to improve administrative capacity, several of which are backed by the EC.

First, as regards e-procurement, Croatia is currently about halfway through its e-procurement implementation strategy, whose ultimate goal is meeting the EU's 100% uptake goal by 2016. In addition to advancing the digitisation of the pre-award stages of the procurement process, the strategy also aims to develop the country's e-auction tools, which have the potential to produce savings for contracting authorities through both lower prices and lower administrative costs.

Second, on the administrative capacity front, the National Action Plan 2014-2016 and Anti-Corruption Strategy 2015-2020^{xxix} envisage further reform of the legislative framework to promote simplification, harmonisation and centralisation, as well as greater investment in procurement tools and personnel. For example, the government has recently indicated its intention to employ approximately 350 additional staff in ESI funds management, some of them being directly engaged in public procurement. Such a substantial influx of new staff will pose logistical challenges in terms of training and preparation.

Third, as part of its procurement *ex-ante* conditionality Action Plan^{xxx}, the Croatian government is undertaking two ESI funds related initiatives. First, it is developing a Training Plan for Public Procurement for the ESI funds management bodies, which focuses on the specificities of public procurement using ESI funds, and is expected to be finalised by July 2015. Second, it has committed to recruit additional public procurement experts in the DPPS by November 2015, to ensure an effective and regular public procurement application in the ESIF programmes and projects.

Furthermore, Croatia is currently in the process of drafting a new PPA. Therefore, it is developing an inclusive process ensuring that as many key stakeholders as possible can provide input during the drafting phase. Additionally, in order to institutionalise the process of gathering feedback on the current procurement legislation, the government has recently established an independent working group within the Croatian Employer Association (*HUP*). It is tasked with proposing amendments to the PPA. The group's current subjects for discussion include streamlining the procurement process and reducing the administrative burden, as well as optimising the role of the CPO.

ANALYSIS

Strengths

The two greatest strengths of the Croatian procurement system are the centralisation of its national portal, and the progress made in improving data collection and transparency. The existence of a single electronic procurement portal has greatly facilitated the modernisation of the Croatian procurement system by channelling all reforms and procedures through a single locus. It also makes it substantially easier to collect data on and monitor procedures.

Significantly enhancing the value of the data collected have been the efforts to make it more easily available to the public, and thus to civil society groups. This kind of external, citizen-lead engagement is a necessary, if not sufficient element to any successful anti-corruption effort.

Weaknesses

Despite the repeated reforms, anti-corruption strategies, and best practices recognised in procurement for Croatia, corruption is still present, especially at the local level, and political influence continues to play a part in the procurement system. This is due in part to the fragmentation of administrative capacities at the sub-national level, and lack of sufficient resources for national oversight bodies. Even with the creation of *USKOK*, the lack of sanctions for corruption-related crimes at a judicial level contributes to a sense of impunity in Croatia.

According to the Commission's 2013 Monitoring Report, the major downfalls in the anti-corruption effort are the lack of preventative measures, and a failure to set deadlines, responsibilities and budgets accordingly^{xix}. There are a number of existing tools that could be made better use of. For example, available risk assessment tools need to be used more systematically at the local level.

Another area where improvements can be made is in the implementation of the current legislative procurement framework. First, like many other institutions in Croatia, the CPO faces difficulties in hiring sufficient staff to execute their responsibilities. Second, despite the fact that the PPA is promoting the use of the most economically advantageous tender criterion (MEAT), contracting authorities are not currently implementing it at expected levels, mainly because of lack of experience.

Finally, regulatory and compliance costs in executing procurement remain high both for government and bidders. Therefore, there is room for further legislative reform to better streamline the process, particularly through greater standardisation and coordination with the local and regional levels.

Recommendations

- **Strengthen anti-corruption efforts:** Although corruption in the procurement system is an issue in Croatia, the legal framework is not yet developed to effectively tackle the problem.

- Expand the *DKOM*'s jurisdiction to allow it to initiate investigations *ex officio*.
- Create proactive measures from Ministry of Economy such as increasing protections for whistle-blowers or including observers during procurement procedures.
- Strengthen the Anti-Corruption Task Force.
- Adopt anti-corruption legislation implementing sanctions for infractions of procurement rules.
- **Improve support:** The scale of recent changes in the procurement system combined with inexperience of many practitioners has resulted in substantial gaps in administrative capacity.
 - Develop and implement a more robust training plan for procurement practitioners in line with the PA Action Plan that focuses on key concepts such as market assessment, the use of MEAT criteria, and e-procurement tools.
 - Make better use of online portals such as the *EOJN* to inform contracting authorities of their obligations through regular updates.
 - Improve incentives to use *EOJN* by making it free of charge for contracting authorities.
- **Hire more experts:** Capacity bottlenecks, i.e. understaffing, high turnover and hiring of profiles with lower qualifications due to lack of qualified candidates, have been reported by key procurement bodies, including the DPPS, the CPO, and anti-corruption oversight institutions.
 - Accelerate hiring of qualified experts at the DPPS in line with commitments under the PA Action Plan (deadline November 2015).
 - Increase staffing levels at CPO and oversight bodies.
 - Develop retention policies targeted at reducing staff turnover among key personnel.

ⁱ Jelena Madir and Kamilo Vrana, Public-private partnerships in Croatia, EBRD, Law in transition online, available at: <http://www.ebrd.com/downloads/research/news/lit112c.pdf>

ⁱⁱ Jelena Madir and Luka Rimac, Croatia: reforms to meet the terms of the EU acquis, EBRD, Law in transition online, available at: <http://www.ebrd.com/downloads/research/law/lit113h.pdf>

ⁱⁱⁱ Official Gazette, Public Procurement Act, 117/03

^{iv} Official Gazette, Act on *DKOM*, 117/2003

^v Official Gazette, Act on *DKOM*, 21/2010

^{vi} Official Gazette, Act on *DKOM*, 18/2013

^{vii} Official Gazette, Public Procurement Act, 21/2010

^{viii} Official Gazette 78/12, amendments 152/2014

^{ix} Official Gazette, Public Procurement Act, 143/2012

^x Official Gazette 18/2013, amendments 127/2013 and 74/2014

^{xi} Državne komisije za kontrolu postupaka javne nabave (State Commission for the Supervision of Public Procurement) (2013), Report on the work of the State Commission for Supervision of Public Procurement for 2013, available at:

http://www.dkom.hr/UserDocsImages/IZVJE%C5%A0%C4%86E%20za%202013_v3%20-%20s%20ispravljenom%20stranicom%2055..pdf

^{xii} Act on the State Commission for Supervision of Public Procurement Procedures

^{xiii} Business Anti-Corruption portal, Croatian Public Anti-Corruption Initiatives, available at: <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/croatia/initiatives/public-anti-corruption-initiatives.aspx>

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^{xv} The Croatian Parliament (2011), Promulgating the Public Procurement Act, Croatian Parliament, Decision of the 11/07/2011, available at:

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^{xvi} GPP 2020, National support for low carbon procurement, available at: <http://www.gpp2020.eu/about-gpp-2020/national-support-actions/>

^{xvii} Croatian Government (2013), The draft strategy for the development of electronic public procurement in Croatia 2013-2016, available at: http://www.javnanabava.hr/userdocsimages/userfiles/file/ZAKONODAVSTVO%20RH/Nacrti%20propisa/Strategija%20e-nabave_nacrt.pdf

- ^{xviii} Partnership for Social Development, An insight into Croatian public procurement through integrityobservers.eu, available at:
http://integrityobservers.eu/UserDocsImages/uvid_u_javnu_nabavu_EN.pdf
- ^{xix} European Commission (2014), DG HOME, EU anti-corruption report, Annex Croatia.
- ^{xx} Anticorruption reloaded Assessment of Southeast Europe, available at: www.seldi.net
- ^{xxi} U.S Department of State, 2013, p. 14 & European Commission, COM (2014) 38 final, p. 2
- ^{xxii} European Commission staff working paper (2011), Croatia 2011 progress report, available at:
http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/hr_rapport_2011_en.pdf
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- ^{xxiv} Kruno Kartus (2013), Croatia NGO posts procurement information online, available at:
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- ^{xxv} Ministry of Economy (2014), The third national energy efficiency action plan for the 2014 - 2016 period, available at: http://ec.europa.eu/energy/sites/ener/files/documents/2014_neeap_en_croatia.pdf
- ^{xxvi} *Državne komisije za kontrolu postupaka javne nabave* (2013) (State Commission for the Supervision of Public Procurement), available at:
http://www.dkom.hr/UserDocsImages/IZVJE%C5%A0%C4%86E%20za%202013_v3%20-%20s%20ispravljenom%20stranicom%2055.pdf
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http://www.mrrfeu.hr/UserDocsImages/EU%20fondovi/HR_PA_FINAL_ADOPTED_30_10_2014.pdf

CYPRUS

KEY FACTS AND FIGURES

Key Facts and Figures in Cyprus							
Overview	Total procurement 1,090,000,000€		Procurement % GDP 7%		2013 GDP 18,118,900,000€	Contracting authorities 700	
Procedures applied	Open 77%	Restricted 0%	Negotiated procedure with call 0%no call 23%		Competitive dialogue 0%	Direct award 0%	Other 0%
Share of contract notices by buyer	National 84%		Regional/local 3%		Body governed by public law 10%	Other 3%	
Contract type	Services 24%		Works 6%		Supplies 70%	Framework agreement 3%	
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met	
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Voluntary	Uptake rate 1%	
Perceived corruption	Corruption widespread in society Businesses 85%		Individuals 78%		Corruption widespread in procurement At national level 67%	At local/regional level 61%	
TED indicators	Value of tenders 320,293,263€		Of total procurement 29%		# contract notices 301	# contract awards 334	
Other indicators	Received single bid 31%		# days for decision 109.3		Price only criteria 92%	MEAT criteria 8%	
	Won by foreign firms 5%		Related to EU funds 5%		Joint purchase 15%	Central purchasing No	

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report.

Summary of public procurement system

Cyprus ranks among the smallest EU Member States both in terms of size and number of administrative bodies. Cyprus has a small and services-oriented economy, based on micro-services and family-owned enterprises that has maintained consistent GDP growth for many yearsⁱ. Indeed, since its accession to the EU in 2004, Cyprus' per capita GDP places the country in the category of the more developed regions of the EUⁱⁱ meaning that its economy does not highly rely on EU funds.

As per other small MS, the public procurement system is characterised by the almost exclusive use of open procedures (99% of the procedures used)ⁱⁱⁱ and the relative length of the administrative processes.

The public procurement system has a decentralised approach since contracting authorities are responsible for their own tenders, even though the legislative and review body are centralised at the State level. Yet, Cyprus is currently reforming some aspects of its public procurement system that may result in a more centralised and uniform system in which a central purchasing body could be settled to assist contracting authorities at the local level in their purchasing process.

DESCRIPTION OF FEATURES

Legal features of public procurement system

EU Directives have been transposed into Cypriot Law via several acts. Directive 2004/18/EC and Directive 2004/17/EC have been respectively transposed by Law 12(I) of 2006 governing procurement of public works, public supply and public service, and Law 11(I) of 2006 regulating procurement procedures of entities operating in the water, energy, transport and postal services sectors. In addition, defence and sensitive security procurement are regulated by the Law 173(I) 2011, which transposed Directive 2009/81/EC. Review procedures concerning the award of public

contracts are regulated by the Law 104(I)/2010 which transposed Directive 2007/66/EC.

EU procedures are followed below threshold as well as above for all contracts of value of 50,000 and more, with the one exception that publication to the Official Journal of the EU is not mandatory. Below EUR 50,000, there are a series of increasingly simplified procedures based on value. For contracts whose value does not exceed EUR 2,000, direct award is allowed. For contracts between EUR 2,000 and EUR 15,000, the contracting authorities may invite only a restricted number of economic operators to bid. For contracts below EUR 50,000 the contracting authority may award a contract without prior publication provided that it has invited at least four tenderers and given reason for such choice^{iv}.

Institutional system

Cyprus has a decentralised public procurement system with a single administrative body at the State level and around 700 contracting authorities at the State and local levels^v responsible for their own procurement. The Public Procurement Directorate (PPD) within the Cyprus Treasury is the single centralised body responsible for all matters regarding public procurement in Cyprus. It is responsible for drafting public procurement legislation and ensuring its proper implementation. It supports contracting authorities for proper implementation of the procurement rules through circular guidance and continuous training. Its management board is also entitled to carry out checks upon contracting authorities to ensure compliance with procurement law. It also issues compliance certificates to contracting authorities for some projects whose value is below the EU thresholds.

For contracting authorities at the state level, purchases are carried out through several bodies based on area of expertise. The main bodies are the Department of Information Technology Services for IT products, the Department of Purchasing and Supply for common use products, the Department of Electromechanical Services for electromechanical products and the Printing Office. Procurements originated by the central administration accounted for 35% of the total value of contracts award in Cyprus in 2010^{vi}.

In addition to the PPD, two other bodies oversee public procurement in Cyprus. First, the Audit Office of the Republic of Cyprus is an independent body which performs external controls of the execution of the national budget. It audits all the public-funded activities, including public procurement documents, procedures and award decisions. It publishes its findings in an annual report, but does not have the authority to issue sanctions or to launch judicial proceedings. It can notify the Attorney General of violations in the procurement area, who has the authority to commence judicial proceedings where in his opinion there is a legal issue. Second, the Internal Audit Service of the Republic of Cyprus conducts internal audits of Cypriot public organisations and EU-funded programmes, including public procurement procedures.

Appeals regarding procurement decisions and practices can be lodged with the independent Tenders Review Authority (TRA) of Cyprus, which is charged with maintaining equal treatment, transparency and non-discrimination in the procurement process. Prior complaint to the contracting authority itself is a precondition for judicial review. The TRA has the authority to cancel or amend award decisions. The decisions of the TRA may be challenged before the Supreme Court, which can grant damages to aggrieved bidders.

Key issues that have a bearing on administrative capacity

Human resources: Public procurement in Cyprus is carried out by around 700 contracting authorities at the state and local levels, including the central

administration (78), municipalities and local authorities (406), the utilities sector (5) and other bodies governed by public law (44)^v.

The PPD employs 26 full-time persons^{vii}. The TRA is headed by a five-person committee. It does not have any permanent professional staff, but does have 8 employees responsible for managing the structure.

Procurement procedures conducted in Cyprus have traditionally been relatively lengthy. Indeed, as recently as 2011, the average number of calendar days between the publication of the contract notice and the award notice in the EU Official Journal/TED under an open procedure was 141 days in 2011 (EU average was 112 days). Since then, Cyprus has made progress, reducing the average number of days to 109 in 2014 (EU average was 120 days).

Structures: Most capacity building activities are carried out by the PPD and the Department of Environment (DoE), which provide training on their specific field of competence i.e. regulation and procurement rules and process and green public procurement respectively. The Cyprus Academy of Public Administration is the civil service training school in Cyprus, but there is no information available showing that it includes public procurement related matters in their training offer.

Training: Some training for contracting authorities and economic operators is provided, in particular on green public procurement and e-procurement. Training seminars open to all contracting authorities are organised by the PPD every two years, featuring expert speakers on public procurement from the EC. As far as e-procurement and framework agreements are concerned, trainings were provided during 2009, 2011 and 2014 to all contracting authorities/entities including local authorities.

However, little information is made publicly available on the content of these trainings. In addition, not all public procurement officers benefit from training on public procurement, in particular at the municipal level^{viii}.

Systems/tools: The PPD provides a Public Procurement Best Practice Guide^{ix}, which contains practical guidelines and information on every phase of the tendering process and advises contracting authorities on various issues related to public procurement, including project management, and developing a procurement strategy. Through its help desk, it helps contracting authorities properly design their tendering process and comply with procurement rules at the national and European level^x. The PPD also provides a set of model tendering documents that contracting authorities can use as a template when initiating a tender.

E-procurement

Cyprus is among the more advanced EU countries in terms of e-procurement. E-notification is already mandatory and was used in 100% of procedures in 2013, while e-access, which is also mandatory, reached 60% uptake in 2013. The fact that e-access uptake fell short of 100% is mainly due to a lack of knowledge within contracting authorities, but informative campaigns, including trainings, seminars and guidelines have been launched to promote e-access. As for e-submission, it has been available since 2009 and mandatory since 2015. 20% of all procurements were submitted electronically in 2013^{xi} and Cyprus intends to reach full e-submission by 2016.

The e-procurement system relies on a single centralised portal, which hosts the e-procurement platform for all contracting authorities. It already covers most of the procurement cycle from e-notification and e-submission to e-evaluation and e-awarding. It is free of charge for contracting authorities and economic operators. The portal helps contracting authorities and economic operators in using e-procurement procedures through interactive walkthroughs, videos demonstrators,

helpdesk, FAQs, user manuals and training seminars. Currently, around 9,000 economic operators and 500 contracting authorities are registered on the portal^{xii}, including 91 governmental organisations, 170 public organisations, 233 regional/local authorities and 7 utilities.

Cyprus has not developed a specific strategy focusing on e-procurement. However, the promotion of e-procurement relies on internal policy guidelines and since the e-procurement portal is the only channel for procurement, it has created a functional obligation to use it.

Corruption

Cyprus has the third highest level of perceived corruption in public procurement within the EU, with 55% of companies participating in a public tender declaring that corruption prevented them from winning contract^{xiii}.

The Coordinating Body Against Corruption (CBB) has not addressed public procurement, and although it has a mandate to develop an anti-corruption strategy, it has not yet done so as it does not yet have a permanent staff in place. However, Cyprus has taken several measures in recent years to prevent corruption. The PPD has published a national code of conduct for procurement that includes an obligation for tender evaluation committee members to sign a declaration of integrity, impartiality, and confidentiality of information. The PPD also executes mandatory ex-ante control on contracts using a negotiated procedure.

Moreover, all contracts, including those below EU thresholds are subject to the EU anti-corruption safeguards included in EU Directives. In addition, specific regulations for the coordination of procedures for the award of contracts^{xiv} require tender boards, evaluation committees and contracting authorities to keep minutes of every meeting and independent observers such as the Attorney General, the Auditor General and the Accountant General are empowered to attend meetings personally at their discretion.

Furthermore, as suggested by the European Commission^{xv}, Cyprus could benefit from developing more uniform tools to prevent corruption in public procurement, including internal and external control mechanisms and risk management tools within contracting authorities.

Europe 2020 Agenda

The introduction of environmental criteria in public procurement relies mainly on contracting authorities' discretion^{vii}. However, central entities and in particular the DoE within the Ministry of Agriculture, Natural Resources, and Environment take an active role in promoting their use, including by providing comprehensive guidance.

The Green Public Procurement National Action Plan of Cyprus (GPP NAP)^{xvi} adopted in 2012 sets several specific measures to promote environmental criteria in tendering processes whose implementation is ensured by the DoE, including regular communication through electronic newsletters to all contracting authorities and stakeholders in order to update them on the ongoing green public procurement developments at the European level, awareness-raising campaigns through meetings, seminars and workshops focused on both the advantages of green public procurement in the Cypriot context and the means of implementing it, and on-site trainings organised by the DoE. In addition, the DoE intends to closely follow-up the implementation of the GPP NAP through annual review of achievements. In that respect, it requires all contracting authorities to designate a "Coordinate Interior" for green public procurement^{xvii}.

A particular issue faced by Cypriot contracting authorities when including environmental criteria is the small size of the internal market, which limits the variety

of green products available. That is why the DoE carries out market research to identify green products on the Cyprus market to be promoted within public procurement. It results in green products and eco-labelled catalogues available for contracting authorities. It also launched the green public procurement awards to reward the contracting authorities that were the most successful in implementing environmental criteria. The first were awarded in September 2014.

There is no specific action to promote SMEs in public procurement but the possibility to conclude separate contracts by lots and the free e-procurement solution are likely to increase their participation in tenders. In fact, they already represent a large part of the contracts awarded. In average, they have won 70% of the above-threshold contracts between 2009 and 2011^{xviii}.

Irregularities and findings of national Audit Authorities

The central Cypriot oversight bodies conduct a relatively limited number of reviews per year, even given the country small size. Despite the limited number of cases reviewed, they are able to identify a number of irregularities.

The TRA publishes an annual report presenting the results of its oversight efforts and analysing the main weaknesses identified over the course of the year. In 2013, it received 58 appeals, a 12% reduction compared to the previous year. Generally, it found that many contracting authorities have improved their performance both in assessing tenders and in terms of compliance with procurement rules^{xix}.

However, the TRA does identify several irregularities, errors and omissions in the tendering processes reviewed. The main concerns relate to the unclear definition of terms of reference, which create unnecessary compliance burdens for potential bidders, and may even prevent some potential suppliers from tendering. Other issues include the failure to clearly communicate the reasoning behind award decisions, resulting in excessive appeals from unsuccessful bidders, failure to provide key tender documentation to the TRA, and unjustified bid cancellation^{xx}.

The Audit Office's 2013 annual report identified a different set of issues, including the unauthorised extension of contracts beyond their expiry date, unjustified invocation of urgency to make a direct award, and substantial unnecessary delays in processing tenders. The Audit Office recommends that procurement procedures be substantially streamlined in order to improve service and outcomes.^{xxi}

Furthermore, within the framework of the preparation of the new legislative package for public procurement to be passed in 2015, the Audit Office with the TRA, the Accountant General and the Parliament have to be part of an expert group in charge of assessing the public procurement system in Cyprus. It underlined some specific issues, including contradictory provisions in terms of reference and a lack of understandings of the procurement legislation among contracting authorities. The small size of many contracting authorities is also stressed as a significant challenge^{xxii}.

Outlook

Cyprus is reforming its public procurement system in order to transpose the 2014 EU Directives and strengthen its regulatory framework. In that respect, four bills^{xxiii} are currently being developed.

The TRA has suggested some specific measures to be included in the updated regulation of public procurement. These include stricter penalties for cases of fraud and abuse in tendering process, and stricter limitation for the participation of already condemned economic operators in tenders. The TRA also wants to change the way decisions relating to public procurement are made within contracting authorities, in particular the fact that many bodies lack necessary technical expertise. Therefore, the

TRA proposes to further centralise procurement services into a single ministry, and to establish an independent service unit within the Treasury to carry out tender procedures on behalf of local contracting authorities, especially those which manage a small number of contracts. It would result in a more centralised system and should improve outcomes and efficiency by putting more procedures in the hands of qualified and experienced procurers.

Finally, a new green public procurement action plan is being prepared for the 2015-2017 period, but no information is currently available to assess in what extent it will go further in implementing green public procurement in Cyprus.

ANALYSIS

Strengths

The main strength of the Cypriot public procurement system is its e-procurement system. The benefits of e-procurement include easier access for SMEs, greater transparency, and faster procedures. The latter aspect is particularly significant within the Cypriot context, which is otherwise characterised by relatively long procedures. In addition, by having one single procurement platform, the PPD is able to spread best practices among contracting authorities and economic operators while ensuring uniform application of procurement rules. This seems particularly relevant in a decentralised system.

Cyprus is also making significant efforts to improve its public procurement system by passing several reforms that may allow some major improvements in terms of fight against corruption and performance of the tender procedures.

Weaknesses

The administrative capacity of Cypriot contracting authorities remains a serious issue, especially at the municipal level. Public buyers often do not have the qualified public procurement staff needed to handle tendering processes and lack access to the comprehensive trainings necessary to build their skills. This results in deficits in compliance with procurement legislation, creates opportunities for fraud and abuse, and drives up the cost of and delays in tendering processes, especially for small contracting authorities that handle a small number of tenders.

Despite recent improvements, the prevention and prosecution of corruption in public procurement still need to be institutionally strengthened and provided with an overall strategy. There is an important lack of coordination between the different actors involved in this field. Furthermore, the Coordinating Body Against Corruption appears to lack the capacity needed to properly ensure the coordination of the anti-corruption actions and the follow-up of the Audit Office findings and recommendations^{xxiv}. Therefore, the lack of uniform and effective tools to prevent and detect corruption in public procurement at national and local level has been stressed as one of the main weaknesses of the public procurement system^{xxiv}.

Recommendations

- **Address administrative capacity:** Limited procurement-specific skills and experience at the local level are a serious issue in Cyprus, contributing to persistent irregularities, unnecessary delays, and corruption risks.
 - Reduce the number of contracting authorities through aggregation of purchase at the regional or central level.
 - Promote the use of standardised tender documents for common goods and services.
 - Implement targeted *ex ante* controls to improve the quality of tender documents and act as a deterrent to manipulation.

- Make training opportunities more available for contracting authorities and economic operators, particularly focused on preparing tender documents.
- Streamline procurement processes to reduce administrative delays.
- **Corruption:** In Cyprus, corruption has been identified as a significant issue affecting the procurement process. Indeed, recent efforts to enhance the institutional framework to fight corruption in procurement processes appear insufficient, while an anticorruption strategy has still not yet been defined by the CBB. One of the reasons for this is the lack of suitably qualified and available staff within the CBB.
 - Develop and implement a comprehensive anti-corruption strategy to curb corruption in public procurement.
 - Increase the pool of highly-skilled staff within the CBB.
- **Lack of information on training and support:** Although there are plenty of training opportunities and seminars available for contracting authorities and economic operators, information on the content of these trainings is not systematically made publicly available. Another issue is that many practitioners do not benefit from these trainings at municipal level.
 - Facilitate access to information about training opportunities and their links to the professions, and about the skills needs anticipated in contracting authorities.
 - Make training organised for contracting authorities and economic operators accessible to public procurement practitioners at municipal level.

ⁱ European Commission (2012), Position of the Commission Services on the development of Partnership Agreement and programmes in CYPRUS for the period 2014-2020.

ⁱⁱ European Commission (2014), Structural Funds (ERDF and ESF) eligibility 2014-2020, Cohesion Policy.

ⁱⁱⁱ European Commission (2011), DG MARKT, Public procurement in Europe: Cost and effectiveness, A study on procurement regulation.

^{iv} Public Procurement Network (2010), Authority for the Supervision of Public Contracts, The comparative survey on the national public procurement systems across the PPN.

^v P. Katranis (2012), Public Procurement Directorate, Cyprus e-procurement platform & e-catalogues Module and Electronic Marketplace, European e-Government Conference.

^{vi} Treasury of the Republic of Cyprus (2011), Public Procurement Directorate, Cyprus e-Procurement System.

^{vii} Public Procurement Network (2014), Comparative survey on the transposition of the new EU public procurement package.

^{viii} Report from the Commission on Institutions on public procurement, 2014.

^{ix} Public Procurement Directorate, Best Practice Guide, available at :

<http://www.publicprocurementguides.treasury.gov.cy/>

^x Public Procurement Directorate, Public Procurement Best Practice Guide.

^{xi} European Commission (2015), DG MARKT, E-procurement uptake.

^{xii} P. Katranis (2012), Public Procurement Directorate, Cyprus e-procurement platform & e-catalogues Module and Electronic Marketplace, European e-Government Conference.

^{xiii} Eurobarometer business survey, 2013.

^{xiv} Regulations P.I. 201/2007 on Procurement Procedures Supplies, Works and Services (General), 2007.

^{xv} European Commission (2014), DG HOME, EU anti-corruption report, Annex Cyprus.

^{xvi} Department of Environment (2012), Green Public Procurement National Action Plan 2012-2014.

^{xvii} Department of Environment (2011), Annual report.

^{xviii} European commission (2014), DG MARKT, SMEs' access to public procurement markets and aggregation of demand in the EU.

^{xix} Tender Review Authority (2013), Annual report 2013.

^{xx} Tender Review Authority (2012), Annual report 2012.

^{xxi} Audit Office of the Republic of Cyprus (2013), Annual report 2013.

^{xxii} Report from the Commission on Institutions on public procurement, 2014.

^{xxiii} "The public procurement and related matters Act of 2015"; "The public procurement for entities operating in the water, energy, transport and postal services sectors and related matters Act of 2015"; "The concession in procurement and related matters Act of 2015" and "the Bill concerning review procedures in the field of public procurement (Amendment) law of 2015".

^{xxiv} European Commission (2014), DG HOME EU anti-corruption report, Annex Cyprus.

CZECH REPUBLIC

KEY FACTS AND FIGURES

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%	Negociated 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 Businesses 94%		Individuals 96%		Corruption widespread in procurement 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	

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Public procurement plays an above average role in the Czech economy. Responsibilities are decentralised, with contracting authorities processing their own procurement at all levels of government without central coordination. Also, while there is no central purchasing body at national level, there is a move to increase aggregation of procurement demand through joint purchasing, e.g. at the Ministry level.

The Czech Parliament passed a comprehensive procurement reform law in 2012 in an effort to boost transparency and efficiency, and improve public confidence in the process. The reforms were substantial and wide ranging, but there were implementation issues with a number of the core provisions, and substantial portions of the law were subsequently repealed.

DESCRIPTION OF FEATURES

Legal features of public procurement system

The EU's public procurement legislation is transposed into the Public Procurement Act (PPA) and its amendments (Act No. 137/2006 Coll.), and the Concession Act (Act No. 139/2006 Coll.), which governs concession agreements and concession proceedings.

The PPA distinguishes between three types of procurement: 'above-the-threshold public contract', 'below-the-threshold public contract', and 'small-scale public contract'. For 'Above-the-threshold' procurement, the EU Directives apply, and there are additional obligations for so-called significant public contracts of approximately EUR 11,000,000ⁱ in value, such as the requirement to have a nine member evaluation committee consisting of at least two-thirds subject matter experts.

'Below-the-threshold' defines procurement below the EU thresholds, but above the national sub-thresholds of EUR 70,000 for supply and services and EUR 210,000 for works. Procurement regulations for this category are broadly similar to EU rules, with the exception of, for example, shorter time limits.

There are also provisions for the use of simplified procedures with prior publication for goods and services in the below threshold price range, and for works contracts of up to EUR 365,000. If such a simplified procedure is used, the contracting authority must invite a minimum of five candidates to demonstrate qualification and submit a bid. A tender must be published, and provisions are in place in order to promote competition and reduce the contracting authority's ability to repeatedly invite the same candidates.

For below threshold utilities contracts and 'small-scale public contracts' Treaty principles apply.ⁱⁱ

The PPA requires disclosure of below and above thresholds procurement information on the online Information System on Public Contracts. The requirements for publication cover basic information about the public contract, such as total final value and evaluation criteria. Information on the winning bid and lowest bid is also provided in the Information System.ⁱⁱⁱ Furthermore, the Information System includes a list of approved economic operators, and a list of individuals who are banned from participating in procurement procedures. The Journal of Public Procurement, i.e. the Czech e-notification portal, is also part of the Information System.

In addition to the Czech national procurement law, Czech authorities have introduced binding procurement methodologies for EU co-funded projects including a methodology that is applicable also for small scale public contracts.^{iv}

Institutional system

The Ministry for Regional Development (MoRD) has primary responsibility for proposing legislation and implementing public procurement regulations. It also provides support and guidance to contracting authorities and manages the online Public Procurement and Concessions Portal. Additionally it is responsible for the Information System on Public Procurement.

There is no central purchasing body in the Czech Republic, but the PPA allows contracting authorities to group for joint purchasing. Furthermore, various government resolutions (e.g. resolutions No. 563/2011, No. 924/2014, No. 289/2015) go further in promoting the aggregation of procurement at central government level, such as by requiring the establishment of lists of commodities that must be purchased jointly.

Oversight responsibilities are split between two unique entities. The first is the Office for the Protection of Competition (OPC), which is responsible for supervision of public procurement and conducting checks for compliance of public contracts with the PPA^v. Review procedures can be launched on the basis of a complaint from an interested party or *ex-officio*. The OPC has the authority to impose financial penalties and sanctions, including bans in case it detects any breaches.

The second body tasked with oversight of public procurement is the Supreme Audit Office (SAO). It performs external controls of regulatory compliance and provides the Parliament, the administration and the general public with information and recommendations on the use of public funds, but has no authority to sanction.

The Regional Court in Brno and the Supreme Administrative Court are in charge of hearing appeals against OPC decisions. Contract law suits are handled by common courts.

Key issues that have a bearing on administrative capacity

Human resources: While the majority of contracting authorities have a specialised purchasing department, the Czech Republic struggles with adequate skills and administrative capacity, particularly in the case of smaller municipalities and if specific skillsets are necessary, e.g. construction. Moreover, there are no specific professional requirements for civil servants that implement public procurement, and no system of certification or accreditation^{xxvii}.

There are currently 41 staff members dedicated to public procurement at the MoRD. Staffing increases are planned for the 2014-2020 programming period, but have not yet been implemented.

Structures: An Expert Group was set up by MoRD in order to provide feedback on current legislative propositions in the field of public procurement. This group consists of expert procurement stakeholders such as contracting authorities, suppliers, supervising authorities, professional organisations as well as NGOs.^{vi}

Training: MoRD is responsible for procurement related training, but does not currently have a systemised approach for comprehensive skill-building. The OPC also offers lectures and training activities on public procurement, which in 2013 were attended by more than 2,200 practitioners^{vii}.

The Institute for Public Administration gives methodological guidance on professional qualifications, including eight-hour procurement seminars for beginners, advanced practitioners, and others that are open to all. However, public procurement practitioners are not required to attend such seminars, and no qualification is earned at the end of the cycle.

Systems/tools: The Public Procurement and Concessions Portal¹ provides information on all aspects related to procurement, including legislation, available guidance, e-learning, and initiatives of the MoRD. Furthermore, a number of initiatives to promote more uniform application of procurement law have been implemented. Among these initiatives mandatory procurement rules for EU Funds, a methodology guideline for the 2014-2020 programming period, a national methodology for small-scale contracts, as well as sample contracts have been developed. In addition, an expert group at the MoRD has worked out and published methodological opinions applicable to contracting authorities.

The Association for Public Procurement, a civil society platform for procurement stakeholders, has developed a Lexicon on Public Procurement Law. This online application allows users to search through case law related to the PPA in order to facilitate the interpretation and correct application of the law.

In addition, the Center of Applied Economics (CAE), an NGO based at the Charles University in Prague, also support procurement practitioners and policy makers. It has developed an online platform² that serves as a benchmarking instrument for comparing the effectiveness of public contracting authorities in using public procurement using various official and non-official data sources. The CAE website also produces data-driven economic research on public procurement policies.

¹ <http://www.portal-vz.cz>

² <http://zindex.cz/>

E-procurement

The Czech e-procurement policy is defined in the 'Strategy of Electronic Public Procurement for the Period 2011 to 2015'. The strategy aims at overcoming the main barrier to e-procurement in the Czech Republic, namely the lack of e-procurement infrastructure. Thus by 2015, all contracting authorities must be equipped to carry out the full procurement process online. Furthermore, the e-Procurement Strategy introduces mandatory targets for e-submission: national contracting authorities are required to procure 100% electronically, while sub-units must procure 50% online.^{viii} The implementation of the National Infrastructure for Electronic Public Procurement (*NIPEZ*) project lies at the core of Strategy. *NIPEZ* is divided into two modules, namely e-marketplaces and the National Electronic Instrument (*NEN*). The first is dedicated to frequent and relatively simple procurement, while the latter is specialised in complex procurement.

The centralised e-procurement platform for e-submission *NEN* is currently under testing. In addition, *NIPEZ* foresees private e-marketplaces, of which five are already in place. E-notification and e-access are mandatory, and the information on public contracts is available on the Journal of Public Procurement. While substantial progress has been made, the share of contracts executed via the system remains low, and thus the benefit is limited. In 2013, 34,816 public contracts were concluded via e-marketplaces worth a total volume of EUR 150 million^{ix}. Since its launch on the 1 august 2015, the *NIPEZ/NEN* platform is fully operational^x.

Corruption

The Czech Republic has one of the highest levels of perceived corruption in the EU, and the procurement is one of the most frequently implicated areas. The Department for Coordination of Fighting Corruption is the leading agency for combating corruption and carrying out investigations of alleged corruption. Cooperation with the OPC is well established, as the OPC assists the Department in case public procurement is concerned.

The OPC's oversight responsibilities also include combatting corruption, and in this capacity it has identified tailor-made selection criteria designed to favour a preselected bidder as a particular concern in creating an opening for corruption^{xi}. A similar warning about tailor-made tender specifications came from the Czech government's National Economic Council (*NERV*), an ad-hoc advisory body set up in the wake of the global economic crisis^{xii}. Having recognised this weakness, the OPC is proceeding more strictly against such discriminating criteria and is requiring more transparency during the tender evaluation process.

The Czech Security Information Service monitors corruption and organised crime and has regularly uncovered undue influence and conflicts of interest in the procurement of energy, railway infrastructure, forestry and postal services. Specifically, it found undue influence over the specification of contracts, subjective and unclear selection criteria, and bid rigging^{xiii}.

The latest anti-corruption policy, adopted in 2015, focuses on corruption and fraud within the public administration, including EU Funds for the period 2014-2020^{xiv}. The previous anti-corruption strategy of 2014 called for increased whistle-blower protections, regulation of lobbying, a public servants law, and reform of parliamentary immunity and of the funding of political parties. However, progress on implementing legislation has been slow to advance. The government did recently ratify the UN Convention against Corruption (UNCAC), but is frequently criticised by other anti-corruption organisations, including the Council of Europe's Group of States against Corruption (GRECO)^{xv}.

The Czech Government signed on to the Open Government Partnership, an international project that aims at increasing transparency in various domains of the public administration. With respect to procurement, the Czech Republic has committed to creating an open data infrastructure. As of 2013, this project was behind schedule, but progressing^{xvi}.

Europe 2020 Agenda

The Czech procurement system is currently being used to promote a number of strategic goals in line with the Europe 2020 strategy, primarily in environmental policy. The Czech Republic was the first Eastern European country to develop national action plans on green public procurement (GPP) and socially responsible public procurement (SRPP) in the early 2000s. In a 2010 government decision, official GPP rules regulating procurement procedures at the central government level were adopted. Specifically, the 2010 decision adopted methodologies for the procurement of furniture and IT and approved the “Rules for implementing of environmental requirements in public procurement of state administration and self-administration” prepared by the Ministry of the Environment.

As part of the Czech ‘Rules’ on GPP, 25% of all state and public vehicles need to respect environmental standards. The Ministry of Environment monitors the application of GPP rules and publishes data in its annual report. However, it must be noted that formally, the ‘Rules’ are a government decision, and as such they only express a political will and not a binding commitment^{xvii}.

The GPP rules also stipulate criteria for the purchasing of certain products. Contracting authorities need to consider various elements in their procurement decision, such as eco-labels, environmental standards and certifications (e.g. EMAS, ISO 14001) energy performance certificates, and labels guaranteeing a renewable source of energy. Eco-efficiency throughout the product life cycle further needs to be taken into account.

Social aspects in procurement are addressed in more general terms with guidelines focusing on the employment of people with disabilities and respect for labour rights such as ILO core conventions within the central administration^{xviii}.

Irregularities and findings of national audit authorities

Oversight of procurement indicates a number of recurring issues in the Czech Republic. Every year, the SAO publishes a report summarising the most common issues identified in procurement audits. The 2014 annual reports names public procurement as the number one risk area in the state’s financial management, highlighting irregularities such as the use of incorrect procedures, awarding of contracts without publication, abuse of exemption clauses and unjustified direct award^{xix}. The audit also unveiled inefficient and uneconomical practices in terms of spending on materials and services and in terms of use of property^{xx}.

The OPC identified similar issues in their 2014 annual report, as well as the use of discriminatory criteria, unjustified bid assessments, failure to reject unqualified bidders and unauthorised cancellation of award procedures. Moreover, the audit suggested that there were situations where contracts were awarded outside of the Act on Public Contract’s regime^{xxi}. The number of fines levied rose to EUR 2.67 million in 2014, compared to EUR 2.1 million in 2013^{xxii}.

Large-scale challenges in public procurement of EU co-financed projects were identified by the national Audit Authority, as well as audits of the EC. Recent findings show that the setting of potentially discriminatory criteria and biased evaluations are the primary areas of concern. Moreover, contracting authorities often lack the ability to use non-price criteria for the evaluation of tender bids. In addition, EC audits also

highlighted the lack of transparency, and the circumvention of public procurement legislation as systemic challenges in public procurement. Problems related to conflict of interest in the management of EU Funds have been highlighted by the Czech Security Information Service, too.

In the past, the national Audit Authority has been criticised for the formal character of its audits, which led to discrepancies with the audit findings of the EC. In fact, 2012 audits by the EC uncovered considerable deficiencies in the Czech management and control system of EU Funds, particularly at the level of the Audit Authority. This led to payment interruption of all Operations Programmes (OP) and subsequent financial corrections, which influenced the de-commitment levels of EU Funds in the 2007-2013 programming period. An Action Plan to address these issues has been put in place but the EU intervention serves to underline the broader need for further reform.

Outlook

The Czech Republic's procurement system is in a state of flux. While many of the provisions introduced in the 2012 reform law have been repealed, it is unclear what measures will be taken to replace them in promoting transparency and accountability in the procurement system. The MoRD has begun work on draft legislation to transpose the content of the 2014 EU procurement Directives, and to advance the 2011-2015 e-procurement strategy.

As part of their 2014-2020 Partnership Agreement with the EC, the MoRD has set up a Public Procurement Working Group with representatives of the OPC, MoRD and the Ministry of Finance that aims at increasing the effectiveness of procurement monitoring by the OPC, improving collaboration with Managing Authorities (MA), and promoting the standardisation of the content to be submitted to the OPC by contracting authorities. The MoRD has also committed to carry out a number of activities in order to make the OPC's oversight activities more effective and reduce the delays in the decisional procedures^{xxiii}.

In addition, the MoRD has also committed to preparing an assessment of the procurement system's administrative capacity needs. Furthermore, the government is developing a number of new tools, including a detailed, updated Methodology of Public Procurement for public contracting professionals to follow, and organising seminars, conferences and other educational events for such professionals to attend.

ANALYSIS

Strengths

The Czech Republic has made dramatic reforms in their public procurement system since accession to the EU in 2004, including transposing the related EU Directives into national legislation in 2006. As a result, there were substantial improvements in transparency and fairness. The Czech Republic has established the basics of a modern legal and regulatory framework, and has made it a priority to pursue further reforms.

The Czech Republic has also made substantial progress on its ambitious agenda for the adoption of e-procurement systems, with a goal of bringing 100% of the cycle online by the end of 2015 for all contracting authorities. Information on public tenders is centralised in the national Journal of Public Procurement and hosted online by the MoRD. The NÍPEZ/*NEN* system is currently in the testing phase and five e-marketplaces are running. While the Czech Republic is experiencing delays in meeting its self-imposed 2015 deadline, it is still possible for it to meet the e-procurement requirements for the time period 2016-2018 mandated by the 2014 public procurement Directives.

In addition, the Czech authorities are investing increasing resources in intensifying cooperation among anti-corruption bodies of its institutions^{xxiv}. For example, a Collaboration Agreement has been signed between the SAO and the Supreme Public Prosecutor's office to intensify investigations into technology contracting in the areas of ICT and solar power. The SAO has also invested in new IT tools to detect uneconomical contracting activity to better identify cases in need of further investigation.

Weaknesses

Despite the progress made in recent years, public contracting in the Czech Republic continues to experience significant issues with corruption. Perceptions of corruption are substantially higher than EU averages, and the SAO identifies procurement as one of the areas with the highest risk of non-observance of the principles of transparency, non-discrimination, and equal treatment^{xxv}.

Part of the problem lies with the failings of the oversight institutions themselves. Staffing policies carry no significant professional requirements, and modest budgets limit the overall number of staff available to execute their mission. Moreover, the leadership of oversight body are in many cases staffed with former politicians, making its decisions unduly susceptible to political pressure. In addition, the fact that the SAO's jurisdiction does not include finances collected by a number of municipalities and regions^{xxvi} further limits its oversight function. As for the OPC, its mandate is often criticised for limiting inspections to 'formal' issues, to the exclusion of economic efficiency^{xxvii}. Finally, apart from a few high profile cases, most sanctions and penalties are modest, and do not appear to be having a significant deterrent effect.

Beyond the shortcomings of oversight bodies, the lack of adequate administrative capacity in contracting authorities is a serious hurdle to the effective functioning of the Czech public procurement system. One of the key factors is the lack of practical and up to date methodical and guidance materials for contracting authorities, particularly for less frequent procurers.

Furthermore, frequent use of negotiated procedures without publication of a tender notice reduces competition and provides substantial discretion for contracting authorities. The Czech Republic uses these negotiated procedures without notification in nearly one-in-five procedures, more than twice the EU average^{xxviii}.

Moreover, frequent amendments of the legal framework have had the effect of undermining legal certainty for contracting authorities and economic operators, especially following the 2012 reform process. As a result, many contracting authorities are reluctant to use the more easily disputable MEAT criteria. The renewed reliance on price-only evaluations is a step backwards for the goal of promoting value for money in public spending.

The absorption rate for allocated EU funds is below the average. Multiple financial corrections and payment interruptions were implemented for a number of OPs since 2012, when an Action Plan, agreed with the EC, was introduced to address the main problematic issues. While public procurement is one of multiple factors affecting the absorption of EU Funds, it remains an important area of attention.

Finally, progress on the implementation of the Country-specific Recommendation related to public procurement has also been limited, particularly regarding the introduction of greater transparency, and better guidance and supervision of procurement^{xxix}.

Recommendations

- **Stability of the legal framework:** Frequent and hasty reforms have undermined contracting authorities' ability to apply procurement rules correctly, and uncertainty regarding the legal basis is often mentioned as a key difficulty in carrying out public procurement.
 - Reduce reform efforts to fewer large-scale reforms. Instead of implementing many 'quick fixes', it is worthwhile conducting fewer reforms that undergo a thorough consultation process with stakeholders.
 - Accompany the reform process with adequate guidance. Contracting authorities need to be informed beforehand of the upcoming changes in order to implement these effectively.
- **Simplification of procurement rules:** Legislation on public procurement is generally considered too complex, and frequent changes have resulted in legislative text that is difficult to read and can be ambiguous in meaning.
 - Publish clearer and more practical guidance materials for contracting authorities to allow them to more easily and confidently navigate the procurement process.
- **Harmonisation of legal interpretation.** In the context of ESI co-funded projects, different bodies often have diverging interpretations on the correct application of rules leading to confusion among stakeholders.
 - Improve coordination between ESI Funds management and oversight bodies (MAs, AA and OPC) to reduce conflicting rulings and harmonise the legal interpretation of specific cases.
- **Stop tailor-made criteria:** Setting tailor-made criteria has been identified as a critical issue in public procurement. Outsourcing of the preparation of technical specifications also presents the risk of tailor-made criteria.
 - Implement ex-ante assessment of tenders by the MoRD or the OPC to identify and sanction the use of tailor-made criteria.
- **Clamp down on additional works:** Several field visit participants pointed to the strategic use of unjustified additional works by firms as abusive, and a recurring problem in contract management and cost controls.
 - Define stricter rules for additional works and amendments to contracts.
 - Set up channels for bidding companies to anonymously report suspicious practices.
- **Sanctions and accountability:** Current sanctions are considered too low to have a deterrent effect on corrupt practices.
 - Increase sanctions as to have a deterring effect.
 - Improve the sanction enforcement capacity of the OPC.
- **More practical guidance.** The available guidance to contracting authorities is considered too theoretical by contracting authorities, contributing to the increased reliance on price only.
 - Develop more practical guidance for topics such as carrying out cost-benefit-analysis and how to include life-cycle costing in tenders. A working group of procurement practitioners could be assembled to help develop such materials.
 - Provide ad-hoc support to contracting authorities such as telephone hotline or an online helpdesk.
- **E-procurement:** While e-procurement systems are in place, full implementation is delayed and uptake is low. The main issues with e-procurement are related to system security, as well as user-friendliness and lack of computer literacy.
 - Develop and test e-procurement infrastructure with users to make e-procurement use very easy and intuitive.

- ⁱ Public Procurement Act 137/2006, 14 March 2006
- ⁱⁱ OECD (2010), Public Procurement in EU Member States - The Regulation of Contract Below the EU Thresholds and in Areas not Covered by the Detailed Rules of the EU Directives, SIGMA Papers, No. 45, OECD Publishing, available at: <http://dx.doi.org/10.1787/5km91p7s1mxv-en>
- ⁱⁱⁱ *Ministerstvo pro místní rozvoj ČR* (Ministry of Regional Development) (2015), *Výroční zpráva o stavu veřejných zakázek v České republice za rok 2014* (Annual report on the state of public contracts in the Czech Republic in 2014)
- ^{iv} See for example: *Závazné Postupy Pro Zadávání Zakázek Spolufinancovaných Ze Zdrojů Eu, Nespadajících Pod Aplikaci Zákona Č. 137/2006 Sb., O Veřejných Zakázkách, V Programovém Období 2007-2013* (Mandatory Procurement rules co-financed from EU funds outside the scope of Act No.137/2006 Coll., the Public Procurement Act during the programming period 2007–2013), available at: <http://www.strukturalni-fondy.cz/cs/Fondy-EU/Narodni-organ-pro-koordinaci/Dokumenty>
- ^v Office for the Protection of Competition's website, available at: <https://www.uohs.cz/en/homepage.html>
- ^{vi} Available at: <http://www.mmr.cz/cs/Verejne-zakazky/Verejne-zakazky-a-PPP/Expertni-skupina-MMR-k-ZVZ>
- ^{vii} Office for the Protection of Competition (2015), and Annual Report 2014.
- ^{viii} *Ministerstvo pro místní rozvoj* (Ministry for Regional Development) (2013), *Zpráva o plnění Strategie elektronizace zadávání veřejných zakázek pro období let 2011 až 2015 za rok 2013* (Report on the Implementation of the Strategy for electronic public procurement for the period 2011 to 2015)
- ^{ix} *Ibid*
- ^x Available at: <http://www.portal-vz.cz/cs/Informacni-systemy-a-elektronicke-vzdelavani/NIPEZ/Aktualne>
- ^{xi} OECD (2014), Global Forum on Competition: fighting corruption and promoting competition: Contribution from the Czech Republic
- ^{xii} Transparency International (2011), National Integrity Assessment Czech Republic
- ^{xiii} Security Information Service (2013), Annual Report of the Security Information Service for 2013
- ^{xiv} *Úřad vlády České republiky Oddělení boje s korupcí* (Czech Government Office Department of combating corruption) *Vládní koncepce boje s korupcí na léta 2015 až 2017* Government policy for combating corruption for the years 2015-2017
- ^{xv} Group of States against corruption (GRECO) website, available at: http://www.coe.int/t/dghl/monitoring/greco/default_en.asp
- ^{xvi} Pavel Černý and Donika Žůbková (2013), *Advokátní kancelář Škola a partneři*, Reporting Mechanism: Czech Republic: Progress Report 2012-13
- ^{xvii} European Commission (2014), *DG ENV*, National GPP Action Plans (policy and guidelines).
- ^{xviii} Kahlenborn Walter, Christine Moser, Joep Frijdal and Michael Essig (2011), Strategic Use of Public Procurement in Europe , Final Report to the European Commission, *DG MARKT/2010/02/C*, Berlin: adelphi
- ^{xix} Czech Republic Supreme Audit Office (SAO) annual report 2014 (February 2015)
- ^{xx} *Ibid*
- ^{xxi} Czech Republic Office for the Protection of Competition (UOHS)'s annual report 2014
- ^{xxii} *Ibid*
- ^{xxiii} Partnership Agreement, Annex to Chapter 2.3: Assessment of the fulfilment of ex-ante conditionalities, available at: http://www.strukturalni-fondy.cz/getmedia/2a5b9c43-5b22-4f51-a9b9-c30775c8ad47/CZ-PA-Annex-EACs_adopted-by-EC-20140826.pdf
- ^{xxiv} Council of the European Union (2015) Council's Country Specific Recommendations (Czech Republic), available at: <http://data.consilium.europa.eu/doc/document/ST-9233-2015-INIT/en/pdf>
- ^{xxv} Supreme Audit Office (2014), Annual Report 2013, available at: <http://www.nku.cz/cz/publikace/vyrocnizpravy.htm>
- ^{xxvi} Supreme Audit Office Act No. 166/1993 of 20 May 1993, available at: <http://www.nku.cz/cz/publikace/zakladni-dokumenty.htm>
- ^{xxvii} *Oživení* (2012) More Than Public Procurement Act: economy, transparency and accountability in public purchases
- ^{xxviii} European Commission (2011) Public procurement in Europe: Cost and effectiveness, available at: http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/cost-effectiveness_en.pdf
- ^{xxix} Council of the European Union (2015) Council's Country Specific Recommendations (Czech Republic), available at: <http://data.consilium.europa.eu/doc/document/ST-9233-2015-INIT/en/pdf>

DENMARK

KEY FACTS AND FIGURES

Key Facts and Figures in Denmark							
Overview	Total procurement 33,800,000,000€		Procurement % GDP 14%		2013 GDP 252,938,900,000€	Contracting authorities 469	
Procedures applied	Open 50%	Restricted 29%	Negotiated procedure with call 10%no call 3%		Competitive dialogue 0%	Direct award 9%	Other 0%
Share of contract notices by buyer	National 16%		Regional/local 42%		Body governed by public law 22%	Other 20%	
	Services 47%		Works 15%		Supplies 38%	Framework agreement 37%	
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met	
E-procurement adoption	E-notification Mandatory		E-access Voluntary		E-submission Partially mandatory	Uptake rate 6%	
Perceived corruption	Corruption widespread in society Businesses 10%		Individuals 20%		Corruption widespread in procurement At national level 14%	At local/regional level 20%	
	Value of tenders 12,601,665,497€		Of total procurement 37%		# contract notices 2,694	# contract awards 2,062	
Other indicators	Received single bid 7%		# days for decision 49.1		Price only criteria 27%	MEAT criteria 73%	
	Won by foreign firms 4%		Related to EU funds 2%		Joint purchase 14%	Central purchasing Yes, SKI	

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Denmark has a well-functioning procurement system that is quite advanced in its strategic dimension, as it includes green, SME, social, and to lesser extent innovation criteria. Procurement is conducted primarily at the local level, whereas the central government and the regions have a lower share of procurement. Each contracting authority is responsible for their own procurement, but they can make use of framework contracts managed by the central purchasing body SKI.

The Danish Competition and Consumer Authority plays an essential role in procurement, as it is responsible for supervision on the one hand, and for guidance and support on the other one. At the ministry level, the Agency for Modernisation is in charge of procurement policy and of the aggregation of procurement needs for government bodies. Denmark transposes EU Directives directly and maintains two sets of rules for national procurement.

Irregularities and corruption are negligible in Denmark, although the Danish Competition and Consumer Authority does point out that a relatively low level of public expenditure is subject to the competition regime.

DESCRIPTION OF FEATURES

Legal features of public procurement system

In the Danish legal system, the 2004 EU procurement Directives were transposed directly into national legislation as governmental order number 937 of 16 September 2004 concerning the procedures for the award of public works contracts, public supply contracts, and public services contracts, and governmental order number 936 of September 2004 concerning procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

On 19 November 2015, the new Contract Law (*Udbudsloven*) was passed, which implements the EU Directive 2014/24/EU. The new rules stipulate that if a supply and service contract has a clear cross-border interest the national threshold is EUR 67,000. Instead, if such a contract does not have a clear cross-border interest, no national threshold applies.

Public works below threshold are regulated by Act 1410/2007 (*Tilbudsloven*). For works, 3 to 4 offers must be collected above EUR 40,000 and the tender must be announced above EUR 400,000. If certain requirements are respected, 3 to 4 offers can be collected also for public works above EUR 400,000.

The Utilities Directive (2014/25/EU) and the Concession Directive (2014/23/EU) were transposed directly by the governmental order No. 1624 of December 2015 and governmental order No. 1625 of December 2015, respectively.

The remedies Directive has been transposed by law number 492 of 12 May 2010. The same complaints procedures apply for above and below threshold procurement. The review body in Denmark is the Complaints Board for Public Procurement, an independent administrative board of professional judges set up for hearing and settling procurement disputes. There is a fee of DKK 10,000 (approximately EUR 1,300) for submitting a complaint to the Complaints Board.

Institutional system

The Danish Competition and Consumer Authority plays the primary role in the Danish procurement system. Apart from its function as competition watchdog in public procurement markets, the Authority has a range of other responsibilities related to the functioning of the procurement system. For instance, it supports bidders through advice on the correct interpretation of procurement rules and guidance. Also, it hears complaints at an early stage and may bring cases in front of the Complaints Board, i.e. the review body. Decisions of the Complaints Board can be appealed before the ordinary courts within a period of eight weeks. Additionally, the Danish Competition and Consumer Authority performs compliance checks and regularly reports on violations. Finally, the Competition and Consumer Authority also operates the online portal for e-notification of public procurement.ⁱ

The publicly-owned company *SKI* acts as the main central purchasing body. The Danish Ministry of Finance holds 55% of its shares, while 45% are in the hands of the Association of Local Authorities of Denmark. *SKI* aims at achieving better procurement results through the aggregation of demand. Its framework agreements are open on a voluntary basis to all levels of government. It manages approximately 50 framework agreements divided into 15 main product categories. Municipalities are *SKI*'s main clients.

The Modernisation Agency under the Ministry of Finance is responsible for procurement policy law, policy, monitoring, and compliance. It also acts as a central purchasing body, managing joint procurement on behalf of the government as part of the State Procurement Programme. Unlike *SKI*, procurement via the framework agreements of the Modernisation Agency is mandatory for state agencies. Other public bodies may choose to enrol in the State Procurement Programme.

Oversight of public procurement is also carried out by the Court of Auditors. The Court reports to the Parliament whether public funds have been spent in accordance with their policy objective including efficiency and effectiveness of public purchases. The work of the Court of Auditors is evaluated by external experts.

Key issues that have a bearing on administrative capacity

Human resources: A dedicated corporate buyer is appointed at each ministry and is responsible for managing procurement needs and overseeing quality. Furthermore, the corporate buyers form a forum that meets eight to ten times a year to coordinate and improve procurement.

SKI places great emphasis on the qualifications of its approximately 75 employees, which is reflected in the personal plan for development of every single employee. It aims at being an attractive employer in order to attract a highly skilled workforce.

Structures: The State Procurement Programme is supported by expert groups composed of selected procurement officials. Expert groups establish standards and criteria by product category in order to ensure maximum efficiency and the respect of user's needs.

The Council for Public-Private Cooperation was set up in 2013 in order to strengthen the cooperation between the public and the private sector in matters of procurement. The Council aims at increasing the knowledge base and improving the dialogue among stakeholders.

Furthermore, the Forum on Sustainable Procurement, a knowledge network of professional buyers in both the public and private sectors, and the Partnership for Green Public Procurement, a collaboration between municipalities, both support contracting authorities with respect to strategic public procurement.

The *IKA* association forms a network of public procurers and suppliers. It is primarily active in providing training and qualifications in procurement, as well as offering a platform for networking. *IKA* has set up *IKA* College in order to address specific training needs of procurers and suppliers.

Training: Certifications and training in procurement are offered by different organisations such as UNDP as well as the *IKA* association.

Training provided by *SKI* focuses, among other topics, on the implementation of green public procurement. It is offered for free in cooperation with the Environmental Protection Agency.

Systems/tools: The Danish Competition and Consumer Authority supports the public administration through the publication of guidance material and its advisory function. Until recently, it provided a telephone hotline for enquiries on public procurement matters, but this service has been replaced by a detailed walkthrough on its website called "bidding step by step".ⁱⁱ For instance, in 2014 it published guidance on the total cost of supply.

SKI offers an e-learning tool as training on green public procurement. This e-learning provides the basics on GPP in a session that can last from 15 min to one hour, depending on prior knowledge. The e-learning ends with a test on the material.

The national e-notification portal has developed a mobile app for suppliers in order to allow access to procurement markets on a smartphone.

E-procurement

Despite the absence of a central e-procurement strategy, Denmark has long been considered a leader in developing e-procurement capabilities. The most important actor in e-procurement is *SKI*, which runs the national e-procurement platform. It established electronic tendering as far back as the late 1990s and more recently

introduced an electronic dynamic purchasing system. Other platforms are available, but are not accessible from a single location.

E-notification is mandatory for all contracting authorities through the advertising portal¹. E-submission must be used by contracting authorities for at least 50% of their total procurement budget. E-invoicing takes an important role in the e-Government Strategy for 2011-2015, and is mandatory for all public bodies and suppliers for all types of purchases. As a result, the implementation of e-invoicing is close to 100%.ⁱⁱⁱ

Tracking of e-procurement data is not systematically monitored, and thus is scarce, making it difficult to assess overall progress. According to the estimates of a 2013 study on e-procurement take-up, the value of e-procurement in amounted to EUR 1.8 billion in 2011 or 5.5% take-up. Denmark ranks 10th in value and 9th in the level of take-up.^{iv}

Corruption

According to the Group of States against corruption (GRECO) Denmark has a strong framework for countering corruption, comprising appropriate legislation, law enforcement and judicial authorities.^v Corruption in public procurement is negligible, as it does not present itself as a systemic challenge.

Europe 2020 Agenda

Denmark launched a Strategy for Intelligent Public Procurement in 2013, in which it defines the goals it intends to pursue through public procurement. Efficiency, innovation, sustainability, and social responsibility are the objectives of Danish intelligent procurement.

Compared to EU peers, Denmark is advanced in its implementation of green public procurement. In fact, it started introducing GPP policies back in the 1990s and has developed extensive requirements and criteria. Additionally, Denmark has actively increased capacity in GPP and performs dissemination activities. Two platforms support the implementation of GPP and sustainable procurement, i.e. the Partnership for Green Public Procurement and the Forum for Sustainable Procurement. Denmark has signed up and effectively met the EU target of 50% share of green tendering procedures. It is now working on increasing the share of GPP even further.^{vi}

In an effort to promote responsible procurement, it has introduced a “The Responsible Purchaser” a web tool that includes several dimensions such as environment, social, and labour aspects, as well as ethical considerations in production processes of suppliers such as human and labour rights, environmental protection, and anti-corruption.^{vii}

Social and SME procurement are also part of Denmark’s strategic goals. *SKI* has set up a specific policy for SME inclusion. When designing the tenders, it analyses the supply structure relevant to the contract and identifies the role SMEs could play in the tender. Subsequently, the tender is conceived in such a way that it facilitates the participation of SMEs. In addition to that, *SKI* regularly organises seminars for SMEs on how to participate to public procurement. Along the same lines, the procurement portal provides an online feature that helps SMEs in findings consortium partners for joint bids.

Social aspects will be increasingly a focus of public procurement. Since 2013 a “comply or explain” principle has been introduced with regards to the use of social clauses by contracting authorities. The Competition and Consumer Authority prepared

¹ <http://udbud.dk>

guidance material on the legal framework related to the use of social clauses, particularly with respect to training and internships.^{vi}

The Council for Public-Private Cooperation finds that the Danish experience is still limited with only 12% of surveyed public buyers having carried out innovation projects. Denmark collaborates with other Nordic countries in promoting innovation through standardisation and procurement, but compared to Sweden, it makes less use of functional requirements for innovation. Also public-private innovation partnerships could be strengthened as only a few are implemented.^{viii}

Irregularities and findings of national Audit Authorities

The Danish Competition and Consumer Authority monitors the status of competition within the public administration on a yearly basis. One of its main findings with respect to public procurement is that contracting authorities have the tendency to keep services in-house that could potentially be contracted out.

Specifically, the findings in 2013 denote that out of some EUR 52 billion worth of services that were suitable for competitive tendering, only around EUR 13 billion were contracted out. In other words, some three quarters of services that could have been procured externally were not contracted out.^{ix}

On the other hand, the Danish procurement system performs very well with respect to compliance and efficiency. In its 2013 annual report Court of Auditors only refers to five instances in which irregularities with public contracts were found or are under investigation.^x The Court of Auditors audited 20 Ministries as part of its mandate to assure the regularity of public finance. For its annual statement, the Court of Auditors reviews over 200 processes; observations are made in about half of the cases.^{xi}

The Complaint Board for Public Procurement found a remarkable decrease in the number of complaints received in recent years: from 182 in 2010 to 107 in 2013. Likely the change in regulatory framework had an impact, as the fee for appealing to the Board rose considerably during this period.^{xii}

An analysis by the Council of Public-Private Cooperation uncovers that Denmark has a particularly high level of tender annulation compared to EU peers. In fact, 885 out of 5,555 published EU-level tenders were cancelled, i.e. a 16% cancellation rate. This rate has been relatively stable over a period of several years. In contrast, the average EU cancellation rates lie between 5 and 10%.^{xiii}

Outlook

After a series of consultations, the Danish Parliament is moving forward with a new Public Procurement Act transcribing the 2014 Directives and making a number of additional reforms. In addition, the government will monitor procurement during the course of 2015 and take stock of developments and initiatives, in order to enter into an agreement with the municipalities on concrete targets for municipal procurement. This agreement is planned for 2016.^{xiv}

Furthermore, a committee has been established with the purpose to work out a strategy for e-Procurement. The first draft of the strategy is expected by mid-summer 2015. Denmark's ambition is to have legislation ready ahead of the deadline by 2016.ⁱⁱⁱ

The Danish Strategy for Intelligent Public Procurement focuses on support to administrative capacity as a means to achieve its goals.^{vi} Skills building, guidance materials, dissemination of best practices, as well as tools are part of the strategy, as public buyers are demanding greater support and guidance in strategic procurement.

ANALYSIS

Strengths

Political will to increase competition in public procurement is yielding results. The Competition Authority has repeatedly pointed at the low level expenditure subject to competition and called for its increase, notably in the field of public services. Furthermore, a circular by the Ministry of Finance (no. 2 of 13 January 2010) establishes that public bodies are obliged to procure, unless they can prove that the particular job is not offered on the market or that procuring would result in disproportionate costs.^{xv}

Thus, Denmark is making steady progress in increasing the level of externally procured public service contracts, particularly at ministry level. Since 2009 the central government increased the level of contracted out services by 3%, while the increase for municipalities was 2%. Furthermore, in order to facilitate public procurement and strengthen competition, the complaints system was reviewed and simplified.^{xvi}

Denmark is very successful at including SMEs in its procurement process. A study conducted by the Competition and Consumer Authority indicates that SMEs participate in two thirds of calls for tenders and are successful in about half of their bids.^{xvii} While *SKI* only covers a fraction of the procurement market, its practices with regards to SME procurement are well-received, as the Competition and Consumer Authority recommends knowledge of the market structure as a way to enhance SME participation in procurement.

Weaknesses

Even though the Danish procurement system is well-functioning, Denmark may not reap the full benefits of its procurement market due to the fact that it has a relatively low level of procurement expenditure. In 2011, the share of procurement expenditure was 23.3% of total government expenditure; in contrast, the OECD average was 29%.^{xviii} This is particularly true for public services, which contracting authorities often chose to provide in house instead of contracting out via procurement processes. However, in-house public services are excluded from a competition regime and are therefore likely to be more expensive. As a result, Denmark may experience efficiency losses due to unexploited potential of more competition. In addition, a greater share of procured expenditure would open up more business opportunities to private companies and in turn foster the private sector's ability to innovate and become more productive. In this sense, the Danish economy is foregoing potential welfare as a consequence of its low level of procurement for public services.

Efficiency losses may also result from the fragmented nature of procurement and the limited amount of centralisation. *SKI's* turnover based on its framework agreements amounted to only 4% of total procurement, indicating that there is potential for further centralisation and aggregation. In fact, *SKI's* goal is to conduct 10% of total procurement under its auspices.^{xix}

Beyond efficiency losses, the underlying causes for the limited procurement in public services shed some light on other shortcomings in the procurement system. In fact, the public procurement legislation and the complaint system are perceived as a barrier by public buyers according to a 2012 survey. This indicates that there is potential for simplification of the legal framework and for the professionalisation of procurement.^{xxi}

Similarly, the high rate of cancelled tenders indicates a series of weaknesses. One of the reasons for withdrawing the tenders appears to be that contracting authorities have unrealistic expectations about what is offered on the market. This signals a lack of dialogue between private sector and public authorities.^{xiii}

While overall a frontrunner in strategic public procurement, Denmark could strengthen innovation procurement. Despite high expectations among stakeholders, implementation shows a nuanced picture and in fact is relatively confined. Furthermore, Denmark has only implemented half of the instruments for promoting innovation through procurement as its more advanced peers such as Sweden. Not least, the lack of comprehensive data makes it difficult to monitor and ultimately draw conclusions on the effects of innovation procurement.^{viii}

Recommendations

- **Procure more:** Denmark's low level of procurement expenditure prevents it from tapping into the full potential of the market.
 - Allow in-house public service contracts to take part in competition in the open market.
 - Increase the share of procured expenditure in order to provide greater possibilities and opportunities for private companies to foster competition.
- **Let the pros handle it:** Participation in large, national framework contracts negotiated by *SKI* falls well short of expectations, which in turn weakens its bargaining power on the market.
 - Encourage contracting authorities to make greater use of framework contracts made available by *SKI*.
- **Complex legal framework:** The legislation on public procurement and the complaint system are generally considered too complex and burdensome.
 - Reform the procurement legislative framework to streamline and simplify compliance.
 - Increase guidance and support to contracting authorities through the Danish Competition and Consumer Authority.
- **Market knowledge:** A significant number of contracts are withdrawn before they are awarded. This may be due to the lack of knowledge on the part of contracting authorities regarding what the market has to offer.
 - Strengthen business skills through targeted trainings and on market research and dialogue with the private sector.

- ⁱ Danish competition and consumer authority, available at: www.udbud.dk
- ⁱⁱ Danish competition and consumer authority, available at: www.kfst.dk/Offentlig-konkurrence/Udbudsprocessen-trin-for-trin
- ⁱⁱⁱ European Commission (2015), DG MARKT, E-procurement uptake
- ^{iv} European Commission (2013), DG MARKT, E-procurement state of play report
- ^v Group of States against corruption (GRECO) (2005), Second evaluation round report
- ^{vi} Regeringen (Government) (2013), *Strategi for intelligent offentligt indkøb* (Strategy for smart procurement)
- ^{vii} *Den Ansvarlige Indkøber* (Responsible purchasing), available at: <http://csr-indkob.dk/>
- ^{viii} *Rådet for Offentlig-Privat Samarbejde* (Council for Public-Private Cooperation) (2013), *Innovationsfremmende indkøb* (Promotion of innovation in procurement)
- ^{ix} Danish Competition and Consumer Authority (2014), Executive summary of the 2014 review of competition in publicly provided services
- ^x *Rigsrevisionen* (National Audit office) (2014), *Beretning til Statsrevisorerne om revisionen af statsregnskabet for 2013* (Report of the state accounts for 2013)
- ^{xi} *Rigsrevisionen* (National Audit office) (2014), *Rigsrevisionens virksomhed i 2013* (Annual report)
- ^{xii} *Klagenævnet for Udbud* (Review Board), *Årsberetning 2013* (Annual Report 2013)
- ^{xiii} *Rådet for Offentlig-Privat Samarbejde* (Council for Public-Private Cooperation) (2014), *Analyse af annullationer af EU-udbud* (Analysis of cancellation of EU procurement)
- ^{xiv} *Moderniseringsstyrelsen* (Agency for Modernisation Ministry of Finance) (2013), *Faktaark: Strategi for intelligent offentligt indkøb* (Fact Sheet: Strategy for smart procurement)
- ^{xv} *Konkurrence- og Forbrugerstyrelsen*, *Status for offentlig konkurrence* (Competition and Consumer Authority, Status of public competition) (2014)
- ^{xvi} Danish Competition and Consumer Authority (2014), Executive summary of the 2014 review of competition in publicly provided services
- ^{xvii} Danish Competition and Consumer Authority (2013), SME-participation in public procurement: Market study
- ^{xviii} OECD (2103), Government at a Glance, Denmark Factsheet
- ^{xix} Available at: <http://www.ski.dk/viden/Sider/Centraliseret-offentligt-indkoeb.aspx>

ESTONIA

KEY FACTS AND FIGURES

Key Facts and Figures in Estonia						
Overview	Total procurement 2,450,000,000€		Procurement % GDP 13%		2013 GDP 18,738,800,000€	Contracting authorities 1,364
Procedures applied	Open 65%	Restricted 1%	Negociated procedure with call 3%no call 9%		Competitive dialogue 0%	Direct award 22%Other 0%
Share of contract notices by buyer	National 34%		Regional/local 10%		Body governed by public law 44%	Other 12%
Contract type	Services 33%		Works 6%		Supplies 60%	Framework agreement 20%
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met
E-procurement adoption	E-notification Mandatory		E-access Voluntary		E-submission Mandatory	Uptake rate 2%
Perceived corruption	Corruption widespread in society Businesses 57%		Individuals 65%		Corruption widespread in procurement At national level 28%	At local/regional level 35%
TED indicators	Value of tenders 769,787,356€		Of total procurement 31%		# contract notices 1,048	# contract awards 1,012
Other indicators	Received single bid 20%		# days for decision 59.8		Price only criteria 81%	MEAT criteria 19%
	Won by foreign firms 7%		Related to EU funds 31%		Joint purchase 4%	Central purchasing Yes

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of the public procurement system

The Republic of Estonia is one of the smallest Member States in the Union by both GDP and population, with a highly centralised government system. The central government was responsible for approximately 70% of all public spending in 2013 and 2014, and thus the bulk of national procurement. Below the central level, there are 213 municipalities, organised into 15 counties.

Estonian law provides for joint procurement, but does not currently feature a comprehensive central procurement body. However, the Centre of Registers and Information Systems does currently operate as the central purchasing body at the state level for IT goods and services.

Estonia is frequently cited for its early and effective adoption of e-procurement. The central e-procurement platform offers end-to-end services to contracting authorities and bidders free of charge.

DESCRIPTION OF FEATURES

Legal features of public procurement system

Public Procurement in Estonia is regulated by the Public Procurement Act (PPA), which transposes EC Directives 2004/17/EC, 2004/18/EC and 2007/66/EC, and governs the awarding process for goods, services, and public works contracts.

Contracts of value greater than the EU thresholds must be managed according to EU procedures, and can use open or restricted procedure, competitive dialogue, and negotiated procedure with or without publication. Below the EU thresholds, but above the national thresholds of EUR 40,000 for goods and services and EUR 250,000 for works, negotiated procedures with or without notice, and competitive dialogue may be

used under certain conditions, and shorter minimum time limits apply. Below the national thresholds, simplified procedures may be used, including direct award.

For every procurement procedure, a public procurement report must be submitted to the government within 20 days of award detailing the terms of the contract, and in the case of other than open or restricted procedures, justifying the procedure used. Within 20 days of the termination of the contract, an annex to the report must also be submitted, detailing the any changes to the terms of the contract signed, and in the case of a framework contract, the amounts and descriptions of the specific contracts awarded.

Estonia does not have a single act specifically designed for concessions nor a general law stating the legal framework for PPP and concessions. Therefore, when awarding service concessions, PPA rules and the general EC principles applyⁱ.

Institutional system

Central procurement policy and executive functions are concentrated at the Department of Public Procurement and State Aid (*RRO*) in the Ministry of Finance. This includes drafting legislation and amendments, supervising procurement activities, managing Estonia's e-procurement platform, and providing guidance and training to contracting authorities and potential suppliers. Individual contracts are handled by the respective contracting authority, although the PPA does allow for voluntary joint purchasing, which is used on an *ad hoc* basis.ⁱⁱ

Complaints regarding procurement decisions can be made to the Estonian Public Procurement Review Committee, which operates as an extrajudicial dispute settlement and review body of first instance. The Committee is composed of three independent members empowered to invalidate awards and to ask for compensation in case of an infraction. In case of an appeal, the Administrative Court is the first instance body. The ruling issued by the Review Committee or by the Administrative Court can then be lodged with the Regional Courts, and the Court of Appeal. The National Court of Estonia has the ultimate say.ⁱⁱⁱ

In addition, external controls are conducted by the National Audit Office (NAO) and internal controls by internal auditors. The NAO conducts audits of State agencies for compliance with the PPA, and publishes annual reports of its findings and recommendations for the Parliament and the general public. NAO's authority to audit local entities is limited, but does under certain circumstances include procurement procedures.

Key issues that have a bearing on administrative capacity

Human Resources: The staff of the *RRO* includes 15 specialists and management personnel with advanced university degrees, primarily legal experts and a handful of sector specialists^{iv}. Regional and local buyers typically have access to extensive training opportunities and support services, resulting in a level of administrative capacity that is relatively consistent across contracting authorities.

Structures: The *RRO* is the primary institution responsible for the training of public procurement stakeholders in Estonia. As part of this task, they operate telephone help lines dedicated to general inquiries on the PPA, and specific questions on the use of the online platform. The *RRO* also fields written requests for advice and guidance from contracting authorities and economic operators, which as a rule are responded to within 5 working days. In 2013, *RRO* responded to one thousand such inquiries.

Trainings The *RRO* regularly organises training sessions in order to update and deepen the knowledge of providers, vendors, staff, and other interested parties, and to encourage the use of e-procurement tools^v. In 2013, a total of 1,177 persons were

trained over the course of 31 day-long sessions on the e-procurement environment, 6 on the PPA, and 16 on the central purchasing programme. This schedule represents an increase of more than 25% compared with the previous year. There are also training workshops organised to promote the implementation of Green Public Procurement into the tenders in accordance with the Europe 2020 agenda^{vi}.

Systems/Tools: The *RRO* makes available a number of printed training materials on the e-procurement platform, including step-by-step guidance on how to execute a procurement contract according to Estonian law, and on how to use the platform itself, information on the PPA and recent amendments, procedural information and forms, and written analyses of different elements of the Estonian procurement system. There are also video guides on using the e-procurement environment.

E-procurement

Estonia ranks among the most advanced MS in terms of e-procurement. E-notification has been mandatory since 2001, and compliance is effectively 100% for contracts above EUR 10,000 for goods and services, and EUR 30,000 for public works. E-submission is partially mandatory since contracting authorities have to allow e-submission for at least 50% of their public procurement. Implementation of e-submission has proceeded rapidly in recent years, with uptake rising from under 5% in 2011 to 72% in 2014, exceeding the national target of 50%. The quick development of e-procurement relies both on comprehensive e-procurement services and wide dissemination of e-procurement practices among contracting authorities and economic operators through awareness-raising actions, guidelines and trainings.

In fact, Estonia's highly developed e-procurement environment and e-procurement portal¹ are frequently referred to as best practice examples for other MS because they are rapid and easy to use. The Register is free of charge for all contracting authorities and suppliers^{vii}, and offers the full range of e-procurement services, including e-notification, e-access and e-submission. The e-procurement portal also provides a wide-range of information and updates for all matters related to e-procurement. In addition, it produces data on the use of e-procurement in Estonia, and broader overviews of the work of the Ministry of Finance in the field of public procurement. The development of e-procurement in Estonia is also supported through comprehensive guidelines and trainings to both contracting authorities and economic operators.

Corruption

Despite Estonia's wide use of e-procurement and related transparency, corruption risks are still present^{viii}. The problem is limited at the state level. In 2012, the Estonian Ministry of Justice registered 28 cases of corruption in relation to state agencies, of which three were related to public procurement. In 2013, there were 287 appeals to contracting award decisions out of 8,214 procedures in total, a rate of just 3.5%. In addition, 4 cases of violation of requirements for public procurement were registered in the past year^{ix}.

However, public procurement at the local level is more vulnerable to corruption. The NAO has identified issues in the adherence of local officials to the guidelines of the Anti-Corruption Act. In 2010 and 2012, it audited ten local authorities to assess whether their economic transactions were compliant with the Anti-Corruption Act. Eight of the ten audited were found to be in breach of the Act. Most of the breaches related to a conflict of interest in public procurement. Specifically, the NAO found that

¹ <https://riigihanked.riik.ee>

local authorities had been involved in contract awards to companies in which they had a financial interest. The audit also found insufficient levels of transparency in the management of funds at the local level^x.

In addition, EU funds are also vulnerable to corruption, and in fact procurement is considered as one of the more vulnerable areas, mainly due to the complexity of the legislation and guidance^{xi}. In 2012, 185 violations or suspected violations of EU funding rules were recorded, while over the period 2008-2012, 339 breaches to EU funding rules were detected in the implementation of EU funds, accounting for a total of EUR 35 million^{xii}.

The 2013-2020 Estonian Anti-corruption Strategy is largely focused on increasing transparency in public sector decision-making. In this sense, the continued development of the e-procurement environment, and the ability it creates to gather and analyse data, are a key function. Furthermore, since 2013, many kinds of financial data of Estonian local authorities, including on procurement, have been made available through an online application².

Europe 2020 Agenda

Estonia's National Reform Program declares the government's intention to use the procurement process to advance secondary policy goals under the Europe 2020 Strategy, but specific goals and means are not developed. The primary strategy document is the "Better Use of Environmental Management in the Public Sector" plan, which set the modest goal of 10% GPP uptake by 2014. These goals are being updated for the coming years.

In order to foster innovation in Estonia, the government has set aside EUR 20 million for the "State as a Smart Costumer" initiative. The funding will be used to raise awareness among contracting authorities of how they can take a more innovation-friendly approach to tendering including via expert counselling, trainings, and building of networks among buyers and innovative suppliers.

In addition, the country's Estonia 2020 Strategy lays out a number of innovation-related goals linked to procurement, including increasing the participation of Universities, start-up businesses, and applied research in public procurement and increasing the share of contracts that incorporate innovation to 3% by 2020^{xiii}.

Irregularities and findings of national Audit Authorities

According to the National Audit Office, the Estonian Ministry of Finance adheres relatively consistently to the PPA in implementing procurement contracts. However, regular audits do identify a number of irregularities, including incorrect choice of procedures, incomplete or missing documentation, and incorrect application of procedure, particularly for simplified procedures. Specifically, they found unjustified prepayment, unjustified use of direct purchase, and delayed or non-submission of Public Procurement Reports. However, auditors observed an improvement in state agencies' performance in the procurement procedures and their plans, which took into account the shortcomings that were pointed out by the National Audit Office in 2012^{xiv}.

In terms of the management of ERDF, CF and ESF funds, Estonia has not been frequently cited for irregularities. Estonia was subject to one financial correction in 2013 in the amount of EUR 0.3 million.

² <http://riigiraha.fin.ee/>

Outlook

Estonia's top near term procurement policy priority is the transition to a fully digitised procurement process. The move should result not only in significant time and cost savings for contracting authorities and bidders, but will also further improve the government's ability to gather and analyse performance data for supervision and policy-making purposes.

Another key goal, as laid out in the 2013-2020 Anti-corruption Strategy, is to increase transparency in government in general, and in procurement specifically. One key step in this process will be to strengthen conflict of interest disclosure requirements and enforcement measures^{xv}.

ANALYSIS

Strengths

One of Estonia's greatest strengths is its highly developed e-procurement platform, which offers the full range of services in an environment that is efficient and easy to use. The early adoption of digital services has also been a major factor in the country's strong oversight and anti-corruption efforts. Finally, Estonia stands out for its comprehensive training and support system, which have helped to ensure a relatively consistent and irregularity-free application of the PPA at all levels of government and throughout the country.

Weaknesses

The most substantial weakness to be addressed in Estonia is the lack of systematic risk assessment tools and procedures to support anti-corruption efforts. At present, Anti-Corruption Authorities do not have a centralised databank of corruption cases that can be linked to procurement actions to identify the risk of corruption when evaluating bidders, and as such must rely on the Commercial Register, the Criminal Records Database, or even web searches. As a result, systematic monitoring is quite limited. In addition, the administrative capacity of the *RRO* is too limited to comprehensively oversee the Estonian public procurement system. In 2012, the Ministry of Finance only reviewed 0.8% of public procurement procedures.

Recommendations

- **Clean up corruption:** Corruption is perceived to be a serious issue in the Estonian procurement system, particularly at the local level where, for example, conflicts of interest are frequently observed.
 - Dedicate greater resources to the *RRO* so they can more effectively conduct oversight.
 - Implement declarations of honour for procurement practitioners to deter and facilitate the prosecution of conflicts of interest.
 - Develop corruption risk assessment tools at every level of government, such as a centralised database of procurement-related corruption cases.
- **Get strategic:** Despite government's intentions to promote the strategic use of procurement to achieve other policy objectives, specific goals and means have not yet been established.
 - Set down precise long-term objectives to ensure that environmental, social and innovative criteria are included in tender procedures.

- ⁱ European Bank for Reconstruction and Development (EBRD) (2012) Estonia PPP legislation quality assessment 2011.
- ⁱⁱ Veiko Lember, Rainer Kattel, Tarmo Kalvet, Public Procurement, Innovation and Policy, 2014, p. 136.
- ⁱⁱⁱ Europe Economics and Milieu for the European Commission (2015), Final country fiches of the study on the economic efficiency and legal effectiveness of review and remedies procedures for public contracts (2013).
- ^{iv} Ministry of Finance, available at: <http://www.fin.ee/kontaktid>
- ^v Ministry of Finance (2013), Landscape summary of procurement, available at: https://riigihanked.riik.ee/lr1/c/document_library/get_file?p_l_id=216043&folderId=518320&name=DLFE-33903.pdf
- ^{vi} GPP in Practice, available at: http://ec.europa.eu/environment/gpp/pdf/news_alert/Issue45_Case_Study95_Estonian_police.pdf
- ^{vii} Partnership Agreement (2014) for Estonia, in accordance with Articles 14 and 15 of Regulation (EU) N.1303/2013 of the European Parliament and of the Council of 17th December 2013
- ^{viii} European Commission (2014), DG HOME, EU anti-corruption report, Annex Estonia
- ^{ix} Criminal Policy Studies n.20, Crime in Estonia (2014), Department of Justice, available at: http://www.kriminaalpoliitika.ee/sites/www.kriminaalpoliitika.ee/files/elfinder/dokumendid/kuritegevuse_at_2015_0.pdf
- ^x National Audit Office (2012), *Korruptsiooni ennetamine valdade ja linnade tehingutes* (Prevention of corruption in municipalities and cities transactions), Report to the *Riigikogu* (Parliament)
- ^{xi} Tönnisson, K. and Muuga, M. (2013), *Korruptsiooniriskid Euroopa Liidu vahendite rakendamisel* (Corruption risks in the implementation of European Union funds)
- ^{xii} European Commission (2014), DG HOME, EU anti-corruption report, Annex Estonia, Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_estonia_chapter_en.pdf
- ^{xiii} Competitiveness Agenda "Estonia 2020" (2014), Interim Report prepared by the State Chancellery, available at: https://riigikantselei.ee/sites/default/files/content-editors/organisatsioon/failid/eesti_2020_vahearuanne.pdf
- ^{xiv} National Audit Office (2013), Auditing of Annual Accounts 2013 and legality of transactions of the state, 2013, available at: <http://www.riigikontroll.ee/tabid/206/Audit/2334/Area/18/language/en-US/Default.aspx>
- ^{xv} Anti-Corruption Strategy 2013–2020 (Estonia), available at: http://www.korruptsioon.ee/sites/www.korruptsioon.ee/files/elfinder/dokumendid/estonian_anti-corruption_strategy_2013-2020.pdf

FINLAND

KEY FACTS AND FIGURES

Key Facts and Figures in Finland						
Overview	Total procurement 34,460,000,000€		Procurement % GDP 18%		2013 GDP 202,743,000,000€	
Procedures applied	Open	Restricted	Negotiated procedure		Competitive dialogue	Direct award
	76%	12%	with call 7%	no call 2%	1%	0%
Share of contract notices by buyer	National 12%		Regional/local 52%		Body governed by public law 15%	Other 21%
Contract type	Services 57%		Works 11%		Supplies 32%	Framework agreement 27%
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met
E-procurement adoption	E-notification Mandatory		E-access Voluntary		E-submission Voluntary	Uptake rate 5%
Perceived corruption	Corruption widespread in society			Corruption widespread in procurement		
	Businesses 27%		Individuals 29%		At national level 19%	At local/regional level 15%
TED indicators	Value of tenders 6,503,196,120€		Of total procurement 19%		# contract notices 3,364	# contract awards 2,567
Other indicators	Received single bid 13%		# days for decision 65.2		Price only criteria 47%	MEAT criteria 53%
	Won by foreign firms 1%		Related to EU funds 3%		Joint purchase 10%	Central purchasing Yes, Hansel Oy

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Finland is characterised by a harmonised and decentralised public procurement system. It is among the group of countries, which are characterised by a total absence of regulation on the organisation of procurement operations below EU thresholds, which implies that the decision whether or not to use public procurement procedures when acquiring goods, services or works belongs to the contracting authoritiesⁱ empowering contracting authorities with expansive discretion in when and how to apply procurement procedures.

According to national statistics, Finland's procurement system spends approximately EUR 35 billion, or 19.4% of the country's GDP annually, making it one of the largest by value in Nordic EU countries. This is attributed mostly to the particularly large size of the public sector in the country's economy. Nonetheless, only a relatively small portion of this spending relies on ESI funds.

DESCRIPTION OF FEATURES

Legal features of public procurement system

In the Finnish legal system, the EU procurement Directives have been incorporated into national legislation via three separate acts: the Act on Public Contracts (348/2007, as amended), implementing Directive 2004/18/EC; the Act on Public Contracts by Contracting Authorities in Water, Energy, Transport and Postal Services Sectors (349/2007, as amended), implementing Directive 2004/17/EC; and the Act on Public Contracts in the Fields of Defence and Security (1531/2011, as amended), implementing the Directive 2009/81/EC.

Furthermore, the rules regarding electronic public procurement have been set out in a separate Act on Electronic Auctions and Dynamic Purchasing System (698/2011).

The national public procurement legislation specifies two national thresholds below the EU thresholds. For works contracts below EUR 150,000, and supplies or services below EUR 30,000, direct award is allowed. Whereas for contracts between EUR 30,000 and EUR 50,000 for supplies and services and EUR 150,000 and EUR 500,000 for works, negotiated procedure with publication is allowed.

As of today, no detailed below-threshold rules have been laid down for the utilities sector.

Institutional system

Competences in terms of public procurement are divided up among two Ministries. The Ministry of Employment and the Economy (MEE) handles national policy making, drafting of national procurement legislation and amendments, and takes the lead in advising economic operators and contracting authorities on how the law should be interpreted. As part of this responsibility, the MEE works with the Association of Finnish Local and Regional Authorities (FLRA) to operate the Public Procurement Advisory Unit (PPAU), an online and telephone help desk for contracting authorities.

The Ministry of Finance is responsible for managing central government procurement, setting purchasing strategy and conducting centralised purchasing.

Oversight of public procurement is carried out by the Finnish National Audit Office (NAO), which controls public procurement procedures in terms of budget, accounting, and financial operations, and reports its findings to the Parliament.

The Market Court (MC) acts as a specific review body on public procurement in the first instance, and has the authority to cancel a decision by a contracting authority wholly or in part. Its rulings in public procurement cases can be appealed to the Supreme Administrative Court (SAC). The average length of MC cases in 2014, of which procurement cases make up a majority, was 5.8 months.ⁱⁱ The average length of an appeal before the SAC was 17.4 months.ⁱⁱⁱ

Hansel Oy, a publicly owned stock company, acts as a central purchasing body and is designed to increase the Government's savings by entering into framework agreements for procurement. These frameworks remain open on a voluntary basis to contracting authorities at all levels of Government. In addition, *KL-Kuntahankinnat Oy*, a joint procurement company, conducts joint purchasing via framework contracts exclusively on behalf of local governments.

Key issues that have a bearing on administrative capacity

Human resources: Each year, between 8,000 and 10,000 civil servants and future public procurement practitioners receive initial training in public procurement procedures by 30 dedicated specialists, who work on behalf of the Finnish Institute of Public Management (*HAUS*). The administrative capacity of public authorities is considered adequate in view of the large number of civil servants responsible for conducting procurement procedures.

Structures: *HAUS* is the primary organisation for consultancy in the Finnish Government. In this regard, it implements training, development and consultation projects for future civil servants at all territorial levels.

In addition, a significant part of the PPAU's activities consists in providing contracting authorities with information and advice on procurement, as well as advising businesses on issues relating to the application of procurement legislation.

Training: *HAUS* organises more than 300 short-term training courses and events for public procurement practitioners and administrators from all kinds of contracting

authorities. These trainings generally consist in providing participants with practical tools focusing on the general implementation of the legislation or on specific topics such as innovative procurement.

The FLRA produces information and holds procurement trainings aimed at building the capacity and enhancing the knowledge of procurement practitioners at the regional and local level. Furthermore, the PPAU provides State and municipal authorities with free advice on good practices in procurement, and the proper application of the public procurement law.

Systems/tools: The PPAU serves as an information and communications platform in public procurement. It spreads information related to public procurement (principally guidance on the public procurement law and its application, and examples of good practices, via e-mail and telephone advisory services, as well as newsletters and links on its website.

Moreover, the FLRA supports the public administration through the publication of guidelines concerning public contracts and its advisory function. It also supports the MEE in running the PPAU.

E-procurement

Finland has not yet elaborated a comprehensive plan for e-procurement. The country's most important actor in e-procurement is *Hansel Oy*, which runs the national e-procurement platform. It integrated almost all the procurement cycles in its operations more than a decade ago and recently developed an entire public system for online ordering (*Tilha*).

Apart from the national platform, *Hansel Oy* also offers a series of tools for conducting mini tenderings on the framework agreements established for the central Government.

E-notification is mandatory for all contracting authorities above the national threshold and voluntary below the national threshold. In both cases, it is enabled through *Hilma*, the central e-notification portal maintained by the MEE. As e-submission is voluntary and not yet provided on the portal, this functionality is currently available via commercial platforms for which two national framework agreements exist.

To date, the number of local and regional contracting authorities is unknown and data on their use of e-procurement is not monitored. This creates a substantial gap in publicly available data.

Corruption

Corruption is not a systemic challenge in Finland's public procurement process, and there is no comprehensive national anti-corruption strategy in place. In addition, the current Action Plan to Reduce Economic Crime and the Shadow Economy, which extends until 2015, does not identify any procurement-specific anti-corruption measures. Nonetheless, a separate programme, the 2012 Internal Security Programme, did call for a number of actions to prevent corruption, including greater international cooperation and sector specific preventive actions for public officials and for the business sector. These are currently being discussed by the 'Anti-Corruption Network' set up among national anti-corruption authorities by the Ministry of Justice, which will examine how best to implement them.

The overall low level of corruption and the absence of anti-corruption measures therefrom are the outcome of three interrelated sets of factors^{iv}: first, a high level of public confidence in institutions, good administration and self-control of civil servants; secondly, a functioning control environment facilitated by the decentralised legislative framework, tight financial monitoring and professional peer-control; and thirdly, heavy

regulation and a strong legalistic tradition of administrative culture at the frontline of the fight against corruption.

Furthermore, the current system of judicial review is considered effective and particularly distinguishes itself by the absence of barriers for tenderers to have their case revised by the MC.

Europe 2020 Agenda

Currently, the Finnish procurement system is being used to promote a number of strategic goals in line with the Europe 2020 strategy, principally in environmental policy, innovation and support to SME development.

With respect to introducing strategic goals in public procurement, Finland has been active in green public procurement for over a decade. It issued a resolution in 2009 according to which environmental perspectives shall be considered in all purchases made by central Government by 2015, and in at least half of all purchases made by municipalities and local governments by the end of 2015. Additionally, in an effort to promote sustainable procurement, the Finnish Government announced in 2013 a goal of allocating 1% of the total value of Finland's public procurement to sustainable environmental and energy solutions, or so-called cleantech solutions^v.

Moreover, in 2010 it launched a "Demand and User-driven Innovation Policy Framework and Action Plan"^{vi}, comprising different actions aimed at encouraging the deployment of innovative procurement through the development of public procurement practices^{vii}. In the wake of this plan, the Finnish Government endorsed a measure for the Finnish Research and Innovation Funding Agency to set up appropriate funding to encourage Finnish public procurers to undertake more innovative procurements^{viii}. This funding shall cover 50% of the costs of projects aimed at the renewal of services and activities. The objective is to promote innovations in public contracts and bring added value through lower life cycle costs, more efficient production processes and reduced environmental impact.

Furthermore, a Smart Procurement programme was launched in 2013 to increase the economic impact of public procurement practices and improve market access for products and services developed by SMEs. Helping SMEs to develop their activities is also a key objective pursued through *Hansel Oy*, which designs tenders in a way to encourage them to bid.

Irregularities and findings of national Audit Authorities

The NAO regularly carries out and publishes external financial and performance audits of procurement. Possible criteria for selecting public procurement cases include the following: total value and complexity of the procurement; new acquisitions rather than routine procurements; order value and number of orders per contractor; and more general aspects, such as critical statements of external and internal supervision authorities, coverage in the media, complaints, legal proceedings or professional experience of auditors. Most frequent irregularities detected can most easily be attributed to a lack of rigour in the preparation and awarding phases of public contracts.

Outlook

The coming year will be focused on implementing the overall reform of the public procurement legislation, which was commenced by the MEE in 2013. Efforts will focus on simplifying the procurement procedures, creating a review mechanism for public procurement and improving the conditions for SMEs to take part in tenders. A national working group has been in place for two years for drafting proposals for new legislation on public procurement in the light of these objectives. The results of this

consultation are scheduled to be submitted as a bill to Parliament by the end of 2015 to go into effect the following year.

ANALYSIS

Strengths

Finland has a high-performing procurement system, which is virtually unaffected by corruption. It provides good value for money to taxpayers and a transparent business environment. These strengths stem principally from: various control levers minimising opportunities for corruption; a rigorous regulatory framework combined with a strongly legalistic tradition of administrative culture; as well as a highly efficient review system whose main peculiarity is the absence of barriers for tenderers to have their case revised by the MC.

Weaknesses

Despite the impetus given by the Government in recent years, public procurement in Finland continues to suffer from a few deficiencies in its strategic dimension. In this regard, procurement still cannot be considered as an adequate driver of innovation. What is more, there are few calls for tenders, as well as shortcomings in the expertise of procurement practitioners.

Additionally, Finland could also do more to develop the involvement of SMEs in public procurement. In fact, its share of the total value of public contracts is slightly lower than elsewhere in the EU and the proportion of SMEs using electronic tender systems is less than half of the EU average (6% as compared to, against 13% at EU level). This is all the more surprising insofar as Finland is regarded as one of the most advanced countries in terms of e-government services. This seeming paradox may be a function of the central Government's preference not to publish electronically tenders worth less than EUR 30,000 for cost reasons^{ix}.

Recommendations

- **Support SMEs and innovation:** Finland's success in using the procurement system to support innovation and SME's could be strengthened.
 - Promote SME-friendly tender design, such as breaking large contracts into lots, making it easier to form consortia, and publishing info on the pipeline of upcoming major projects.
 - Devote resources to market research to identify emerging technologies.
 - Implement feedback channels through which relevant stakeholders will be able to report on their experiences in purchasing innovative solutions.
- **Implement e-procurement:** Finland has not articulated a clear plan to achieve full e-procurement adoption.
 - Develop a comprehensive Action Plan to implement the e-submission functionality on the national e-procurement platform.
 - Incorporate comprehensive and timely data collection and publication as an integral element of the e-procurement environment.

ⁱ OECD (2010), Public Procurement in EU Member States - The Regulation of Contract Below the EU Thresholds and in Areas not Covered by the Detailed Rules of the EU Directives", SIGMA Papers, No. 45, OECD Publishing, available at:

http://www.oecd-ilibrary.org/governance/public-procurement-in-eu-member-states_5km91p7s1mxv-en

ⁱⁱ Market Court annual statistics, available at:

<http://www.markkinaoikeus.fi/fi/index/markkinaoikeus/tilastoajakasittelyajat.html>

ⁱⁱⁱ Supreme Administrative Court of Finland, 2014 Annual report, available at:

<http://www.kho.fi/fi/index/julkaisut/vuosikertomukset.html>

^{iv} Ari Salminen, Olli-Pekka Viinamäki, Rinna Ikola-Norrbacka (2007), The control of corruption in Finland, Faculty of Public Administration, University of Vaasa, available at:

http://www.ramp.ase.ro/en/_data/files/articole/9_02.pdf

^v Katriina Alhola (2013), Finnish Environment Institute, Promoting cleantech in public procurement in Finland, IPPC6, Dublin, SYKE, available at:

<http://www.ippc6.com/downloads/ippc%206%20presentations/15th%20friday/Sustainability%20&%20Procurement/Katriina%20Alhola,%20Ari%20Nissinen,%20Jyri%20Sepaala.pdf>

^{vi} Peter Stern, Jakob Hellman, Monique Rijnders-Nagle, Miriam Terrell and Tomas Åström (2011), How public procurement can stimulate innovative services, Norden, available at:

http://www.vpt.lt/vpt/uploaded/2012/metodologija/HowTo%20inovating%20services_angl.pdf

^{vii} Ministry of Employment and the Economy Innovation (2010), Demand and user-driven Innovation policy, Framework and Action Plan, available at:

<http://udi.fi/sites/default/files/Policy%20Framework%20and%20action%20plan.pdf>

^{viii} Elvira Uyarra (2012), Manchester Institute of Innovation research, Review of measures in Support of Public Procurement of Innovation, available at: <http://www.innovation-policy.net/compendium/section/Default.aspx?topicid=32§ionid=149>

^{ix} European Commission (2013), 2013 Fact sheet, fact sheet on Finland, available at:

http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/files/countries-sheets/2013/finland_en.pdf

FRANCE

KEY FACTS AND FIGURES

Key Facts and Figures in France							
Overview	Total procurement 306,980,000,000€		Procurement % GDP 15%		2013 GDP 2,116,565,000,000€	Contracting authorities 132,652	
Procedures applied	Open 76%	Restricted 3%	Negotiated procedure with call 8%no call 4%		Competitive dialogue 1%	Direct award 9%	Other 0%
Share of contract notices by buyer	National 7%		Regional/local 37%		Body governed by public law 22%	Other 33%	
Contract type	Services 52%		Works 17%		Supplies 31%	Framework agreement 1%	
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met	
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Voluntary	Uptake rate 2%	
Perceived corruption	Corruption widespread in society Businesses 63%		Individuals 68%		Corruption widespread in procurement At national level 50%At local/regional level 56%		
TED indicators	Value of tenders 56,730,388,641€		Of total procurement 18%		# contract notices 40,516	# contract awards 32,921	
Other indicators	Received single bid 14%		# days for decision 91.5		Price only criteria 4%	MEAT criteria 96%	
	Won by foreign firms 2%		Related to EU funds 6%		Joint purchase 5%	Central purchasing Yes, UGAP	

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

The French public procurement system is characterised by the high number and wide range of contracting and oversight institutions involved due to the country's size and semi-decentralised political structure. The dispersion of authority and responsibility among the country's regional and local authorities is a significant barrier to standardisation of methods, resulting in highly varied outcomes. France also features a relatively complex regulatory structure that can be both onerous for potential suppliers to comply with and allows a high degree of discretion to contracting authorities.

France stands out as having the highest number of procurement procedures per year within the EU. The majority of these contracts are public works carried out at the local and regional levels.

DESCRIPTION OF FEATURES

Legal features of public procurement system

The EU Directives 2004/17/EC and 2004/18/EC were incorporated into French law in the Public Procurement Code (*CMP*) in 2006, which remains the primary legislative vehicle for procurement regulations. For private bodies mainly financed by public funds that were excluded from the scope of the *CMP*, "bodies governed by public law" under the EU Directives, Ordinance No. 2005-649 of 6 June 2005 extends the scope of EU Directives.

Concessions are not regulated by the *CMP*. Public services concessions are covered by Law No. 93-122 of 29 January 1993, commonly referred as the 'Sapin Law', whereas works concessions are subject to Ordinance No. 2009-864 of 15 July 2009.

Under the *CMP*, there are a number of thresholds that determine the conditions under which procurement must be performed. For tenders below EUR 15,000, contracts can be awarded without publication of a contract notice or the application of competition rules. Contracting authorities subject to the *CMP* are free to choose the methods of publication between EUR 15,000 and EUR 90,000. Moreover, contracting authorities can freely determine the procurement procedures governing service and supply contracts below EUR 130,000 for the State and its administrative public bodies, and EUR 200,000 for local governments and public health-care institutions, and works contracts below EUR 5 million.

Furthermore, a simplified tender procedure was introduced in April 2014 by the General-Secretariat for the Modernisation of Public Administration (*SGMAP*). Under this simplified system, the need to submit habilitation documents is limited to the winning bidder. Economic operators provide only their unique identification number and a declaration of honour along with their offers, substantially reducing the administrative burden.

Institutional system

The Ministry of Economy and Finance (*Minefi*) has primary responsibility for the conditions governing the public procurement systemⁱ. Its Department of Legal Affairs (*DAJ*) is in charge of analysing regulations regarding public contracts, as well as providing support and legal advice to State departments. The *DAJ* is also responsible for collecting data on procurement through the Public Procurement Economic Observatory (*OEAP*)ⁱⁱ. In addition, the Ministry of Defence and the Ministry of Transport, which make comparatively heavy use of public procurement, have developed practical tools to better inform contracting authorities on the main developments in their respective areas.

France has a central purchasing body called the Union for Grouping Procurements (*UGAP*), which is dedicated to the State, public organisms and local buyers. Its functions are complemented by the State Purchasing Body (*SAE*), whose principal activity consists of awarding framework agreements and procurement contracts for common purchases of central administrations.

At the local and regional levels, small and medium-sized local authorities often appoint non-specialist civil servants to be responsible for public procurement, while larger bodies typically have dedicated procurement departments. The Directorate General for Public Accounting (*DGCP*), part of the Budget Ministry, is charged with providing advice to local authorities on procurement.

The main oversight bodies are the National Court of Audits (*CC*) and its 27 inferior regional courts (*CRC*), along with the central comptrollers. Comptrollers at the State level are internal overseers, verifying that public corporations, mixed enterprises, organisations and businesses that have benefited from financial assistance, central agencies and national companies respect the principles of legality, economy, efficiency and efficacy. The *CC* and the *CRCs* provide external controls of public bodies' operating conditions and irregularities in these bodies' public procurement.

Administrative jurisdictions are competent for issuing penalties and sanctions, including bans, related to public procurement irregularities. The administrative tribunals have primary jurisdiction to review contracts for compliance with the law. In the case of intra-governmental proceedings, appeals can be lodged before the administrative Courts of Appeal, which is the last recourse instance. Its decisions can be subject to review for compliance with the law by the State Council. Also, the administrative tribunals can be accessed by any company or individual suspecting a fraud. In this instance, appeals can be made directly to the State Council.

Another important institution is the Public Procurement Mediation, a government scheme created in 2012 to facilitate economic operators' access to public procurement. It is composed of national and regional bidder advocates on public procurement who provide guidance on how to navigate the procurement process and act as impartial, neutral and independent conciliators in the event that disputes arise between contracting authorities and suppliers, especially SMEs.

Key issues that have a bearing on administrative capacity

Human resources: In France, procurement procedures are carried out by approximately 200,000 civil servants at all territorial levels, including the central administration, devolved State services, regions, departments, and municipalities, inter-municipal structures, public establishments, and healthcare institutionsⁱⁱⁱ. Despite France's ongoing process of territorial splintering and the complexity of its administrative structures, the administrative capacities of public authorities remain relatively well-developed.

Structures: Public service executives are trained in three leading civil service schools: for the central level, the National Administration School (*ENA*), for the territorial public service, the National Institute for Territorial Studies (*INET*) and the National Centre for Territorial Civil Service; and for the hospital civil service, the National School of Public Health (*EHESP*). In addition, five Regional Institutes of Administration (*IRA*) are dedicated to the trainings of future public sector officers. Each of these institutions also organises symposia aimed at improving administrative practices and disseminating research on public administration, as well as specialised publications on administrative science.

Training: As part of their training, future civil servants who attend the *ENA*, *INET*, *EHESP* and the *IRAs* are instructed in the rules governing public tendering procedures. In addition, the National Centre of Training for Territorial Public Service (*CNFPT*) is in charge of training civil servants in procurement matters at the regional, municipal and local levels.

Each Ministry has its own training organisation, which provides courses, workshops, and support to public procurement practitioners. For instance, the Institute for Public Management and Economic Development (*IGPDE*) is in charge of providing training and technical assistance to *Minefi*. Tailor-made training modules are also provided for public procurement practitioners by many private consulting firms and the Central Service for the Prevention of Corruption (*SCPC*). Most of these modules provide participants with practical tools focusing either on the procurement procedures or on the implementation of the legislation.

Moreover, within the framework of the 2014-2020 programming period, France is planning to hold regular trainings, certification and audit programmes on public procurement for contracting authorities. These trainings will focus on helping public procurement practitioners become more familiar with the most common irregularities and potential financial corrections to be applied, as well as practical exercises of procurement control practices^{iv}.

Furthermore, the *SAE* has produced short informational videos for public procurement practitioners presenting guidance on a number of topics, including the use of e-procurement platform and simplified administrative procedures, in an easy and intuitive way.

Systems/tools: *Minefi* published a methodology note explaining public procurement rules and their interpretation by the different courts in 2012, and regularly puts out updated fact sheets designed to assist buyers in the purchase process^v.

Additionally, the *DAJ* maintains a section on *Minefi*'s website where public procurement practitioners can find various documents and information, such as data sheets,

real-time online reporting on new regulatory texts, answers to frequently asked questions, and various obligatory and optional forms.

Finally, the Service of Legal Information for Public Purchase (*CIJAP*), under the General-Directorate of Public Finances (*DGFiP*) within *Minefi*, operates as a call centre for public buyers at the regional and local level. It comprises a team of 10 public servants of the State Administration, which responds to the inquiries of public buyers at the 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 calendar days.

E-procurement

Although France was a forerunner by developing its e-procurement portal seven years ago, its overall e-procurement system continues to be characterised by slow progress. The Government has repeatedly tried to promote e-procurement in recent years, particularly in the pre-award phase. Even so, results have been mitigated, partly due to the complexity of the regulatory environment combined with administrative burdens. For example, even in the e-procurement environment there is often still a lot of actual paper work that must be completed in order to conduct a procedure, which may dissuade contracting authorities from migrating to electronic processes.

Contracting authorities are required to use the National Inter-ministerial Marketplace e-platform *PLACE*, which is managed by the *SAE*^{vi}. Beyond this, the number of private service providers remains relatively significant and many regions, such as Burgundy and Brittany, which are among the most advanced in end-to-end procurement, provinces and municipalities continue to use their own e-procurement platforms. Some of the regional platforms, notably in Bourgogne and Bretagne, are working on more interoperability at the regional level and with the national platform (*PLACE*).

Corruption

Perceived corruption in public procurement managed by national and local authorities is comparatively high^{vii}. The *SCPC*, whose functions are to centralise and provide meaningful insight into corruption, has repeatedly identified corruption risks in public procurement processes, particularly those carried out at the local level.

While there is no specific national anti-corruption strategy, the French national legislation covers a wide range of issues related to fighting corruption. Furthermore, the Criminal Code includes a specific provision criminalising breaches of public procurement rules. The main advantage of this jurisprudence is that it allows a breach of public procurement rules to be sanctioned, even if it cannot be proven to have been corruption.

Europe 2020 Agenda

The use of public procurement to achieve strategic environmental, social and economic policies goals is relatively well-developed in France. With regard to the environmental dimension, mechanisms aimed at supporting the inclusion of sustainable development and environmental protection have gradually been integrated into the procurement law. In 2005, the *CMP* authorised the use of environmental considerations as award criteria, in so far as they relate to the subject of the contract. The Ministry of Ecology monitors the implementation of green public procurement rules and publishes official reports, methods and practical tools on its dedicated eco-responsibility platform^{viii}. Sustainable buying guides are also available from the Ministry's website^{ix}.

France is also active in pursuing SME development through the procurement process. In fact, since 2008, France has notably introduced a mechanism aimed at encouraging public purchasers to give preference to innovative SMEs. Moreover, to promote access to public procurement to SMEs, the government has authorised smaller firms to form consortiums to make common bids. In addition to the e-portals made available online in 2008 and 2009 to facilitate SMEs' access to public procurement, a national conference on innovative procurement was organised by *Minefi* in 2014 to facilitate relations between SMEs and public buyers. On this occasion, the *DAJ* made available to buyers and businesses a practical manual on innovative public procurement^x.

Social aspects in procurement have been addressed in more general terms with guidelines focusing on the use by all public purchasers of social clauses of the *CMP* aimed at favouring the employability of the most disabled individuals within central administrations.

Irregularities and findings of national Audit Authorities

Unless it has been required to do so by the Government and the Parliament, the National Court of Audits does not systematically address public procurement in its annual reports. By contrast, the *SCPC*'s 2011 annual report highlights public procurement as an area of risk in terms of transparency and underlines the fact that the existence of highly accurate procedures and regulation do not necessarily prevent fraudulent operations.^{xi}

Furthermore, the circular of 19 May 2009^{xii} takes stock of four years of administrative case law on public procurement by presenting irregularities committed prior to the launch of consultations, during the tender evaluation process and after the choice of contractor. Commonly encountered irregular practices include the award of contract before a prior call for competition, failure to meet the delivery date without a valid reason, or full outsourcing tolerated by the public payer.

Outlook

To improve access of SMEs to public procurement, France has decided to give new impetus to the reform of public procurement started several months earlier, as part of the transposition process of the EU Directive 2014/24/EU. In this regard, a decree was adopted on 26 September 2014 to cap requirements relating to the economic and financial capacity of companies, in order to avoid excluding certain SMEs.

In line with this simplification process, the *Minefi* has published various ordonnances for consultation, with a view to adopting them by July 2015. The first key measure concerns the simplification of the *CMP*, of which nearly 200 pages will be deleted, reducing the number of legislative texts from three to seventeen. At the same time, the *Minefi* is seeking to dematerialise more tenders.

Another important challenge for France will be to preserve local suppliers without transgressing the competitive tendering rules set by the EU. To facilitate this, a practical guide covering social clauses was distributed to local authorities in December 2014 to make them aware of non-price contract award criteria, such as the integration of people excluded from the labour market.

ANALYSIS

Strengths

In a national context characterised by significant budget cuts within public administrations, public procurement has been a focus of reform efforts designed to improve efficiency and to increase value for money. In particular, recent changes to the procurement procedures set out in the *CMP* significantly restrict purchasers' room

for manoeuvre, thereby increasing competition among bidders and reducing the vulnerability of the sector to corruption.

Other important initiatives further underline France's efforts to increase the efficiency of public procurement. Amongst these is the recent implementation of a new central purchasing body, the *SAE*, which should contribute to a further rationalisation of purchases, and thus of public spending. Also, the government's efforts are geared towards the promotion of e-procurement in the pre-award phase, to facilitate electronic process for companies responding to public consultations. Furthermore, France collects public procurement data through the *OEAP*, which could serve as a basis for monitoring the performance of procurement policy.

Another strength of the French system are the innovations going on at the sub-national level. For example, since the 2000s, some regions have implemented qualitative monitoring of public procurement to better tailor their procurement system to the needs of stakeholders. This is the case for Rhône-Alpes, where the Regional Council solicits feedback from economic operators and operational services for up to 20% of their annual procedures.

Weaknesses

Despite the progress made in recent years, public procurement in France continues to suffer structural challenges. Part of the problem lies with the complexity of the procurement rules, and the overlapping responsibilities of the various supportive bodies. As a result, as pointed out by the *SCPC*, "public procurement contracts in France are increasingly prime territory for anti-competitive practices"^{xiii}.

E-procurement constitutes a further area that could be improved upon. Despite governmental efforts to simplify administrative procedures with regard to the electronic submission process, the system remains fragmented, and take-up is marginal. As such, more developed regions, provinces and municipalities continue to use their own e-procurement platforms. Increased integration and better compatibility could reduce the administrative burden for bidders seeking to get engaged in public contracts.

Recommendations

- **Keep it simple:** the high degree of complexity in both the legal and institutional structures that make up France's procurement system are a source of considerable confusion and an opportunity for abuse.
 - Streamline the Public Procurement Code to reduce complexity.
 - Designate a one-stop shop for procurement information (e.g. *DAJ*'s website) and promote its use to contracting authorities and economic operators.
 - Develop a more extensive suite of comprehensive and practical guidance materials to help practitioners navigate the procurement system.
 - Clarify the distribution of functions between the *DGCP*, the *Minefi* and the *DAJ*, and *SAE* and *UGAP* respectively, to reduce redundancies and improve clarity for practitioners.
- **Promote e-procurement:** In France, progress in adopting e-procurement is slow and uneven between regional and local levels of government due to a fragmented system and insufficient promotion.
 - Improve integration of municipal, provincial and regional e-procurement platforms with the national e-procurement platform to reduce administrative burdens for bidders interested in public contracts.
 - Integrate e-procurement into the *DAJ*'s website to promote the use of existing platforms.
 - Promote the use of e-procurement among contracting authorities and economic operators, for example by making of e-procurement tools more user-friendly.

- **Data collection and monitoring:** Data collection by the *OEAP* is currently limited to tenders above EUR 90,000, and only covers a limited subset of topics, significantly limiting the ability of the government to conduct monitoring and assessment at the national level.
 - Expand the mandate of the *OEAP* to collect data on tenders of all sizes, and to publish both raw data and regular analysis.

ⁱ Cordis, Study on French public procurement system, available at:

ftp://ftp.cordis.europa.eu/pub/innovation-policy/studies/6_france.pdf

ⁱⁱ Observatory of public procurement, available at: <http://www.economie.gouv.fr/daj/observatoire-economique-lachat-public>

ⁱⁱⁱ Public Procurement Network (2010), The comparative survey on the national public procurement systems across the PPN

^{iv} Partnership Agreement (2014) for France, in accordance with Articles 14 and 15 of Regulation (EU) N.1303/2013 of the European Parliament and of the Council of 17th December 2013: <http://www.europe-en-france.gouv.fr/Centre-de-ressources/Ressources-reglementaires-et-strategiques/Accord-de-partenariat-2014-2020>

^v Partnership Agreement (2014) for France, in accordance with Articles 14 and 15 of Regulation (EU) N.1303/2013 of the European Parliament and of the Council of 17th December 2013: <http://www.europe-en-france.gouv.fr/Centre-de-ressources/Ressources-reglementaires-et-strategiques/Accord-de-partenariat-2014-2020>

^{vi} OECD (2011), Government at a glance, available at: <http://www.oecd.org/gov/47876453.pdf>

^{vii} Flash Eurobarometer (2013), Business' attitudes towards corruption in the EU.

^{viii} Eco-responsibility platform available at: <http://www.ecoresponsabilite.ecologie.gouv.fr/index.php>

^{ix} Available at: <http://www.developpement-durable.gouv.fr/Commande-publique.html>

^x Ministry of Economy and Finance (2014), Practical guide to innovative public procurement, available at: http://www.economie.gouv.fr/files/files/directions_services/daj/marches_publics/conseil_acheteurs/guides/guide-pratique-achat-public-innovant.pdf

^{xi} Central Service for the prevention against corruption (SCPC) (2011), Annual Report 2011, available at: <http://www.justice.gouv.fr/publications-10047/autres-rapports-dactivite-10287/rapport-du-service-central-de-prevention-de-la-corruption-2011-24367.html>

^{xii} Circular of 19 May 2009 on the organisation, operation and control of endowment, available at: <http://www.legifrance.gouv.fr/eli/circulaire/2009/5/19/ECM0908677C/jo/texte>

^{xiii} Central Service for the prevention against corruption (SCPC) (2007), Annual Report 2007, available at: <http://www.ladocumentationfrancaise.fr/rapports-publics/084000591/>

GERMANY

KEY FACTS AND FIGURES

Key Facts and Figures in Germany						
Overview	Total procurement 401,730,000,000€		Procurement % GDP 15%		2013 GDP 2,809,480,000,000€	Contracting authorities 30,000
Procedures applied	Open 74%	Restricted 2%	Negotiated procedure with call 14%no call 6%		Competitive dialogue 0%	Direct award 4%Other 1%
Share of contract notices by buyer	National 8%		Regional/local 43%		Body governed by public law 20%	Other 29%
Contract type	Services 29%		Works 44%		Supplies 27%	Framework agreement 13%
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met
E-procurement adoption	E-notification Mandatory		E-access Partially mandatory		E-submission Mandatory	Uptake rate 10%
Perceived corruption	Corruption widespread in society Businesses 58%		Individuals 59%		Corruption widespread in procurement At national level 37%	At local/regional level 49%
TED indicators	Value of tenders 25,691,160,679€		Of total procurement 6%		# contract notices 24,960	# contract awards 20,734
Other indicators	Received single bid 12%		# days for decision 57.9		Price only criteria 52%	MEAT criteria 48%
	Won by foreign firms 2%		Related to EU funds 5%		Joint purchase 4%	Central purchasing Yes, multiple

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Germany has a long public procurement legal tradition grounded primarily in the budgetary systems of the various municipalities, regions and ministries. As a result, the German approach to procurement is strongly focused on economic efficiency. More recently, policies aimed at fostering secondary procurement objectives such as innovation and environmental sustainability have been introduced.

The procurement system is also highly decentralised and often quite complex due to Germany's federal system. It is subject to a dispersed regulatory framework that comprises delegated acts, such as ordinances and rules by non-governmental bodies, and allows for a substantial level of autonomy to the German federal states. According to estimates, some 58% of all procurement activity is done at the municipal level, and 30% at the level of the federal states, leaving just 12% of procurement to be distributed federally.ⁱ

Irregularities in procurement are not considered to be a major concern due to strong administrative capacity on the one hand, and to adequate measures for preventing corruption on the other hand. Germany's effective anti-corruption framework is reflected in the low perception of corruption in public procurement compared to the EU average.ⁱⁱ Nevertheless, Germany does publish a disproportionately low number of tenders at EU level, which is a concern particularly given the size of government spend.

DESCRIPTION OF FEATURES

Legal features of public procurement system

In Germany, public procurement is governed by different sets of rules depending on whether a tender falls above or below the EU thresholds. Above the EU thresholds, the Act Against Restraints of Competition (*GWB*) transposes the general provisions of

Directive 2009/81 and the remedies Directives 92/50 and 89/665 into national law. Further provisions of Directive 2004/18/EC are transposed in the Public Procurement Regulation (*VgV*). Finally, additional provisions transposed from Directive 2004/18/EC are laid out in specific delegated legislation, including the Regulations on Contract Awards for Public Works (*VOB/A*), Regulations on Contract Awards for Public Supplies and Services (*VOL/A*), and the Regulations on Contract Awards for Independent Professional Services (*VOF*). In addition, the Utilities Regulation (*SektVO*) and the Defence and Security Procurement Regulation (*VSVgV*) transpose the Utilities Directive 2004/17/EC and the Directive on Defence and Security Procurement 2009/81/EC into national law and rank as *lex specialis* in the utilities and defence or security domain respectively.

By contrast, public procurement below the EU thresholds is governed by national budgetary law at the federal level. In some federal states, below threshold public procurement is governed by a system of state level legislation, while others govern via decree or administrative rules. Some municipalities also have their own laws, rules and regulations. Aspects such as green and social procurement are often included at this level.

Institutional system

The main institution responsible for public procurement policy is the Federal Ministry of Economy and Energy (*BMWi*), as it decides on the principles of public procurement and drafts primary legislation. The *BMWi* is also the main contact point for the European Commission and other international bodies regarding the regulatory framework for public procurement. In the area of public works procurement, the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (*BMUB*) is the institution in charge. The Federal States Committee on public procurement further ensures regular exchange with the Federal States on the latest aspects of procurement policy and practice, including procurement in the context of EU Funds.

A unique element of Germany's public procurement institutional set-up are the so-called Public Procurement Committees. These bodies are a forum for stakeholders from federal, federal state and local administrations, public-private organisations such as Chambers of Industry and Commerce, and the private sector. They contribute to the drafting of procurement rules taking into account private and public sector needs. The German Committee for Supplies and Services Tendering and Contract Regulations (*DVAL*) works on procurement rules for supplies and services, while the German Committee for Construction Tendering and Contract Regulations (*DVA*) contributes to procurement rules for public works.

Germany has not one, but four central purchasing bodies at the federal level, which are thematically specialised. The Federal Financial Directorate Southwest (*BFD Südwest*) procures for the tax administration. The Federal Institute for Materials Research and Testing concludes framework agreements for specific technical product groups. The Federal Office for Equipment, IT Technology, and Use of the German Armed Forces is mainly responsible for procurement for the German military. Finally, the Central Purchasing Body of the Ministry of the Interior plays the most important role as it procures for all federal agencies, manages the main e-procurement platform and carries out other supportive functions. Furthermore, there are central purchasing bodies at regional level, too, such as the Central Purchasing Body in Rheinland Pfalz.

The distinction between procurement above and below EU thresholds is also reflected in the review system and their related bodies. Above EU thresholds, the procurement review chambers are administrative review bodies in charge of the first instance review procedure. Each Federal State has such a procurement review chamber in addition to the federal procurement review chamber, which is located within the Federal Competition Authority. Appeals of procurement review chambers' decisions

can be made to a specialised procurement-senate in the respective Higher Regional Courts. In contrast, below the EU thresholds bidders who wish to dispute a decision need to file a suit for damages before the civil courts. Furthermore, most federal states have introduced review bodies for contracts below EU thresholds called *VOB* or *VOL* Offices.

Supervision of procurement in terms of cost effectiveness and compliance is carried out by the Audit Courts of the German Federal States, as well as by the Federal Court of Auditors.

Key issues that have a bearing on administrative capacity

Human resources: Despite the decentralised nature of procurement responsibilities and institutions in Germany, contracting authorities typically devote substantial resources to salaries and training, resulting in a relatively strong administrative capacity. In organisational terms, procurement at the municipal level is organised as a mixture of centralised and decentralised structures, but is rarely entirely centralised.

Structures: Germany has a well-developed system of support to tenderers that comprises dedicated advisory structures and training institutions. Notably, contracting authorities frequently collaborate with local and regional Chambers of Commerce via so-called Procurement Advisory Offices, joint public-private ventures that provide support functions to both potential suppliers and contracting authorities. For instance, in 2013 Procurement Advisory Offices organised 306 seminars and provided over 25,000 consultancy services nationallyⁱⁱⁱ. Importantly, they also help businesses to acquire certification as a pre-qualification to tender. The pre-qualification allows economic operators to submit paperwork in advance to the Procurement Advisory Office. If approved, the supplier receives a certification valid for one year that substitutes the submission of paperwork to the contracting authority.

Following the recent implementation of provisions regarding environmental compatibility, sustainability and life-cycle costing in the *VgV*, the central purchasing body of the Ministry of the Interior has set up a Competence Centre for Sustainable Public Procurement^{iv} that maintains an information platform, gives advice and organises trainings. Similarly, the Centre of Excellence on Public Procurement^v has been established in order to strengthen the influence of public procurement on innovation.

Training: Training on public procurement is primarily available from specialised private providers of continuing education. These courses cover a wide range of topics such as EU structural policies and German procurement law.

The Federal Academy of Public Administration, the Federal Government's central institution for further training, offers specialised training and seminars for contracting authorities regarding procurement matters via its interactive training system and virtual learning platform. Moreover, some public universities, including the University of Hannover and the Academy of European Law in Trier also offer procurement-specific coursework.

Systems/tools: The central purchasing body of the Ministry of the Interior publishes specific guidelines for IT purchases. These guidelines were introduced in the 1980s in order to guarantee maximum consistency in IT purchases of the German public administration.^{vi} Other guidance material is available on strategic public procurement, such as the EC Guide on Socially Responsible Public Procurement (SRPP)^{vii}, the administrative regulation on the procurement of energy efficient goods and services^{viii}, and the Federal Government's Procurement Manual.

E-procurement

E-procurement policy is largely defined by the Ministry of the Interior as part of the digitalisation of government programme 'Digital Administration 2020'. Though fragmented, the German e-procurement system is relatively advanced, particularly at the federal level.

E-notification is mandatory at federal level and in some federal states. Federal agencies are required to publish their calls for tenders on the federal portal, which is also available to regional and municipal authorities on a voluntary basis. E-submission is mandatory for federal agencies via the e-procurement platform¹. The four central purchasing bodies make use of the main centralised e-procurement platform. There are also a number of e-procurement platforms available at the regional level. As a result of a number of federal state laws,^{ix} the acceptance and usage of those platforms is increasing, particularly for tenders below the EU thresholds. On the federal level, e-submission uptake is even higher.

The central purchasing body of the Ministry of the interior also operates an e-catalogue and e-ordering platform that manages large framework contracts for standardised goods and services and acts as a virtual department store for contracting authorities². About 480 registered federal authorities can buy over 70,000 standardised goods and services.^x Germany's four federal central purchasing bodies are responsible for the framework agreements in their respective area of competence.

In order to guarantee interoperability among the various platforms, the German government has developed a common e-procurement standard called *XVergabe*, which ensures the compatibility of data processed by diverse procurement platforms through all stages of the procurement cycle from e-notification to e-award. The technical feasibility and the framework conditions for *XVergabe* have been established and implementation is due shortly.

Corruption

Germany has a strong anti-corruption system relying on adequate administrative capacity, effective oversight mechanisms and law enforcement. The success of this anti-corruption approach also covers public procurement. The perception of corruption in public procurement is low, even though some weaknesses persist notably in the area of major construction works.^{xi}

The 2004 Guidelines for the Prevention of Corruption introduced several preventive measures in public procurement that apply to federal bodies. These include the separation of the three phases of the procurement process, i.e. the preparation and planning phase, the actual purchasing, and the billing and settlement phase. Also the 'four-eyes principle' and the regular rotation of personnel were implemented.^{xii} If the contracting authority opts for any procedure other than the open procedure, the decision has to be documented. In addition, some federal states keep track of bidders that have been excluded from procurement procedures.

While public procurement remains an area of vulnerability according to the 2013 Report on the Prevention of Corruption in the Federal Administration, no actual cases of procurement-related corruption were reported in that year.^{xiii}

In fact, many efforts are made at the federal level to prevent corruption. For instance, a corruption risk monitoring tool is used to assess corruption risks of a given activity,

¹ <https://www.evergabe-online.de>

² <http://www.kdb.bund.de/>

notably procurement. If an activity qualifies as vulnerable, risk mitigation measures are adopted, e.g. background checks of newly hired employees. Moreover, the Ministry of the Interior regularly performs checks of on-going tender procedures both at random and based on tip-offs from whistle-blowers. In order to maximise the effectiveness of oversight, it is empowered to directly access procurement records without having to notify, and indeed without being detected by, the contracting authority.

Europe 2020 Agenda

Germany's public procurement system has been recognised as an efficient instrument to attain the objectives of the single Market and the current political objectives, such as socio-economic goals with respect to SME and sustainability requirements. To this end, several legal initiatives have been implemented to strengthen ecologically and innovative aspects in the award procedures for more sustainable products.

The federal, regional and communal authorities are working together within the Alliance for Sustainable Procurement in order to increase the percentage of sustainable goods purchased. Energy efficiency is a major issue in Germany's public procurement framework, expressed as a mandatory criterion in the award procedure. An administrative regulation has been published in order to facilitate the inclusion of energy efficiency in the award of contracts.^{viii} Other guidelines that promote the Europe 2020 objectives have been issued, notably an inter-ministerial decree for the procurement of wood products.^{xiv} The Competence Centre for Sustainable Procurement also supports contracting authorities by centralising useful information and providing specific advice. Sustainable IT purchases are supported via the *ITK* project.^{xv}

Innovation procurement is fostered by the Centre of Excellence on Public Procurement run by the Federal Materials Management, Purchasing and Logistics Association. Contracting authorities compete for the "Innovation Creates a Lead" prize each year, awarded to the most innovative procurement procedure or the most innovative product. Current proposals for the modernisation of the procurement law framework are concentrated on integrating innovation criteria in procurement procedures.

The *GWB* already foresees that the interests of SMEs shall be taken into account in the procurement process through the splitting of contracts into various lots. As this requirement can be challenging for contracting authorities, the *BMWi* has developed an electronic tool that supports the generation of lots.^{xvi}

Irregularities and findings of national Audit Authorities

Irregularities in public procurement are sporadic in nature, as shown by the 2013 annual report of the German Court of Audits. Most of the irregularities were related to public works. Findings included that prevention of corruption was weakly implemented in a construction project at the federal state level. On the other hand, the Court of Audits noted for example that the Federal Agency for Real Estate Management introduced new procurement guidelines safeguarding transparency and economic efficiency of its procurement.^{xvii}

The public procurement tribunals decided on 817 review procedures in 2013 worth a total volume of EUR 3 billion. The tribunals decided on matters such as the applicability of procurement law, in particular the European framework for in-house operations the lawfulness of joint bidding and the contract award criteria.^{xviii}

Outlook

Germany is taking advantage of the opportunities deriving from the transposition of the new EU public procurement Directives. On 8 July 2015, the federal cabinet passed the Draft bill for the Modernisation of Public Procurement Law, which would reform the

public procurement framework to be simpler and better harmonised. The reform plan includes the consolidation of the *VOL/A* and the *VOF* regulations into the *VgV* law. However, the general regulatory framework of the *GWB* and several procurement regulations, as well as additional legislation on the federal state level will be maintained. The new legislation is intended to improve data collection and harmonisation over a range of procurement related topics, including the use of green and social award criteria, in order to provide a more accurate and comprehensive picture of procurement nationwide.

Subsequent reforms are intended to address the regulatory framework specific to public procurement below EU thresholds.

ANALYSIS

Strengths

Overall, the public procurement framework in Germany is effective to achieve the primary goals of realising value for money and promoting open and fair competition, and the subordinated goals such as the Europe 2020 priorities. This is due in large part to the high degree of competition, a solid anti-corruption framework and a continuous development of skills.

Germany's procurement system is characterised by a relative high use of open procedures. This is engrained in the understanding of public procurement as part of competition law on the one hand, and on the other is anchored in its legal system through the so-called 'principle of preference for the open procedure'. The average level of competition for contracts is above the EU average, with 7.5 bids submitted per tender compared to 5.1 EU-wide. More competition usually leads to stronger market efficiency and more economic purchases. The singular emphasis on open procedures is expected to recede with the transposition of the 2014 Directives, which promote the use of other competition compatible procedures.

German procurement law requires the division of contracts into lots in order to facilitate the participation of SMEs in the procurement process. The implementation of this provision is challenging for contracting authorities and therefore requires particular attention in terms of assistance in the design of tenders. Nevertheless, the legal requirements result in an increasing participation of SMEs.

Germany's review system introduced by the remedies Directive is considered a strength of the procurement system. In fact, prior to the remedies Directive, legal protection for public procurement was not specifically regulated. Thus, the introduction of specialised public procurement review chambers institutionalised legal protections and ensures legal certainty with respect to the interpretation of procurement law. Another positive development has been the professionalization and specialisation of both the legal profession and the tribunals resulting in high quality judgements and overall high legal certainty. However, a comparable specialised review system is not available below EU thresholds. Expanding the use of specialised review tribunals to include below threshold contracts could result in further gains in transparency, non-discrimination and equal treatment.

A further strength of the German procurement system is the strong anti-corruption framework at federal level. In the procurement field, this includes the preference for the open procedure, 'four-eyes' and transparency, the separation of planning, award and billing, as well as the accurate and prompt documentation of the procurement procedure.

Dedicated competence centres develop specialised skills in some specific area of public procurement and therefore contribute both to achieve the strategic goals, such as

green, social, innovation policy, as well as the improvement of public procurement skills of the relevant officials.

Weaknesses

The most significant weaknesses in the German procurement system are the inefficiencies resulting from the separation of legal and institutional structures both among and between the various federal and regional administrations. Duplication of efforts, e.g. among the four federal level centralised purchasing bodies and their numerous regional counterparts, creates substantial costs for administrations and economic operators. Potential bidders are forced to monitor multiple platforms for potential contracts in a given region, and a cottage industry of specialised service providers has sprung up just to help economic operators navigate the maze of sites. From the perspective of the buyers, regional and local contracting authorities are legally barred from taking advantage of the federal e-marketplace, cutting them off from the benefit of its stronger market position. Incongruities in procedures and requirements among product categories and between the various kinds of contracting authorities impose additional management and compliance costs.

Lack of harmonisation is also a key barrier to better data collection. The German system currently impedes the collection of comprehensive, nationwide statistics on procurement, and on the implementation and effectiveness of procurement policies. The *BMWi* has launched a study addressing the relevant issues, including e-procurement¹. However, the costs and complexity of data collection and compilation would be considerably reduced by also addressing the complexity of the system.

Finally, the fact that Germany submits a disproportionately low number of tenders for publication in TED is also a weakness. At 1.1% of GDP, or 6.4% of public expenditure (excluding utilities), Germany registers the lowest values of contracts published under EU rules. The average value of contracts published under EU procurement Directives amounts to 3.2% of the GDP or 19.1% of the public expenditure.^{xix} DG REGIO audits have identified factors which could contribute to the low publication rate. For example, the way that some professional services are classified under the VOF may allow for greater use of restricted and negotiated procedures. However, the estimated magnitude of the factors identified is not sufficient to explain the low publication rate. The federal government has launched a study examining the underlying causes of this issue.

Recommendations

- **Improve Coordination:** Germany's federal system results in redundancies and conflicts among institutions at the federal and federal state levels, and among the federal states, resulting in inefficiencies, particularly for economic operators.
 - Incentivise greater coordination between the federal and federal state level governments to improve harmonisation of rules and systems.
 - Develop interoperability among the various e-procurement platforms to facilitate searching for and bidding on tenders.
- **Improve data collection:** Germany currently does not have a system for collecting comparable procurement data at the national level.
 - Implement standardised data collection rules and a central collection point to produce accurate, timely and comparable procurement data nationwide.
- **EU tenders:** Germany has the lowest value of contracts published under EU procurement Directives (1.1% of GDP, against an EU average of 3.2%), which limits competition and access to markets.
 - Incentivise increased publication of tenders on EU-wide platforms.

- ⁱ Kienbaum (2014), *Zwischenbericht, Statistik der öffentlichen Beschaffung in Deutschland – Grundlagen und Methodik (Arbeitstitel)* (Interim Report, Statistics of public procurement in Germany - Basic concepts and methodology).
- ⁱⁱ Flash Eurobarometer (2013), Business' attitudes towards corruption in the EU
- ⁱⁱⁱ Available at: <http://www.abst.de/>
- ^{iv} *Beschaffungsamt des BMI - Kompetenzstelle für nachhaltige Beschaffung* (Procurement Office of BMI - Competence Centre for Sustainable Procurement), available at: <http://www.nachhaltige-beschaffung.info>
- ^v *Kompetenzzentrum Innovative Beschaffung* (Competence Center for Innovative procurement), Available at: <http://www.koinno-bmwi.de>
- ^{vi} *Unterlage für Ausschreibung und Bewertung von IT-Leistungen* (Document for tender and evaluation of IT services), currently: UfAB V Version 2.0.
- ^{vii} European Commission (2010), *Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement*.
- ^{viii} Federal Gazette of Germany (2013), *Allgemeine Verwaltungsvorschrift zur Beschaffung energieeffizienter Produkte und Dienstleistungen (AVV-EnEff)* (General administrative regulation for the procurement of energy efficient products and services).
- ^{ix} Public Procurement Law of the state Northrhine Westfalia, available at: <https://www.vergabe.nrw.de/faq/tariftreue-und-vergabegesetz-nrw>
- ^x European Commission (2015) DG MARKT, E-procurement Uptake.
- ^{xi} Transparency International (2012), *Nationaler Integritätsbericht Deutschland* (National integrity report), p.72–75.
- ^{xii} *Bundesministerium des Inneren* (Federal Ministry of the Interior) (2004), *Richtlinie der Bundesregierung zur Korruptionsprävention in der Bundesverwaltung* (Federal Government Directive to prevent corruption in the federal government).
- ^{xiii} *Bundesministerium des Inneren* (Federal Ministry of the Interior) (2014), *Korruptionsprävention in der Bundesverwaltung: Jahresbericht 2013* (Prevention of Corruption in the Federal Administration: Annual Report-2013)
- ^{xiv} Available at: http://www.bmel.de/DE/Wald-Fischerei/02_Internationale-Waldpolitik/texte/HolzbeschaffungErlass.html
- ^{xv} The *ITK-Beschaffung* project, available at: <https://www.itk-beschaffung.de/>
- ^{xvi} Bearing Point, et Orrick (2014), Background study for the development of the tool: *Auftragsberatungsstellen(job consulting services), Wie kann § 97 Abs. 3 GWB hinsichtlich der Pflicht zur Aufteilung eines öffentlichen Auftrags in Teillote rechtssicher in die Beschaffungspraxis überführt werden?* (How the ARC deals with the obligation of division of a public contract into partial lots in the procurement practice?), available at: <http://www.bmwi.de/DE/Themen/Wirtschaft/Wettbewerbspolitik/oeffentliche-auftraege.did=640804.html>
- ^{xvii} *Bundesrechnungshof, Bemerkungen 2014 zur Haushalts- und Wirtschaftsführung des Bundes* (Federal Court remarks on budget and financial management of Federal institutions), p. 44, 52.
- ^{xviii} *Das Bundeskartellamt* (German competition authority), *Jahresbericht 2013* (Annual report 2013), available at: http://www.bundeskartellamt.de/DE/UeberUns/Publikationen/Jahresbericht/jahresbericht_node.html
- ^{xix} European Commission (2015), Country Report Germany Including an In-Depth Review on the prevention and correction of macroeconomic imbalances.

GREECE

KEY FACTS AND FIGURES

Key Facts and Figures in Greece						
Overview	Total procurement 16,230,000,000€		Procurement % GDP 9%		2013 GDP 182,438,300,000€	Contracting authorities N/A
Procedures applied	Open N/A	Restricted N/A	Negotiated procedure with call N/A no call N/A		Competitive dialogue N/A	Direct award N/A Other 0%
Share of contract notices by buyer	National N/A		Regional/local N/A		Body governed by public law N/A	Other 0%
Contract type	Services N/A		Works N/A		Supplies N/A	Framework agreement 6%
Ex ante conditionality criteria as of 2014	EU rules Not met		Transparency Not met		Training Fully met	Admin. capacity Not met
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Planned	Uptake rate N/A
Perceived corruption	Corruption widespread in society Businesses 99%		Individuals 99%		Corruption widespread in procurement At national level 76%	At local/regional level 94%
TED indicators	Value of tenders 3,398,202,777€		Of total procurement 21%		# contract notices N/A	# contract awards N/A
Other indicators	Received single bid N/A		# days for decision N/A		Price only criteria N/A	MEAT criteria N/A
	Won by foreign firms N/A		Related to EU funds N/A		Joint purchase N/A	Central purchasing No

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

The impact of the 2008 economic crisis has been harder on Greece than perhaps any other country, with GDP falling by nearly 30% between 2007 and 2013. As part of the coordinated response effort, the Greek government agreed to undertake a major process of structural reforms in order to increase efficiency of government. In this context, procurement features prominently among the functions to be reformed, having been identified by the OECD as one of the top drivers of administrative costsⁱ.

Prior to the crisis, the Greek procurement system was marked by its singular complexity among both legal and institutional structures. Substantial progress has already been made in consolidating and rationalising responsibilities, including through the creation of a single public procurement authority responsible for a wide range of policy, executive and oversight functionsⁱⁱ.

In addition, the procurement system features prominently in a government-wide push to increase transparency and combat corruption. This includes the rapid adoption of e-procurement and online reporting tools, which have substantially increased the efficiency, openness, and ease of oversight of the system.

DESCRIPTION OF FEATURES

Legal features of public procurement system

The Greek procurement legal system is uniquely complex, being dispersed among as many as 400 laws, regulations, and presidential decreesⁱⁱⁱ. Further contributing to the complexity is a lack of uniformity, as different laws and regulations employ a number of concepts and definitions that diverge from those inherent in the EU Directives. For example, there is no single definition of an awarding authority in Greek law, meaning that different classifications are used for different purposes^{iv}.

In 2014, the Greek government implemented a new law (law 4281/2014), which consolidated the vast array of regulations on procurement into a single framework covering virtually all legal aspects of the procurement environment. Despite enactment, implementation is not yet active as a number of ministerial decrees and other regulatory initiatives have to be introduced first. In addition to bringing together all previous regulations, the new law makes decisive steps towards simplification and modernisation of the procurement system in Greece, notably by cancelling procurement privileges, which currently allow some actors, such as State-owned companies, to follow their own procurement procedures. The deadline for passing the necessary secondary laws is January 2016.

Below the EU thresholds, awarding authorities have the right to use open, restricted, or negotiated procedures, with or without publication of notice. For goods, services and work contracts below EUR 60,000, awarding authorities can choose to use simplified bidding procedures under certain conditions. Direct award is permitted below EUR 20,000 for State authorities, and below EUR 15,000 for local and regional authorities.

Institutional system:

As with the legal system, institutional responsibilities have traditionally been diffuse, although efforts have been made toward greater centralisation. In 2011, the government established the Hellenic Single Public Procurement Authority (SPPA) to be the primary procurement organ. Its responsibilities include managing central government procurement of works, supplies and services, providing policy advice to the legislature, providing guidance to awarding authorities on the application of procurement law and regulation, and authorising the use of special procedures, such as negotiated procedure without publication notice. The SPPA also plays a supervisory role by monitoring and evaluating awarding authorities' decisions for effectiveness and conducting random checks of on-going procedures for compliance with the law^v. The Authority is fully operational, with a staff of 100 employees, and is in an on-going process to obtain the technical capacity, including servers and experts, necessary to become the focal point of all e-platforms available in Greece for e-procurement.

The General Secretariat for Public Works (GSPW) in the Ministry of Economy, Development and Tourism is responsible for public works procurement and public services contracts relating to public works, as well as for the regional authorities. The Ministry's responsibilities include the publishing and evaluation of calls for tenders and submitted offers, as well as the awarding of procurement contracts. It also makes law and regulations propositions concerning public work contracts, and it furthermore provides awarding authorities with technical specifications and guidelines regarding mandatory implementation^{vi}. It represents the administrative organ and hence supervises the construction activity in the country.

The General Secretariat of Commerce (GSC) also within the Ministry of Economy, Development and Tourism is the owner and coordinator of the e-procurement system and is also responsible for public supplies and services. Moreover, the Ministry of Interior and Administrative Reconstruction established in June 2011, has some jurisdiction over procurement as part of its focus on public organisation and administration matters, including the relations between the State and society, as well as it coordinates policies concerning the e-governance and administrative reforms^{vii}.

As far as compliance is concerned, the Administrative Authority of Public Contracts is the institution in charge. It is responsible for the supervision, control, and conduct of the tendering processes and conclusions of public contracts, as well as to ensure the compliance with the Greek and European legislation^{viii}.

In case a contract exceeds one million Euros in value, the contracting authority is obliged to submit all relevant documents and papers to the Court of Auditors, which

will check the contract's legality, and efficiency. On the local level, there are Government Representatives ("Secretary Generals of the Region"), who examine the decisions taken by the local authorities during the award procedure. In case there are irregularities during the execution of the contract, the Body of Inspectors of Public Procurement Works will control the respective contracting authorities^{ix}.

For the implementation of procurement procedures in municipalities, each one has a dedicated Department of Finance and a Procurement Office. They are in charge of the implementation and coordination of the public procurement procedures, according to the "Procurement Regulation of Local Authorities"^x.

Administrative courts have primary jurisdiction to review contracts for compliance with the law. Actions for the annulment of harmful contracting decisions can be lodged before the administrative courts of appeal of the same area of the court of first instance. Decisions taken on appeal are subject to review by the Administrative Court of Appeals depending on the contracting authority, and by Council of State whose ultimate judgment cannot be challenged. Legal actions related to the publication of calls for tenders as well as award decisions are frequent, making substantial demands on the administrative courts and contributing to the above average length of Greek procurement procedures.

Key issues that have a bearing on administrative capacity

Human resources: The Greek administration has clearly identified the need to expand human resources in procurement in order to improve capacity. However, binding budgetary constraints limit the ability to hire additional staff.

As of 2013, the SPPA had a staff of 100, more than a third of whom are advanced degree holding specialists in legal, economic or engineering areas with substantial procurement backgrounds.

Structures: The Public Procurement Monitoring Unit (PPMU) is part of the Centre of International and European Economic Law in Thessaloniki. The PPMU provides Greek contracting authorities with specialised and prompt legal advisory support in all phases of awarding public works and technical services contracts falling within the scope of EU Law on Public Procurement.

In this context, the PPMU's mission is to ensure the correct application of EU Law in public contract award procedures, to contribute to the establishment of transparency and fair competition in public procurement processes, to promote the effectiveness and best value for money in public procurement procedures, and to disseminate knowledge by promoting academic research, encouraging dialogue in its field of expertise^{xi}.

Training: Greek authorities organise training seminars for contracting authorities as well as economic operators. In July 2011, the European Commission set up the Task Force for Greece (TFGR), to provide the Greek public authorities with technical assistance in order to enable them to implement the reforms under their economic adjustment programme^{xii}. Among its tasks, the TFGR also implemented over 400 missions and 35 policy workshops on various domains in Greece, including public procurement.

Systems/tools: The SPPA publishes a number of tools designed to promote standardisation among awarding authorities, including rules and best practices guides, interpretations of laws and regulations, standardised tender documents, procurement plans, and technical specifications.

The e-procurement platform also provides e-learnings and information manuals^{xiii}. Moreover, PPMU provides a list of public procurements Directives and handbooks on how to navigate and follow the process^{xiv}.

E-procurement

The Greek e-procurement system is relatively advanced, offering a range of services to awarding authorities and bidders. It applies to public supplies and public services contracts but it does not apply yet to public works. The central portal, known as Prometheus, contains links to all the key platforms, as well as training and guidance materials, legal materials, and statistical reports^{xv}.

The key e-procurement platform is the National Electronic Public Procurement System (ESIDIS), which offers e-notification, e-access, and e-submission. A blanket government mandate for all three categories was phased in for goods, services and works over the course of 2014 for all contracts over EUR 60,000^{xvi}. For the post-awarding procedure, the Greek Government has established electronic tools, such as e-auction, e-catalogue, e-ordering, e-payment and e-archiving. Use of these tools is not mandatory to this date^{xvii}.

Prometheus also hosts links to the Central Electronic Registry for Public Procurement (CERPP), which serves as a transparency register. All procurement notices worth EUR 1,000 and above must be published on this platform^{xviii}. Furthermore, there is a search engine for open public data, *UltraClarity*, which contains all Greek open Government documents, including relevant data and information on tenders and procurement procedures. The portal was established with the objective to promote transparency among the Greek citizens and to encourage the use of public data.

Corruption

Greek authorities have repeatedly identified corruption as a significant issue impacting the public administration, and particularly the procurement process. In the aftermath of the 2008 financial crisis, the fight against corruption was given a new impetus both due to the severe budget constraints placed on the government and the conditions of international financial assistance. As a result, Greece has undertaken numerous reforms in recent years to increase transparency and reduce opportunities for corruption^{xix}. For example, a 2010 law obliges all public institutions and authorities to publish their decisions, including on public contracts, online on the so-called Clarity Programme website¹.

In 2013, the Ministry of Justice, Transparency and Human Rights developed a national anti-corruption plan called "TRANSPARENCY", which laid out a detailed plan to implement more effective monitoring and supervision processes, and recommended the creation of a special anti-corruption public prosecutor^{xx}. Two such offices have been established in Athens and Thessaloniki, focusing exclusively on investigating corruption^{xxi}.

Meanwhile, there has also been a push to further consolidate the legal system governing procurement in order to reduce gaps and overlaps that give practitioners undue discretion in applying procurement processes, creating the opportunity for corruption. On a similar note, the push to move all procurement onto electronic

¹ <https://diavgeia.gov.gr/>

platforms is also expected to contribute to the transparency of the process, and thus make corruption easier to detect and prosecute.

In 2015, Greece abolished the office of the National Anti-Corruption Coordinator and shifted the competences in anti-corruption to the political level by appointing a Minister of State for Combating Corruption. Upon his assignment, he made headlines by declaring that corruption was endemic to the procurement process, and included a system of kickbacks worth an average of 2% to 2.5% per contract^{xxii}. Consequently, he announced the upcoming adoption of several measures geared to tackle corruption, including the investigation of all public contracts, an increase in the severity of criminal penalties, and a policy of voiding overpriced contracts^{xxiii}. A subsequent change in the institutional setting occurred in September 2015, when competences moved to the office of an alternate Minister of Justice.

An updated version of the 2013 National Plan against corruption was published in August 2015 and contains an ambitious timeline for relevant anti-corruption actions^{xxiv}. Public procurement is recognised as a high-risk area that needs a specific strategy and action plan to be adopted by the end of 2015.

Europe 2020 Agenda

The EU has specified in various Directives the goal of having a 50% share of Green Public procurement (GPP) by 2010. However, despite this legislation, the Greek public authorities have not yet reached this target. The percentage of contracts that are compliant with the green procurement criteria is below 20%, while the national Greek GPP plan is still being elaborated^{xxv}. Nevertheless, environmental aspects have been included in the Greek Presidential Decrees (60/2007, 59/2007), and with the European Directives and Regulations, the Greek public authorities have become more strict, especially in the field of their energy performance of public and private contracts for procurement of buildings, and green electricity among other areas^{xxvi}.

Irregularities and findings of national Audit Authorities

Greek oversight bodies have identified a number of persistent, recurring irregularities and issues that have an impact on the economic efficiency of procurement processes, effective use of national and EU funds, and ease with which potential contractors do business with the government. According to the 2013 Supreme Court of Audit report^{xxvii}, which covers 2011 data, the most common irregularities include artificially splitting contracts to remain below tender thresholds, costs that unjustifiably exceed the standard rates set out by the SPPA, particularly for medical supplies, and unauthorized direct award of additional work or extension of contract to an existing contractor in violation of contract deadlines or cumulative award limits.

As part of its oversight function, the SPPA has also identified a number of recurring irregularities, including discrepancies between published notifications and actual tendering documents, unjustified invocation of urgency in order to bypass tendering requirements and unauthorized extension of contracts^{xxviii}. Systematic irregularities have been a barrier to both EU funds management, and payments. In 2013, Greece was subject to the second highest number of financial corrections in the EU. In addition, in 2014 Greece was reported to the European Court of Justice for a potential violation of non-discrimination and equal treatment rules (Directive 2004/18/EC) due to its company classification system^{xxix}.

Outlook

Considerable efforts have been carried out to improve the procurement system, but given the political unrest, the outlook remains uncertain.

The most promising agenda item in Greece's near-term outlook is the effective implementation of the new procurement law (4281/2014) by 2016, which still requires follow-up actions by the SPPA. Once implemented, this law should dramatically simplify the current legal and regulatory landscape down to a single set of procurement processes for services, goods, and works in line with EU norms. It would also substantially advance the standardisation and centralisation of procurement functions in the SPPA, unify reporting and publication requirements to a single system under the CERPP, and complete the transition to a fully digital procedure. Full implementation of the law is dependent on the enactment of a number of supporting decrees and regulations, a process which remains far from complete.

In addition, the Greek government is obliged by their partnership agreement with the Commission to transpose the 2014 procurement directives by the end of January 2016.

Over the medium term, the SPPA is working with key stakeholders to develop a new national strategy for procurement, which will set public procurement policy over the coming years. At the same time, the SPPA is cooperating closely with the GSC and the GSPW to design an integrated procurement management training program to standardise and systematise the formation of procurement practitioners.

Finally, for the longer term, the government is working to increase centralisation through greater use of framework contracts for the central government services and commodities in order to achieve economies of scale, and to reduce the number of awarding authorities from 7,000 to 700^{xxx}.

ANALYSIS

Strengths

The recent economic crisis has been a major catalyst for structural reforms in Greece, many of which have improved transparency and accountability in procurement. These concern in particular the establishment of the CERPP and the implementation of the e-procurement platform in 2013, which publishes all stages of procurement procedures for contracts with a value of EUR 1,000 and above. These platforms in particular contribute to a higher level of transparency with regards to contracts and payments, as the information are made available for anybody, and have been rapidly made a mandatory part of doing business for the government. These reforms were made possible in large part thanks to the involvement of the on-site EC staff from the TFGR.

In addition, the creation of the SPPA is a major step forward in the centralisation and professionalisation of the procurement process. The full time professional staff of the SPPA have increased standardisation in two ways: first by managing central contracts in-house; second, by providing authoritative guidance to contracting authorities nationwide. Perhaps most importantly, they are leading the push to dramatically simplify the jungle of laws and regulations governing Greek procurement. In this respect, the role of the TFGR has been crucial in providing both the guidance and motivation necessary to get these reforms enacted.

Finally, a number of reforms were passed to combat corruption among officials by introducing harsher sentences for officials convicted of corruption and eliminating political immunity from sanctions such as travel restrictions and asset seizures.

Weaknesses

The key weakness of the Greek procurement system is the overly complex system of laws and regulations governing its exercise, which underlies many of the issues adversely affecting outcomes. First and foremost, complexity increases the amount of

discretion awarding bodies have in tendering and awarding contracts, obscure practices, and complicates oversight, all of which encourage corruption. A simpler, more standardised system would present fewer opportunities for corruption, and be easier to monitor for irregularities.

Second, the complexity of the system makes it very costly to administer, reducing efficiency. In addition, delays in delivering public works and supplies not only increase the cost of the contract but also deprive the beneficiaries of public goods and undermine development.

Regular, comprehensive training of practitioners and oversight personnel is essential to the operation of any procurement system. The more complex the regulatory system is, the more extensive, and thus expensive, the training must be. The same relation holds true for the administration of contracts, and oversight of activities. Managing complexity is costly.

Finally, the complexity of the procurement system imposes another kind of costs on suppliers and on the State by contributing to an excess of disputes and appeals. The lack of clarity in how to apply the regulations, and in which regulations to apply, increases the incentives for aggrieved failed bidders to take their case to court, delaying the process and creating considerable financial burdens on the State.

Of course, complexity is not the only issue. Another important barrier to greater efficiency and fairness is the sensitivity of the process to political needs. For example, Greece is one of the few MS in which the head of the Supreme Audit Office is appointed by the Prime Minister and answerable to the executive rather than the Parliament.

Recommendations

- **Keep it simple:** Greece's procurement system is overburdened with a complex system of laws and regulations on the one hand, and institutions on the other.
 - Prioritise the enactment of regulations and secondary legislation needed to fully implement the 2014 procurement reform law according to schedule in order to realise the expected benefits in streamlining and rationalisation.
 - Implement a comprehensive education and training program to ensure that procurement practitioners can anticipate the coming changes and are prepared to implement them.
 - Improve harmonisation, or consolidate audit and control functions currently spread across the Court of Auditors, MAs and the Inspector of Public Procurement Works to eliminate gaps, reduce redundancies, and lessen the burden of compliance for contracting authorities.
 - Develop feedback channels through which relevant stakeholders can comment on procedural matter and legal issues.
- **Increase independence:** Greek procurement decisions are susceptible to political influence in a number of ways, creating opportunities for abuse of the system and harming confidence in its fairness and objectivity.
 - Reform the SPPA to ensure that the president and leadership are appointed by, and accountable to the Parliament and not the government
 - Require declarations of honour from evaluation committee members to discourage, and facilitate prosecution of conflicts of interest.
- **Get tough:** There is a perception that violations of procurement rules are infrequently and inconsistently enforced, and that sanctions are too modest to act as a deterrent.

- Increase sanctions for violations of procurement rules and invest resources into enforcement.
- **Incorporate transparency:** Despite the reforms in recent years to increase transparency and reduce opportunities for corruption, more needs to be done to mitigate the risks.
 - Incorporate comprehensive and timely data collection and publication into the design of the e-procurement system to maximise transparency and the ability of outside groups and the public to conduct oversight.
- **Lack of training and support:** Many Greek practitioners, including at the MA level, lack sufficient access to adequate training to fulfil their responsibilities.
 - Develop more specific and advanced training programs covering general procurement procedures, ESI funds specific topics, and anti-corruption policies.
- **Think strategically:** Greek authorities are delayed in applying the proposed EU target of having a 50% share of GPP by 2010. For now, this percentage remains only at 20%, while the national GPP plan is slow to be put under way.
 - Develop and implement a comprehensive GPP plan to ensure established targets are met.

ⁱ OECD (2014), Measurement and Reduction of Administrative Burdens in 13 sectors in Greece, available at: <http://www.oecd.org/regreform/regulatory-policy/Greece-Measurement-and-reduction-of-administrative-burdens.pdf>

ⁱⁱ Law 4013/2011 on establishment of PPA

ⁱⁱⁱ The Hellenic Single Public Procurement Authority (2013), Annual Report, available at:

<http://www.eaadhsy.gr/index.php/m-eadhsy/m-ethsies-ektheseis/95-ethsia-ekthesi-pepragmenvn-2013>

^{iv} The Government Procurement Review (2014), The Law Business Preview

^v The Hellenic Single Public Procurement Authority (2013), Annual Report, available at:

<http://www.eaadhsy.gr/index.php/m-eadhsy/m-ethsies-ektheseis/95-ethsia-ekthesi-pepragmenvn-2013>

^{vi} Buy Smart +, Analysis report of procurement standards and procurement praxis in Greece, Available at: http://www.buy-smart.info/media/file/2099.D22_Procurement_Standards_in_Greece.pdf

^{vii} Available at : <http://www.ydmed.gov.gr/>

^{viii} The Government Procurement Review (2014), The Law Business Review

^{ix} Public Procurement Network (2010), Authority for the Supervision of Public Contracts, The comparative survey on the national public procurement systems across the PPN.

^x Buy Smart +, Analysis report of procurement standards and procurement praxis in Greece, Available at: http://www.buy-smart.info/media/file/2099.D22_Procurement_Standards_in_Greece.pdf

^{xi} Public procurement monitoring unit, available at: <http://mopadis.cieel.gr/index.jsp?extLang=LG>

^{xii} Task Force For Greece Seventh Activity Report, available at:

http://ec.europa.eu/archives/commission_2010-2014/president/pdf/gr7_en.pdf

^{xiii} European Commission (2015), DG MARKT, E-procurement uptake

^{xiv} Public procurement monitoring unit, available at: <http://mopadis.cieel.gr/civilagr.jsp?extLang=>

^{xv} Official website of the e-platform, available at: <http://www.promitheus.gov.gr/>

^{xvi} *Ibid*

^{xvii} European Commission (2015), DG MARKT, E-procurement uptake

^{xviii} The Government Procurement Review (2014), The Law Business Preview

^{xix} European Commission (2014), EU anti-corruption report, Annex Greece, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_greece_chapter_en.pdf

^{xx} Ministry of Justice (2013), « TRANSPARENCY » Anti-Corruption National Action Plan, available at: http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=KyH_7RZiUPg%3D&tabid=64

^{xxi} European Commission (2014), EU anti-corruption report, Annex Greece, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_greece_chapter_en.pdf

^{xxii} Business Anti-Corruption Portal, Greek Public Procurement, available at: <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/greece/show-all.aspx>

^{xxiii} Address of the Minister of State for combating corruption to the Greek Parliament, available at: <https://www.youtube.com/watch?v=kdpC0QarmjE>

^{xxiv} Hellenic Republic General Secretariat Against Corruption, National Anti-Corruption Strategy, available at: <http://www.gsac.gov.gr/index.php/el/2015-08-12-10-16-53>

^{xxv} Buy Smart +, Analysis report of procurement standards and procurement praxis in Greece, Available at: http://www.buy-smart.info/media/file/2099.D22_Procurement_Standards_in_Greece.pdf

^{xxvi} *Ibid*

^{xxvii} Supreme Audit Authority (2011), Annual Report, available at:

http://www.elsyn.gr/elsyn/etisia_ekthesi.jsp

^{xxviii} The Hellenic Single Public Procurement Authority (2013), Annual Report, available at:

<http://www.eaadhsy.gr/index.php/m-eadhsy/m-ethsies-ektheseis/95-ethsia-ekthesi-pepragmenavn-2013>

^{xxix} European Commission (2014), Public procurement: Commission refers Greece to Court for non-compliance with EU rules in construction sector, Press release, available at: http://europa.eu/rapid/press-release_IP-14-807_en.htm?locale=en

^{xxx} Ministry of Finance (2014), The 2014 National Reforms Programme, available at:

http://ec.europa.eu/europe2020/pdf/csr2014/nrp2014_greece_en.pdf

HUNGARY

KEY FACTS AND FIGURES

Key Facts and Figures in Hungary							
Overview	Total procurement 13,730,000,000€		Procurement % GDP 14%		2013 GDP 100,536,500,000€	Contracting authorities 13,000	
Procedures applied	Open 67%	Restricted 1%	Negotiated procedure with call 12%no call 12%		Competitive dialogue 0%	Direct award 5%	Other 3%
Share of contract notices by buyer	National 16%		Regional/local 16%		Body governed by public law 26%	Other 42%	
Contract type	Services 37%		Works 10%		Supplies 53%	Framework agreement 3%	
Ex ante conditionality criteria as of 2014	EU rules Not met		Transparency Not met		Training Not met	Admin. capacity Not met	
E-procurement adoption	E-notification Mandatory		E-access Voluntary		E-submission Voluntary	Uptake rate N/A	
Perceived corruption	Corruption widespread in society				Corruption widespread in procurement		
	Businesses 91%		Individuals 89%		At national level 47%	At local/regional level 48%	
TED indicators	Value of tenders 7,130,872,369€		Of total procurement 52%		# contract notices 1,936	# contract awards 1,972	
Other indicators	Received single bid 36%		# days for decision 69.3		Price only criteria 65%	MEAT criteria 35%	
	Won by foreign firms 2%		Related to EU funds 20%		Joint purchase 10%	Central purchasing Yes, KSF	

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Since its accession to the EU in 2004, Hungary has undertaken a dramatic shift of its procurement system from one in which responsibilities were widely dispersed to a more harmonised system under the coordination of various public entities. The 2011 Act on Public Procurement already entailed a substantial realignment of the primary legislation, contributing to a more standardised and transparent environment. Furthermore, the year 2014 brought a major reorganisation, consolidating the functions of the bodies in charge of public procurement legislation, implementation, and control and monitoring, within the Prime Minister's Office (PMO). A new Public Procurement Act (PPA) was recently adopted and entered into force on November 1st 2015.

While progress has been made in many areas, structural weaknesses have still to be addressed. Above all, application of the law varies substantially across contracting authorities nationwide, and corruption remains a significant concern.

Moreover, e-procurement is still in its infancy, and the national procurement portal does not yet offer e-submission services. Another major challenge of the Hungarian public procurement system is the significant lack of user-friendly and streamlined access to data on public procurement spending and published information in this field.

Hungary distinguishes itself from other MS for its significant use of negotiated procedures without publication, accelerated negotiated and accelerated restricted procedures, which are considered among the least conducive to openness and competition.ⁱ They also have one of the highest rates of procedures that involve only a single bidder.

DESCRIPTION OF FEATURES

Legal features of public procurement system

As part of the EU accession process, Hungary undertook a substantial remaking of its procurement system to reflect EU procurement rules. In September 2015, Hungary adopted the Act CXLI of 2015 on Public Procurement (PPL), which defines national rules on public procurement procedures and concessions as well as implements the EU Directives 2014/23/EU, 2014/24/EU and 2014/25/EUⁱⁱ. In the previous legislative framework, the conditions for procurement both above and below the EU thresholds, as well as EU Directives 2004/17/EC, 2004/18/EC and the review procedures set out in Directives 89/665/EEC and 92/13/EEC, covering public contracts and utilities respectively, were set out in Act CVIII of 2011 on Public Procurement.

In addition to the main legislative act, the PPL is supplemented by several governmental and ministerial decrees, the aims of which are to regulate matters like centralised procurements, order of publication and standard forms.

The Hungarian system does allow for simplified procedures below the EU thresholds. It also provides substantial leeway for contracting authorities. For instance, contracting authorities are permitted to use restricted or negotiated procedures as long as this is indicated in their call for tenders. Also contracting authorities may develop independent procedural rules, which are not subject to provisions set out by the second part of the PPL, for the execution of public supplies and public services not reaching EU thresholdsⁱⁱⁱ.

The PPL includes a number of exemptions from the PPL for contracts below EU thresholds, including amongst others groceries, sport and cultural services, prison labour, and emergency relief.

As for the national thresholds, the §15 of Act CXLI of 2015 states that amounts regarding each subject matter of public procurement are set on a yearly basis by the Budget Act of Hungary.

Institutional system

Hungary has two main bodies for procurement policy: the PMO and the autonomous Public Procurement Authority (*KH*). The PMO has primary responsibility for drafting legislation related to public procurement. In addition, it provides support and guidance to contracting authorities. It also acts as an internal overseer, conducting regulatory control of procurement procedures and monitoring compliance with the PPL.

The *KH* serves as the primary executive agency. It is responsible for monitoring the application of the law and formulating opinions on draft legislations. It also collects and publishes operational and statistical information via annual reports, as well as the official Public Procurement Bulletin and the central register of award procedures. In addition, it performs a key support function in fielding implementation questions from contracting authorities, issuing non-binding guidance documents, and organising trainings and seminars for practitioners. Furthermore, it maintains relationships with public procurement bodies of other States.

The Directorate General for Public Procurement and Supply (*KEF*) acts as a central purchasing body for central Government agencies. Use of the *KEF* is mandatory based on product categories, specifically software and IT services, stationary and office products, and motor vehicles. Contracting authorities at the local level must take charge of their own procurement, but the PPL allows for local Governments to use central purchasing in their territory.

In addition to the PMO, the State Audit Office (SAO) also conducts oversight of procurement. The SAO conducts external oversight, providing recommendations and legally binding obligations to correct the most serious irregularities.

The contracting authorities themselves are the first point of contact for claims of infringement of procurement rules. If a claim is not addressed to the satisfaction of the petitioner, it can be elevated to the Public Procurement Arbitration Board (*KDB*), which has the power to suspend a procurement proceedings, void previously made award decisions, impose fines, or bar tenderers from involvement in future procurement. Decisions of the *KDB* can be appealed through the judicial court system, starting with the regional courts. Decisions rendered by the courts are subject to review by the *Curia*, Hungary's Supreme Court, if these are challenged through an extraordinary remedy^{iv}.

Key issues that have a bearing on administrative capacity

Human resources: Public procurement is carried out by approximately 13,000 contracting authorities at all territorial levels. As a result, administrative capacity varies considerably among contracting authorities, as does implementation. Recruitment efforts face substantial challenges due to a combination of unfavourable demographic developments and a general decrease in the attractiveness of public sector employment, which could lead to a recruiting crisis in the public sector^v in the coming years.

As part of its procurement *ex-ante* conditionalities Action Plan^{vi}, the Government is undertaking three initiatives to improve administrative capacity. First, it will expand the total number of procurement experts on staff by 25%. Second, it is developing a work plan to more efficiently and systematically build up the expertise of new hires. Third, it will work to improve qualified staff retention through a motivational system scheduled for implementation before the end of 2015.

Structures: Four higher education institutions – the National University of Public Service (*NKE*), the Budapest Business School, the Budapest University of Engineering and Economics, and the Corvinus University of Budapest – offer specialised programs or optional courses in public procurement, which are open to everyone. Two private entities – the Hungarian Association of Logistics, Purchasing and Inventory Management, and the agency for the development of vocational training, *DFT Hungária* – also offer coursework for procurement practitioners.

The Government has also established the Hungarian Public Procurement Institute (*MKI*) to increase the availability of accurate, authoritative procurement information and to provide active support to contracting authorities and bidders at national and local levels. *MKI* hosts training seminars and informal meetings for procurement professionals, and posts regular news and policy updates on their website.

Training: Several training seminars and courses are organised by the *KH* for public procurement practitioners. Moreover, the *KH*, as well as the PMO, conduct training courses for their own procurement staff. The objectives of these courses are to enable participants to get to know the EU's public procurement system, and to provide them with tools focusing on the implementation of the PPL, as well as the regulation of anti-fraud measures. In addition to training, a further objective is to encourage the exchange of experience and sharing of good practices between public procurement practitioners.

Systems/tools: The primary tool for procurement practitioners and potential suppliers is the website of the *KH*, which hosts not only a searchable tender database but also a wealth of freely available guidance materials in different languages including Hungarian, English and German^{vii}. These include legal and legislative information, official public procurement counsellors, links to TED and the PPN, and other useful information.

Since its founding in 2011, the *KH* also publishes a monthly journal called *Procurement Review* featuring scholarly and professional articles on the PPL and any recent changes, recent decisions of the Arbitration Board, announcements for upcoming education and training events, and answers to pressing questions from practitioners. A one year subscription to the online version costs approximately EUR 50.

The independent Corruption Research Centre of Budapest provides basic data on public procurement spending through a tool available on its website, known as the *Makab* database^{viii}. However, the difficulty in accessing documents on the database makes it difficult to identify and analyse trends. Some private parties and academic researchers have constructed their own databases of public procurement. For instance, the anti-corruption NGO K-Monitor has developed a database, which allows users to track public procurement contracts based on official notifications in national newspapers^{ix}.

E-procurement

The digitisation of Hungary's procurement system is still in its early stages, having neither a well-developed online environment nor sufficient incentives for contractors to participate. E-notification via the *KH*'s online portal^x is mandatory, but additional pre-award processes are limited. E-submission is wholly voluntary in Hungary, and not offered by any central government service. As such, uptake rates remain quite low.

One barrier to greater e-procurement uptake is technical. Indeed, the public portal managed by the *KH* is still in its infancy and does not yet offer e-access or e-submission services. The site does host a searchable tender database, as well as lists of contracting authorities and procedural and legal guidance materials. While e-submission services are offered by two private portals, these are primarily geared toward private sector contracts^{xi}.

Furthermore, because contracting authorities are not required to report e-procurement data, the Government does not carry out systematic monitoring, making it difficult for policymakers to evaluate issues and design appropriate responses.

Corruption

The perception of corruption in Hungary is quite high compared with other MS and the procurement system appears to be one of the key drivers of this view. It has the second highest rate in the EU of people who report that giving a gift or doing a favour in exchange for a public service is an acceptable practice, far above EU norms.^{xii} Furthermore, EU and national institutions, as well as civil society groups, frequently cite procurement as a major area of concern for corruption, and the need for action is highlighted in one of the Council's 2015 country-specific recommendations^{xiii}. However, it should be noted that perceptions among the business community of corruption in procurement are comparatively low, as 47% of businesses perceive corruption to be widespread in national level procurement compared to the EU average of 56%^{xiv}. This disparity may potentially be explained by the culture of impunity that surrounds corruption, or by a fear among respondents of reprisals.

Bid rigging, or collusive tendering, has been identified as one of the most frequent problems in public procurement, representing 60% of the types of corruption encountered in Hungary^{ix}. Bid rigging undermines the primary goal of the procurement process, which is to achieve the best value for money for public services through fair competition among potential providers.

Moreover, a high number of contracts have been awarded to a relatively small number of companies in recent years, which may be an indicator of insufficient competition or potential corruption.^{xv}

Since 2012, the Government has been implementing a Corruption Prevention Programme in Public Administration comprising a range of integrity-related measures for the public administration. The programme focused on prevention policies, such as an integrity management system, including anti-corruption training for civil servants, corruption impact assessment of governmental proposals and decrees, protection of whistle-blowers, and awareness-raising activities.

The revised National Anti-Corruption Programme for the period 2015-2018 focuses on the concept of 'open contracting,' that is, increased disclosure and participation in public contracting. Specific to procurement, the Hungarian government has set a goal to create an easily searchable and regularly updated database of procurement calls for tender and contracts available online, with each procedure and each bidder given a unique and permanent identifier.

Furthermore, Hungary is currently trying to implement an initiative to incorporate the principle of integrity into its education system through the introduction of anti-corruption material into the national core curriculum, and the curriculum of the *NKE*, but the effectiveness of the integrity framework in curbing corruption remains to be proven.

Europe 2020 Agenda

Hungary's progress in integrating environmental, sustainability and social policy goals into its public procurement system has been limited. It has not yet adopted targeted national strategies on green public procurement (GPP) and socially responsible public procurement (SRPP), but has introduced initiatives to promote SMEs' access to procurement markets as well as innovation procurement.

Although the use of GPP criteria in the evaluation process has been permitted for some time, the number of public procurement procedures that do so is consistently small. The 2012 PPL does make a priority of promoting GPP, but implementation is still on-going. The *KH* has published guidance materials on the website, and the MKI has made available free life cycle cost and CO2 emissions estimation tools for use in preparing and evaluating tenders^{xvi}.

Considerations for innovation-oriented public procurement have been addressed in the Research, Development and Innovation Strategy for 2020^{xvii}, of which one of the overall objectives is to "reinvigorate public sector innovation in the healthcare, environmental, energy, educational, transport and logistics sectors." The strategy includes recommendations for supporting innovation procurement instruments, including pre-commercial procurement, from the budgets of the Research and Technology Innovation Fund, the ERDF, as well as sectorial budgets. Also, it suggests that consideration be given to setting up an independent governmental function for the management of innovation-centred public procurements.

Additionally, one of the areas that have seen most policy activity in 2013-2014 is support for SMEs. The PPL contains a number of provisions designed to promote better access for SMEs to public contracts, including by 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.

Irregularities and findings of national Audit Authorities

The SAO and the *KH* publish annual findings on the use of public procurement by contracting authorities^{xviii}. The most frequent irregularities are generally related to the submission of faulty data, amendments of the contracts, and procedures liaised with the award of contracts and subject of procurement.

The SAO conducts audits to evaluate the effectiveness of the public procurement system. In 2014, it assessed the impacts of the amendments made to the PPL in the period 2008-2012, as well as those of the new legislation that went into effect in 2014 on the following institutions: the Ministry of Public Administration and Justice, the Ministry for National Economy, the *KH* and the *KEF*. Two key positive findings were that during this period, the time required to process a tender from conception to signature of contract was substantially reduced, and the selection and award criteria were made less ambiguous. In addition, a few deficiencies were detected in the regulatory framework and yielded recommendations towards the Ministry of National Development, the *KH*, as well as the *KEF* concerning, respectively: the implementation of legislative amendments, the dissemination of information and data as established in the current legislation, and the possibility to log-in to the *KEF* portal through a client gateway^{xix}.

The SAO regularly highlights the collusion of contracting authorities and bidders, unjustified cancellation of procedures post award, and low participation rates by local governments in centralised public procurement, as areas of concern.

In its role as the Audit Authority, the Directorate General for Audit of European Funds carries out system audits and audits of operations, including in public procurement. Access to its reports is, however, restricted.

Other assessments carried out directly by the EC also identify issues including, in particular affecting major infrastructure projects, conflicts of interest, high frequency of a small number of companies being awarded tenders for EU co-financed contracts, large number of tenders with only one tenderer, and excessive costs, especially in cases of EU funded projects^{xx}.

Additionally, the most common irregularities detected by the EC include the application of discriminatory and disproportionate selection criteria, including excessive number of experts and very detailed technical and professional credentials required, excessive references required, contract performance criteria applied as selection criteria, or modification of an essential condition of the contract referring to “unforeseeable circumstances”^{xxi}. In 2013, a substantial financial correction was implemented, due in part to deficiencies observed in public procurement during the 2007-2013 programming period^{xxii}.

Outlook

The most significant issue in Hungary’s near-term outlook is a major overhaul of the country’s PPL. As part of their compliance with the requirement to transpose the 2014 EU Procurement Directives, the PMO has been consulting with other government bodies and a number of outside experts and professional associations to undertake a fundamental reform of the procurement system.

In addition to the Directive such as promoting SME access, adoption of e-procurement and reduction of administrative burden, the new PPL seeks to increase competition through broader dissemination of calls for tender, a more streamlined process including shorter deadlines and fewer documentation requirements, and greater supervision of the performance of contracts by the *KH*.

ANALYSIS

Strengths

Passage of the 2012 amended PPL was a landmark improvement for Hungary’s procurement system, contributing to a more standardised and transparent environment.

The PPL has also made headway in attracting more private sector bidders to the process by cutting red tape, thereby increasing competition.

Weaknesses

Despite the progress that has been made, one of Hungary's key weaknesses is efficiency loss due to insufficient competition in the process, especially in view of the constantly evolving regulatory framework, above all for services. As pointed out by the EC, direct award of contracts continues to be broadly used, often without sufficient justification^{xxiii}. In addition, the extensive use of negotiated procedures leads to higher costs and a distortion in the functioning of the market by excluding potential contractors. Additionally, the fact that a significant number of public contracts are being won by the same companies indicates possible corruption or collusive bidding, which may affect competition.

Moreover, corruption has repeatedly been identified as a significant issue affecting public administration in general, and specifically the procurement process. The 2012 Corruption Prevention Program in Public Administration involved a number of prevention policies aimed at reducing opportunities for corruption in public administration, such as the setting up of an integrity management system, but systemic problems remain. Amongst other things, Hungary still lacks a single independent and publicly credible agency that can take charge of, and be held accountable for combating corruption.

One of the key barriers to better oversight of the procurement system, and to better policymaking more generally, is the lack of comprehensive and reliable data collection. This, in turn, is due to the low level of development of the e-procurement system, under which currently only e-notification is mandatory^{xxiv}. The lack of digitisation raises a general problem of transparency and deprives the government of data on award decisions and contracts, which are crucial to identifying potential misuse, and other areas in need of improvement.

Finally, implementation of strategic policy goals including environmental sustainability, innovation and social inclusion into the public procurement system is not highly developed and does not appear to be a top government priority.

Recommendations

- **Tackle corruption:** Corruption in the public procurement system is key concern in Hungary, despite the launching of multiple initiatives designed to address it in recent years.
 - Improve the track record of prosecution of corruption in public procurement and apply dissuasive sanctions.
 - Implement the Open Contracting initiative in a rigorous and comprehensive way.
 - Reduce the cost of appealing procurement decisions by lowering filing and court fees for aggrieved parties seeking redress.
 - Incorporate timely and comprehensive data collection and dissemination into the design of the ongoing e-procurement implementation process.
- **More competitive procedures:** Hungary makes more frequent use of direct award and negotiated procedures than most other MS, often without providing sufficient justification. This limits competition for public contracts.
 - Reduce reliance on negotiated procedures in favour of more competitive alternatives, unless well-justified.

- Increase the uptake of e-procurement as it increases transparency, competition and allows for cost saving by providing sufficient and adequate administrative capacity.
- **Improve staff capacity:** Shortages of adequately skilled staff are present at the central and local level, contributing to irregularities, delays, and Hungary's low EU funds absorption rate.
 - Institute mandatory, rigorous training regime for all new procurement practitioners to increase and maintain the skills of staff, as laid out in Hungary's Partnership Agreement.
 - Develop staff retention and motivation policy, as laid out in the Partnership Agreement.
 - Increase procurement staff at the PMO, which is in charge of the supervision of procurement for EU development funds.
- **Strategic use of public procurement:** The integration of environmental, sustainability and social policy goals into the public procurement system is not a high-level priority in Hungary, and thus not well advanced.
 - Develop training and guidance materials on the use of non-price criteria in tender selection.
 - Conduct awareness-raising efforts, including as part of the new training regime and planned procurement conferences, to educate contracting authorities on the benefits of innovative, sustainable and inclusive procurement.

ⁱ European Commission (2011), Public procurement in Europe: Cost and effectiveness, Annex, available at: http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/cost-effectiveness_en.pdf

ⁱⁱ New Act CXLI of 2015 on Public Procurement, available at: <http://www.kozbeszerzes.hu/>

ⁱⁱⁱ Article 123 of the Act CVIII of 2011 on Public Procurement (PPL)

^{iv} Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, available at: http://juradmin.eu/en/eurtour/eurtour_en.lasso?page=detail&countryid=12

^v Saltanat Liebert, Stephen E. Condrey and Dmitry Goncharov (2013), Public Administration in Post-Communist Countries - Former Soviet Union, Central and Eastern Europe, and Mongolia, CRC Press Book.

^{vi} Partnership Agreement (2014) for Hungary, in accordance with Articles 14 and 15 of Regulation (EU) N.1303/2013 of the European Parliament and of the Council of 17th December 2013:

http://palyazat.gov.hu/download/52032/Partners%C3%A9g_Meg%C3%A1llapod%C3%A1s_2014-2020.pdf

^{vii} Partnership Agreement (2014) for Hungary, in accordance with Articles 14 and 15 of Regulation (EU) N.1303/2013 of the European Parliament and of the Council of 17th December 2013:

http://palyazat.gov.hu/download/52032/Partners%C3%A9g_Meg%C3%A1llapod%C3%A1s_2014-2020.pdf

^{viii} Corruption Research Center Budapest, available at: <http://www.crcb.eu/?cat=6>

^{ix} European Commission (2013), Identifying and reducing corruption in Public Procurement in the EU

^x Public Procurement Authority, available at: www.kozbeszerzes.hu

^{xi} Available at: <http://www.electool.com/hu/> | <https://home.eeebid.com/site/index.php>

^{xii} DG COMM (2014), Special Eurobarometer 397 on Corruption, available at:

http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf

^{xiii} COUNCIL RECOMMENDATION of 14 July 2015 on the 2015 National Reform Programme of Hungary and delivering a Council opinion on the 2015 Convergence Programme of Hungary I, available at:

http://ec.europa.eu/europe2020/pdf/csr2015/csr2015_council_hungary_en.pdf

^{xiv} European Commission (2013) Flash Eurobarometer 374: Businesses' attitudes towards corruption in the EU

^{xv} Anticorrp (2015), Project Anti-Corruption Policies Revisited, WP8 - Corruption, assistance and development, D8.1.4 The political economy of grand corruption in public procurement in the construction sector of Hungary, available at: <http://anticorrp.eu/wp-content/uploads/2015/06/D8.1.4-Hungary.pdf>

^{xvi} Centre for Environmental Studies, Available at: <http://www.ktk-ces.hu/>

^{xvii} Ministry for National Economy, National research and development and innovation strategy (2013-2020), available at:

<http://www.google.lu/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CB8QFjAA&url=http%3A%2F%2Fnkfih.gov.hu%2Fdownload.php%3FdocID%3D25559&ei=7cIFVYKAHcar7AbI-oCwBQ&usq=AFQjCNHGwQZ5UucVKfn4KUoHOFpeV1GPYg&sig2=DnqqI6cCSDurGWq0PYm1KA>

^{xviii} See SAO's Annual reports, available at: <http://www.asz.hu/jelentesek/asz-eves-jelentes>, and Public Procurement Authority's Annual reports website, available at: <http://www.kozbeszerzes.hu/tevekenysegek/eves-beszamolo/>

^{xix} SAO (2014), Report on the audit of the functioning of the public procurement and the impacts of the amendments made to the PPL in the period 2008-2012, available at:
<http://www.asz.hu/jelentes/14074/jelentes-a-korabbi-es-a-megujult-kozbeszerzesi-rendszer-mukodesenek-ellenorzesrol/14074j000.pdf>

^{xx} European Commission (2014), DG HOME, EU anti-corruption report, Annex Hungary, available at:
http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_hungary_chapter_en.pdf

^{xxi} European Commission (2015), Commission Staff Working Document, Country Report Hungary 2015 Including an In-Depth Review on the prevention and correction of macroeconomic imbalances

^{xxii} DG REGIO (2014), Annual Activity Report

^{xxiii} European Commission (2014), Assessment of the 2014 national reform programme and convergence programme for Hungary, available at: http://ec.europa.eu/europe2020/pdf/csr2014/csr2014_hungary_en.pdf

^{xxiv} BI - K-Monitor (2012), Transparency and Accountability in public procurements: the case of 4 countries, Workshop, available at: <http://k-monitor.hu/eqyeb/workshop-16022012%22%20/%20%22prog>

IRELAND

KEY FACTS AND FIGURES

Key Facts and Figures in Ireland						
Overview	Total procurement 15,540,000,000€		Procurement % GDP 9%		2013 GDP 174,791,300,000€	Contracting authorities 3,319
Procedures applied	Open 68%	Restricted 14%	Negotiated procedure with call 15% no call 0%		Competitive dialogue 1%	Direct award 0% Other 1%
Share of contract notices by buyer	National 34%		Regional/local 11%		Body governed by public law 40%	Other 15%
Contract type	Services 61%		Works 9%		Supplies 30%	Framework agreement 24%
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Voluntary	Uptake rate 22%
Perceived corruption	Corruption widespread in society Businesses 49%		Individuals 81%		Corruption widespread in procurement At national level 39% At local/regional level 39%	
TED indicators	Value of tenders 2,434,831,083€		Of total procurement 16%		# contract notices 1,279	# contract awards 763
Other indicators	Received single bid 8%		# days for decision 147.9		Price only criteria 16%	MEAT criteria 84%
	Won by foreign firms 11%		Related to EU funds 2%		Joint purchase 9%	Central purchasing Yes, NPS

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Ireland's public procurement system is relatively modern and high performing. In particular, the range of services offered online is extensive, national, and quite well-developed.

The Irish system is currently undergoing a move towards greater centralisation, particularly at the state level, where a large number of diverse functions have recently been consolidated in a single office. There has also been a move to introduce greater standardisation and simplification of processes, which is expected to accelerate under the coordination of the central procurement authority. Tendering responsibilities are still managed by the individual contacting authorities at the state and local levels.

It is notable that despite the budgetary pressures that have been in place in Ireland since the economic crisis, the government has made substantial efforts to incorporate other strategic policy goals into the system. This includes environmental goals such as energy efficiency and use of sustainable materials, as well as economic policy goals like promotion of innovation and addressing long-term unemployment.

DESCRIPTION OF FEATURES

Legal features of public procurement system

In the Irish legal system, EU procurement Directives 2004/18/EC, 2004/17/EC, and 2009/81/EC have been transposed into national law by the European Communities Regulations SI No. 329 of 2006, the European Communities Regulations SI No.50 of 2007, and the European Union Regulations SI No 62 of 2012, respectively.

At the national level, public procurement below EU thresholds is regulated by the Department of Finance's (DoF) 'Green Book', which sets out a number of national sub-thresholds. Contracts valued at less than EUR 5,000 may be awarded on the basis of verbal quotes from one or more competitive suppliers. For contracts valued between

EUR 5,000 and EUR 25,000, the buyer must solicit quotes from at least three potential suppliers or service providers. Furthermore, all contracts for supplies and general services with an estimated value of EUR 25,000 and upwards have to be published on the national procurement website, while above the national threshold of EUR 50,000 for works and related services, there is no obligation to advertise on the same website.

Institutional system

The Office of Government Procurement (OGP) of the Ministry for Public Expenditure and Reform (MPER) plays the primary role in the Irish procurement system. It is in charge of the formulation of public procurement policy, dissemination of best practices, general guidance, and management of the Government's e-procurement strategy.

In addition, the OGP recently absorbed the key executive role played by the National Procurement Service (NPS), which acted as both a central purchasing body and an oversight body. Within this new capacity, the OGP's goals are to standardise the procurement process and achieve savings by implementing a systematic approach to public procurement. It also manages the central e-procurement platform, eTenders¹.

Further oversight responsibilities are carried out by the boards and management of individual contracting authorities, along with the Office of the Comptroller and Auditor General (C&AG), which conducts external controls of procurement for compliance with the procurement regulation.

The Irish High Court is responsible for public procurement first instance review procedures. Its rulings may be appealed to the Supreme Court in Dublin, which is the last recourse instance. The full determination of a public procurement case can take up to 3 years. However, the procedure can be expedited to 6-12 months if the parties ask for the case to be transferred to the commercial division of the High Court.

Key issues that have a bearing on administrative capacity

Human resources: As of the end of 2014, the total staffing level of the OGP was 213, two thirds of whom are sourcing staff. With the increased role of the OGP, Irish authorities are actively recruiting additional highly skilled staff.

At the contracting authority level, availability of skilled staff is an even greater issue. According to research by the Irish Institute of Public Administration (IPA), just 10% of public buyers have procurement as their full time job, and less than 40% of public buyers have procurement as a major part of their responsibilities. The same study found that just 23% of buyers possessed any kind of procurement-related qualification.ⁱ

Structures: The IPA is the country's leading provider of education and training for the wider public service. It therefore has a responsibility to provide future procurement practitioners with procurement-related vocational trainings, including certificates in public procurement.

A number of private education providers, such as the Irish Institute of Purchasing and Materials Management, the Chartered Institute of Public Finance and Accountancy, and Public-Affairs-Ireland, offer degree programs specifically tailored to procurement practitioners. In addition, a few Universities such as the National University of Ireland

¹ <http://www.etenders.gov.ie/>

Maynooth and the University College Dublin, include procurement practice in their curricula.

Training: The IPA's vocational trainings program, along with various public procurement fora and short-term seminars organised by professional, commercial and trade associations, provide public procurement practitioners with legal, financial and administrative background of how public procurement works in practice.

Moreover, as laid out in Ireland's 2014 Partnership Agreement, public procurement training workshops will be organised by Managing Authorities in the coming yearsⁱⁱ.

Systems/tools: The OGP supports contracting authorities through the publication of guidance and legal materials, as well as its advisory function. Also, its website contains general information directing on the eTenders platform.

Additionally, procurement related information including guidelines on national and EU public procurement procedures, information on ESI Funds management and control, reports, and circulars, are made available by the NPS through the eTenders platform.

The Competition Authority also publishes guidance material on procurement issues, including a booklet for contracting authorities on how to spot potential bid riggingⁱⁱⁱ, and a guide for SMEs on how to assemble consortia without running afoul of competition law.

E-procurement

The use of e-procurement in Ireland is relatively well-developed, having been implemented early and currently offering a range of services to contracting authorities and bidders. The central portal² is managed by the OGP, and contains guidance, analysis, and legal materials. The central e-procurement platform, eTenders, run by the NPS offers the full spectrum of the e-procurement functionality, including a searchable database of current and upcoming tenders and offering the full gamut of e-procurement functionality. It is free of charge to all parties. There are also a number of privately operated platforms that offer additional services, including e-auction.

E-notification is compulsory for all contracting authorities for tenders greater than EUR 25,000 in value for supplies and services, and EUR 10,000 for ICT procurements. Below these thresholds, it is optional. E-submission was made mandatory for all contracting authorities as part of the 2001 e-procurement strategy, and is thus usually offered by contracting authorities.

Until recently, comprehensive national data on procurement was not systematically collected, making it impossible to properly analyse elements of the system, such as the benefits of adopting e-procurement. In 2013, OGP's Business Intelligence Unit began collecting contracting authority source data to create a rich information source reflecting procurement practice in Ireland. This will be analysed and reported on to the public.

Corruption

The combination of a strong legal framework, substantial enforcement activity and relatively harsh sanctions for abuse of office offenses has been successful in keeping the problem of corruption relatively in check in Ireland compared with the rest of the EU. This is not to imply that Ireland is corruption free. As the recently released reports of two high profile Tribunals of Inquiry into corruption-related offenses have

² <http://www.procurement.ie/>

highlighted, close connections between politicians and the business community remain a risk area for corruption.

In 2012, the Government acknowledged the need to address corruption and started an ambitious programme of political and legislative reform with the aim of enhancing openness and anti-corruption standards. Since then, substantial progress has been made in improving transparency and accountability in matters related to public procurement, electoral funding and fraud. However, beyond increased use of e-procurement tools and improved data collection, procurement-specific reforms do not feature prominently in the agenda.

In 2015, Transparency International's Irish office published a report based on data collected from over 500 whistle-blowers, witnesses and victims of wrongdoing, according to which public procurement constitutes a corruption-prone area for local authorities.^{iv}

Europe 2020 Agenda

The Irish procurement system has been used to promote a number of strategic goals in line with the Europe 2020 strategy, including environmental policy, support to SME development and innovation.

With regards to the environmental dimension, Ireland has been active in green public procurement (GPP) since 2007. Current policy is primarily guided by the 2012 "Green Tenders" National GPP Action Plan from the MPER and the Ministry for the Environment, Community and Local Government^v. The plan lays out a number of techniques that can be used by public buyers to incorporate GPP into their processes, including adding environmental concerns to evaluation criteria, requiring suppliers of certain services to have green certifications, require that all buildings built, leased or purchased meet a minimum Irish Building Energy Rating of B3, and requiring electric devices be purchased from suppliers certified by the WEEE Register Society.

Expanding access to procurement contracts for SMEs is another priority that has increased in prominence since the economic downturn. Efforts in this area focus on improving the standardisation of pre-qualification and tendering documents to reduce compliance costs for smaller firms, eliciting input from SMEs in reforming procedures, providing Q&A and dialogue on open tenders via the e-procurement portal, and by helping Irish SMEs identify and compete for public contracts overseas.

Another important initiative for Irish SMEs is the Tender Advisory Service (TAS) pilot project, which fields questions from economic operators during the tendering procedure. This project is managed by the OGP and aims at facilitating communications between contracting authorities and bidders to address procurement issues before the procedure is concluded, thereby potentially reducing litigation following the award of the contract.

However, one factor working against greater SME involvement is the move towards an increased use of large framework contracts^{vi}. Therefore, as part of an effort to encourage SMEs to form consortia to compete for larger contracts, the Competition Authority, together with the Consumer Protection Commission, have developed a walkthrough of how to build a consortium in compliance with competition law.

Innovation policy goals are also being incorporated into the procurement system through the promotion of the use of pre-commercial procurement to modernise public services, and the procurement of innovative solutions to create new business opportunities for industry.

Finally, although the implementation of social policy goals via the procurement system remains less developed, some initiatives have been started such as the establishment of a Social Clauses Project Group led by the Office of Government Procurement. The group is charged with identifying social considerations and assisting procurement

bodies in the implementation, evaluation and support of these social initiatives^{vii}. In addition, the 2015 Action Plan for Jobs does call for greater social engagement with public bodies and job training facilities to identify opportunities to use procurement to help address long-term unemployment and other labour force development issues.^{viii}

Irregularities and findings of national Audit Authorities

The C&AG carries out audits and reports on the use of public funds. It also examines the internal audit systems of public bodies and publishes annual reports referred to as 'Accounts of the Public Services' on funding granted by the Irish legislature. Recent oversight activities have identified a number of recurring irregularities and issues that have an impact on the efficiency of procurement processes, including delays in the procurement process, non-compliance with procurement rules, and the tendency to award multiple successive contracts to single suppliers, thus increasing the risk that best value may not be obtained where proper procurement procedures are not followed.

Outlook

Over the near term, the ongoing reform of the Irish procurement system will focus on two issues, transposition of the new EU Directives, and enhancing the strategic use of procurement for policy promotion. Many of the targets and methods laid out in the 2015 Action Plan for Jobs, in the case of SMEs, innovation and social policy, and the Green Tenders Action Plan in the case of GPP, remain unfulfilled. Turning these goals into practice will require coordinated efforts over the course of the coming years. At the same time, Ireland still has to transpose the 2014 EU Directives, providing ample opportunity to reopen and reform the country's procurement laws.

ANALYSIS

Strengths

The three primary strengths of Ireland's procurement system are its highly developed and centralised e-procurement system, the streamlined and centralised administrative set-up, and its extensive use of procurement to achieve other policy goals. Ireland was a pioneer of e-procurement adoption, and as a result they have had a long time to develop and improve the system. The current platform is comprehensive, easy to navigate, and freely available to all.

The centralisation of nearly all state procurement function in the OPG is a more recent development, but is also bearing fruit. The move to a single procurement entity has increased professionalization of procurement work, reduced coordination costs, and facilitated efforts to streamline services and regulations.

Finally, Ireland's efforts to use their procurement system to further environmental, innovation and social policy goals is laudable, particularly given the challenging economic environment that the country has faced in recent years.

Weaknesses

While there has been significant progress made in professionalisation of procurement at the state level, there is still substantial room for improvement at the sub-national level. A primary factor underlying this shortfall is the lack of required training or certification. Because sub-national public bodies have a relatively high degree of freedom in managing their own human resources, there is no consistent requirement that those responsible for procurement duties have or maintain any kind of qualification. Absent a national mandate, the lack of local administrative capacity could be countered by the conglomeration of responsibilities through a central or regional purchasing body.

In addition, despite the positive reforms undertaken in recent years, more remains to be done. This applies in particular to the issue of corruption, which continues to be perceived as a barrier to participation in procurement by both local and international suppliers. Furthermore, while sizeable efforts have been made in the last two years to improve transparency in matters related to public procurement, there is still room for improvement as regards the access to information on public tenders.

Recommendations

- **Increase administrative support:** Contracting authorities at the sub-national level lack adequate skills and experience in procurement, resulting in inefficiency and errors.
 - Allow public procurement practitioners at sub-national level access to vocational training courses organised at a State level, such as those provided by the IPA.
 - Expand the existing suite of standardised documents and guidance materials available to practitioners.
 - Establish a telephone and e-mail helpdesk to provide *ad hoc* support.
- **Combat corruption:** The perception of corruption is considered a serious barrier to participation in Irish public markets by both local and international suppliers.
 - Delegate anti-corruption efforts to a politically independent organisation.
- **Lack of transparency:** Despite positive reforms in recent years to increase transparency in public procurement matters, access to information on public tenders could be further improved.
 - Improve public access to timely and comprehensive data on all stages of the procurement process.
 - Increase collaboration with civil society groups to oversee procurement data.
- **Upgrade the e-procurement system:** While a full suite of e-procurement tools has been developed, uptake rates are modest, and many cite the excess administrative burden of using the system.
 - Update existing e-access and e-submission tools to reduce administrative burdens for contracting authorities and economic operators.
- **Low SMEs' involvement in public procurement:** Efforts to foster SME participation in public procurement markets are being undermined by the current trend to increasing use of large framework contracts.
 - Incentivise SMEs to form consortia to compete for larger contracts.
 - Publish information on the pipeline of large projects so SMEs can better prepare.

ⁱ Institute for Public Administration (2013), Local Authority Times, Vol 17, No 1&2, p. 20.

ⁱⁱ Partnership Agreement (2014) for Ireland, in accordance with Articles 14 and 15 of Regulation (EU). N.1303/2013 of the European Parliament and of the Council of 17th December 2013, available at: <http://per.gov.ie/wp-content/uploads/Partnership-Agreement-Ireland-2014-2020.pdf>

ⁱⁱⁱ The Irish Competition Authority (2009), The Detection and Prevention of Collusive Tendering, available at: <http://www.tca.ie/images/uploaded/documents/Booklet%20-%20The%20Detection%20and%20Prevention%20of%20Collusive%20Tendering.pdf>

^{iv} Transparency International (2015), Speak Up Report, available at : http://transparency.ie/sites/default/files/15.03.31_Speak_Up_Final.pdf

^v Green Public Procurement, available at: <http://www.greenpublicprocurement.ie/>

^{vi} SBA Fact sheet (2014), fact sheet on Ireland, available at: http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/files/countries-sheets/2014/ireland_en.pdf

^{vii} Brendan Howling, Irish Minister of Public Expenditure and Reform, June 9th 2014 Press Releases, available at: <http://www.per.gov.ie/en/minister-for-public-expenditure-and-reform-mr-brendan-howlin-td-announces-establishment-of-social-clauses-project-group/>

^{viii} Ministry for Jobs, Enterprise and Innovation (2015), Action Plan for Jobs, available at: <http://www.djei.ie/publications/2015APJ.pdf>

ITALY

KEY FACTS AND FIGURES

Key Facts and Figures in Italy						
Overview	Total procurement 157,230,000,000€		Procurement % GDP 10%		2013 GDP 1,609,462,200,000€	Contracting authorities 30,000
Procedures applied	Open 76%	Restricted 5%	Negotiated procedure with call 6% no call 9%		Competitive dialogue 0%	Direct award 3% Other 2%
Share of contract notices by buyer	National 8%		Regional/local 40%		Body governed by public law 21%	Other 31%
Contract type	Services 58%		Works 6%		Supplies 36%	Framework agreement 13%
Ex ante conditionality criteria as of 2014	EU rules Partially met		Transparency Partially met		Training Partially met	Admin. capacity Partially met
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Partially mandatory	Uptake rate 2%
Perceived corruption	Corruption widespread in society Businesses 97% Individuals 97%			Corruption widespread in procurement At national level 70% At local/regional level 69%		
TED indicators	Value of tenders 30,716,039,658€		Of total procurement 20%		# contract notices 8,733	# contract awards 7,214
Other indicators	Received single bid 31%		# days for decision 183.2		Price only criteria 45%	MEAT criteria 55%
	Won by foreign firms 1%		Related to EU funds 6%		Joint purchase 10%	Central purchasing Yes, Consip

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Procurement in Italy is carried out at all levels of government by a pool of over 30,000 contracting authorities including national ministries, national agencies, and publicly-owned companies. At the national level, centralisation of procurement occurs through the main purchasing body, Consip. Some of the larger regions have also set up their own central purchasing bodies. In fact, most expenditure occurs at the sub-national level. Over 60% of public works contracts are commissioned by territorial entities. Also supply and services are largely procured locally.

More than three quarters of all procurement contracts are awarded through the open procedure, comprising more than 50% of the total value. Italian contracting authorities also make comparatively heavy use of the negotiated procedures, in particular in its form without publication of contract notice, which accounts for about 25% of procurement value.^{xiv}

The procurement system is prone to corruptionⁱ and inefficiency, due in part to the lack of administrative capacity of the public administration and to weaknesses in the legislative frameworkⁱⁱ. On an annual basis, the Italian public administration procures close to EUR 90 billion, thereby underscoring the high financial stakes involved.ⁱⁱⁱ

Another element of the Italian procurement system is the presence of state-owned 'in-house' corporations. These in-house firms are used extensively to provide public goods and services, but are generally exempt from procurement rules.

DESCRIPTION OF FEATURES

Legal features of public procurement system

The EU Directives 2004/18/EC and 2004/17/EC have been transposed into Italian law by Legislative Decree 12 April 2006 n. 163, the 'Code of Public contracts of works,

services and supplies' (hereafter the 'Code'). Procurement above and below the EU threshold is regulated by this single legislative act, including for the utilities sector. The same procedures apply regardless of the threshold, yet a number of exceptions for both the classical and utilities sectors are listed in the Code. For instance, in the classical sectors direct purchasing is permitted below EUR 20,000 for supply and services and below EUR 40,000 for public works. Furthermore, below EUR 500,000 contracting authorities may perform a negotiated procedure without publication of contract notice.

EU directive 2007/66 on the review procedure was introduced by Legislative Decree 20 March n. 53 2010. Procedural rules have been transposed by the Administrative Justice Code, Decree 2 July 2010 n. 204.

In addition to the national Code, regions have the competency to legislate over public procurement according to the Constitutional Court (judgement 303/2003). However, the role of regional legislation is limited apart from the five regions that are granted special autonomy (Sicily, Sardinia, Valle d'Aosta, Trentino Alto Adige, Friuli Venezia Giulia).

Institutional system

Responsibility for public procurement is shared among two main bodies at national level. The Department of European Union Policies is in charge of relations between the Italian government and EU institutions, including for procurement policy. It has the primary responsibility for the coordination of public procurement policies at the national, regional, and local level, in particular with respect to elaborating the Italian position in procurement matters vis-à-vis EU institutions. The Ministry of Infrastructure and Transport is mainly in charge of proposing draft legislation and performs a consultative function for contracting authorities regarding the correct implementation of EU rules.

In addition, the Department of Development and Economic Cohesion (DPS) is charged with balancing economic and social development of underdeveloped areas in the country. This includes translating and implementing EU cohesion policy objectives and EU Directives into the national policy framework. It is also in charge of managing and assessing national investments made through the use of EU Structural Funds.

In 2014, under the coordination of Department of European Union Policies, an inter-institutional working group was set up to reform public procurement processes and improve the capacity of the public administration. This working group is composed of the main procurement stakeholders at ministerial level, including the Department of European Union Policies, the Ministry for Infrastructure and Transport, the Ministry of Justice, Ministry of Economy and Finance, and the Ministry of Economic Development.

Consip, a publicly owned stock company, acts as the central purchasing body on behalf of the state. It was created to implement the so-called Programme for Rationalisation of Public Expenditure. In 2013, Consip's role was strengthened to include a greater focus on e-procurement.

Until 2014, Italy's independent Authority for the Supervision of Public Contracts (AVCP) was mandated with supervising compliance with procurement rules and procedures. The AVCP had extensive functions with respect to procurement including dispute resolution, identifying and reporting potential illegal conduct to the Criminal Court and to the Court of Auditors, and reporting to the Parliament and to the Government. It also carried out an advisory function, as it could propose legislation to the Ministry of Infrastructure. Since 2014, the responsibilities of the AVCP were transferred to the National Anti-Corruption Authority (ANAC). Importantly, the ANAC is also responsible for collecting data on procurement through the Public Procurement Observatory.

Italy's Court of Audit also oversees public procurement. According to the Group of States against Corruption (GRECO), the Court of Audit performs high quality work^{iv}, however, it must be noted that the Court cannot perform checks without prior warning.^v

Key issues that have a bearing on administrative capacity

Human resources: Administrative capacity has been identified as a key area of weakness in Italy's public procurement, as contracting authorities often lack the professional skills to draft procurement documentation and manage tendering procedures. Traditionally, the skillset of procurement practitioners has been limited to administrative and legal curricula, and therefore lacks an important economic focus.

While agencies such as Consip and other regional central purchasing bodies perform procurement exclusively and are therefore quite specialised, this is not the case for the majority of contracting authorities, where procurement is fragmented among state, regional and local authorities. Consip has a staff of 340.

Thus, the lack of specialised competencies, both technical and administrative, is a potential source for irregularities. Furthermore, given the limited capacity and expertise of the public administration, in many cases part of the contractual procedure, notably the design and supervision of works, is outsourced, which limits the contracting authority's ability to oversee the quality of contract execution.^{Error!}
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Structures: The National School for Public Administration (SNA) and Formez PA are the two key education and training institutions for civil servants, and both offer coursework specifically on procurement.

The Public Contracts Service set up by the Ministry of Infrastructure and Transport supports contracting authorities and economic operators with legal counselling. It also serves as an e-notification portal as all contracts above threshold must be published there and are searchable by registered users.

The Department of Development and Economic Cohesion also offers technical assistance to contracting authorities using ESI Funds covering legal issues related to the application of public procurement regulations.

A system of support offices for enterprises has been set up by Consip in cooperation with various territorial associations in order to facilitate the use of e-procurement tools.

Training: The SNA offers a Diploma on Public Procurement for civil servants and managers as well as to private sector professionals composed of 19 training sessions plus a training session focused on collusion in public procurement. Consip collaborates with the SNA on public procurement training. Formez also offers training on procurement as well as several trainings on the management of ESI Funds.

Public administrations at regional level are largely autonomous in formulating and implementing their own training plans including on aspects related to public procurement.

A recent survey on the professionalisation of public procurement by the University of Rome II found that training is available and useful, but it is not sufficient to fill the procurement practitioners' self-identified skills gaps. In fact, 85% of respondents said they had attended training courses over the past three years, and virtually all found them useful or very useful. Nevertheless, surveyed practitioners consider themselves in need for improvement in what they consider the key competencies to perform their

job, namely legal knowledge, strategic and organisational competency, and analytical skills.^{vi}

Systems/tools: The portal OpenCoesione¹ publishes information on projects co-financed by EU Funds as part of Italy's OpenData and OpenGovernment initiative. Information related to the tender process is included on the portal as an integral aspect of project implementation.

Internal monitoring systems are not well developed, particularly in the south of the country, and at the municipal and regional levels. In fact, the majority of public bodies conduct no performance monitoring of staff or offices responsible for procurement.^{vi}

E-procurement

Despite the fact that Italy launched its e-procurement strategy at the beginning of the decade, the overall e-procurement system is fragmented and shows diverging levels of advancement. At the national level, contracting authorities are required to buy via framework contracts managed by Consip, which is also responsible for the online platform² as its operations centre. Furthermore, there are significant differences among the regions, too. For instance, Lombardy, Emilia Romagna, and the Province of Bolzano have introduced mandatory e-procurement requirements, while in the remaining regions e-procurement is still performed on a voluntary basis and uptake lags behind.

As a further instrument for e-procurement, the Electronic Marketplace of the Public Administration (*MEPA*), also run by Consip, is the most successful electronic market and is used by 50% of contracting offices.^{vi}

Overall, e-procurement is used by approximately half of contracting authorities and mostly for standardised goods, indicating a clear path for future improvement. Lack of IT skills among contracting authorities are cited as one of the reasons for the low level of take-up^{vii}.

Corruption

Public procurement in Italy is considered a risk area for corruption and organised crime, notably in the domain of public works^v. The analysis of the judiciary proceedings published in the 2013 Implementation Report of the Anti-Corruption Authority shows the following: 68 corruption convictions were linked to public procurement. That is roughly 22% of the total corruption convictions, thereby confirming the high vulnerability of procurement to corruption.^{viii} Furthermore, it must be noted that the average time span between the corrupt activity and the conviction lasts over 10 years.^{viii}

Public works are at particularly high risk, as 49% of the above mentioned convictions are related to this area.^{viii} It is estimated that the average km of high speed railway track in Italy costs EUR 61 million to build, compared to approximately EUR 10 million/km in France, Spain or Japan.^v This divergence may serve as an indicator of the scale of mismanagement and irregularities in the procurement process.

Recent corruption scandals have uncovered a vulnerable area in Italy's legal framework. Specifically, cases where a single company is assigned both to design and execute a works contract frequently result in cost overruns and corruption risks. EC audits have confirmed these findings.

¹ <http://www.opencoesione.gov.it/>

² www.acquistinretepa.it

However, Italy has made some progress in the fight against corruption with the passing of the 2012 Anti-corruption law. This legislation is based on four pillars: transparency, education, codes of conduct, and risk assessment. Furthermore, the Anti-corruption law introduced the National Anti-Corruption Plan for 2013-2016, which coordinates the various anti-corruption strategies of public administrations. The National Plan promotes integrity pacts as an important tool for combating corruption in public procurement. According to the Anti-Corruption Law, contracting authorities may determine in contract notices or letters of invitation that non-compliance with Integrity Pacts is grounds for exclusion. So far, Milan is considered an example for the implementation of integrity pacts. Furthermore, Transparency International-Italy is working with the Public Works Authority, the Ministry of Infrastructure, the ALER (Lombardy Utility for Residential Construction) and a number of local authorities to further promote the use of integrity pacts.^{ix}

An earlier law introducing the traceability of public funds is another important tool for the prevention of corruption.^v

Finally, ANAC has a mandate to prevent and oversee corruption in the public administration and state-owned subsidiaries through the implementation of transparency and the oversight of public procurement and other corruption-prone domains. The transfer of procurement oversight to ANAC has brought about a stronger focus on corruption, while maintaining the same functions of the previous authority in terms of oversight. On the other hand, the terms of the reorganisation require ANAC to generate savings of 20% in terms of personnel and operational costs, which could limit its capacity to perform those functions.^x

In order to support contracting authorities in the fight against corruption, ANAC has introduced an approach called 'collaborative supervision', whereby contracting authorities can request the ANAC to supervise the implementation of procurement procedures. Such intervention may be requested for high-value and strategic projects, 'major events' or EU co-financed projects.^{xi}

Europe 2020 Agenda

With respect to introducing strategic goals in public procurement, Italy is active in green public procurement, as it has adopted and revised the National Action Plan in 2008 and 2013 respectively. The plan targets an inclusion of environmental criteria for 50% of the total value and number of public tenders for targeted categories of goods.

At the national level, Consip is active in pursuing green goals as well, and has introduced environmental criteria in 75% of its active agreements. It also initiated studies on indicators for identifying products with better environmental performance. Lastly, Consip offers technical support for the introduction of green criteria to public administrations^{xii}.

Increasing SME participation in public procurement is also considered an important policy goal, which is pursued by Consip through the electronic marketplace MEPA. Inclusion of SMEs is facilitated through the low administrative requirements for participation in MEPA. Also, a network of support office was set up in collaboration with relevant trade associations in order to provide operational assistance for participating to MEPA and to disseminate information. So far, MEPA has been quite successful as SMEs account for 4,500 of the 5,000 companies registered in the electronic marketplace.^{xiii}

Irregularities and findings of national Audit Authorities

In its 2013 annual report, the AVCP outlines a number of recurring irregularities arising from public works contracts, most notably costs rising substantially due to variants after the beginning of the work contract. Other issues include splitting of

contracts to avoid transparency or procedural requirements, and delays or even suspension of works during the execution phase. These irregularities may be caused by poor design, which in turn is tied to the limited administrative capacity of contracting authorities, or may hide larger underlying problems of corruption and criminal activity.^{xiv}

The Supreme Court of Auditors echoes some of the findings of the *AVCP*, pointing to the lack of controls during the execution phase. Moreover, the Court draws attention to an important grey area in Italy's procurement system, the so-called 'in-house' companies, which are either partially or entirely publicly-owned. Their number fluctuates, but the most recent count indicates that 50 'in-house' companies are state-owned while 5,258 of them are owned by local entities.^{xv}

Furthermore, the inter-institutional working group on public procurement has conducted an analysis of common irregularities related to procurement using ESI Funds. It concluded that below threshold procurement presents greater irregularities, notably due to disregard of publication and transparency requirements and the absence of appropriate tender procedure.^{xvi}

Italy has a particularly low level of EU fund absorption, as slightly above 50% of fund expenditure has been certified by 2013.^{xvii} Furthermore, EU funded programmes have been subject to various audits in 2013, notably in Sicily, Campania, Calabria, and Sardinia, resulting in financial corrections of EUR 49 million. Irregularities were also found in L'Aquila, where fraud in procurement led to greater attention on the part of audit authorities.^{xviii}

Outlook

The Italian public procurement system has been affected by a number of changes in recent years, notably the Anti-corruption law and the enhanced transparency requirements. However, given the persistent shortcomings and weaknesses in public procurement, there are plans to implement further changes.

The mandatory transposition of the new EU public procurement Directives offers Italy the opportunity to review the entire procurement Code in order to simplify procedures, and the Parliament is considering legislation that would reduce the complexity of the Code from 650 articles to 250.^{xix}

Simplification of procurement from a legal and procedural perspective should substantially restrict the ability of contracting authorities to use exemptions and emergency measures to circumvent procedural requirements. Other aspects of reform aim at tackling the challenges in the execution of public works and increasing the professionalisation of procurement practitioners.

Furthermore, the Public Procurement Working Group is defining a national strategy to address shortcomings in procurement in order to address the *ex-ante* conditionalities of the 2014-2020 programming period. The Working Group is also involved with the transposition of the new directives, the simplification of legislation, as well as tackling general challenges in the procurement.

In addition to the activities of the Working Group, a series of actions have been put forward as part of Italy's Action Plan to comply with the *ex-ante* conditionalities. The Action Plan includes the simplification of procurement rules during the course of the transposition exercise. Measures that aim at ensuring the effective application of procurement regulation include defining criteria for the selection of procedures, defining criteria for in-house procurement as well as providing guidance material. Furthermore, the Action Plan foresees the strengthening of e-procurement through appropriate instruments. At the regional level, guidelines for below threshold public procurement will also be provided. In terms of training and dissemination, two specific

training actions will be offered for Managing Authorities (MA) and an interactive forum will be set up within the *OpenCoesione* portal. Administrative capacity will be strengthened by supportive actions such as a help desk and a training programme for regional and state authorities. Finally, a network of dedicated procurement personnel within MA will be responsible for verification of correct interpretation of public procurement regulation.^{xx}

ANALYSIS

Strengths

In the context of tightening public budgets, greater attention is being paid to improving the functioning of the public administration, including public procurement. This has led to the introduction of a series of reforms over the last years that touch upon public procurement either directly or indirectly. Some encouraging results in terms of enhanced efficiency, transparency, and the prevention of corruption can already be listed.

Furthermore, efforts to strengthen Italy's performance with EU Funds are ongoing, notably the creation of a Public Procurement Working Group tasked with identifying challenges to the procurement system and proposing recommendations for reform. In addition to the output to be produced by the working group, knowledge transfer between key procurement stakeholders has already been registered as a positive outcome of the collaboration.

The strengthening of *Consip* through its rationalisation of purchases has brought about savings of EUR 4.69 billion.^{xxi} Further savings are expected to result from their ongoing work to further develop their e-procurement capacities. Rationalisation of demand is high on the government's agenda, as demonstrated by the substantial centralisation introduced by a 2014 reform, which foresees the creation 35 purchasing bodies, or so-called aggregators. These centralised purchasing bodies will be solely responsible for procurement of certain goods and services.^{xxiii}

With the 2012 anti-corruption law, Italy has aligned itself to international standards in public administration. While some weaknesses in the current framework still persist, the anti-corruption law represents an important step in the right direction, as it increases the accountability of the public administration.

Several initiatives have been taken in order to increase transparency. In addition to contracting authorities' obligation to communicate public procurement data to the Public Procurement Observatory, a 2010 law now demands the traceability of financial flows. Furthermore, the 2013 transparency law (decree law n. 33/2013) requires the introduction of a transparency portal for the public administration. Moreover, Italy collects significant data on public procurement, which is not the case in many other EU countries. Such data collection is a pre-requisite for monitoring of performance of procurement policy. A promising initiative of the Anti-Corruption Authority is the development of a system of indicators or 'red flags,' for the identification of risk areas in procurement.^{xxii}

Weaknesses

Italian public procurement law is strongly oriented towards formal elements without sufficiently taking into consideration the goals of public procurement, i.e. generating outcomes such as value for money for the public administration. This has resulted in a lengthy, complex and onerous procurement code, which contracting authorities and economic operators have difficulties to work with. The weakness of Italy's procurement legislative framework has a twofold detrimental effect on the country's performance. On the one hand, the complexity of the legal system has led to exemptions and loopholes, which in turn allow the infiltration of corruption and

organised crime. On the other hand, Italy has one of the most stringent regulations of procurement below the EU mandated thresholds.^{vi} Such cumbersome and inflexible rules are having a significant negative impact on procurement performance.

Additionally, given its complexity, public procurement generates a great amount of litigation, which results in lengthy and costly judicial proceedings and efficiency losses. Yet, the primary weakness of the legislative framework is the range of exceptions and loopholes that the Code provides. Exemptions from the Code for Civil Protection Agency or under the umbrella of “major events” can be exploited to circumvent public procurement rules.

Also, the poor execution of public contracts is troublesome. Again, the many issues pointed out by the Court of Audit, including increased costs after the beginning of works, variations, delays, or even non-completion, are often signals for criminal activity. Moreover, sanctions appear to have little effect in deterring sanctionable activity. The 2012 Anti-corruption report finds a clear relationship between the value of public work contracts and the occurrence of variations of the contract during execution. For contracts between EUR 150,000 and 200,000 variations in construction happen in 40.8% of cases, while contracts above EUR 5 million experience variations in 73.4% of cases.**Error! Bookmark not defined.**

Administrative capacity is a further area of weaknesses in Italy highlighted by the amount of ‘passive waste’ that Italian procurement is experiencing. In particular the lack of technical skills to carry out complex procurement projects, particularly public works, increases the vulnerability of the administration to inefficiency as well as irregularity.

As mentioned above, the grey area surrounding in-house companies constitutes a point of attention and further investigation. In addition to the lack of transparency in governance structures, these in-house companies are often exempted from public procurement procedures when providing services to the public entities.

Furthermore, weaknesses in procurement and an overly complicated legal framework have been recognised as part of the reason behind Italy’s low performance with ESI Funds, resulting in recurring errors and irregularities in the course of co-financed procurement procedures. In addition, public procurement is considered one of the most burdensome procedures, after fiscal policy, construction, and new firm creation.^{xxiii}

Lastly, Italy’s progress on the 2014 public procurement Country-specific Recommendation has been limited. While it has introduced some measures to streamline public procurement, more actions are needed to strengthen procurement as a whole, such as defining an e-procurement strategy.^{xxiv}

Recommendations

- **Formalistic legal framework:** Public procurement legislation is considered strongly formalistic, which has a detrimental effect on the procurement system by slowing down procedures and limiting flexibility.
 - Introduce outcome-based legislation that promotes economic efficiency leaving greater room for manoeuvre of contracting authorities to pursue “value for money”.
- **Close loopholes:** Current exemptions from the Public Procurement Code have often been misused to the benefit of corrupt players.
 - Eliminate all possibilities of derogation from the Public Procurement Code except major disaster.
 - Introduce strict ex post oversight of procedures carried out through an exemption of the Code.

- **Clear rules for in-house:** A sizeable amount of public goods and services are provided by in-house firms, which are often not subject to procurement regulations.
 - Enhance transparency when public goods and services are acquired through in-house firms.
 - Clarify the requirements and conditions for the use of in-house firms.
- **Crack down on abuse:** Italy faces persistent issues with corruption risk in procurement, particularly in the construction and public works.
 - Strengthen enforcement to reduce lag times between violations and convictions to reduce the perception of impunity.
 - Improve risk management tools to better target high risk projects for increased oversight.
- **Contract execution:** The limited oversight during the execution of public contracts leads to many problems such as cost overruns and unfinished works as well as the infiltration of corruption during this last phase of the procurement cycle.
 - Introduce strict limitations on additional works in order to reduce cost overruns.
 - Limit economic operators' ability to carry out both design and contract execution, as this practice bears higher risks for cost overruns.
 - Enhance legal liability for completion of projects.
- **Efficiency and simplification:** In addition to the formal nature of the Italian procurement system, the laws and regulations are generally considered overly complex and lengthy. Contracting authorities frequently add to the already burdensome process by requiring excessive documentation from bidders.
 - Follow through on ongoing reform efforts intended to substantially reduce the number of articles in the Public Procurement Code.
 - Apply LEAN methodology to review procedures and increase efficiency.
 - Introduce "winner-only habilitation" to reduce unnecessary administrative burden on economic operators.
 - Provide standardised tender documents in order to simplify the contracting authorities' work and reduce the requests for additional documentation.
- **Specialise review:** The complexity of the legal system generates large amounts of litigation with excessively long court proceedings.
 - Establish a specialised court on public procurement to develop a higher specialisation in public procurement and make review proceedings more efficient.
- **Define the procurement skills set:** Currently, most Italian procurement practitioners have a legal-administrative background, but lack business experience or an economics background necessary to effectively carry out their tasks.
 - Set up a curriculum of competencies in order to make sure that procurement practitioners have a better-rounded skillset.

ⁱ ANAC, Corruzione sommersa, corruzione emersa in Italia: Modalità di misurazione e prime evidenze empiriche

ⁱⁱ European Commission (2015), Country Report Italy 2015 including In-Depth Review on the prevention and correction of macroeconomic imbalances

ⁱⁱⁱ *Rapporto della Commissione per lo studio e l'elaborazione di proposte in tema di trasparenza e prevenzione della corruzione nella pubblica amministrazione* (2012) (Report from the commission for the transparency and the prevention against corruption in the public administration), *La Corruzione in Italia per una Politica di Prevenzione: Analisi del fenomeno, profili internazionali e proposte di riforma* (Prevention of Corruption in Italy: Analysis of the phenomenon and recommendations).

^{iv} GRECO (2008), Evaluation Report on Italy.

^v European Commission (2014), DG HOME, EU anti-corruption report, Annex Italy

- ^{vi} *Università degli studi di Roma Tor Vergata and Promo P.A. Fondazione, Come Acquista la P.A.: Il nuovo ruolo dei Responsabili acquisto per lo sviluppo del procurement nella Pubblica Amministrazione e per l'aumento dell'efficienza e dell'efficacia dell'azione amministrativa* (The procurement responsibilities in the public administration).
- ^{vii} *Ibid*
- ^{viii} ANAC (2013), *Rapporto sul Primo Anno di Attuazione della Legge n. 190/2012* (report on the first year of implementation of the law n. 190/2012)
- ^{ix} Chiara Putaturo, Project Officer Transparency International Italia (2014), Integrity Pacts best practices – Italy, available at: http://transparency.hu/uploads/docs/Chiara_Putaturo.939.pdf
- ^x ANAC Piano di riordino (ai sensi dell'art. 19, comma 3 del decreto legge 24 giugno 2014, n. 90 convertito in legge 11 agosto 2014, n. 114) (Reorganisation Plan)
- ^{xi} *Regolamento pubblicato nella Gazzetta Ufficiale n. 300, pagina 56, del 29/12/2014, in vigore dal 30 dicembre 2014* (Regulation published in the Official Gazette n. 300, page 56, of the 29/12/2014 and valid as of 30 December 2014), available at: http://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anacdocs/Comunicazioni/News/20141215_II/Reg.Viq_ANAC.pdf
- ^{xii} *Consip, Il Green Public Procurement*, available at: http://www.consip.it/press_room/press_kit/
- ^{xiii} IDC (2013), Study on e-Procurement, EU Country Profiles
- ^{xiv} AVCP (2013), *Relazione annuale* (Annual report)
- ^{xv} Corte dei Conti (2013) (Court of Audit), *Requisitoria orale del Procuratore Generale presso la Corte dei Conti Salvatore Nottola nel Giudizio sul Rendiconto General dello Stato, Esercizio 2013* (note on the year 2013 from the attorney general for the Court of Audit)
- ^{xvi} Agenzia per la Coesione Territoriale (Agency for Territorial Cohesion), 12/05/2015, interview with PwC
- ^{xvii} OpenCoesione, available at: http://www.opencoesione.gov.it/media/files/pillola-1/Pillola_OpenCoesione_n.3_-_La_spesa_certificata_al_31_dicembre_2013.pdf
- ^{xviii} DG REGIO (2013), Annual Activity Report.
- ^{xix} Il Sole 24 Ore 07/04/2014, available at: <http://www.ilsole24ore.com/art/notizie/2015-04-07/appalti-rating-imprese-e-pa-073714.shtml?uuid=ABwQPPLD>
- ^{xx} Dipartimento per lo Sviluppo e la Coesione Economica (2014) *Accordo di Partenariato 2014-2020 Italia*
- ^{xxi} Consip (2013), *Rapporto annuale* (Annual report)
- ^{xxii} *Autorità Nazionale Anticorruzione* (2014) (National Anticorruption Authority), *Relazione annuale sull'attività svolta 1 gennaio- 22 aprile 2014* (Annual report).
- ^{xxiii} Single market Forum acts 13/02/2015, available at: <http://www.politicheeuropee.it/comunicazione/19231/appalti-pubblici-e-nuove-direttive-europee>
- ^{xxiv} European Commission (2015) Country Report Italy 2015 including an In-Depth Review on the prevention and correction of macroeconomic imbalances.

LATVIA

KEY FACTS AND FIGURES

Key Facts and Figures in Latvia						
Overview	Total procurement 2,660,000,000€		Procurement % GDP 11%		2013 GDP 23,265,000,000€	Contracting authorities 2,258
Procedures applied	Open 72%	Restricted 1%	Negotiated procedure with call 3% no call 9%		Competitive dialogue 0%	Direct award 15% Other 1%
Share of contract notices by buyer	National 38%		Regional/local 12%		Body governed by public law 18%	Other 33%
Contract type	Services 33%		Works 7%		Supplies 60%	Framework agreement 4%
Ex ante conditionality criteria as of 2014	EU rules Not met		Transparency Fully met		Training Fully met	Admin. capacity Fully met
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Mandatory	Uptake rate N/A
Perceived corruption	Corruption widespread in society Businesses 79%		Individuals 76%		Corruption widespread in procurement At national level 66%	At local/regional level 58%
TED indicators	Value of tenders 1,379,839,659€		Of total procurement 52%		# contract notices 1,123	# contract awards 1,233
Other indicators	Received single bid 33%		# days for decision 66.4		Price only criteria 80%	MEAT criteria 20%
	Won by foreign firms 4%		Related to EU funds 19%		Joint purchase 15%	Central purchasing No

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Since its accession to the EU in 2004, Latvia's economic development and growth has relied heavily on EU funds. At just 64% of the EU average in 2014, Latvia has among the lowest GDP per capita in the EUⁱ.

While central and local contracting authorities can conduct their own tender procedures within a decentralised public procurement system, several initiatives in the past years have fostered the harmonisation and centralisation of purchases especially for local authorities. However, additional challenges still need to be tackled to reduce the substantial number of irregularities in tender procedures and to strengthen the administrative capacities of public procurement practitioners at both national and local levels.

DESCRIPTION OF FEATURES

Legal features of public procurement system

Public procurement in Latvia is currently regulated by two main laws: the 2006 Law on Public Procurement (PPL) transposed Directive 2004/18/EC, and the 2010 Law on the Procurement of Public Service Providers transposed Directive 2004/17/EC. The PPL regulates procurement procedures both above and below EC thresholds.

Latvia has two levels of national thresholds below the EU thresholds. First, direct procurement is allowed for small value contracts of less than EUR 4,000 for supplies and services and EUR 14,000 for worksⁱⁱ. Second, simplified procedures can be used for contracts between EUR 4,000 and EUR 42,000 for supplies and services and EUR 14,000 and EUR 170,000 for worksⁱⁱⁱ. Above this second level, the same procedures and rules apply as above the EU thresholds, except for shorter time limits

^{iv}.

The 2013 reform of the public procurement law made centralised procurement mandatory for local authorities for all goods and services offered in the e-catalogue, such as stationary and computer equipment. This has been implemented mainly through the creation of Tender Committees in charge of conducting the entire tender procedure from the drafting of tender documents to the awarding of contracts.

Institutional system

The Ministry of Finance (MoF) has primary responsibility for procurement policy making and drafting legislation. The Procurement Monitoring Bureau (*IUB*), a State direct administration institution that is supervised by the MoF, is responsible for monitoring procurement compliance with legal requirements and for conflicts of interest, preparing guidelines and instructions, and drafting standardised tender and contract documents. The *IUB* also prepares annual reports to the Latvian government on the monitoring and functioning of public procurement^v. In addition, the *IUB* acts as a first instance review body for complaints regarding public procurement. It also carries out *ex-ante* controls before the start of procurement procedures in cases of projects co-financed by ESI funds.

The State Regional Development Agency (*VRAA*) is responsible for promoting harmonised and comprehensive public purchases nationwide through the management of e-procurement and the conclusion of framework agreements for certain types of goods and services. For central government institutions, purchasing from the e-catalogues based on these framework agreements is mandatory. The Providing State Agency for Internal Affairs and the State Agency for Defence Properties of the Ministry of Defence also act as central purchasing bodies in the security and defence sectors^{vi}.

The main external supervision body in public procurement is the State Audit Office (SAO). The SAO is an independent collegial supreme audit institution. It performs audits in order to ascertain whether resources of central and local public bodies are used in a lawful, economical and efficient manner, and to provide recommendations for the reduction of deficiencies^{vii}. One of its tasks is to audit public procurement activities and to control the implementation of EU co-funded programmes. The SAO reports its findings to the *IUB* which can consequently impose fines to contracting authorities for violation of the PPL.

The Corruption Prevention and Combating Bureau (*KNAB*), as the leading specialised anti-corruption authority of Latvia, plays a supporting role in the public procurement system. Its aim is to fight corruption in a coordinated and comprehensive way through prevention, investigation and education. In particular, it detects corruption in public procurement procedures in collaboration with the *IUB* and is responsible for prosecuting cases of corruption and other criminal offences in public procurement cases.

Ultimately, there are judicial review procedures applicable to public procurement complaints. Aggrieved parties may request the administrative court to annul, terminate, amend or reduce the contractual terms of a tender procedure, even if it is already executed. An appeal to the administrative court does not suspend the public procurement processes, but may result in the annulment of the process and/or the award of damages^{viii}.

Key issues that have a bearing on administrative capacity

Human resources: The main procurement institutions in Latvia struggle to attract and retain qualified personnel, as public procurement specialists are one of the lowest paid categories in the public administration. Additionally, expertise on public procurement is often not readily available on the market and needs to be realised through education and training of staff.

The *IUB* primarily recruits staff with a legal background, with an in-house training program designed to build procurement-specific skills. The staff of the *IUB* consisted of 61 persons in 2014, including 54 public officials and 7 contractual employees. In the past year, the increase of responsibilities of the *IUB*, particularly regarding the control of EU co-funded projects, development and monitoring of electronic procurement and green public procurement, has generated a growing workload for the *IUB* staff^{ix}. Due to the comparatively low salaries offered in proportion to the professional qualification necessary for performance of duties, work intensity, and responsibility, the *IUB* suffers from a relatively high levels of staff turnover. In fact, in 2014 it registered a 67% rotation coefficient, i.e. number of recruited plus fired workers over number of employed personnel.

The SAO faces many of the same challenges in terms of recruitment and retention of high-skilled employees. In 2013, they had 163 on staff, of which 124 were auditors and 39 were supporting personnel^{vii}. Procurement is just one of the functions the SAO controls.

Structures: The *IUB* is the main supportive body for contracting authorities and economic operators in public procurement. Training wise, it works in collaboration with the Latvian School of Public Administration (LSPA), which is the largest training centre for civil servants and public administration employees in Latvia.

Training: Apart from the trainings organised internally, *IUB* staff benefit from capacity building activities offered by the LSPA, the State Chancellery and other educational institutions including foreign seminars and conferences^{ix}.

Contracting authorities have access to a diverse set of trainings given by the *IUB* in collaboration with the LSPA and other Ministries. Regarding e-procurement, the *IUB* and the *VRAA*^x provide training to contracting authorities through jointly held seminars on the procurement legal framework and e-procurement benefits^{xi}. In addition, training sessions on green public procurement are organised by several institutions, mainly the Ministry of Environment and Regional Development, the *IUB*, the Ministry of Economy and the Ministry of Agriculture^{xii}. In 2014, *IUB* experts have held 36 seminars for state and local authorities with a total audience of 1,497 participants^{ix}.

The SAO also invests important resources in the training of auditors as no higher education training is available on that matter in the country. In 2013, each auditor benefited from an average of 33 hours of educational training and professional development. 22 training sessions and seminars were held on topics such as the use of specific audit software, processes of financial audit, audit evidence and documentation, evaluation of errors, risk assessment, IT controls and international financial reporting standards.

Systems/tools: The *IUB* offers numerous and diverse types of support and tools to public procurement practitioners and economic operators. It provides oral and written advice and phone consultations, organises workshops, and drafts guidelines, explanatory notes and standardised tender documents^{xiii}. Moreover, it maintains a Publication Management System¹, which facilitates the dissemination of procurement notices online, as well as electronic dispatch for publication on the EU Official Journal.

In addition, the SAO is currently carrying out an ESF co-funded project to strengthen its performance audit capacity. One of the priorities set in the SAO's 2014-2017 Strategy is to increase the focus on performance issues in audits, including performance of public procurement procedures. In this context, the activities

¹ <http://www.iub.gov.lv/pvs/users/registerAdmin>

implemented include a review of performance audit methodology and the organisation of training and pilot audits^{xiv}.

E-procurement

The use of e-procurement in Latvia is highly centralised towards a unique electronic procurement system (*EIS*) and is currently limited to e-notification of contracts and to a lesser extent to e-access to tender documentation. E-notification on the national e-procurement portal is mandatory for all contracts.

The national e-procurement portal provides e-catalogues and e-ordering services for the management of centralised framework agreements, as well as limited e-submission services for the reopening of competition within these framework agreements.

E-auction and full e-tendering functionalities are currently being developed in cooperation with the *IUB* as part of an ERDF co-funded project to be completed by the end of 2015^{xv}. Furthermore, Latvia is currently working to develop a comprehensive strategy towards full, effective and timely functionality of e-procurement procedures by early December 2015.

Corruption

Corruption remains a serious issue in public procurement practices in Latvia, notably in public works. Perceptions of corruption in procurement organised at the national level well exceed the EU average^{xvi}, and there have been a number of bribery investigations at both the state and national levels in recent years^{xvii}.

The *IUB* has identified recurrent irregularities which may indicate corruption risks. These consisted mainly in cases where contracting authorities failed to make documentation available to bidders, requirements for bidders and subcontractors were missing or unclear, or requirements regarding bidders' qualifications were disproportionate^{xviii}.

Several anti-corruption initiatives have been implemented in recent years in the framework of the Corruption Prevention and Combating Programme 2009-2013 to foster integrity in the public sector. One of these initiatives resulted in the approval by the government of a framework plan for human resources in the central administration, entailing wider use of open competitions and a unified system of disciplinary liability for contracting authorities and public-private partnerships. In addition, a unified code of ethics is planned before spring 2016^{xix}.

Since 2013, the Code of Administrative Violations established administrative sanctions for violations of rules governing public procurement, public-private partnerships and the award of concessions. This makes it possible to sanction officials for procurement violations that do not amount to criminal offences. The sanctions mainly consist in fines, and can include deprivation of the right to hold public office^{xx}.

Europe 2020 Agenda

The use of public procurement to achieve strategic goals is not highly developed in Latvia and has been mainly focused so far on green public procurement. Under the PPL, environmental criteria can be introduced in tender procedures as a part of technical specifications or selection criteria. However, the use of green public procurement is not mandatory for contracting authorities, and thus their use is limited. According to the *IUB* monitoring data, only 4.5% of contracts awarded between 2010 and 2013 included environmental criteria. Social criteria, too, have been introduced in the legislation, but are not widely used, primarily due to the fact that contracting authorities lack a thorough understanding on how to apply them.

In general, Latvian contracting authorities award a relatively large share of public contracts to SMEs or groupings of companies led by such enterprises, 67% compared to EU average of 56%^{xxi}. Although there is no specific regulation for SME access to public procurement, the VRAA has introduced some regional divisions of purchases within the centralised e-catalogue system in order to facilitate the participation of SMEs essentially splitting the framework contracts into smaller lots and thus fostering the participation of SMEs^{xxii}.

Irregularities and findings of national Audit Authorities

An analysis of errors in public procurement procedures involving EU Structural Funds between 2010 and 2013 was recently carried out by the SAO on the basis of data reported by EU Funds management bodies^{xxiii}. Identified public procurement-related errors amounted to 1% of the total ERDF and ESF expenditure declared to the EC. Furthermore, the analysis makes three key observations. First, the majority of the errors that resulted in financial corrections during the audit period were related to unlawfully restrictive selection criteria or unequal treatment of tenderers in awarding of the contract. Second, discrepancies related to the reported cause of irregularities by beneficiaries and Audit Authority have been noticed. Third, there are inaccuracies in the reporting of errors to the Commission, such as failure to specify the type of irregularity.

As a result, the SAO issued three recommendations to the Ministry of Finance, aimed at gathering detailed information on public procurement irregularities, explaining the essence of errors to contracting authorities upon their identification, and ensuring the accurate classification and evaluation of irregularities according to their type.

The IUB also conducts reviews of irregularities in procurement. It cites disregard of technical specifications, non-compliance with publication requirements, splitting contracts into lots in order to avoid procurement procedures as the most common irregularities in public procurement.

Furthermore, DG REGIO has identified several issues with project implementation at the end of the 2007-2013 programming period. Notably, this has concerned delays in the execution of major projects, significant cost overruns, and the unjustified use of additional works. Frequent legal challenges also contribute to delays in project implementation.

Outlook

Latvia recently established requirements for the development of green public procurement along with a wider supply of energy-efficient and ecological goods in the National Development Plan of Latvia 2014-2020 and also adopted a Green Procurement Promotion Plan 2015-2017. This short-term strategic policy aims to promote sustainable purchase and production and to increase the use of green public procurement up to 30% by 2017. These objectives will be particularly implemented through the use of the EU Structural Funds and the Cohesion Fund.

The main specific measures foreseen to achieve these ambitious goals deal are the development of the regulatory framework of green public procurement, the production of guidelines and standardised documentation for the purchase of certain products and services, the promotion of green products in the EIS e-catalogue, the development of a life cycle cost estimation model for certain product groups, the organisation of training courses and awareness raising campaigns for contracting authorities at State and local level, as well as the annual monitoring and reporting on green public procurement by the Ministry of Environment and Regional Development.

ANALYSIS

Strengths

Latvia is making significant efforts towards a wider use of centralised procurement, which should substantially reduce errors and irregularities, as well as the administrative cost of preparing and responding to tenders. Recent amendments to the PPL have introduced the obligation for all contracting authorities to publish tenders notifications online and for local administrations to use centralised procurement through the Tender Committees. In addition, new developments in Latvia's e-procurement system allow a larger range of buyers to register in the centralised system.

In addition, recent amendments to the Code of Administrative Violations are expected to bring a greater degree of discipline and accuracy to public procurement decisions through the application of administrative penalties for breaching tender procedures^{xxiv}.

In Latvia contracting authorities that make use of EU Funds are requested to make an annual planning of procurement needs and related procedures. This has two beneficial effects: on the one hand, it forces contracting authorities to think strategically about procurement; on the other hand, it allows economic operators to better prepare for upcoming public tenders.

Weaknesses

Many of Latvia's public procurement deficiencies can be traced back to insufficient focus on the preparation of tender documents. More emphasis is placed on *ex-post* identification of irregularities than on anticipation and prevention. In this sense, investment in more *ex ante* controls or support could improve outcomes.

Also, the legal framework below EU thresholds presents several weaknesses, as its provision for ensuring transparency and mechanisms for accountability are not particularly robust. In addition, issues related to unforeseen additional works and cost overruns may be related to the lack of clear contractual provisions to cover potential risks. Economic operators view the exemption of in-house procurement as a major obstacle to a transparent procurement system. Also, low threshold public procurement bears significant risks for corruption, yet it is not sufficiently monitored.

Although a number of relevant initiatives are in place to support public procurement practitioners, the main bodies involved in the management and control of public procurement at national level struggle to maintain a stable and well-trained workforce and the overall level of competence still needs to be improved.

The development of e-procurement is still quite low in Latvia. Until now, the lack of full e-procurement functionalities, especially e-submission, has been a substantial barrier to the uptake of e-procurement by contracting authorities and economic operators.

Finally, the integration of Europe 2020 objectives into the public procurement process has only recently become a priority for Latvia and the inclusion of environmental, social and innovation criteria in tender procedures is not highly developed.

Recommendations

- **Get it right the first time:** Preparation of tender documents is a major weakness in Latvia, due in part to the administration's focus on detection rather than prevention of errors and irregularities.
 - Dedicated increase resources to *ex ante* controls of tender documents.
 - Develop comprehensive guidance materials, including sample tender documents, to help contracting authorities in the preparation of documents.

- **Follow through:** Many issues in the procurement process, such as preventable delays and cost overruns, and unjustified add-works, take place after the signature of the contract, and thus beyond the jurisdiction of the *IUB*.
 - Extend the *IUB*'s authority to the full project lifecycle.
 - Develop risk-management tools to systematically identify potential issues before they arise.
- **Increase transparency:** Economic operators. Oversight bodies and civil society groups would benefit from increased transparency on procurement procedures in Latvia.
 - Subject below EU threshold tenders to reporting and transparency requirements more in line with above EU threshold norms.
 - Bring the legal definition of fraud into line with the EU's definition.
 - Increase the transparency of in-house procurement done by municipalities.
 - Oblige Latvia's procurement bodies to make their public procurement plans available online.
- **Better pay:** Procurement bodies, including the *IUB*, struggle to attract and maintain highly skilled staff. The current human resources strategy involves an extensive training regime, but ultimately procurement staff are among the lowest paid in the public administration.
 - Bring compensation for high skilled procurement staff into line with similarly qualified positions in other parts of the public administration.
- **Develop e-procurement:** E-procurement is still in its infancy and uptake remains very low due to underdeveloped functionalities.
 - Create a comprehensive e-procurement platform.
 - Develop a policy plan setting out ambitious targets on e-procurement.
 - Introduce dedicated e-procurement trainings and guidance materials.
- **Get strategic:** The promotion of strategic goals via procurement is a recent priority for the Latvian government, and thus remains modest.
 - Set up and maintain an inventory of ready-to-use environmental, social and innovative criteria for different product groups.
 - Implement the government's strategic plan to promote quality criteria.
 - Design specific trainings to promote such criteria within contracting authorities.

ⁱ Eurostat statistics explained: GDP per capita, consumption per capita and price level indices, available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/GDP_per_capita_consumption_per_capita_and_price_level_indices

ⁱⁱ European Commission (2011), Commission Staff Working Paper, Evaluation Report: Impact and Effectiveness of EU Public Procurement Legislation, Part 2.

ⁱⁱⁱ *Publisko iepirkumu likums* (The Public Procurement Law), edition of 1 November 2014.

^{iv} OECD (2010), "Public Procurement in EU Member States -The Regulation of Contract Below the EU Thresholds and in Areas not Covered by the Detailed Rules of the EU Directives", SIGMA Papers, No. 45, OECD Publishing.

^{vii} *Publisko iepirkumu likums* (The Public Procurement Law), edition of 1 November 2014.

^{vi} *Ibid*

^{vii} State Audit Office of Latvia (2014), Annual Report 2013.

^{viii} *Ibid*

^{ix} Procurement Monitoring Bureau (2015), Annual Report 2014.

^x State Regional Development Agency (2014), Annual Activity Report 2013.

^{xi} DG MARKT (2013), Study on e-Procurement Measurement and Benchmarking - EU-country-profiles.

^{xii} DG ENV (2014), National GPP strategies.

^{xiii} Public Procurement Network, Authority for the Supervision of Public Contracts (2010), The comparative survey on the national public procurement systems across the PPN.

^{xiv} State Audit Office of Latvia (2014), Communication on the ESF co-funded project "Support to implement structural reforms in the public administration", Sub-activity "Strengthening the capacity of the State Audit Office," available at: <http://www.lrvk.gov.lv/en/about-the-state-audit-office/eu-structural-funds>

^{xv} European Commission (2015), DG MARKT, E-procurement uptake.

^{xvi} European Commission (2013) Flash Eurobarometer 374

^{xvii} Corruption Prevention and Combating Bureau (2013), Progress and results in preventing and combating corruption in Latvia, Periodical update.

^{xviii} European Commission, DG HOME (2014), EU anti-corruption report – Annex Latvia.

^{xix} Council of Europe GRECO (2015) Fourth Evaluation Round Corruption prevention in respect of members of parliament, judges and prosecutors Compliance Report Latvia

^{xx} *Latvijas Administratīvo pārkāpumu kodekss* (Latvian Administrative Violations Code), last amended on 10 March 2015.

^{xxi} European Commission, DG MARKT (2014), SMEs' access to public procurement markets and aggregation of demand in the EU.

^{xxii} DG MARKT (2013), Study on e-Procurement Measurement and Benchmarking - EU-country-profiles.

^{xxiii} State Audit Office of Latvia (2014), Parallel regulatory audit on "Analysis (of types) of errors in EU and National public procurement within the Structural Funds programmes".

^{xxiv} European Commission (2014), Assessment of the 2014 national reform programme and convergence programme for LATVIA.

LITHUANIA

KEY FACTS AND FIGURES

Key Facts and Figures in Lithuania							
Overview	Total procurement 3,420,000,000€		Procurement % GDP 10%		2013 GDP 34,955,600,000€	Contracting authorities 7,703	
Procedures applied	Open 87%	Restricted 1%	Negotiated procedure with call 1%no call 7%		Competitive dialogue 0%	Direct award 5%	Other 0%
Share of contract notices by buyer	National 22%		Regional/local 18%		Body governed by public law 45%	Other 16%	
Contract type	Services 43%		Works 3%		Supplies 54%	Framework agreement 4%	
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met	
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Partially mandatory	Uptake rate 55%	
Perceived corruption	Corruption widespread in society Businesses 89%		Individuals 95%		Corruption widespread in procurement At national level 48%	At local/regional level 51%	
TED indicators	Value of tenders 1,296,969,175€		Of total procurement 38%		# contract notices 2,326	# contract awards 2,078	
Other indicators	Received single bid 14%		# days for decision 61.0		Price only criteria 89%	MEAT criteria 11%	
	Won by foreign firms 1%		Related to EU funds 7%		Joint purchase 6%	Central purchasing Yes, CPO	

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Since its accession to the European Union in 2004, Lithuania has been among the fastest growing economies in the EU. For the second consecutive year in 2014, it was ranked 24th in the world in the Ease of Doing Business Index from the World Bankⁱ.

Procurement accounts for roughly a third of the national budget, and is primarily conducted by sub-national contracting authoritiesⁱⁱ with the national procurement supervising body operating a strong reporting system to monitor their activities. As a result, updated data on the planning and implementation of tender procedures is regularly published, making Lithuanian public procurement particularly transparent. Nevertheless, problems persist in practice especially when it comes to reducing the number of irregularities and controlling the correct application of public procurement legislation.

DESCRIPTION OF FEATURES

Legal features of public procurement system

The Lithuanian Law on Public Procurement is the national act regulating public procurement and transposing the EU Directives 2004/18 and 2004/17 as well as the Clean Vehicles Directive 2009/33/EC and the Energy efficiency Directive 2006/32/ECⁱⁱⁱ. Several legal acts provide more specific regulations on the provisions of the law, offering standard contract documents, giving recommendations to contracting authorities and promoting certain trends such as centralised public procurement.

The law introduces two levels below EU thresholds. Contracts below EUR 3,000 in value are largely free of regulation, including mandatory contract notification. For contracts above this value, but below EUR 58,000 for supplies and services and EUR 145,000 for works, simplified procedures can be applied^{iv}. Above these limits, but below the EU thresholds, individual contracting authorities have to set up their own implementation rules and publish them in the Central Public Procurement Information

System (*CVP IS*). These rules can be developed on the basis of the standard rules prepared by the Public Procurement Office (PPO) and have to be compliant with the requirements of the Law on contract notices, verification of tenderers' qualification, technical specifications, tender evaluation, and terms for submitting bids. In addition, contracting authorities must define and publish an annual procurement plan estimating the value of public procurement for the coming year.

Institutional system

In Lithuania, procurement policy is set by the Ministry of Economy, and implemented by three main national bodies: the PPO, the Competition Council and the Central Purchasing Organisation (CPO). The PPO implements the public procurement policy and supervises compliance with the law and the implementing legislation. The PPO's functions include providing methodological assistance to the contracting authorities, administering the central e-procurement portal, preventing infringements, controlling contracting authorities' compliance with the law and coordinating and monitoring public procurement procedures together with partner ministries and other State authorities. In particular, the Ministry of Economy is in charge of the definition of the public procurement policy and legislation but does not participate in the implementation or control of public procurement.

The Competition Council investigates possible anti-competitive practices from both contracting authorities and bidders. It reports its findings to the PPO and can impose fines as well as refer cases to the courts in case of competition law infringements related to public procurement. In order to optimise tasks and avoid possible redundancies, the PPO and the Competition Council agreed in 2011 on a separation of their functions^v: the PPO reviews compliance with public procurement rules, the Competition Council ensures compliance with competition regulation^{vi}.

The CPO conducts centralised procurement on behalf of contracting authorities, including the central administration and its territorial branches, as well as local authorities^{vii}. It aims to ensure the rational, transparent and efficient use of public funds and administrative resources through centralised public procurement. It negotiates framework agreements for a wide range of products, services and public works, which contracting authorities can browse and order online using an e-catalogue.^{viii}

The National Audit Office (NAO) is the supreme audit institution of Lithuania and aims to foster an efficient management of State property^{ix}. Its activities fall with the Public Audit Strategy 2011-2015 and the corresponding annual audit programmes. The NAO controls public procurement through performance and financial audits, reports audit findings, and coordinates its activities on a regular basis with the PPO^x.

Key issues that have a bearing on administrative capacity

Human resources: The main national procurement bodies at national level have sizeable dedicated staffs. The staff of the PPO is constantly growing thanks to increased state budget allocations and the needs related to the attribution of new functions. It is currently composed of more than 80 persons, approximately 80% of them being civil servants, including directors, heads of departments and divisions, and chief specialists. According to the public procurement law, the director of the PPO is appointed by the President to a 4 year term for a maximum of two subsequent tenures upon the recommendation of the Prime Ministerⁱⁱⁱ.

The Competition Council has a staff of over 60 highly skilled employees.^{xi} The CPO has a staff of 27 experienced professionals.

Structures: The PPO is the main public body involved in public procurement capacity building. The other bodies dealing in public procurement, such as the CPO, the

Competition Council or the NAO, also provide trainings, guidelines and tools for public procurement practitioners.

Training: Contracting authorities' employees mainly acquire their knowledge on public procurement from on-the-job training. Nevertheless, many training courses are organised at the national and local levels. Numerous and diverse trainings and seminars on public procurement are organised by the PPO itself or in collaboration with other Ministries, local authorities or European and international bodies. They are opened either to contracting authorities or to suppliers and deal with general aspects of the law and procedures, as well as with specific topics like definition of criteria, green procurement or e-procurement. The CPO also performs training for contracting authorities and suppliers to foster the use of central public procurement and of its e-catalogue.

The NAO has also developed an internal training programme on public procurement aimed at auditors, which includes courses on simplified low-value purchases, EU-funded tenders, contract awarding, public procurement risk management, and procurement contracts.

Furthermore, thanks to a request from the PPO in 2011, Mykolas Romeris University has developed a master degree programme in public sector economy with a specialisation in public procurement studies.

Systems/tools: The PPO publishes various training materials online, such as guidelines, regularly updated news and FAQs on public procurement, as well as good practices regarding the most common recurring problems that practitioners may face. Additionally, the *CVP IS* carries out exchanges of information on the implementation of the dissemination of public procurement^{xii}.

The CPO also provides a dedicated manual for contracting authorities which includes guidance on risk management, irregularities and claims resolution, employee training, internal audit and other procedures.

As part of the National Anti-Corruption Programme 2011-2014, a specific tool called the Price Comparison Model is in development to enable comparison of standard unit prices in the public and private sectors for the purposes of the accuracy of tender valuation^{xiii}. Such tools already existed for works estimates, such as the so-called SISTELA database, and training and conference services at the ESF implementing agency.

E-procurement

The *CVP IS* is Lithuania's e-procurement one-stop-shop, launched by the PPO in 2008 to be used by all contracting authorities and bidders. The *CVP IS* covers all the pre-awarding phases of the public procurement process: e-notification, e-access, e-submission and e-awarding. E-notification and e-access have been mandatory for all contracting authorities since 2009, even for low value tenders, while e-submission is required for at least 50% of the total value of public procurement of each contracting authorityⁱⁱⁱ. The number of users of *CVP IS* is constantly growing. This includes 97% of all contracting authorities and more than 15,000 suppliers, including nearly 600 foreign companies.

The PPO measures e-procurement in volume and value on a quarterly basis and makes this data available through reports published online^{xiv}. E-procurement uptake reached approximately 90% of total procurement in 2013, making it one of the most advanced countries in the EU in this area.^{xv}

In recent years, the development of e-procurement in Lithuania has been fostered by the implementation of the Strategy of the Development and Improvement of the

Lithuanian Public Procurement System for 2010-2013. This strategy aimed to develop a system of public procurement in Lithuania that allows contracting authorities to acquire the goods, services or works that best satisfy their needs at the lowest possible cost, guaranteeing promotion of the development of a competitive and innovation-based economy. Measures included reduction of administrative burden in the sphere of public procurement, SME participation in public procurement, development of e-procurement, improvement of the public procurement value calculation methodology, reduction of corruption in public procurement and upgrading the qualifications of participants in public procurement^{xvi}.

In order to secure political support and to convince contracting authorities of the benefits of e-procurement, the PPO carried out a cost-benefit analysis estimating savings related to the use of e-procurement^{xvii}. The analysis concluded that following the implementation of *CVP IS*, procurement processes have become more simplified, streamlined, effective, and transparent. It also found that overall competition for contracts increased and that the average length of procurement procedures fell by 15 days. Finally, it revealed that more SMEs were taking part in the tender processes.

Corruption

In Lithuania, corruption is identified as a major problem in public procurement^{xviii} and as a barrier to doing business. 95% of Lithuanians say corruption is widespread in their country, and 29% report having been asked or expected to pay a bribe for services received over the past 12 months, the highest share in the EU^{xix}. What is more, business representatives believe that public funds are often diverted to preferred companies, individuals or groups due to corruption, and that government officials frequently favour well-connected companies and individuals in the process of awarding contracts^{xx}. Recent cases have also drawn attention to corruption in procurement at local level^{xxi}. Furthermore, procurement in the health care sector is considered particularly vulnerable to corruption^{xxii}.

The primary anti-corruption agency is the Special Investigation Service (*STT*), which has the mission of reducing corruption through law enforcement, prevention actions, anti-corruption education, and awareness-raising efforts among the public, and is accountable to the President and Parliament. The PPO is responsible for monitoring corruption in public procurement specifically, and is empowered to refer cases to law enforcement..

Recently, a new National Anti-Corruption Programme for the years 2015-2025 was approved by the Parliament, with the primary aim of strengthening the oversight of public procurement and reducing related corruption. The 2011-2014 anti-corruption programme that preceded it showed positive results. It notably defined specific targets in the field of public procurement, including having 80% of tenders be carried out electronically, and holding the cost of public tenders within 7% of private sector prices.^{xxiii} By the end of 2014, approximately 70% of all public tenders were being carried out electronically.

Another positive development since 2012 has been the requirement for an authorisation by the PPO in order to carry out direct awards. A number of exceptions are foreseen; nonetheless the PPO must still be notified immediately.

Europe 2020 Agenda

The Law on Public Procurement creates the possibility for contracting authorities to lay down special conditions related to social and environmental objectives for the performance of a contract. So far, the use of strategic procurement has been mainly focused on green public procurement and to a much smaller extent on social and innovative procurement.

In recent years, several successive green public procurement plans have been set up by the Ministry of Environment, the last one being the Implementation Measures of GPP for the new period 2012-2015. It aims not only to strengthen the capacity of contracting authorities to carry out green procurement, but also to encourage suppliers to put more environmental friendly products on the market and to collect and disseminate information on these kinds of products^{xxiv}.

Specific mandatory environmental criteria are defined for 4 product groups that include a wide range of purchases such as office supplies, IT equipment, maintenance services, waste collection, construction furniture and equipment, or public lighting^{xxv}. Monitoring of green procurement is centralised by the PPO and is based on direct reporting from contracting authorities who are required to submit a report on their use of green procurement and environmental criteria^{xiv}. In 2014, around 6% of public contracts included environmental criteria (15% in value) primarily public works, office and computing equipment, as well as firefighting, police and defence equipment contracts.

The law on public procurement provides three ways for contracting authorities to undertake their purchases with a social dimension^{xxvi}. First, they can add qualification or technical requirements of a social nature to the tender specifications. Second, they have the right to reserve contracts for social enterprises for disabled people. Finally, they are entitled to carry out at least 5% of the total value of simplified procurement with social enterprises. According to the monitoring data from the *CVP IS*, purchases from social enterprises represented around 1% of the total value of public procurement between 2011 and 2013, meaning that only a small number of administrations carry out social procurement.

Implementation of innovation policy goals through the procurement process is not systematically implemented in Lithuania^{xxvii}, however promotion of SME participation has achieved some progress. Between 2009 and 2011, SMEs were awarded 76% of public contracts above and below EU thresholds by number, and 55% in value. The PPO has been fostering the participation of SMEs in public procurement via targeted training courses and through the promotion of e-procurement. More recently, the Innovation Development Programme for 2014-2020 plans to facilitate public procurement and patenting rules for the purchase of R&D equipment to further support the development of innovative businesses.^{xxxii}

Irregularities and findings of national Audit Authorities

The PPO and the NAO are the main bodies in charge of oversight and reporting on public procurement irregularities. According to the NAO Activity Report for 2014, the number of irregularities in the management of State property, and in particular in the field of public procurement, is decreasing.

Nevertheless, some recurrent violations of the public procurement law remain. The PPO conducted 259 reviews in 2014 which lead to 13 contracts annulments. A significant number of irregularities were found in the tender documentation, including incorrect definition of the purchase value, an application of selection and award criteria, and the inadequate choice of procedures.

Outlook

Adoption of the Euro as the official Lithuanian currency in 2015 is expected to provide a boost to trade, and economic growth is projected to accelerate in the coming year. This in turn should increase domestic demand both for public and private purchase, and lead to more cross border biddings^{xxviii}.

Moreover, the creation of the Central Risk Management Analysis System of Public Procurement in late 2014 is expected to improve supervision and control of public

procurement through improved detection of fraud and irregularities. This will enable PPO employees to assess possible risks at all stages of public procurement procedures and will help more efficiently and appropriately apply the prevention and control measures stipulated by the legislation.

The Lithuanian Parliament recently approved the 2015-2025 National Anti-Corruption Programme. This ambitious strategy aims to promote fairer competition, more transparent and rational purchase of goods, works, or services by way of public procurement and foresees transparency measures applicable to tender procedures^{xxix}.

Regarding e-procurement, new strategic measures are currently being prepared in an effort to foster end-to-end e-procurement, in particular through the development of e-invoicing and renewed investment in the capabilities of the *CVP IS* and the *CPO*^{xxx}.

ANALYSIS

Strengths

One strength of the Lithuanian procurement system is the progress made in enhancing transparency. The *CVP IS* currently hosts a wide range of regularly updated procurement documentation online, including draft technical specifications, as well as individual contracting authorities' procurement plans^{xxxi}.

Lithuania has established a legislative framework that is stable enough for conducting adequate public procurement procedures. In addition, a significant number of actions are in place to support contracting authorities in carrying out tender processes: training programmes, guidelines and tools have been developed by a wide range of actors on numerous and diverse aspects of public procurement.

Finally, Lithuania has also made significant improvement in the field of e-procurement fostering the use of *CVP IS* as well as the e-catalogue of the *CPO*.

Weaknesses

Despite having an adequate legislative framework and oversight structures in place, the authorities in charge of controlling tender procedures have made limited progress in reducing recurrent irregularities and fraud in the field of public procurement due to the dispersed nature of supervision responsibilities.

Further reforms need to be developed to reduce fraud and corruption, particularly at the local level. For example, penalties imposed on contracting authorities for irregularities are disproportionately low compared to the value of the public contract in question. Additional means of prevention within the scope of the work of contracting authorities would also help detect corruption at earlier stages of procurement and have local authorities primarily involved in the fight against corruption.^{xxxii}

Furthermore, in terms of strategic procurement, although the law allows contracting authorities to include social considerations in public tenders, efforts to promote the inclusion of social procurement by national authorities are insufficient. As a result, only a very small number of contracting authorities use it.

Recommendations

- **More effective oversight:** Lithuania is considered to have a strong legal framework, and reasonably well staffed oversight bodies, yet it still struggles to reduce persistent irregularities and corruption risks, particularly at the local level.
 - Exploit the strong data collection system to improve risk management systems to better target oversight efforts.

- Improve coordination with civil society groups to strengthen public oversight of procurement data.
 - Strengthen the independence of anti-corruption bodies by depoliticising senior appointments in anti-corruption institutions through a transparent, merit-based procedure.
 - Enact stiffer sanctions for violations of procurement rules to increase deterrent effect.
 - Improve enforcement by increasing resources or better targeting the efforts of the PPO anti-corruption staff.
- **Insufficient strategic use of public procurement:** Although the law encourages contracting authorities to use procurement to achieve social policy goals, efforts of national authorities have fallen short in doing so.
 - Conduct awareness-raising campaign accompanied by guidance materials on the values and use of strategic procurement, particularly for socially responsible procurement.
 - Set up and maintain an inventory of ready-to-use environmental, social and innovative criteria for different product groups.

ⁱ World bank Ease of doing business index, available at:

<http://data.worldbank.org/indicator/IC.BUS.EASE.XQ>

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^x National Audit Office of Lithuania (2015), Annual Report 2014.

^{xi} Competition Council of the Republic of Lithuania (2014), Annual report 2013.

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^{xiv} VPT (2014), *Informacija apie 2014 m. I, II, III, IV ketvirtį įvykusius viešuosius pirkimus* (Quarterly public procurement reports).

^{xv} European Commission (2013), DG MARKT, Study on e-Procurement Uptake.

^{xvi} Lithuania Government (2013), National Reform Programme 2013 of Lithuania.

^{xvii} European Commission (2011), Evaluation Report, Impact and Effectiveness of EU Public Procurement Legislation, part 1.

^{xviii} *Lietuvos korupcijos žemėlapis* (Lithuanian anti-corruption office) (2011) m. liepa – rugpjūtis (Lithuanian Map of Corruption).

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^{xx} World Economic Forum (2014), The Global Competitiveness Report 2013-2014.

^{xxi} Freedom House (2013), Report on Lithuania.

^{xxii} European Commission (2015) Commission Staff Working Document.

^{xxiii} European Commission (2014), DG HOME, EU anti-corruption report, Annex Lithuania, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_lithuania_chapter_en.pdf

^{xxiv} Buy Smart+ (2012), Analysis report of procurement standards and procurement praxis in Lithuania

^{xxv} Ministry of Environment of Lithuania (2012), *Produktų grupės aplinkos apsaugos kriterijai* (Environmental criteria for the product groups).

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LUXEMBOURG

KEY FACTS AND FIGURES

Key Facts and Figures in Luxembourg							
Overview	Total procurement 5,470,000,000€		Procurement % GDP 12%		2013 GDP 45,288,100,000€	Contracting authorities N/A	
Procedures applied	Open 82%	Restricted 10%	Negotiated procedure with call 6%no call 1%		Competitive dialogue 1%	Direct award 1%	Other 0%
Share of contract notices by buyer	National 38%		Regional/local 13%		Body governed by public law 9%	Other 41%	
Contract type	Services 22%		Works 59%		Supplies 19%	Framework agreement 0%	
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met	
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Voluntary	Uptake rate N/A	
Perceived corruption	Corruption widespread in society Businesses 25%		Individuals 42%		Corruption widespread in procurement At national level 20%	At local/regional level 31%	
TED indicators	Value of tenders 566,767,272€		Of total procurement 10%		# contract notices 470	# contract awards 353	
Other indicators	Received single bid 7%		# days for decision 84.1		Price only criteria 79%	MEAT criteria 21%	
	Won by foreign firms 16%		Related to EU funds 11%		Joint purchase 5%	Central purchasing No	

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Luxembourg has the highest GDP per capita in the European Union. Indeed, the Luxembourgish economy benefits from high political and social stability, an attractive legal and fiscal framework, and a qualified and multilingual workforce. As such, ESI funds do not play a significant role in the economy, representing only 0.03% of national GDPⁱ.

Luxembourg is also one of the smallest countries in the EU in terms of size, population and administrative framework. This reflects on the public procurement system, which is articulated around a single one-stop-shop public procurement portal on which all contracting authorities are obliged to publish their contracts. The public procurement system is quite stable, facing no major changes or issues in recent years. The last important evolution was the adaptation of the portal to e-procurement solutions and in particular to e-submission.

Contracting authorities and business organisations are involved in the supervision of tender procedures through the specific Tender Commission, and also take active part in building the administrative capacity of both public procurement practitioners and economic operators.

DESCRIPTION OF FEATURES

Legal features of public procurement system

EU Directives 2004/18/EC and 2004/17/EC have been transposed by the Law on public procurement of 25 June 2009 and the implementing Regulation of 3 August 2009. Both the law and the regulation are divided into three parts. The first part sets general principles applicable to contracts below EU thresholds, while the second and third parts cover contracts falling under the EU Directives 2004/18/EC and 2004/17/EC, respectively. In addition, EU Directives on defence (2009/81/EC) and remedies

(2007/66/EC) have been transposed through the Law of 26 December 2012 on defence and security public contracts and the Law of 10 November 2010 on remedies in public procurement contracts, respectively.

There are three levels of national thresholds governing procurement procedures below the EU thresholds. Simplified procedure is allowed for the two lowest thresholds. For contracts related to supplies, services or works below EUR 55,000, so-called small-scale procurement, negotiated procedures without publication is allowed. For contracts between EUR 55,000 and EUR 100,000, negotiated procedures without publication is allowed, provided that at least three bidders are invited. For contracts above EUR 100,000 for supplies and services and EUR 800,000 for works, open procedure is mandatory, except in cases where negotiated procedure with or without publication is allowed by the Directives.

Institutional system

The Public Procurement Directorate, part of the Public Works Department of the Ministry of Sustainable Development and Infrastructures (*MDDI*), is the primary policy body for public procurement. It is responsible for the regulatory framework, drafting legislation, monitoring its implementation and ensuring the external representation of the Luxembourgish authorities in the field of public procurement.

The Tender Commission is a consultative body within the *MDDI* composed of representatives from contracting authorities and chambers of commerce and cottage industries. It can act as both a supervision body, ensuring that public procurement rules are applied properly by contracting authorities, or upon the reception of complaints from tenderers. The notices and opinions published by the Tender Commission are not binding but are commonly adopted by contracting authorities.

Luxembourgish law provides tenderers with two methods for contesting a contract award. On the one hand, the complaints can address either the contracting authority directly, without affecting the award procedure, or to the Tender Commission. On the other hand, judicial appeals have to be submitted to the administrative court or to civil and commercial courts if the aggrieved bidder claims damages.

There are two main independent supervision bodies of the public procurement system. The National Court of Auditors investigates every year a set of public organisations. Among the topics covered are the public procurements carried out by these organisations, although no specific report on the public procurement system is issued. In addition, the Competition Council is responsible for fair competition between economic operators in Luxembourg. It regularly issues decisions on unfair competition in public procurement, mainly caused by collusion between economic operators.

Key issues that have a bearing on administrative capacity

Human resources: At central level, the Public Procurement Directorate employs 20 persons, of whom 5 manage the public procurement portal and 4 work for the Tender Commission. While there is no precise count, there are approximately 300 contracting authorities currently registered with the central e-procurement portal, of which it can be broadly estimated that 50 are local and regional authorities.

Structures: The National Institute of Public Administration (*INAP*) is the government's leading civil service training school in Luxembourg. It provides initial and vocational training for public employees at the State and local levels.

Training: Several organisations conduct trainings and capacity building sessions for public procurement officials and tenderers. The *INAP* provides 3 hours seminars for newly recruited and senior officials at the State and municipal levels on public

procurement legislation and its evolution through EU Directives and jurisprudence as well as the introduction of environmental considerations in tendersⁱⁱ.

Professional organisations also participate in public procurement capacity building among their affiliated companies, in particular organising training sessions or issuing information notes, for instance about the e-procurement portal.

In addition, contracting authorities can receive training from the Luxembourg Institute of Science and Technology (LIST) regarding the use of the e-procurement portal.

Systems/tools: The e-procurement portal serves as an information and communication platform on public procurement for the whole country. It provides contracting authorities and economic operators with information on general principles and guidelines, applicable legislation, notification of contracts and guidance on procedures including applicable thresholds, submission conditions and timelines as well as standardised tender specifications which have been recently introduced for public worksⁱⁱⁱ. Another tool called Prometa Spec has been developed for the State administration to automatically create and tailor tender documents according to some basic standardised elements^{iv}.

In addition, the uniform application of procurement law is ensured through direct communication between contracting authorities and public procurement officials from the central administration^v.

E-procurement

The Luxembourg's e-government plan 2010–2014^{vi} is targeted at offering an extensive e-procurement system for contracting authorities and tenderers through the Public Procurement Portal (*PMP*), including secure information transfer between contracting authorities and tenderers, and an e-submission solution. However, the level of e-procurement uptake in Luxembourg is still very low^{vii}. Indeed, while the *PMP* has been implemented since 2006 and e-notification has been mandatory for all contracting authorities, e-submission has only been available since September 2014. In 2013, 295 contracting authorities from Luxembourg were registered on the *PMP*, representing the majority part of contracting authorities^{viii}.

All tender notices in the country are published on a single platform within the *PMP*, but the related tender documents are not all e-accessible. Indeed, although e-access is mandatory, there is no penalty for a contracting authority that does not comply, hence the relatively modest rate of 43% e-access uptake of in 2014^{ix}.

In order to further promote e-procurement, campaigns for raising awareness among economic operators and contracting authorities have recently been launched. For instance, in February 2014, a conference organised by the *MDDI* to present the e-submission solution attracted 150 participants^x.

Corruption

Luxembourg has the second lowest level of perceived corruption in public procurement within the EU^{xi}. There is no national anti-corruption strategy targeting public procurement, nonetheless a set of legal instruments has been developed to prevent corruption in tender processes. These include limitations for companies previously convicted of corruption from participating in public procurement for a period up to two years^{xii} and the application of a price analysis for financial offers that are 15% below the average price of its competitors^{xiii}. In addition, public procurement practitioners benefit from training on anti-corruption measures.

Nevertheless, a public procurement corruption case reported in 2011^{xiv} involving public officials and two bidders on public construction projects has shed light on some pitfalls

of the public procurement regulatory framework. Indeed, Luxembourg law does not ban conflicts of interest in public procurement, which implies for instance that civil servants can be employed in the private sector without respecting a standstill period.

Europe 2020 Agenda

The Luxembourgish public procurement law formally encourages contracting authorities to make use of tender procedures to promote sustainable development and social objectives^{xv}.

Similarly, the National Plan for Sustainable Development adopted in 2010 by the *MDDI* explicitly sets the objective of promoting green and social criteria in public procurement. For instance, it intends to promote the social economy as well as the inclusion of disabled persons and of the long-term unemployed through public procurement. However, the plan does not set any target objectives, specific measures or mandatory criteria to promote green public procurement^{xvi}.

The *PMP* provides some guidance on criteria that can be required in the terms of references and links to EU green public procurement website and toolkit. Guidelines for sustainable construction works are also available^{xvii}.

The inclusion of social considerations in tender procedures is also foreseen by the public procurement law. Contracting authorities may restrict tenders to social enterprises, or to enterprises that favour the inclusion of disabled persons or that participate in labour inclusion programmes^{xviii}.

There is no specific action to promote SMEs in public procurement, and they already represent a substantial share of contracts awarded. On average, SMEs have won 70% of above-threshold contracts between 2009 and 2011^{xix}.

Irregularities and findings of national Audit Authorities

The National Court of Auditors issues annual audit reports in which some irregularities related to public procurement procedures are reported. Three public procurement-related irregularities were reported in 2012, and three in 2013^{xx} relating either to selection criteria or to the procedure adopted. However the number of irregularities is too low to consider them as endemic weaknesses.

The Tender Commission also reports on irregularities. It issued 79 opinions on disputed procurement in 2013, and 84 opinions in 2012^{xxi}. However, its decisions are not publicly available and no comprehensive analysis of the system has been published so far.

Outlook

A recent significant change in the public procurement system was the introduction of an e-submission solution in the *PMP* in September 2014. Even though it is not mandatory yet, contracting authorities seem to express high demand for e-submission, which may quickly increase the level of e-procurement take up^{ix}.

In addition the Luxembourgish government made a step towards integration of environmental criteria in tenders. It recently agreed on the participation of the State to the Resource Centre of Technologies and Innovation for buildings, which is responsible for the standardisation of clauses in procurement contracts, in particular regarding sustainable buildings^{xxii}.

It will provide standardised specifications for public contracts which are a set of clauses to be applied to either all public contracts or to sector-specific procurement.

This on-going work will help to promote the adoption of environmental and social criteria in tenders.

Finally, the Parliament recently adopted eight bills related to reforms in the public administration including some reinforcement of training capacity building for civil servants at State and local levels^{xxiii}.

ANALYSIS

Strengths

The Luxembourgish public procurement system is structured around the *PMP*, which provides comprehensive information for all contracting authorities and economic operators. The recent development of e-submission services will also contribute to a further harmonisation of processes through this common portal.

The Tender Commission is a unique consultative and supervision body of the public procurement system. In practice, it also acts as a dispute resolution body that prevents some cases from being brought before the administrative court by expressing recognised opinions. This mechanism contributes to significant procedural cost savings for contracting authorities and economic operators.

Finally, the training regime on offer on public procurement in Luxembourg contributes to the strong overall performance of the system and ensures a uniform application of the rules and procedures. In addition, the high level of involvement of professional organisations in training and awareness raising actions contributes to the proper dissemination of knowledge and skills among economic operators.

Weaknesses

First, the supervision and monitoring of public procurement in Luxembourg is relatively limited. The two main independent supervision bodies of the public procurement system do not investigate specifically on public procurement, and there is therefore no publicly available report dealing with the overall performance of the system or with the main irregularities found. This is prejudicial to public information and understanding of the main issues faced by public procurement in Luxembourg.

Second, the promotion of the Europe 2020 Agenda through public procurement has, at this point, not been made concrete. Indeed, no targets have been defined and few concrete measures have been implemented to ensure the adoption of environmental and social criteria in tender procedures. The responsibility of including such criteria is left to contracting authorities, and little guidance is provided on how to effectively integrate these criteria into their purchases.

Recommendations

- **Target supervision:** Procurement in Luxembourg is not currently governed by a dedicated procurement body, and public access to oversight data is limited.
 - Increase procurement oversight activities within the *MDDI*, including collection of comprehensive data and publication of annual reports.
- **Low uptake of e-procurement:** Despite a well-functioning infrastructure, e-procurement uptake remains very low.
 - Promote the use of the *PMP* e-procurement portal through awareness-raising activities and incentives.
 - Develop authoritative and accessible guidance documents on the use of e-procurement tools.

- **Powerful purchasing:** Public procurement is not used to its full potential to achieving strategic objectives.
 - Set, implement and monitor well-defined objectives to ensure that environmental, social and innovation goals are included in tender procedures.
 - Produce hands-on guidance for contracting authorities to implement these criteria.
 - Set up and maintain an inventory of ready-to-use environmental, social and innovative criteria for different product groups.

ⁱ Partnership Agreement between Luxembourg and the European Commission on ESI Funds for the 2014-2020 programming period (2014).

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<http://www.fonction-publique.public.lu/fr/formations/catalogue/index.html>

ⁱⁱⁱ Regulation of the Grand Duchy of 24 March 2014 for the institution of standardised tender specifications for public procurement procedures.

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^v European Commission (2012), Position of the Commission Services on the development of Partnership Agreement and programmes in Luxembourg for the period 2014-2020.

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^{vii} European Commission staff working document (2014), Assessment of the 2014 national reform programme and stability programme for LUXEMBOURG.

^{viii} Department of Public Works (2014), Annual Report 2013.

^{ix} European Commission (2015), DG MARKT, E-procurement uptake.

^x E-procurement conference, Chambre des métiers du Luxembourg, 19 February 2014, available at: <http://www.cdm.lu/news/2014/02/marches-publics-electroniques>

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^{xiii} OECD (2010), Public Procurement in EU Member States - The Regulation of Contract Below the EU.

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^{xiv} GRECO (2013), Fourth Evaluation Round.

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^{xix} European Commission (2014), DG MARKT, SMEs' access to public procurement markets and aggregation of demand in the EU.

^{xx} Court of Auditors of Luxembourg (2014), Special report on public organisations.

^{xxi} Department of Public Works (2014), Annual Report 2013.

^{xxii} Summary of the works of 27 February 2015, news release from the Luxembourg Government, available at: <http://www.gouvernement.lu/4473749/27-conseil-gouvernement>

^{xxiii} Law of 25 March 2015 on Public Service Reforms.

MALTA

KEY FACTS AND FIGURES

Key Facts and Figures in Malta						
Overview	Total procurement 700,000,000€		Procurement % GDP 10%		2013 GDP 7,508,300,000€	Contracting authorities 152
Procedures applied	Open 100%	Restricted 0%	Negotiated procedure with call no call 0% 0%		Competitive dialogue 0%	Direct award 0% Other 0%
Share of contract notices by buyer	National 86%		Regional/local 0%		Body governed by public law 3%	Other 11%
Contract type	Services 21%		Works 9%		Supplies 70%	Framework agreement 5%
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Not met
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Mandatory	Uptake rate 1%
Perceived corruption	Corruption widespread in society Businesses 74%			Individuals 83%	Corruption widespread in procurement At national level 57% At local/regional level 50%	
TED indicators	Value of tenders 250,053,909€		Of total procurement 36%		# contract notices 314	# contract awards 208
Other indicators	Received single bid 11%		# days for decision 115.4		Price only criteria 97%	MEAT criteria 3%
	Won by foreign firms 10%		Related to EU funds 49%		Joint purchase 71%	Central purchasing Yes, DoC

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Malta is the smallest country of the EU in both population and size, allowing for a relatively centralised governmental system, including in the exercise of procurement. There is a single departmental agency charged with all national-level procurement responsibilities, and which also acts as a central purchasing body. The majority of contracts are still handled by individual central and local government contracting authorities.

Since approval of its Partnership Agreement in 2014, Malta has hired additional skilled personnel and put in place a training regime to bring their administrative capacity up to the level foreseen in their Action Plan. As a result, it has now fulfilled all the procurement *ex-ante* conditionality criteria.

DESCRIPTION OF FEATURES

Legal features of public procurement system

EU Directives 2004/18/EC and 2004/17/EC have been transposed into Maltese Law by Legal Notice 296/2010 and Legal Notice 178/2005 respectively. The Public Procurement Regulations (Legal Notice 296/2010) rules the contracts above and below the EC thresholds. In addition, Legal Notice 255 of 2009, as amended by Legal Notices 416 of 2011 and 475 of 2014, regulates tendering procedures for Local Councils.

Maltese Law defines multiple levels of national thresholds below EU thresholds. For two of these thresholds, simplified procedure is allowed: for contracts of less than EUR 2,500, direct award is allowed and for contracts between EUR 2,500 and EUR 6,000, restricted or negotiated procedure with or without publication can be applied. In 2012, contracts awarded below the EU thresholds accounted for approximatively 60% of the total amount of contract award¹.

Institutional system

Within the Ministry of Finance, the Department of Contracts (DoC) is the single centralised public procurement body in Malta. It is responsible for drafting procurement legislation and policy, preparing guidelines and instructions, collecting statistical data and preparing annual monitoring reports on the functioning of the procurement system. In addition, the DoC provides legal and other advice to contracting authorities jointly with the Attorney General.

The DoC also acts as the central purchasing body for all contracts above EUR 120,000 for most of the contracting authorities listed in the Public Procurement Regulationsⁱⁱ. This does not include local councils, which are empowered to administer their own public procurement, nor contracts between EUR 6,000 and EUR 120,000, which are procured through departmental calls for tender with limited intervention from the Department of Contractsⁱⁱⁱ. Ad-hoc committees can also be established by the DoC to monitor the procurement process for contracts exceeding EUR 120,000. Within the DoC, the General Contracts Committee plays a supportive role by collecting information on and investigates claims of irregularities, and making recommendations on tender decisions to the DoC and local contracting authorities.

The main oversight bodies are the National Audit Office (NAO) and the Internal Audit and Investigation Department (IAID). The NAO conducts an independent supervision of public organisation, including public procurement. It regularly issues thematic analysis of the performance of the public procurement system, including tenders carried out within EU-funded programmes. Within the NAO, the Public Accounts Committee (PAC) has an implicit role in public procurement, due to its remit to scrutinise and assess the financial administration of the public sector and to promote improvements where necessary, and encourage the economic, efficient and effective utilisation of public sector resources. The IAID carries out audits on several areas of government policies. In 2012, it conducted 32 audits including procurement in construction work and education^{iv}. IAID reports are not made publicly available.

The Public Contracts Review Board is the main body responsible for receiving complaints from bidders related to procurement contracts whose value exceeds EUR 12,000. This threshold is set to decrease to EUR 10,000 between 2015 and 2016 in line with new EU rules. Its decisions are binding for all parties and the award of the contract has to comply with this decision. Appeals of the decisions issued by the Review Board or the DoC can be brought before the Court of Appeal^v. More than 57,000 appeals on awarded tenders were processed by the board in 2014. The number of hearings adjudicated totalled 134, of which 102 were rejected and 32 were upheld^{vi}. Complaints for contracts below EUR 12,000 have to be brought before the Local Councils Tendering Appeals Board, which is responsible for hearing and deciding on such appeals.

Key issues that have a bearing on administrative capacity

Human resources: Human resources levels and the internal organisation of the DoC have experienced several changes over the past few years reflecting the broader reorganisation of the public procurement system, in particular the introduction of e-procurement and the management of EU Funds.

The DoC is composed of 42 employees divided among various sub-departments^{vii}. In 2013, an internal operations review recommended that the existing workforce would need to be expanded to address the increasing workload due to the new EU-funded programmes for 2014-2020. Consequently, several recruitments were completed especially for high level positions. In addition, 10 procurement managers were recruited and trained. Some of them will be deployed in various Ministries in order to increase the overall public procurement knowledge of the State Administration^{viii}. The DoC has also strengthened its internal capacity, creating a dedicated position of e-

procurement manager and strengthening the IT and information security services^{ix}. The DoC has also recently required the creation of a green public procurement function within contracting authorities in order to implement the national strategy on green public procurement^x.

At the contracting authority level, lack of administrative capacity is likely to be a key factor in Malta's above average procedure durations. Although there has been considerable progress in recent years, the current average length of 115 days in 2014 remains above EU norms.

Structures: The Centre for Development, Research and Training (CDRT) is the body responsible for the training of public administration officials on a wide range of topics. It provides 20 hour long trainings on public procurement regulations and procedures, a one day training for contracting authorities, and specific trainings on e-procurement and green procurement. It works with the DoC to design trainings relevant to the needs of procurement practitioners and to promote trainings among them.

In addition, the Malta College for Arts, Science and Technology, in cooperation with the DoC and CDRT, has launched a Diploma in Procurement and Supplies. The program is available to all public officers in charge of procurement process and focuses on negotiation, planning, risk management and data analysis.

Training: Training sessions on public procurement issues are provided for DoC employees, contracting authorities and economic operators. DoC employees benefit from six seminar modules dealing mainly with local legislation. In 2013, three modules were organised gathering 100 public officials. The CDRT also offers a two half day course for public procurement managers in contracting authorities. 19 public officials attended this course in 2013. The DoC encourages all of its employees to attend at least one training course organised by the CDRT each year and notes that most of them attend several courses^{xi}. In addition, some public procurement officials at the State level and especially employees of the DoC follow trainings on public procurement abroad. Finally, in March 2015, training on procurement regulations was delivered to prospective candidates of local council elections, which are will be held in April 2015.

E-procurement procedures are also the subject of a dedicated training provided to public procurement officials at all levels and economic operators. As regards economic operators, the DoC is responsible for the training in collaboration with the CDRT. Workshops with economic operators are organised by the DoC to discuss the e-procurement issues they might face and support them particularly for the use of the e-procurement portal^{xii}. A number of such workshops were organised just prior to the launch of the e-procurement portal to enable economic operators to familiarise themselves with the system and gain confidence in using it. Moreover, a workshop is organised in line with each tender launched on the e-procurement system, for prospective bidders to be able to raise any issues or questions with respect to the tool.

Both procurers and economic operators also benefit from access to trainings focused on green public procurement^{xiii}.

Systems/tools: The main source of information and guidance on public procurement matters is the website of the DoC. It provides notifications and award information for economic operators, but also procurement policy notes, overall introduction to the public procurement legislation and relevant circulars issued by the Department. The website also offers information on the workings of the General Contracts Committee and the Public Contracts Review Board.

In addition, the e-tenders portal of the Maltese Government^{xiv} publishes practical information on public procurement. They include a calendar on e-procurement information sessions organised by the DoC and provide economic operators with

interactive walkthroughs and tender preparation tools to participate in e-procurement^{xv}.

E-procurement

Maltese law has already made all three major elements of e-procurement, e-notification, e-access and e-submission, mandatory for contracts above EUR 120,000, i.e. those managed by the DoC. As a result, the level of e-procurement uptake for contracts whose value is above that threshold is close to 100%^{xvi}. E-notification and e-submission for contracts below this threshold are not mandatory but most contracting authorities do already publish their contracts on the central e-procurement platform, e-PPS¹. E-PPS can be used by all Maltese contracting authorities and provides a wide range of services to both contracting authorities and economic operators.

The Maltese Government has set the objective to reach 100% e-procurement uptake by 2015. To reach this target, awareness campaigns and trainings to encourage contracting authorities and economic operators to make the transition to e-procurement have been organised. Intensive trainings are provided by both the CDRT and the Malta Information Technology Agency, which manages the implementation of IT-related governmental programmes, in particular within the framework of the Malta National Digital ICT Strategy 2014-2020. In 2012, more than 400 public procurers were trained to the use of e-PPS^{xvii}.

However, the adoption of e-procurement by contracting authorities remains a challenge for Malta. The DoC recently asked all Ministries to elaborate a plan to transition towards e-procurement for all contracting authorities in their portfolio. The plan must indicate the deadline for the transition and include a contact person at the Ministry level. As of January 2015, only 4 Ministries had proposed a plan, prompting the DoC to reissue its request^{xviii}.

Corruption

Some studies rank Malta in the group of EU Member States presenting the lowest risk of corruption in general thanks to its combination of strong deterrent measures and low opportunities for corruption^{xix}. However, this does not mean that Malta is corruption-free, and in fact on some measures, such as the number of businesspeople that claim corruption prevented them from winning a contract, Malta compares unfavourably to EU averages^{xx}. Furthermore, recent procurement cases in energy markets have highlighted Maltese vulnerabilities to corruption.^{xxi}

In 2008, Malta adopted a National Anti-Fraud and Corruption Strategy based on four pillars: capacity building, communication, national co-operation and co-ordination and international co-operation. Among the bodies implementing this strategy are the Anti-Fraud and Corruption Unit of the IAID, which reviews government activities and carries out internal financial investigations. In 2013, the Maltese government introduced the Protection of the Whistleblower Act as a further means to counter corruption. In addition, the NAO controls public procurement through it audits activities and keeps records relating to the accounts of the bodies audited which can be useful in initiating or pursuing investigations.

From the prevention angle, Malta provides procurers with a code of conduct focusing on conflicts of interest and favouritism, and has implemented screening processes to assess to vulnerability to corruption of officials involved in tenders^{xxii}.

¹ <https://www.etenders.gov.mt>

Europe 2020 Agenda

Environmental and innovation considerations in public procurement are explicitly promoted in several Maltese national strategy documents. Yet, adoption by contracting authorities and economic operators has not met expected levels.

The principle of green public procurement has formally been included in Malta's strategic framework since 2005. In 2012, the green public procurement National Action Plan (NAP) defined the overall strategy and a comprehensive set of measures to reach 50% green public procurement take-up by 2015 (both in value and number of tenders). The same target was adopted in the previous NAP for 2009 but was not achieved. It has been noticed that although most of the tenders published included environmental criteria, few of them indeed met the EU green public procurement common criteria^{xxiii} due to a lack of information at the local level and lack of specific targets and monitoring^{xxiv}.

The Green Public Procurement Office, within the Ministry for Sustainable Development, the Environment and Climate Change, is responsible for the implementation and monitoring of the 2012-2015 NAP and works in close collaboration with the DoC. It provides contracting authorities with guidelines on 18 priority product groups and detailed environmental criteria to be integrated to tenders. The NAP states that all tenders falling under EU-funded programmes must be prepared according to these guidelines, a goal that was achieved in 2013^{xxv}. In addition, various trainings and information sessions are organised to raise awareness on green procurement among both contracting authorities and economic operators. Besides, all procurements issued by the DoC or others contracting authorities have to be scrutinised and cleared by the GPP office to ensure that they properly integrate sustainable development criteria^{xxvi}. In 2012, 4.5% of tenders falling within 18 priority product and service groups identified in the GPP NAP were fully compliant with GPP criteria^{xxvii}.

Malta has also made a priority of promoting innovation through public procurement. One initiative of the National Strategic Plan for Research and Innovation for 2007-2010 suggested that the Malta Council for Science and Technology (MCST) and the DoC should to define transparent mechanisms to ensure that innovation is rewarded in public procurement^{xxviii}. It has been implemented by workshops and information sessions but few actions have been carried out so far towards local procurers to help them implementing the strategy^{xxix}.

Irregularities and findings of national Audit Authorities

In 2015, the National Audit Office published an analysis of the most frequent irregularities observed in public procurement within the programmes co-funded by the EU Structural Funds. The most frequent irregularities involved breach of the principle of equal treatment. In particular, the report points to lack of clarity with respect to the tender award criteria. In addition, non-compliance with the advertising procedures or failure to state all the selection and contract award criteria in the tender documents or tender notice have been observed. Finally, cases of attribution of contracts without competition in the absence of extreme urgency and other unjustified resort to direct award have been detected. Overall irregularities detected during the period 2010-2013 are estimated to comprise 1.6% of the total value of projects declared to the EC and carried out through public procurement^{xxx}. Such infringements have also been observed at local level^{xxxi}.

In their separate assessments of the financial accounts of the main administrative bodies, the NAO pointed to the breaking down of large contracts into smaller tenders to bypass public procurement regulation as an issue.

In addition, the Review Board made an analysis of 135 cases received in 2013 and concluded that 80% of the cases were filed on trivial grounds^{xxxii}. A specific concern is

raised about local councils which represent 30% of the cases and seem to face difficulties in properly implementing procurement procedures.

Outlook

One of Malta's top near-term priorities is implementing the GPP strategy. Training is planned in 2015 for all contracting authorities, and the Government intends to re-launch the GPP Inter-Ministerial Task Force (IMTF), which is responsible for monitoring the implementation of the NAP. The key priorities for the new IMTF will be to undertake a comprehensive review of the first NAP with a view to developing a second NAP for the years 2015 to 2018 to be presented before Cabinet for approval in 2015^{xxxiii}. In addition, the DoC is still encouraging contracting authorities to adopt green public procurement and e-procurement through the publication of circulars. For instance, it requires each contracting authorities to create a GPP coordinator to ensure the compliance of published tenders with green public procurement criteria^x. In addition, the Malta Intelligent Energy Management Agency (MIEMA) is currently reinforcing its human resources with expertise in green public procurement strategies and promotion eco-innovative products within procurements.

In addition, the DoC recently adopted the final version of the Common Assessment Framework, which is a quality management tool aimed at improving the performance of public management. Amongst other things, it promotes the use of the Common Procurement Vocabulary (CPV) among all contracting authorities, in particular when preparing tender specifications.

Moreover, the Review Board has expressed its will to prioritise appeals related to EU-funded projects, health and education in the public hearing of appeals in order to increase the overall performance of public procurement in such strategic fields of the Government policy.

ANALYSIS

Strengths

The effectiveness of the public procurement oversight system in Malta seems quite unique. Supervision is ensured by several bodies both internal and independent from the Government. Their investigations highlight some of the main issues affecting procurement, for instance in terms of corruption or improper application of regulation. The NAO collaborates with law enforcement officials to further investigate suspected cases when it does not have the sufficient resources. In addition, the legitimacy and expertise of the NAO is well recognised, which allows its publications to benefit from substantial media coverage and therefore significantly contribute to public debates and ultimately weight upon the political agenda.

The appeal process through the Review Board has also been significantly improved in recent years, with the average appeals case duration was shortened from two and a half months to an average of six weeks^{ix}, resulting in cost savings for both contracting authorities and economic operators and simplifying the process for economic operators, especially for SMEs.

Malta has a comprehensive legislative and operational framework for public procurement. The centralisation of most of the public procurement competences within the DoC provides it with significant legal and administrative resources to lead the national policy on public procurement and ensure its proper implementation.

Finally, Malta provides a wide range of training opportunities to public procurement practitioners and economic operators that contribute to the overall performance of the system. Offered trainings are consistent with the ongoing evolution of the public procurement system. Including coverage of green public procurement and

e-procurement in particular, which is relevant to ensure the adoption of such changes by contracting authorities and economic operators.

Weaknesses

The efficiency of Malta's procurement system could be improved via further harmonisation of processes both among central agencies, and between the central and local governments. Lack of harmonisation is one of the major factors behind the country's low EU funds absorption rates. During the 2007-2013 period, Malta only managed to implement 49% of the total ERDF and CF allocated to it, the sixth lowest absorption rate of all Member States^{xxxiv}.

The dissemination of procurement-related initiatives to local entities remains a significant challenge. Indeed, both the adoption of GPP and e-procurement is restrained by a lack of awareness and understanding of the procurement procedures at the local level. Furthermore, the relatively high number of appeals originating at the local level indicates an insufficiently harmonised interpretation of procurement procedures. A number of actions have been taken to address this gap, such as comprehensive training opportunities, but more needs to be done.

In addition, while corruption is not particularly widespread, the lack of transparency in the system of funding political parties is a key risk area for misuse. On the administrative side, lack of clearly defined jurisdictional boundaries and insufficient staff resources, such as at the MAC, mean that there is variability in how cases are handled, indicating that coordination between the different anti-corruption actors could be improved^{xxxv}.

Finally, despite a clear improvement in the average speed of procurement procedures in 2014 compared to the previous years, the country scored very low in terms of quality^{xxxvi}. Burdensome procedures impose significant costs on both contracting authorities and economic operators and weigh upon available administrative capacities^{xxxvii}. It is also a barrier to participation for both local and international suppliers, reducing Malta's competitiveness^{xxxviii}.

Recommendations

- **Streamline and harmonise procedures:** Despite Malta's small size and relative centralisation, substantial disparities exist in how procedures are conducted, resulting in inconsistencies and unnecessary delays, and weakening the country's EU funds absorption rate.
 - Standardise procurement procedures across levels of government reduce uncertainty and delay, as well as the cost of implementation.
 - Review the current procedure in line with LEAN principles to reduce unnecessary paperwork and delays.
- **Improve education and training:** Malta has made significant progress in increasing staffing levels to meet expected workload for the 2014-2020 programming period, but more needs to be done on the education and training side to ensure that practitioners have the necessary skills.
 - Enact the DoC's extended training program of mentoring and coursework to increase the capacity of newly hired staff, as laid out in Malta's Partnership Agreement with the EC.
 - Introduce targeted trainings on ESI funds management and control.
 - Institute the long-term procurement diploma program for civil servants, as laid out Malta's Partnership Agreement with the EC.

- **Get the word out:** Information on initiatives related to public procurement, such as the adoption of GPP and e-procurement, is not disseminated systematically to practitioners at local level.
 - Improve communication between the DoC and other practitioners through more frequent updates and meetings.
- **Take procurement online:** The adoption of e-procurement by contracting authorities remains a significant challenge for Malta. The DoC is currently working with several Ministries on plans to transition to e-procurement for all contracting authorities, but so far progress has been slow.
 - Put the ministerial plans into practice and follow up closely on any issues which could hinder the implementation of e-procurement in Malta.
 - Offer dedicated trainings and guidance documents on e-procurement.
- **Bring innovation to the local level:** Malta has made a goal of promoting innovation through the procurement process, but despite organising a number of workshops and information sessions aimed at State level organisations, little progress has been made at the local level.
 - Expand procurement of innovation education and training opportunities to local practitioners.
- **Improve oversight:** Despite a generally strong reputation for fairness, the Maltese procurement system still experiences persistent irregularities, including the artificial splitting of large contracts to avoid regulation.
 - Improve data collection and transparency on below thresholds contracts.
 - Develop monitoring systems that can detect contracting spilling and other irregularities.

ⁱ Ministry for Finance of Malta (2013), Annual Report 2013.

ⁱⁱ Public Procurement Network (2010), Authority for the Supervision of Public Contracts, The comparative survey on the national public procurement systems across the PPN.

ⁱⁱⁱ Public Procurement Regulations, Legal Notice 296 of 2010, as amended by Legal Notices 47, 104, 255 and 312 of 2012 65 and 397 of 2013, and 55, 132, 293 of 2014.

^{iv} European Commission (2013), Annual Public Procurement Implementation Review 2013.

^v Public Contracts Review Board (2013), Annual report 2013.

^{vi} Times of Malta, Tenders to be Simplified in a bid to reduce appeals, 19 March 2015.

^{vii} Public Procurement Network (2010), Authority for the Supervision of Public Contracts, Comparative survey on the transposition of the new EU public procurement package.

^{viii} Ministry for Finance of Malta (2012), Annual Report 2012.

^{ix} *Ibid*

^x Department of Contracts (2014), Mainstreaming green public procurement across the public sector contracting authorities, Circular N° 22/2014.

^{xi} Ministry for Finance of Malta (2013), Annual Report 2013.

^{xii} European Commission (2015), DG MARKT, E-procurement uptake.

^{xiii} European Commission (2014), DG ENV, National GPP Action Plans.

^{xiv} Available at: <https://www.etenders.gov.mt>

^{xv} European Dynamics S.A (2014), Public Procurement Service, Economic operators User Manual.

^{xvi} European Commission (2015), DG MARKT, E-procurement uptake.

^{xvii} European Commission (2013), DG MARKT, Study on e-Procurement Measurement and Benchmarking - EU-country-profiles.

^{xviii} Department of Contracts (2015), Transition to electronic procurement for departmental tenders, Circular N° 01/2015.

^{xix} European Research Centre for Anti-corruption and State-building (2013), The Good, The Bad and the Ugly: Controlling Corruption in the European Union.

^{xx} Flash Eurobarometer (2013), Business' attitudes towards corruption in the EU.

^{xxi} Business Anti-Corruption Portal (2015), available at: <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/malta/show-all.aspx>

^{xxii} European Commission (2013), Identifying and reducing corruption in Public Procurement in the EU.

^{xxiii} European Commission (2008), Public procurement for a better environment.

^{xxiv} Office of the Prime Minister (2011), Green Public Procurement – National Action Plan.

^{xxv} Ministry for Finance of Malta (2013), Annual Report 2013.

^{xxvi} *Ibid*

^{xxvii} Maltese Government (2012), Government reports progress on green public procurement.

- xxviii MCST, National Strategic Plan for Research and Innovation for 2007-2010.
- xxix ERAPRISM (2010), Public Procurement for Innovation in Small European Countries.
- xxx National Audit Office (2015), An Analysis of Types of Errors in Public Procurement within the Structural Funds Programmes.
- xxxi National Audit Office (2013), Report by the Auditor General on the Working of Local Government.
- xxxii Ministry for Finance of Malta (2012), Annual Report 2012.
- xxxiii Ministry of Environment, Green Public Procurement, available at :
<http://environment.gov.mt/en/decc/Pages/environment/gpp/gpp.aspx>
- xxxiv DG REGIO (2013), Annual Activity Report.
- xxxv European Commission (2014), DG HOME, EU anti-corruption report, Annex Malta.
- xxxvi Public procurement performance by the European Commission, available at :
http://ec.europa.eu/internal_market/scoreboard/performance_per_policy_area/public_procurement/index_en.htm#maincontentSec5
- xxxvii European Commission Malta country report 2015, available at: http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- xxxviii European Commission (2014), Assessment of the 2014 national reform programme and stability programme for Malta.

THE NETHERLANDS

KEY FACTS AND FIGURES

Key Facts and Figures in Netherlands							
Overview	Total procurement 136,320,000,000€		Procurement % GDP 23%		2013 GDP 650,857,000,000€	Contracting authorities 7,500	
Procedures applied	Open 71%	Restricted 14%	Negociated procedure with call 2%no call 3%		Competitive dialogue 1%	Direct award 10%	Other 0%
Share of contract notices by buyer	National 18%		Regional/local 44%		Body governed by public law 28%	Other 10%	
Contract type	Services 56%		Works 11%		Supplies 33%	Framework agreement 15%	
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met	
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Voluntary	Uptake rate 7%	
Perceived corruption	Corruption widespread in society Businesses 75%Individuals 61%				Corruption widespread in procurement At national level 33%At local/regional level 52%		
TED indicators	Value of tenders 10,359,452,963€		Of total procurement 8%		# contract notices 3,874	# contract awards 3,412	
Other indicators	Received single bid 8%		# days for decision 64.2		Price only criteria 10%	MEAT criteria 90%	
	Won by foreign firms 3%		Related to EU funds 1%		Joint purchase 3%	Central purchasing No	

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

The Netherlands is a highly decentralised unitary state in which power is shared quite diffusely among the central government, 12 provinces and 393 municipalities. In the Dutch system, each contracting authority is responsible for the management of its own public procurement procedure, regardless of its level of authority. Coordination and policy-making are handled at the central level by the Ministry of Economic Affairs and its Public Procurement Expertise Centre, PIANOO.

The recent transposition of EU Directives into the Public Procurement Act led to a number of changes, which include facilitating better access for SMEs, reducing the administrative burden for contracting authorities and economic actors, and granting contracting authorities more flexibility in how they organise their proceduresⁱ. Furthermore, the Netherlands is increasingly investing in implementing sustainable public procurement mechanismsⁱⁱ.

It should be noted that, due in part to the country's uniquely decentralised political system, and the variety of public and private actors at play, the Netherlands does not collect or publish comprehensive, nationwide data on their public procurement practices or outcomes.

DESCRIPTION OF FEATURES

Legal features of public procurement system

In 2013, the Netherlands incorporated the EU public procurement Directivesⁱⁱⁱ into the main national procurement law, the Public Procurement Decree (PPD), as well as into the legally binding Proportionality Guide. Transposition of the Directives introduced several new regulations to the Dutch legal system, including the establishment of a commission of public procurement experts, and measures to reduce administrative burdens for SMEs^{iv}.

For tenders whose value is below the EU thresholds, individual contracting authorities have broad discretion in how they conduct procurement. The reforms that went into effect in 2013 codified a broad set of standards, including the principles of transparency in procedures, objectivity in award, proportionality of requirements, and non-discrimination. Contracting authorities are also now required to publish announcements in the central online database TenderNed, break tasks into lots where appropriate, award according to most economically advantageous tender criteria, and notify unsuccessful candidates within 15 days of award.

Contracting authorities may ask tenderers to submit a 'declaration of conduct' in public procurement. This document is obtained from the Ministry of Security and Justice as evidence that the tenderer is not legally disqualified from bidding due to criminal proceedings or administrative restrictions. The certificate also gives an overview of the procurement processes that the tenderer has dealt with in the past at the European or national level^v. It should be noted that obtaining this document can take up to 16 weeks in the case of an investigation being needed, which can be burdensome for suppliers that do not regularly bid on government contracts^{vi}. Also, foreign firms are ineligible to apply. Typical processing time is closer to eight weeks, and the declaration is valid for two years.

Institutional system

The Ministry of Economic Affairs has primary authority over procurement issues in the Netherlands. It is responsible for drafting procurement legislation, interfacing with the EU, and controlling the compliance of contracting authorities with procurement law. The Ministry of Economic Affairs also operates the Public Procurement Expertise Centre, PIANOo, which brings together a network of more than 3,500 Dutch public procurement experts and tendering professionals to share their experiences and best practices. PIANOo hosts an online forum, publishes guidance, organises conferences, training sessions and meetings, and runs the TenderNed e-procurement platform.

Also, under the Ministry of Economic Affairs is the Commission of Public Procurement Experts. The Commission was established in 2013 to act as an alternative means of claims resolution to the legal system for procurement bidders with complaints. The Commission can act as a mediator between the economic actor and the contracting authority, and has the power to issue non-binding advice on how to resolve claims. In its first year, the Commission received 70 complaints, primarily from SMEs.^{vii} Claims are still also handled by the Civil Courts, whose decisions can be appealed before the Court of Appeal and ultimately before the Supreme Court.

In addition, the Authority for Consumers & Markets (ACM), the Netherlands' former Competition Authority (*NMA*), consists of an independent body responsible for regulating the public procurement market and investigating signals of unfair competition. Although supervisory responsibilities are highly decentralised, the ACM collects and investigates signals of unfair competition and has the authority to impose fines when procurement rules have been breached. Annual reviews of economic efficiency and legal compliance are performed at the contracting authority level.

Key issues that have a bearing on administrative capacity

Human resources: Although the Dutch system has traditionally afforded contracting authorities substantial autonomy in procuring, lack of administrative capacity is not a significant issue, even at the local level. This is due in part to the existence of PIANOo and its predecessor organisations, which have for decades put a wealth of knowledge and experience at the fingertips of Dutch contracting authorities. The cooperative nature of PIANOo allows it to achieve this task with fewer than 30 full time employees.

Another key success of the decentralised system has been the reliance on consultation with domain-specific specialists. For example, the city of Amsterdam has an Office for

Engineers, which it relies upon to advise on procurement related to ground, water and road building.

Structures: PIANOo is the primary public body responsible for improving administrative capacity among procurement practitioners. It does this in large part by acting as a forum for current procurement professionals to discuss and learn from each other's experiences, such as through the PianoDesk online discussion platform, or by organising peer events such as lunches.

The Dutch Association for Purchasing Management, NEVI, is another important resource for public buyers in the Netherlands. NEVI provides professional purchasing trainings, as well as executive programs related to procurement management.

Training: Procurement training in the Netherlands is offered by a mix of public and private providers. PIANOo organises a wide range of training activities for public buyers throughout the year, including workshops, conferences, and topic specific training sessions. It also directs its members to a long list of private sector skill building organisations that cover procurement topics. PIANOo also offers a free, six part training course on Dutch and EU procurement law for buyers and legal professionals. Furthermore, training and knowledge sharing on public procurement is provided for staff implementing ESI Funds^{viii}.

For economic operators, the TenderNed site offers a list of private providers who offer training and other support services for those looking to sell goods and services to Dutch public sector entities.

Systems/tools: In addition to the interactive fora, PIANOo also hosts a number of documents that procurement practitioners can use for reference. The most general are the Metro Maps, step-by-step FAQs on a number of procurement topics that provide a general guide and include links to other resources. They also offer sample documents, procurement procedural guides and manuals, legal opinions, and a digital newsletter.

In addition, having set a number of aggressive sustainable procurement goals, the Ministry of the Environment and the Netherlands Enterprise Agency have developed a number of sustainability-specific tools for contracting authorities. One such tool is the sustainable public procurement coach, which allows contracting authorities to assess their own performance in meeting sustainability criteria. The coach is a questionnaire that, when completed, will provide tailored advice on how to improve the users' performance in integrating sustainability criteria in the public procurement process based on best practices. In addition to this, there is a FAQ document that provides quick and simple answers on the procurement process.

E-procurement

The availability of the TenderNed platform means that e-procurement is available to all contracting authorities, but actual usage varies by service. Since 2013, e-notification is mandatory for all contracting authorities, either on TenderNed or a local or regional platform. These secondary platforms are all interoperable with the central platform, so all notifications automatically end up on TenderNed. TenderNed also offers e-access capabilities, which are used almost universally by those who post directly to it. The platform has an automatic link with Tenders Electronic Daily (TED) in order to make sure that European announcements are made if there is an obligation to it.

TenderNed also supports e-submission, but uptake remained below 50% in 2013. In addition to the central platform TenderNed, there are also a number of private e-procurement platforms, such as Negometrix, *Aanbestedingskalender.nl*, CTM Solutions, *NétiveVMS BV* and The Solutions Factory, on which contracting authorities can also publish announcements and tenders.

Dutch authorities plan to develop additional tools in order to make public procurement procedures more electronic. These tools include an e-catalogue, a tool for e-auctions and a dynamic purchasing system.

Corruption

The Netherlands' centuries old tradition of promoting transparency and accountability among public officials has helped to hold corruption to some of the lowest levels in the EU. In fact, most Dutch anti-corruption efforts are focused on protecting Dutch businesses that do business abroad from corruption in other countries. Nevertheless, recent corruption scandals in the field of procurement demonstrate that corruption remains an issue.

The Dutch anti-corruption framework is built on the Public Administration Probity in Decision-Making or "*BIBOB*" Law, and the associated *BIBOB* Office within the Ministry of Justice. The *BIBOB* Office conducts investigations of potential suppliers for issues such as criminal prosecution or failure to pay taxes, which could potentially be deemed by the contracting authority to be grounds for exclusion^{ix}.

Europe 2020 Agenda

The Dutch have set a goal of 100% sustainable purchasing by 2015, and have instituted a host of tools to achieve it. The most important of these are a library of product specific criteria to be used in drafting procurement documents. These criteria, which must be applied to all procurement tenders, set out supplier, service, and award criteria that reflect the specific environmental and life-cycle costs for a given contract type.

In addition, Dutch authorities have created a number of tools to guide contracting authorities in the implementation of sustainable procurement. For example, the Netherlands Enterprise Agency has established a Sustainable Public Procurement Coach website that offers performance tracking, best practices and guidance. PIANOo also publishes a manual on sustainable procurement, with step by step guidance on the implementation of sustainable criteria in the public procurement procedures^{ix}.

In terms of SMEs and innovation, estimates indicate that 80-90% of public contracts in the Netherlands are awarded to SMEs. However, Dutch authorities still see room for improvement, and are promoting common solutions, such as breaking contracts into lots, eliminating turnover requirements, and using standardised tender documents. The Netherlands are also working to include SME voices in the planning process through greater dialogue and market research.

Understanding the market is also key to innovation procurement, another strategic goal. To facilitate connections between innovative businesses and contracting authorities, Dutch authorities have created a number of tools, including an Innovation Market platform to allow suppliers to promote their products to governments across the Netherlands and beyond.

Finally, starting in 2015, municipalities also have a responsibility to promote employment and social inclusion in their communities. One solution being promoted is the use of procurement to create work opportunities for individuals who might not otherwise have access to labour markets, including youth, the elderly, or persons with disabilities.

Irregularities and findings of national Audit Authorities

Each national and subnational authority has its own independent audit body. At the national level, the Court of Audit, which belongs to the High Council of State, is responsible of the control the conformity of the national government's revenue and

expenditure. Its publications are available to the public and can be found on its website^x. In its last report on public procurement it concludes that errors happened mostly in the context of tenders below the applicable European threshold. Since they could not find a structural explanation, they advised the government to clarify the applicable rules, promote information and evaluate periodically the cause of errors^{xi}.

At the subnational level, authorities rely on independent Auditors. As far as the city of Amsterdam is concerned, the audit institution of Amsterdam ACAM is responsible for the control of legality of expenses therefore assesses its respect of the public procurement rules. It does not, however, make its report available to the public^{xii}.

In addition to official audits, several independent institutions also evaluate public procurement performances, such as the Economic Institute for Construction and Housing, and the Tendering Institute, both of which focus on the construction sector.

Outlook

The primary focus in procurement reform is the transposition of the 2014 EU Directives on procurement. To this end, the Dutch authorities plan to publish draft legislation for public consultation laying out how the government intends to use the discretionary policy margins in the EU Directives that are left to the Member States. However, taking into the account the lengthy legislation procedures, it is possible that the Directives may not be transposed before the April 2016 deadline.

The other major goal is obtaining full e-procurement adoption. The independent procurement expertise centre E-proQure conducted a study on the use of e-procurement in the public and private sector that indicates that awareness of e-procurement remains low, and that despite the available technical infrastructure, the Netherlands are not on track to meet the EU adoption deadlines^{xiii}. Even though the e-procurement provisions in the Dutch public procurement law of 2012 specify the implementation deadline of October 2018, the Government has not yet decided whether this deadline will be postponedⁱ.

Finally, the Public procurement act of 2012 states that this law shall be reviewed in April 2015 and examine whether the regulations and objectives have been achieved, as well as their effects and impacts shall be evaluated^{xiv}.

ANALYSIS

Strengths

Overall the Netherlands' public administration has a good reputation, and a tradition of providing a reliable and business friendly environment^{xv}. Reflecting their fundamental value for integrity, transparency and accountability within public administrations, the Netherlands has set up a sophisticated administrative framework to prevent corruption within its public services. As a result of this and of their proactive approach to promoting these values, the Dutch authorities have managed to keep the corruption cases significantly low compared to the other European Union countries.

Weaknesses

The primary weakness of the generally high performing Netherlands procurement system is the lack of centralised tracking and measurement statistics. The availability of such data would be a valuable tool in crafting future procurement reform measures, and more generally in guiding the public policy debate.

Another issue is the high number of direct award procedures for tenders under the EU thresholds. While in the Netherlands, direct award is not directly linked to concerns about corruption, it does impede efforts to foster private sector competition and

maximise public sector value for money. The sub-threshold award requirements put in place in 2013 should reduce this impact, but do not obviate the preference from more openly competitive processes. Another critical aspect of the Netherlands' procurement system is the fact that it has a very low rate of publication of EU-wide public contracts: the share of EU contracts in 2013 was 7.6% of total procurement expenditure excluding utilities compared to the EU average of 19.1%. A larger percentage of EU-wide public contracts would increase competition and related economic welfare^{xvi}.

Recommendations

- **Bigger data:** Due mainly to the Netherlands' decentralised political system, it does not collect or publish comprehensive procurement statistics.
 - Put in place a centralised data collection system or make the current systems interoperable in order to generate procurement statistics for analysis and publication.
- **Open it up:** In the Netherlands, the number of direct award procedures for tenders under the EU thresholds is substantially higher than in other MS. This may have a detrimental impact on efforts to foster private sector competition and maximise public sector value for money.
 - Promote the use of more openly competitive procedures where applicable.
- **Improve publication rate:** The Netherlands' low rate of publication of EU-wide public contracts impedes efforts to increase competition. An issue, which is also indirectly linked to the high number of tenders closed under the EU thresholds.
 - Implement a tender publication system with easy-access for all contracting authorities.
 - Increase transparency through publication of below-threshold contracts.
- **Accelerate digitisation.** Although e-procurement systems are in place, full adoption is not yet complete.
 - Conduct awareness-raising campaign to inform contracting authorities about the benefits of e-procurement.
 - Develop guidance materials to facilitate the use of e-procurement systems.
- **'Declaration of conduct':** Contracting authorities may require bidders to submit a 'declaration of conduct' in public procurement, certifying that they are not legally disqualified from bidding. In its present form, the procedure for obtaining this document is cumbersome, and can take up to 16 weeks.
 - Streamline the process for obtaining a "Declaration of conduct" or allow bidders to fulfil the requirement with a signed declaration of honour.

ⁱ Public Procurement Network (2010), Authority for the Supervision of Public Contracts, Comparative survey on the transposition of the new EU public procurement package.

ⁱⁱ Partnership Agreement between Netherlands and the European Commission on ESI Funds for the 2014-2020 programming period (2014).

ⁱⁱⁱ 2004/17/EC, 2004/18/EC, 2009/81/EC, 92/13/EEC and 89/665/EEC.

^{iv} Main changes for Procurement, available at: <http://www.pianoo.nl/belangrijkste-wijzigingen-aanbestedingswet-ten-opzichte-van-bao-wira>

^v Ministry of Justice Report on procurement activities, available at: <https://www.justis.nl/producten/gva/>

^{vi} Application Behavior Procurement Statement, available at: <https://www.pianoo.nl/document/2670/aanvraagformulier-gedragsverklaring-aanbesteden-gva>

^{vii} Public Procurement Commission (2014), Periodic Report, available at: <http://www.commissievanaanbestedingsexperts.nl/sites/default/files/bijlage/Periodieke%20rapportage%20van%20de%20Commissie%20van%20Aanbestedingsexperts%2028-03-2014.pdf>

^{viii} Rijksoverheid (2014) *Partnerschapsovereenkomst Nederland 2014-2020*.

^{ix} Netherlands Reports to the Seventeenth International Congress of Comparative Law.

^x *Algemene Rekenkamer*, Publication, available at: <http://www.rekenkamer.nl/Publicaties>

^{xi} *Algemene rekenkamer*, EU trend rapport 2015, available at : http://www.rekenkamer.nl/Publicaties/Onderzoeksrapporten/Introducties/2015/03/Trendrapport_open_data_2015

^{xii} Auditor van Amsterdam, available at: <http://www.amsterdam.nl/gemeente/organisatie/overige/acam-0/>

^{xiii} EproQure (2014), *E-aanbesteden in Nederland: de tijd dringt* (E-procurement in Netherlands), available at: <http://www.e-proquire.nl/2014/07/e-aanbesteden-in-nederland-de-tijd-dringt/>

^{xiv} Evaluation Procurement Act 2012, available at: <http://www.rijksoverheid.nl/onderwerpen/aanbesteden/aanbestedingsregels/evaluatie-aanbestedingswet-2012>

^{xv} European Commission (2014), Assessment of the 2014 national reform programme and stability programme for Netherlands.

^{xvi} European Commission (2015) Country Report Netherlands 2015 Including an In-Depth Review on the prevention and correction of macroeconomic imbalances.

POLAND

KEY FACTS AND FIGURES

Key Facts and Figures in Poland						
Overview	Total procurement 46,970,000,000€		Procurement % GDP 12%		2013 GDP 396,111,500,000€	Contracting authorities 14,000
Procedures applied	Open 87%	Restricted 3%	Negotiated procedure with call 1%no call 5%		Competitive dialogue 0%	Direct award 3%Other 1%
Share of contract notices by buyer	National 9%		Regional/local 17%		Body governed by public law 30%	Other 45%
Contract type	Services 45%		Works 7%		Supplies 48%	Framework agreement 1%
Ex ante conditionality criteria as of 2014	EU rules Not met		Transparency Fully met		Training Fully met	Admin. capacity Fully met
E-procurement adoption	E-notification Mandatory		E-access Partially mandatory		E-submission Voluntary	Uptake rate 0%
Perceived corruption	Corruption widespread in society Businesses 86%			Individuals 82%	Corruption widespread in procurement At national level 65%At local/regional level 67%	
TED indicators	Value of tenders 22,318,884,373€		Of total procurement 48%		# contract notices 22,210	# contract awards 22,308
Other indicators	Received single bid 45%		# days for decision 43.2		Price only criteria 83%	MEAT criteria 17%
	Won by foreign firms 1%		Related to EU funds 15%		Joint purchase 3%	Central purchasing No

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

The public procurement system in Poland is decentralised, with approximately 14,000 contracting authoritiesⁱ spread out among the country's ministries, central offices, province offices, state control organs, courts and tribunals, and territorial self-government offices. The disparity of contracting authorities makes it difficult to track the level of conformity of contracts and their involvement in Europe 2020, such as their engagement in green procurement, or the participation of SMEs in procurement.ⁱⁱ Approximately 90% of all contracts are awarded based solely on the lowest price, however, this is likely to change following reforms introduced in 2014, as greater emphasis is put on non-price award criteria, including quality, overall cost of use, environmental and social aspects.

The economic impact of procurement in Poland is above average for the EU, disbursing the equivalent of 20.4% of GDP in 2013. Due to the combination of a large population and substantial flows of ESI funding, Poland has one of the highest number of ESI fund procurement awards in the EU.ⁱⁱⁱ

Public-Private Partnerships (PPPs) play an important role in procurement in Poland, particularly in infrastructure projects contracted by local authorities, as PPPs are considered of strategic importance in Poland's 2030 development strategy.^{iv} The Polish infrastructure investment programme, called "Polish Investments", relies heavily on the use of PPPs in infrastructure. Implementation of this plan would cement Poland's role as one of the most extensive users of PPPs in the EU.

Since approval of its Partnership Agreement in 2014, Poland has enacted legislative reforms addressing the issues associated with the transposition of EU rules. As a result, it has now fulfilled all the *ex-ante* conditionality criteria related to procurement.

DESCRIPTION OF FEATURES

Legal features of public procurement system

As part of its accession to the EU, Poland adopted the Public Procurement Law of 2004^v (PPL) as the national legislation transposing EU Directives and regulating public procurement. The PPL has been amended several times, notably by the 2009 Act on Concession for work and services. It applies to all contracts above EUR 30,000.^{vi}

In addition to the PPL, there is a body of secondary legislation that also governs procurement in Poland. This includes Regulations of the Prime Minister, which cover issues like protection of secret data^{vii} and the obligation to publish notices on TED.^{viii} Other major acts regulating the Polish public procurement system are the Public-Private Partnership Act of December 19, 2008 and the Concession for Construction Works and Services Act of January 9, 2009.^{ix}

The PPL was most recently amended in 2014 to promote award criteria beyond price, and to tighten restrictions on suppliers. Under the amendment, candidates may be excluded for violating or failing to fulfil the terms of a previous contract, either intentionally or due to gross negligence. Contractors can also be banned for having committed a breach of professional duties in the previous three years. Finally, the new legislation permits contracting authorities to request additional information in the case of an exceptionally low price presented by the economic operator.^{xi}

Institutional system

The Public Procurement Office (PPO) is the primary policy, executive and oversight agency for procurement in Poland, but does not have a purchasing role.^{xi} Individual contracting authorities are responsible for conducting their own procedures. The PPO is made up of the President, a permanent staff, and the Public Procurement Council, an advisory body to the PPO. The PPO is responsible for drafting procurement legislation, gathering data and conducting analysis on the procurement system, including via the publication of annual reports, disseminating procurement guidance, and maintaining the digital Public Procurement Bulletin. The PPO is supported by the Public Procurement Council an advisory and consultative body composed of 10 to 15 members appointed by the Prime Minister.

The PPO also conducts controls of award procedures, and in the case of irregularities may recommend an ongoing procedure be halted or modified, or apply to the Court to nullify an award decision. Contracting authorities can appeal to the National Appeal Chamber (*KIO*), a non-judicial review body, also housed at the PPO premises, that acts as the first instance specialised appeal body for bidders with complaints against contracting authorities. The decisions of the KIO can be appealed to the regional courts, and ultimately to the Supreme Court.

The Supreme Audit Office (SAO) is the independent state audit body in charge of controlling public spending for economic efficiency and effectiveness, and benefit of the Polish State. It undertakes audits of public procurement activities from the point of view of legality, economic efficiency, efficacy and integrity. The SAO reports to Parliament, and makes their findings available to the public via annual reports.

For EU co-financed contracts, the supervision institutions are the managing authorities, intermediary authorities and intermediary authorities of second level. Furthermore, the Centre for EU Transport Projects (CEUTP), as an implementing body for EU Funds, has important responsibilities related to control and audit of public procurement.

Key issues that have a bearing on administrative capacity

Human resources: The PPO had a total staff of 140 in 2013, including the 35 members of the *KIO*, and 10 to 15 members of the Public Procurement Council that are not staff of the PPO. 30 positions were co-financed by the EU. At the contracting authority level, there is substantial variation in the number and qualifications of practitioners.

Structures: The PPO is primarily responsible for maintaining and expanding administrative capacity at both the central and contracting authority levels. To this end, they are quite active in distributing guidance materials and offering in-person training programs on a wide range of topics.

In addition, the PPO has teamed up with four universities, including the Warsaw School of Economics, to offer a postgraduate program in public procurement. The programme covers the entire procurement process for the preparation of tender documentation to award.

Trainings: The PPO organised a number of trainings for contracting authorities in 2013. Under the rubric of “the New Approach to Public Procurement Project,” they organised sessions around topics including the use of non-price criteria in assessing offers, increasing participation of SMEs, negotiating innovative procurement solutions, and the use of electronic procurement tools. In total, the PPO conducted 48 two-day trainings, during which 1,000 people from 646 institutions of public and administration were trained. There were also four seminars for representatives of the controlling institutions.

In addition, the PPO implemented a training regime in support of the National Action Plan on sustainable procurement, which aims at further stimulating incorporation of environmental and social policy goals in public procurement activities for the years 2013-2016. Within this programme, the PPO organises 2 training sessions and a conference each year on social clauses in public procurement contracts. The PPO also organises 2 annual trainings on green public procurement issues, including the use of energy labels and sustainable power management in accordance with ISO 50001.

Other seminars were organised on how to prevent corruption in procurement. These actions were directed at representatives of the government and local authorities, governmental agencies, institutions and entities applying the PPL. In addition, employees of the PPO took an active part and spoke during the 28 conferences and seminars organised by external entities. In 2013, a total of approximately 3,550 people participated in educational and informational projects organised by the PPO.

Systems/tools: The PPO publishes a number of support and guidance materials for contracting authorities and suppliers that are available free to the public. These include a detailed methodology, a number of step-by-step guides for practitioners on topics such as green procurement and social aspects of procurement, legal explainers and updates, and publications of opinions. The PPO also publishes information on other countries’ procurement systems to help Polish suppliers compete for contracts abroad. In addition, the PPO publishes online indexed lists of past decisions by the *KIO* as a kind of case law library. Commercial portals provide search engines for this virtual library, as the online tool made available by the PPO is less intuitive and requires to know the reference number of specific cases in advance.

E-procurement

At present, the e-procurement infrastructure is fragmented and offers only limited services. E-notification on the Public Procurement Bulletin or in TED is mandatory for all contracts above EUR 30,000. E-access services are available, and use is mandatory

for contracts using open procedures. An e-auction platform is also available. E-submission is available, but remains voluntary and uptake rates are low.

The PPO has set up a free of charge platform for electronic auctions, where 504 auctions were conducted in 2014 generating significant savings. Also, an e-catalogue platform is scheduled to be completed in 2015.

According to a PPO survey, 43% of contracting authorities do not exchange information electronically with contractors, 22% in a few occasions, while 35% do so regularly. Among the reasons cited for the low rate of digitisation are the lack of confidence in the e-communication tools, the lack of knowledge, the lack of appropriate tools and the ambiguous provisions related to e-procurement. Concerns related to information security, particularly the verified electronic signature, are considered the principal barrier to uptake of full-scale e-procurement.^{xii}

The 2012 Plan for the Digitization of Public Procurement calls for the creation of a single unified online platform compatible with the global e-government platform *ePUAP* that will offer end-to-end e-procurement services by 2016.^{xiii} The plan estimates that full implementation could generate annual savings in the tens of billions of Euros.

Corruption

Poland has made substantial efforts to tackle corruption, particularly since accession to the EU, but abuses remain a serious issue, particularly in procurement including EU co-financed projects. The current anti-corruption strategy, which covers the years 2014-2019, places particular focus on procurement, including via a standalone report highlighting potential problem areas for corruption in public procurement.^{xiv} The key government agency, and author of the above report, is the Central Anti-Corruption Bureau (*CBA*).

According to the *CBA*, corruption occurs in the procurement process via inflation of the value of invoices, quantifying operating expenses as project costs, spending for purposes other than the project, and sub-division into lots to avoid procedures. A 2012 OLAF-commissioned study also pointed to bid-rigging, kickbacks, conflict of interest and deliberate mismanagement.^{xv} If detected, such violations are punishable by fines and imprisonment.

Procurement in Poland is particularly vulnerable to bid-rigging, which has caused recent suspensions of payments for three EU co-founded projects.^{xvi} Even though specific trainings to detect bid-rigging are provided by the Office for Competition and Consumer Protection and the *CBA*, it remains a challenging area, because fraud detection requires substantial means for investigative techniques.

The PPO also has an important role to play in the fight against corruption by performing verifications of procedures at a number of key stages in the procurement process, including *ex-ante* and *ex-post* checks. In the case that violations resulting in invalidation of the contract are detected, the PPO is empowered to refer cases for criminal investigation. Despite checks by the PPO, challenges remain.

Contracting authorities are empowered to seek clarification from a bidder if the price seems abnormally low.^{xvii}

Europe 2020 Agenda

The Polish procurement system has begun incorporating secondary policy goals, including environmental and innovation policy, but use of these techniques remains limited. According to a PPO study, the share of contracts awarded according to Green Public Procurement rules grew from 4% to 12% between 2006 and 2013, a substantial improvement that still leaves Poland's GPP system on the less developed side of EU

averages^{xviii}. The National Action Plan on Sustainable Procurement sets a target of 20% sustainable procurement by 2016, achievable primarily through improved training of government officials and awareness rising among potential suppliers including through certification systems^{xix}. To this end, a thorough program of training events, conferences, and guidance materials has already been developed.^{xx}

Efforts to promote innovation through the procurement process are also underway, as outlined in the Strategy for the Innovation and Effectiveness of the Economy for the years 2012-2020 "Dynamic Poland" (*SIEG*).^{xxi} Among other things, *SIEG* pushes public authorities to draft tender documents in consultation with market participants such that the terms allow, and even encourages the use of new technologies and innovative goods and services.^{xxii} It also includes the promotion of most economically advantageous tender award criteria. Increasing SME participation in the procurement process is another goal.

Incorporation of social policy goals, such as equality of opportunity, integration and labour market standards, is also a goal, although its impact remains admittedly limited.^{xxiii}

Irregularities and findings of national Audit Authorities

The SAO, the primary oversight body in Poland, conducts *ex-ante* audits for irregularities in procurement primarily designed to limit the risk of subsequent issues, such as invalidation or penalties by law enforcement. If detected, irregularities are flagged to the contracting authority, which has discretion to implement their recommendations or not.^{xxiv} Irregularities identified in the SAO's recent audits include awarding an infrastructure procurement without a construction permit, unjustified subdivision of a contract to avoid tendering requirements, and bidders offering prices considered abnormally low in light of estimated costs^{xxv}. It also identified cases where contractors won bids that they were subsequently unable to deliver on budget. As a result, the SAO suggested an amendment to the PPL, since adopted, to include the definition of 'strikingly low price'^{xxv}, which is then subject to enhanced scrutiny.

The Office for Competition and Consumer Protection also gathers statistics on anti-competitive and corrupt practices in procurement. They identify bid-rigging, submission of multiple tenders, submitting abnormally low offers and collusion between tenderers and purchasers as a serious impediment to competition in public markets in Poland.

Finally, PPO controls of the conformity of contract award procedures with the PPL are carried out regularly. In 2013, 376 controls and 591 formal investigation procedures were conducted resulting in 20 cases where administrative proceedings were initiated and one award was rescinded. The remaining cases ended in financial penalties. Irregularities identified included failure to publish required notification, preferential description of contract terms, and unjustified division of contracts into lots to avoid compliance with the PPL.

During the same period, the *KIO* heard 3,044 appeals. It issued 121 opinions with reservations as to the result of the controls carried out by the PPO Chairman. 12 of them were fully accepted.^{xxvi}

In 2013, the European Commission reported Poland to the European Court of Justice for non-compliance with EU procurement law requirements regarding the exclusion of candidates from procurement procedures.^{xxvii}

Systemic irregularities in public procurement related to Cohesion Fund projects in the 2000-2006 programming period led to a net financial correction of 2% for all projects to be closed after June 2010.^{xxviii}

Outlook

Poland's near-term focus will be on implementing its already stated goals in terms of GPP, e-procurement and anti-corruption. Polish adoption of GPP standards into the procurement process lags EU averages, and even reaching the comparatively modest goal of 20% GPP by 2016 will be a challenge. To that end, Polish authorities have invested substantially in training and guidance efforts which should bear fruit over the coming years. Related efforts in terms of social and innovation goals will also require awareness building efforts.^{xxix}

At the same time, there is also a lot to be done in order to meet Poland's e-procurement goals. Adopting a new technological platform will inevitably incur substantial transition costs in terms of productivity loss and investment in training and guidance for contracting authorities. During the 2014-2020 programming period, ESI funds will be dedicated, among other goals, to supporting e-procurement including via training^{xxx}. According to the Partnership Agreement, support from the ERDF is targeted at actions for creating demand for e-services.^{xxxi}

In terms of Poland's anti-corruption efforts, the 2014-2019 strategy calls for a thorough review of current practices, an increase in coordination among existing bodies, and greater cooperation with outside organisations, including civil society groups, and the public at large. A promising initiative by the NGO Batory Foundation is the creation of a platform, the so-called Corruption Risk Barometer in Public Procurement, aimed at detecting and minimising bid-rigging and malpractices.

Finally, the 2015 draft amendment of the PPL aims at strengthening SME participation and promoting quality-related award criteria such as life-cycle costing, in addition to introducing mandatory e-procurement.

ANALYSIS

Strengths

Poland has made substantial progress in reforming their procurement system in recent years, creating a robust system of institutions to shape, guide and oversee procedures nationwide. Some of the latest reforms are a testament to how the system is improving. A notable example is the recent amendment of the PPL requiring award decision to include at least one non-price criterion. Since the introduction of this amendment, the percentage of tender notices that are based solely on price decreased from 93% to 33%.^{xxxii}

Furthermore, in recent years, oversight bodies such as the SAO identified a recurring issue where bidders were winning tenders by submitting strikingly low bids, then running into problems delivering on their contracts within the budget allotted. In response, an amendment to the PPL was adopted that includes a mechanism for holding such low-ball bids up to increased scrutiny, and mandating most economically advantageous tender award criteria. Combined, these two reforms should substantially reduce the practice of price dumping, eliminating a common hassle for project managers and improving the competitiveness of the process for other bidders.

In 2014, Poland undertook the necessary legal steps to fully comply with the EU's public procurement Directives following a judgement by the European Court of Justice. Compliance with the Directives also satisfied Poland's procurement-related commitments to the EC under their 2014 Partnership Agreement.

Weaknesses

The main weaknesses of the Polish system are the ongoing susceptibility to corruption, the instability of the legal framework including inconsistent interpretation of the

procurement law, and the relatively underdeveloped e-procurement infrastructure. Additionally, despite positive reform efforts, many contracting authorities still make limited use of quality criteria for the evaluation of tenders.

On the anti-corruption front, Poland's problems are largely structural. For example, the fact that the head of the CBA is a political appointee who serves at the whim of the Prime Minister exposes the office to potential politicisation^{xxxiii}. Furthermore, the lack of adequate institutional coordination creates gaps in coverage between law enforcement agencies that harms their effectiveness. The adoption of a new anti-corruption programme in 2014 is a positive step, but there is considerable room for improvement in efforts to eliminate abuse of power. Notably, the introduction of ex ante and ex post checks of procurement procedures could prove useful to limit corrupt practices.^{xxxiii}

Another major issue is the instability of the legal framework. Frequent amendments to the PPL pose a challenge to contracting authorities, as they often lack information on latest legal changes. This difficulty is exacerbated by the fact that there are inconsistencies in interpretation of the law due to institutional overlap between the PPO and the KIO. Furthermore, the KIO has been criticised for inconsistencies in their own interpretation of the law.

The other key weakness is the underdeveloped e-procurement environment. Transitioning to a fully electronic system is not only a requirement for MS, it can be an important tool for both improving administrative capacity by standardising processes, and in improving transparency by generating valuable tracking data. The fragmented and voluntary nature of currently available e-procurement tools means that these benefits are going unrealised. Polish authorities will have to make considerable efforts to achieve their digitisation goals in a timely fashion.

Finally, national policy initiatives are often stymied by low participation rates among contracting authorities. This has been a factor in the use of e-procurement tools, adoption of non-price award criteria, and to the incorporation of GPP. The combination of insufficient administrative capacity, uncertainty about the legal framework contributing, and vulnerability to audit and legal action leaves many practitioners wary about implementing new techniques or strategies. In this case, clear and timely provision of guidelines and training materials could be effective.

Recommendations

- **A united front:** Many of the challenges in the Polish procurement system are linked to the lack of clear and authoritative system, including unclear regulations, overlapping institutional jurisdictions and contradictory judicial and administrative decisions.
 - Reform the PPL to reduce ambiguities in the definitions of legal terms and jurisdiction of institutions, particularly oversight bodies; consolidation of oversight responsibilities in a single agency should be considered.
 - Reduce the frequency of legal amendments by bundling necessary reforms and pair their enactment with information campaigns so practitioners have the information they need to implement them.
 - Create an online one stop shop where contracting authorities and economic operators can find comprehensive and authoritative guidance materials on all aspects of procurement.
 - Improve the PPO's case law library to be more user friendly and intuitive.
 - Develop more standardised tender documents.

- **Addressing corruption:** Corruption affects the procurement process in Poland in a number of persistent ways, including bid-rigging, misuse of funds and kickbacks.
 - Enhance *ex ante* and *ex post* checks of procurement procedures to reduce the manipulation of tender documents and detect fraud in implementation.
 - Improve awareness raising activities on anti-corruption measures, including by preparing clear and authoritative guidance materials.
 - Strengthen the capacity of dedicated bodies, such as the Centre for EU Transport Projects (CEUTP) and its specific unit for bid-rigging in the department of irregularities.
 - Increase transparency by publishing more extensive tender and award data online for public oversight and increasing cooperation with civil society groups as outlined in the 2014-2019 anti-corruption strategy.
 - Strengthen enforcement of existing procurement rules.
- **Increase independence:** While the Polish institutional system is not overly complex, the current set-up between the KIO and PPO contributes to institutional frictions and uncertainty.
 - Separate the KIO from the PPO to allow it full independence in making decisions, particularly when the President of the PPO weighs in on a case.
- **Move beyond price only:** Poland has substantial room for growth in their use of MEAT criteria, and in the incorporation of other policy goals in their procurement.
 - Provide additional guidance materials on the use of non-price criteria.
 - Institute a two-step evaluation process to separate price and non-price elements.
 - Develop training and guidance materials on the benefits of strategic procurement, including the use of life-cycle costing.
- **Accelerate e-procurement uptake:** The current e-procurement infrastructure is too fragmented and underdeveloped, and use of e-submission is low.
 - Develop high quality, centralised e-procurement platform at the ePUAP portal.
 - Conduct extensive awareness-raising and training campaign so that contracting authorities are engaged and prepared to use the new platform.

ⁱ European Commission Staff Working Document (2013), Annual Public Procurement Implementation Review 2013.

ⁱⁱ National Action Plan on Sustainable Procurement (2013), available at:

<http://www.uzp.gov.pl/cmsws/page/?F:379>

ⁱⁱⁱ European Commission (2011), Public Procurement in Europe- Costs and Effectiveness, available at:

http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/cost-effectiveness_en.pdf

^{iv} *Polska 2030: Wyzwania rozwojowe* (2009) (Poland 2030: Development Challenges).

^v Act of 29 January 2004 - Public Procurement Law, Journal of Laws of 2013, No. 907, 984, 1047, 1473, of 2014 item 423, 768, 811, 915, 1146 and 1232, available at: <http://www.uzp.gov.pl/cmsws/page/?F:370>.

^{vi} Act of 29 January 2004 - Public Procurement Law, available at:

<http://www.uzp.gov.pl/cmsws/page/?F:370>

^{vii} Regulation of the Prime Minister of 19 February 2013 amending the regulation on the rules of procedure for examining the appeals, Journal of Laws of 2013, item 232, available at:

<http://www.uzp.gov.pl/cmsws/page/?F:370>

^{viii} Regulation of the Prime Minister of 23 December 2013 on the value of contracts and design contests imposing an obligation to submit the notices to the EU Publications Office, Journal of Laws of 2013, item 1735, available at: <http://www.uzp.gov.pl/cmsws/page/?F:370>

^{ix} Act on Public-Private Partnership Journal of Laws / *Dziennik Ustaw (Dz.U)*, of 2009, No 19, item 100.

^x Act on Concession for Works and or Services.

^{xi} Amendment to the Public Procurement Law of 2004, available at:

<http://dziennikustaw.gov.pl/DU/2014/1232>

- ^{xii} *Urząd Zamówień Publicznych* (Public Procurement Office) (2014) *Sprawozdanie Prezesa Urzędu Zamówień Publicznych o funkcjonowaniu systemu zamówień publicznych w 2013 r.* (Report on the functioning of the public procurement system in 2013).
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- ^{xiv} Polish Anti-Corruption Programme for the years 2014-2019, available at : <http://www.cba.gov.pl/pl/prewencjapublikacje/strategia-antykorpcyjna/3409,Rzadowy-Program-Przeciwdzialania-Korupcji.html>
- ^{xv} The European Anti-Fraud Office (OLAF), (2013), Public Procurement: costs we pay for corruption, Identifying and Reducing, Corruption in Public Procurement in the EU.
- ^{xvi} Centre for EU Transport Projects CEUTP, 12/05/2015, Interview with PwC.
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- ^{xix} National Action Plan on Sustainable Procurement 2013-2016 <http://www.uzp.gov.pl/cmsws/page/?F:379>
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- ^{xxi} Ministerstwo Gospodarki (Ministry of Economy), Dynamic Poland 2020 –2013, available at: http://www.mg.gov.pl/files/upload/17492/SIEG_PL_wersja%20książkowa.pdf
- ^{xxii} Dynamic Poland R&D report, available at: http://www.mg.gov.pl/files/upload/17492/SIEG_PL_wersja%20książkowa.pdf
- ^{xxiii} The New Approach to Public Procurement Guide, available at : <http://www.uzp.gov.pl/cmsws/page/?D:1248>
- ^{xxiv} OECD and European Commission (2013), Organising Central Public Procurement Functions – Sigma Initiative -, available at: http://www.sigmaweb.org/publications/Brief26_CentralPPFunctions_2013.pdf
- ^{xxv} The Supreme Audit Office (2013), Report available at: <http://www.nik.gov.pl/plik/id,5600.pdf>
- ^{xxvi} *Urząd Zamówień Publicznych* (Public procurement Office) (2013), Report available at: http://www.uzp.gov.pl/cmsws/page/?F:288;sprawozdania_roczne_uzp_z_funkcjonowania_systemu_zamowi_en_publicznych.html
- ^{xxvii} European Commission Press release – October 2013, available at: http://europa.eu/rapid/press-release_IP-13-965_en.htm?locale=en
- ^{xxviii} European Commission (2015) DG REGIO Annual Activity Report 2014.
- ^{xxix} *Urząd Zamówień Publicznych* (Public procurement Office) (2013), National Action Plan 2013-2016, Polish version, available at: <http://www.uzp.gov.pl/cmsws/page/?P:10996>
- ^{xxx} Programming of the 2014 – 2020 financial perspective – Partnership Agreement Poland, p. 241, available at: https://www.mir.gov.pl/fundusze/Fundusze_Europejskie_2014_2020/Documents/UP_ang.pdf
- ^{xxxi} Programming of the 2014 – 2020 financial perspective – Partnership Agreement Poland, p. 98, available at: https://www.mir.gov.pl/fundusze/Fundusze_Europejskie_2014_2020/Documents/UP_ang.pdf
- ^{xxxii} Warsaw Enterprise Institute (2015), *Z nowym prawem zamówień publicznych – stare problemy, nowy bałagan*, (New public procurement law – old problems, new disorder).
- ^{xxxiii} European Commission (2014), DG HOME, EU anti-corruption report, Annex Poland.

PORTUGAL

KEY FACTS AND FIGURES

Key Facts and Figures in Portugal						
Overview	Total procurement 17,290,000,000€		Procurement % GDP 10%		2013 GDP 169,394,900,000€	
Procedures applied	Open	Restricted	Negotiated procedure		Competitive dialogue	Direct award
	48%	3%	with call	no call	0%	5%
Share of contract notices by buyer	National		Regional/local		Body governed by public law	Other
	7%		12%		68%	13%
Contract type	Services		Works		Supplies	Framework agreement
	28%		6%		66%	6%
Ex ante conditionality criteria as of 2014	EU rules		Transparency		Training	Admin. capacity
	Fully met		Fully met		Fully met	Fully met
E-procurement adoption	E-notification		E-access		E-submission	Uptake rate
	Mandatory		Mandatory		Mandatory	41%
Perceived corruption	Corruption widespread in society			Corruption widespread in procurement		
	Businesses		Individuals		At national level	At local/regional level
	90%		90%		78%	83%
TED indicators	Value of tenders		Of total procurement		# contract notices	# contract awards
	2,720,222,950€		16%		1,599	2,026
Other indicators	Received single bid		# days for decision		Price only criteria	MEAT criteria
	15%		94.1		56%	44%
	Won by foreign firms		Related to EU funds		Joint purchase	Central purchasing
	1%		27%		2%	Yes, eSPap

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

The Portuguese government is structured in a decentralised system with its central government, two autonomous regions of Azores and Madeira, and municipalities and parishes at the local level. Azores and Madeira have their own political statute and enjoy legislative autonomy in some government areas, including the ability to adapt the national legislation according to their own specificitiesⁱ. This enabled these two regions for example to raise the threshold level for direct awards and change the regime of guarantees that is requested by contractors.

Starting in 2007, Portugal began a substantial shift of the procurement system from one in which responsibilities were widely dispersed, to a centralised system under the coordination of the Institute of Public Markets, Real Estate and Construction (*InCI*) and the Entity of Shared Services of Public Administration (*eSPap*)ⁱⁱ. It modernised and professionalised procurement in Portugal leading to transparency best practices with substantial cost savings within public administration.

A key element of the reforms has been the embracing of e-procurement, implemented via private platforms. Portugal became an EU leader by making e-procurement mandatory in 2009, and today the e-procurement environment system is well-established, covers the entire procurement value chain, and is often cited as a source of best practices for other MS.

DESCRIPTION OF FEATURES

Legal features of public procurement system

The current Portuguese procurement system was largely shaped by the adoption of the Public Procurement Code (PPC) in 2008, which transposed EU Directives 2004/17/CE and 2004/18/CE, and initiated a significant overhaul of the previously legal system.

The PPC modernised, centralised and professionalised the system by creating a central procurement agency, the *InCI*, and a purchasing body, the predecessor to the *eSPap*, and mandating electronic procedures for the central administration. Local authorities retain autonomy for their own procurement, but do have the ability to purchase via *eSPap*'s several framework contracts.

The PPC has subsequently been amended several times, the most recent being via Decree-law 149/2012, which specifies the implementation of Portugal's commitments on public procurement with respect to the Economic Adjustment Programme for Portugal. The autonomous regions of Madeira and Azores have some freedom to adapt the PPC according to their particularities as autonomous regions. The EU Directives of 2014 have not yet been transposed into Portuguese law.

Institutional system

The main policy body in the Portuguese procurement system is the Ministry of the Economy, which is in charge of development and definition of procurement policy. In this, it is supported by the *InCI*. Together with the Ministry of Finance, another major actor in the procurement system, their responsibilities cover the communication of information to civil society regarding procurement and reporting to the EU the procurement statistics. Both Ministries are responsible for compliance with statistical reporting of the procurement system.

The central purchasing body is *eSPap*, which manages a number of large framework contracts through which central government agencies are required to purchase standardised items such as motor vehicles and paper goods. *eSPap* recently assumed the missions and duties of the previous National Agency of Public Procurement (NAPP), among others. The *eSPap* provides a number of shared services to different government bodies of which procurement is just one. Services are available to any public body that decides to join the National System of Public Procurement (NSPP), including regional and municipal contracting authorities.

The Portuguese Competition Authority (PCA) has the mission to ensure compliance with the competition rules in Portugal, and in particular, to supervise and ensure that the public procedures do not violate these rules. PCA is a partner institution of the European Network of Competition Regulators.

Another external oversight body is the Court of Auditorsⁱⁱⁱ, which is a fully independent judicial body that has jurisdiction over all Portuguese administration institutions and its territory, and can apply sanctions for breaches^{iv}. Internal controls are performed by the Inspectors Generals of the various Ministries.

The Agency for Development and Cohesion (AD&C), which operates under the Ministry for Regional Development, also provides a significant supportive function. The Agency coordinates the regional development policy and ensures, at the technical level, the general coordination of the ESI Funds for the 2014-2020 programming period.

Key issues that have a bearing on administrative capacity

Human Resources: In 2013, *eSPap* counted 315 employees, of which 35% are higher technicians, 28% information scientists, and 25% technical assistants. In 2013, nearly 65% of *eSPap* employees held an undergraduate degree, with another 5% holding a Master's degree. As of 2011, *InCI* employed 127 people, of which roughly half are high skill technical employees. *InCI* staff attended in total approximately 7,000 hours of training both provided internally and externally^v. In both agencies, procurement represents less than half of their responsibilities.

In general, improvements in administrative capacity are hindered by a five year government-wide hiring freeze, which prevents the recruitment of any new experts,

and forces HR efforts to focus on luring the best and brightest away from other agencies with non-monetary perks.

Structures: As the main institution responsible for the professional development of civil servants, the National Institute of Administration organises training sessions on public procurement. The AD&C, as supportive body for ESI Fund implementation, has a dedicated team for public procurement, which, among other things, provides dissemination and guidance on procurement.

Training: There are several training seminars and e-learning courses that are organised in order to develop capacity. The eSPap, organises regular trainings for its own staff, including 67 training events in 2013, of which 28 were external events, for a total of 7,726 hours^{vi}.

There are also several workshops, conferences, and trainings on public procurement-related matters offered by eSPap and advertised on the e-procurement portal¹, which promotes various informational events and awareness raising initiatives for the contracting authorities.

Moreover, there are organised trainings for staff working on the implementation of Structural and Cohesion Funds, including Coordinating, Managing, Audit and Certification Authorities. There are also networking and training sessions for the implementation of green public procurement regarding energy-related matters, organised for both procurers and public procurement training providers^{vii}.

Systems/Tools: The auditing authorities have specialised tools and instruments designed to support and analyse public tendering procedures^{viii}. Furthermore, the national authorities in charge of the ESF funds provide an audit tool on the dedicated ESF website. That website also contains a tool for self-assessments which can be used for trainings of public and private entities^{viii}.

In Madeira the MAs regularly publish technical guidelines on public procurement procedures^{ix}. These guidelines and information are made available on the websites of the national authorities in charge of the coordination of Structural Funds. For example, the website dedicated to the coordination of the ESF contains a FAQ's section specifically dedicated to public procurement related matters^{ix}.

Furthermore, the AD&C is currently developing its own risk assessment tool, whose function is to assemble and track errors and irregularities from the 2007-2013 and 2014-2020 programming periods, in order to identify red flags for *ex-ante* controls. The necessary data for this tool is collected from Managing Authorities, Administrative Authorities and administrative courts. The AD&C also developed a procurement manual for supplies and services.

E-procurement

E-procurement in Portugal is highly developed and boasts a high level of adoption due to a concerted effort since 2008 by procurement stakeholders to develop the e-procurement infrastructure. The 2008 reform law requires all procurement to be carried out using electronic means and in fact, the vast majority of contracts' pre-award cycle is carried out online.

E-procurement in Portugal diverges from EU peers in that the system rests exclusively on privately run platforms, which compete against each other to offer e-procurement services to contracting authorities. These private operators are authorised by the government and linked to the central BASE portal, which acts as single point of contact for economic operators.

¹ <http://www.base.gov.pt/>

The central BASE portal has the role of centralising and recording information about the procurement procedures carried out via different e-platforms and performance of contracts. This central portal allows economic operators can search tender notifications in one location, and be linked through to the individual platforms to access tender documents and submit a bid. The information that is collected and provided to candidates and bidders by BASE consists of the calls for tenders, application, receipt and evaluation of tenders, as well as performance of contracts. Documentation is published on the entire tendering procedure, which aims to make this information available to all interested parties.

There are seven private portals that are connected to the BASE platform. *Vortal* processed 28% of the electronic contracts in 2013, *Construlink* 27%, *Saphety Level-Trusted Services* 21%, *ANO Inforlatcs System & Services* 16%, *Acin icloud solutions* 6%), *Infosistema sistemas de informação* 1%, and *central E-informação e comércio Electronico S.A.* 1%^x.

Corruption

Despite substantial efforts to improve transparency and counter corruption, including the creation of an independent Council for Prevention of Corruption (CPC) in 2008, Portuguese authorities continue to struggle with successfully preventing and prosecuting corruption cases. For example, although conflict of interest has been an area of substantial concern, oversight bodies currently lack an automated system for checking the names of award committee members against potential bidders. The CPC called for a better disclosure system back in 2012, but so far this has not been implemented^{xi}.

Another issue in combatting conflict of interest is the so-called 'revolving door' of individuals moving back and forth between the public and private sectors, and in particular between contracting awarding entities in government and the firms that bid for those contracts. Currently, the Portuguese government does not track or monitor such movements, allowing the practice to continue unchecked^{xii}.

The Portuguese procurement system is characterised by a high degree of transparency, which can contribute effectively to reducing opportunities for corruption. Specifically, a number of high profile corruption cases have increased awareness among contracting authorities that their documentation is both available to the public and being monitored. The resulting self-policing has led to a decline in overall errors in tender documents.

However, although the information is quite comprehensive, due to a lack of interoperability, oversight bodies such as the PCA do not have direct access to the underlying data. As such, searches must be done on a case-by-case basis, preventing automated searches for red flag behaviour, such as multiple bids of the same price.

Portugal also makes high use of direct award, the thresholds for which are well above the EU average. Here as well, the Portuguese system relies on transparency to mitigate the risk of corruption. Direct award contracts are subject to the same advance notification and award publication requirements as regular tenders. Furthermore, following a direct award of up to EUR 75,000, a contracting authority cannot make another award to the same bidder during the following two calendar years.

Europe 2020 Agenda

As regards green public procurement, the Portuguese public authorities have gradually expanded the incorporation of environmental requirements into award criteria and technical specifications. These environmental aspects include, for example, energy efficiency and CO2 emissions levels, use of recycled content and reduced packaging,

as well as waste management and fuel consumption. If an offer fulfils more than the minimum requirements, then up to 25% of the total score can be awarded in extra points. The two institutions in charge of the GPP in Portugal are the Ministry of Environment and the *InCI*^{xiii}.

In addition to this, the GPP plan is being supported by the National Laboratory of Energy and Geology in the form of a partnership. Its role is to support the capacities and raise awareness among public procurers with regards to sustainable public procurement (SPP), with the specific objective of achieving low carbon procurement processes^{xiv}.

Irregularities and findings of national Audit Authorities

In order to ensure compliance with procurement rules and regulations, the PPC mandates regular controls by the Court of Auditors, whose reviews indicate a number of recurring irregularities in procurement. Those cited in the 2015 annual report include truncated notice periods, failure to clearly define award criteria or evaluation models in tender specifications, unjustified use of direct award procedures, contracting between municipalities and their local businesses without establishing market prices, and signing of back dated contracts.

The Portuguese municipalities in particular suffer from recurrent irregularities in procurement procedures. In 2012, EU audits identified serious issues in the system, resulting in payment suspensions^{xv}.

The Inspectorate General of Finance (IGF) acts as the Audit Authority for ERDF and ESF funds. Their audits highlight two issues of particular concern. The first is conflict of interest. Although they have assembled a database of publically available information on companies, board members, and major stock holders, it must be searched on a case-by-case basis to detect potential issues, while declarations of honour are not currently mandatory for ESI funded projects.

The second issue of concern is the non-application of procurement rules by some non-public entities. Non-profits and associations that receive more than 50% of their annual revenue from public sources, such as volunteer fire brigades and some charities, are subject to the same procurement rules as other contracting authorities. Many, however, are ignorant of this fact, particularly those whose revenue, and thus applicability of procurement law, fluctuates from year to year. Although these organisations represent a small share of total procurement by value, their absolute number is substantial, and failure to apply the correct procedures is an irregularity.

Outlook

Like many MS, Portugal will be using the transposition of the 2014 procurement Directives as an opportunity to enact a broader set of amendments to national procurement law. Perhaps the most ambitious element of the planned reforms is a second re-imagining of the e-procurement environment.

One element of the reform is the adoption of a so-called 'broker model'. Under the current rules, the contracting authority chooses the platform they want to host their tenders, and tenderers must comply, often forcing them to create accounts and profiles for several services to be able to compete for contracts. Under the new system, both contracting authorities and bidders will be able to submit their documentation to the platform of their choice with the BASE portal acting as a go-between, or broker, to connect them.

Also, the rules of the private platform system state that platforms must be free of charge for economic operators, deriving their income exclusively from contracting authorities. Despite the ban, platform operators have gradually introduced creative

new ways to extract income from tenders. Because the only criteria for operating a platform is the security certification, enforcement is difficult. As such, the new rules are expected to introduce new certification criteria that will allow procurement authorities to sanction platforms for such violations, including by decertifying them.

In addition, *eSPap* is planning a substantial increase in their central purchasing activities. On the one hand, they would like to expand their current set of framework contracts to include new products, such as power. On the other hand, they would like to do more business with regional and municipal contracting authorities, for whom purchasing through *eSPap* is voluntary.

ANALYSIS

Strengths

Portugal's embrace of e-procurement and the reforms that put it into place are the biggest asset to the national system. Since implementation in 2008, the new system has had a host of positive impacts, including: reduced administrative burden and processing times; fewer irregularities; improved data collection, thereby strengthening both oversight and data-driven policy making; increased transparency and civil society involvement; strengthened competition; and substantial budgetary savings to the public administration and to taxpayers.

The success of the reform derives from both the strong public support built via the deliberative and inclusive process used to create it, and to the willingness of policymakers to adapt and amend it to address its weaknesses and failures.

In terms of the related reforms, policymakers and economic operators are particularly proud of having restricted the need to submit habilitation documents to only the winner of a given tender, replacing it with a simple declaration of honour. This one change substantially reduced the cost of submitting a bid, with essentially no downside for the public administration.

Weaknesses

Despite their substantial progress in recent years, Portugal's procurement system continues to struggle with a number of implementation issues. First and foremost among these issues is unsatisfactory oversight and enforcement. Despite the enactment of new, stiffer penalties for anti-competitive or abusive practices as part of the 2008 reform, the use of such sanctions has been modest, and in some cases, they have never been applied at all.

In part, the lack of enforcement can be attributed to difficulties in monitoring processes. For example, despite the massive amounts of real-time, machine readable data being generated by the electronic procurement system, systematic monitoring is limited by a lack of technical interoperability and the presence of administrative barriers. This substantially limits the ability of oversight bodies like the IGF and PCA to identify behaviour red flags in data currently being collected.

As a result, abuses such as bid rigging and conflict of interest, and irregularities such as unjustified add works, are persistent problems.

Another weakness lies in the fact that the legal challenges create substantial delays in procedures, particularly on major projects. It is commonly believed that many of these challenges are filed as a means for economic operators to harm their competitors, but at substantial cost to the public administration and to taxpayers.

Finally, Portugal makes quite extensive use of direct award for public contracts based on their far above average threshold for such procedures. Although there are

meaningful transparency and anti-favouritism policies in place to reduce the threat of corruption, the practice deprives contracting authorities of the benefits of public market competition.

Recommendations

- **Improve interoperability:** Portugal's shift to an electronic procurement system has provided it with a wealth of data, but many official agencies (the AA IGF, Competition Authority, even MAs) do not have access to it.
 - Develop technical interoperability to allow different bodies direct access to notices, contracts, bids, and performance data.
 - Improve legal interoperability by working with the Commission on Access to Official Documents to facilitate authorization while respecting confidentiality.
- **eSPap:** High voluntary use of eSPap framework agreements by non-central administrations is a good indicator of value, but mandatory use among central government agencies blocks valuable cost saving opportunities, and reduces price pressures on bidders. Also, the massive scale of framework agreements restricts competition to larger bidders and may result in vendor lock.
 - Allow limited ability of central government contracting authorities to opt out of framework agreements with justification.
 - Shorter framework agreement terms will reduce vendor lock.
- **Training:** Overall training is good, but problems persist, particularly in vaguely drafted technical specifications and evaluation methods.
 - Targeted trainings on writing technical specifications.
- **Corruption:** Corruption is commonly perceived to be a problem by authorities and the general public, but the track record of enforcement and prosecutions appears insufficient.
 - Increase prosecutions of corruption-related offences linked with public procurement; this may require strengthening the capacities of the anti-corruption prosecution authorities to effectively pursue such cases.
 - Better implement the verification of declarations of absence of conflict and enforce dissuasive sanctions for breaches.
 - Connect the Competition Authority to BASE data on bids and contracts to allow for improved targeted searches of corruption red flags.
 - Increase incentives to report suspected corrupt practices by implementing mandatory reporting of corruption for public employees, possibly extending the reporting obligations to the private sector and ensure effective protection of whistle blowers.
 - Enhance and promote channels for whistleblowers to anonymously and confidentially report suspected corrupt practices.
- **Appeals:** The appeals process is slow, expensive, and often abused for anti-competitive reasons.
 - Digitise the appeals filing process.
 - Narrow conditions under which an appeal fully halts a procurement procedure.
 - Increase fees for filing appeals, potentially making them relative to value of contract.
 - Create penalties for misuse of appeals.
- **Direct award:** Portugal's threshold for direct awards are substantially higher than other MS, substantially limiting the share of public contracts subject to competition
 - Reduce the thresholds and otherwise restrict the use of direct award.

- **One stop shop:** Contracting authorities and economic operators currently navigate multiple sources for information, guidance materials and contract notices, including the BASE portal, *eSPap*, *InCI*'s websites.
 - Use BASE/eSPap as one-stop shop for procurement information.
- **MEAT:** The PCC makes a priority of adopting MEAT criteria where applicable, but roughly 50% of contracts are still awarded based on lowest price only.
 - Increase use of MEAT criteria through improved guidance materials and awareness raising campaign.

ⁱ European Union Committee of the Regions – Division of Powers, available at:

<https://portal.cor.europa.eu/divisionpowers/countries/membersLP/Portugal/Pages/default.aspx>

ⁱⁱ OECD (2007), Central Public Procurement Structures and Capacity in Member States of the European Union, SIGMA Papers, No. 40, OECD Publishing.

ⁱⁱⁱ *Tribunal de Contas* (Court of Auditors), available at: <http://www.tcontas.pt/en/english.shtm>

^{iv} Public Procurement Network (2010), Authority for the Supervision of Public Contracts, The comparative survey on the national public procurement systems across the PPN.

^v INCI, Balanço Social (Social Report) (2011).

^{vi} ESPap (Shared Services in Public Administration) (2013), Annual Activity Report, available at:

<https://www.espap.pt/quemsomos/Paginas/instrumentosgestao.aspx>

^{vii} Green Public Procurement 2020 website, available at: <http://www.gpp2020.eu/about-gpp-2020/>

^{viii} Government of Portugal (2014), Portuguese Partnership Agreement 2014-2020, available at:

<http://www.portugal.gov.pt/media/1489775/20140730%20Acordo%20Parceria%20UE.pdf>

^{ix} Available at:

<http://www.idr.govmadeira.pt/portal/Conteudo.aspx?IDMenu=2&IDSubMenu=147&Path=147&jmenu=2>

^x Ministry of Economy (2013), Public Procurement Annual Report 2013, available at:

http://www.inci.pt/Portugues/inci/EstudosRelatoriosSectoriais/EstudosRelatorios%20Sectoriais/Rel_Anual_Contratos_Publicos_2013.pdf

^{xi} Council for Prevention of Corruption, available at:

http://www.cpc.tcontas.pt/documentos/cpc_presentation.pdf

^{xii} European Commission (2014), DG HOME, EU anti-corruption report, Annex Portugal.

^{xiii} Open House (2010), Best practice on green or sustainable PP and new guidelines, Seventh Framework

Programme, available at: http://www.openhouse-fp7.eu/assets/files/D1.4_Best_practice_on_green_or_sustainable_public_procurement_and_new_guidelines.pdf

^{xiv} Green Public Procurement 2020 website, available at: [http://www.gpp2020.eu/about-gpp-2020/national-support-actions/http://www.gpp2020.eu/about-gpp-2020/national-support-actions/](http://www.gpp2020.eu/about-gpp-2020/national-support-actions/http://www.gpp2020.eu/about-gpp-2020/national-support-actions/http://www.gpp2020.eu/about-gpp-2020/national-support-actions/)

^{xv} European Commission (2013), DG REGIO, Annual Activity Report, available at:

http://ec.europa.eu/atwork/synthesis/aar/doc/regio_aar_2013.pdf

ROMANIA

KEY FACTS AND FIGURES

Key Facts and Figures in Romania						
Overview	Total procurement 15,980,000,000€		Procurement % GDP 11%		2013 GDP 144,282,200,000€	Contracting authorities 13,524
Procedures applied	Open 77%	Restricted 1%	Negotiated procedure with call 6% no call 16%		Competitive dialogue 0%	Direct award 0% Other 0%
Share of contract notices by buyer	National 29%		Regional/local 19%		Body governed by public law 9%	Other 43%
Contract type	Services 34%		Works 8%		Supplies 59%	Framework agreement 42%
Ex ante conditionality criteria as of 2014	EU rules Not met		Transparency Not met		Training Not met	Admin. capacity Not met
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Mandatory	Uptake rate 6%
Perceived corruption	Corruption widespread in society Businesses 91%		Individuals 93%		Corruption widespread in procurement At national level 64% At local/regional level 59%	
TED indicators	Value of tenders 4,612,543,166€		Of total procurement 29%		# contract notices 3,755	# contract awards 3,951
Other indicators	Received single bid 31%		# days for decision 50.7		Price only criteria 90%	MEAT criteria 10%
	Won by foreign firms 1%		Related to EU funds 4%		Joint purchase 1%	Central purchasing No

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Romania's budget relies more heavily on EU funds than most MS due to its comparatively low level of economic development as measured by GDP per capita. Since Romania joined the EU in 2007, significant changes have been introduced in the public procurement system^{viii}. The Romanian governmental system is strongly centralised, including in procurement matters. Despite its high level of centralisation, this system remains quite complex and involves numerous different institutions whose competences are not clearly distributed.

Administrative capacity is an issue at all levels of government. Even the public procurement regulatory and control bodies organised at the central level are often understaffed and receive limited training on public procurement matters. At the same time, the regulatory environment is fast-changing. As a result, the application of procurement practices can vary substantially over time and across institutions, making the system difficult to efficiently oversee. Corruption as well as budget constraints are perceived to be significant barriers to achieving greater value for money in the procurement system.

DESCRIPTION OF FEATURES

Legal features of the public procurement system

Romania transposed the public procurement Directives before its accession to the EU through Emergency Government Ordinance EGO 34/2006. Since then, this primary legislation has been subjected to multiple and substantial amendments. Frequent changes have also affected the secondary procurement legislation, such as Romanian Government Decision GD 925/2006^{xxx}, and other binding regulations.

Romania applies different rules to procurement above and below EU thresholds. Direct award is allowed for small value contracts under EUR 30,000 for services and 100,000 for works. Simplified procedures can be applied for contracts between EUR 30,000 and

EUR 134,000 for supplies and services and EUR 134,000 and EUR 5,186,000 for works.

While open procedures are by far the most commonly used, accounting for approximately three quarters of all contracts, Romania also makes higher than average use of negotiated procedure without publication, framework agreements and e-auctions^{xxxi}. The use of e-auctions for approximately 7% of contracts in particular marks Romania as unique among central and eastern European countries, where they are otherwise rare.

Institutional system

Numerous institutions have relevant roles and responsibilities in the field of public procurement. Until recently, there were three main bodies: the National Authority for Regulating and Monitoring Public Procurement (*ANRMAP*), the Unit for Coordination and Verification of Public Procurement (*UCVAP*), and the National Council for Solving Complaints (*CNSC*). With the passage of Government Emergency Ordinance No. 13 of May 20, 2015ⁱ, the *ANRMAP* and the *UCVAP* are set to merge into a single National Public Procurement Agency (*ANAP*) within the Ministry of Finance.

Once established, the newly created *ANAP* will be the primary procurement body in Romania, being responsible for legislative and policymaking, executive and oversight functions. The latter includes the *ex-ante* controls of all tender documents before publication on the country's e-procurement portal, regardless of their value or procedure. In contrast to the *ANRMAP*, the new *ANAP* will have a much less centralised structure, which should allow it to better serve the diverse needs of the different regions of the country.

The *CNSC* is the first instance administrative body with jurisdiction over public procurement. It aims to guarantee the compliance of contracting authorities with the legislation through the resolution of complaints submitted by any person, who claims that their rights or legitimate interests were violated by an act of the contracting authority. It has the power to annul the action adversely affecting the complainant, to annul an awarding procedure or to oblige a contracting authority to take corrective action. Both contracting authorities and complainants can challenge *CNSC* decisions before the Court of Appeal of the county in which the contracting authority is located. The appeal against a *CNSC* decision is final and binding for all parties involved. Moreover, Romania recently instituted a strict time limits on remedy procedures: no more than four months from filing to ruling, the shortest in the EU.

The main oversight body concerning public procurement is the Romanian Court of Accounts. It conducts *ex post* audits of the planning, management and use of public sector financial resources including via public procurement. It reports findings and irregularities to *ANRMAP/ANAP*, and the National Anticorruption Directorate (*DNA*), which controls and, when justified, apply the corresponding sanctions. Within the Court of Accounts, the Audit Authority is in charge of external audit of EU co-funded projects and also controls public procurement procedures with its own competences.

In addition, the Competition Council, an autonomous administrative body aimed at protecting and stimulating competition in Romania, undertakes another type of control of public procurement through the Bid Rigging Module (BRM). The BRM analyses the control reports of *ANRMAP/ANAP*, *CNSC* and the Romanian Court of Auditors to identify potential anticompetitive practices in public procurement procedures. Based on their findings, the BRM conducts investigations of selected cases in collaboration with the above-mentioned institutions and can sanction irregularities with fines applied to contracting authorities.

Other institutions involved in the regulation, implementation, control and sanctioning of public procurement include the National Management Centre for the Informational

Society, the EU funds Managing Authorities, the Authority for Certifications and Payments, the DNA, the National Integrity Agency (ANI), and the Department for Fight Against Fraud. Each one contributes to the monitoring and enforcement of public procurement as well as initiating and amending legislation, but responsibilities are not clearly delineated.

Key issues that have a bearing on administrative capacity

Human resources: At the national policy and oversight level, detailed breakdowns of responsibility and skill levels are published as part of the annual activity reports of organisations such as the National Court of Accounts, the CNSC and both components of the ANAP. Their staffs are composed of civil servants including mainly economic and technical counsellors, legal advisers, and administrative staff. Staff levels are frequently criticised as too low given the responsibilities these bodies have.

For instance, the ANRMAP used to perform the *ex-ante* verification of all awarding documents in the country and had the obligation to review such documentation within two weeks of submission. Delays frequently approached twice that duration, resulting in systematic delays in the public procurement process. Furthermore, lack of clarity and accuracy in guidance provided to contracting authorities who have submitted documents in need of amendment often created additional delays. This was also attributed to shortfalls in administrative capacity. In addition to *ex-ante* controls of all contracts, the ANRMAP had other responsibilities, including *ex-post* controls. In 2013, the ANRMAP had a total staff of 139ⁱⁱ. Similarly, the 91 employees of the CNSC struggle to deal with the procedural 5,739 complaints received in 2013^{xxii}.

In addition, the majority of contracting authorities do not have sufficient and trained human resources to define selection criteria, prepare tender documents, evaluate offers and guarantee a sound execution of contracts^{xxx}.

Adding to the issue of understaffing is the lack of expertise in specific public procurement matters. As a result, contracting authorities frequently rely on outside consultants to prepare tender documents. However, outside consultants come with their own issues such as lack of impartiality. Furthermore, work carried out by consultants is not always embraced by the authority, further limiting their added value. Similar difficulties often appear during the implementation phase.

Structures: The ANAP and the National Court of Accounts share responsibilities for designing, implementing and controlling public procurement policy, with the Ministry of European Funds (MFE) competent for regularity control of EU funded projects and therefore are the main providers of training programmes, guidelines and dissemination events in this field.

Training: The ANRMAP used to organise training courses through a specialised department dedicated to public procurement practitioners and other stakeholders such as appeal court judges, and regularly provided advice to contracting authorities when conducting controls of tender procedures. This practice will be continued by the ANAP, which will assume responsibility for training its own staff and the broader contracting authority population through methodological guidance. The ANAP has already reinstated a helpdesk service for both contracting authorities and economic operators via the ANRMAP's website, although it still needs to be worked out and fed with future guidelines.

Public procurement is also one of the priority areas of the National Court of Accounts' training programme, as well as the MFE's improvement strategy. A number of courses are organised each year focusing either on the general implementation of the public procurement law, procurement audit or in the application of EU funds-specific rulesⁱⁱⁱ.

Moreover, an on-going technical assistance project called “Support for the staff involved in the management of structural instruments in order to optimise the public procurement system” aims to ensure the dissemination and exchange of information concerning the use of public procurement by the staff managing EU funds at all levels, including managing authorities, intermediate bodies, certifying authorities, audit authorities and beneficiaries. It includes specific training programmes on the use of EU funds through public procurement and the organisation of working groups between both components of the *ANAP*, the *MFE*, the Audit Authority and Managing Authorities^{iv}.

Systems/tools: The central authorities operating in public procurement have developed guidelines and standardised tender documentation for the use of contracting authorities at all levels. In addition, the *MFE* has created a guide on the main risks of using EU funds through public procurement for contracting authorities^v. Some standardised tender documents are also already available for infrastructure projects in the environment and transport sectors. Furthermore, the *ANRM* has drafted standardised awarding documentations, forms and template contracts in various sectors, such as road modernisation, supply of milk and software, and work supervisory serviced.

E-procurement

Since 2006, contracting authorities are obliged to conclude 40% of their annual public procurement contracts worth more than EUR 30,000 through electronic methods, either through end-to-end procurement procedures or through direct acquisitions via the electronic catalogue^{vi}. Fully electronic procurement from notification to submission did amount to EUR 1.05 billion in 2011, or 6.2% of total procurement^{vii}. While this figure was only half the EU average, it actually puts Romania ahead of many other MS. One factor might be the interest among the business community. In 2012, 19% of enterprises used e-procurement to access tender documents, well above the EU average of 13%. The extensive use of e-auctions in Romania should be highlighted as they represent roughly three times the value of contracts processed with e-submissions in the same year^{vii}. In 2014, 45,283 procedures amounting to EUR 21.9 billion were carried out exclusively online^{viii}. In the same year, an average of 22% of the total procurement process was made entirely through electronic means.

Under the supervision of the Ministry of Communications and Information Society, the Digital Agenda Agency of Romania is the public institution in charge of e-government and thus is responsible for the national Electronic System for Public Procurement (*SEAP*). *SEAP* is an e-procurement platform that works as a portal for all public institutions to acquire supplies, services and works electronically. Public operators and tenderers must register with *SEAP* every two years and pay a fee in order to get digital certificates for authentication in the system and e-signature. *SEAP* functionalities include e-publication of contract notices and tender documentation, facilitating interoperability with the EU Official Journal, and e-submissions of tenders^{ix}. *SEAP* also enables contracting authorities to carry out direct purchase electronically. In 2014, acquisitions amounted to a value of approximately EUR 14 billion^{viii}.

The strategic objectives regarding the development of e-procurement are defined in the National Strategy on Digital Agenda for Romania, which established the target of increasing the use of *SEAP* up to 60% of public procurement procedures in 2014^x. The Digital Agenda for Romania also aims to support the improvement of e-auctions through the development of new functionalities in *SEAP*.

Corruption

Fraud, corruption and conflicts of interests are major concerns in public procurement in Romania. The perception of corruption is one the highest of the EU, with 91% of respondents saying that corruption is widespread, well above the EU average of 75%^{xi}.

According to the World Bank governance indicators, Romania is ranked last among EU countries regarding control of corruption and government effectiveness^{xii}. The payment of kickbacks is the most frequent cited form of corruption within public procurement processes, followed by bid-rigging and conflict of interests^{xiii}.

In addition, a report on the efficiency and transparency of public procurement in Romania, elaborated in the framework of a cross-country project co-funded by OLAF, pointed out recently that public procurement strongly lacks transparency at all stages of tender procedures^{xiv}. First, during the identification of needs by the contracting authority, irregularities mainly consist in the disclosure of confidential information to certain competitors, introduction of hidden clauses to favour a tenderer or to increase the price of a contract. The selection of procedures also often limit competition with excessively short timeframes, the use additional fictitious bidders or by extending invitations to firms unlikely to submit competitive bids.

The report also highlights infringements in contract awarding, in particular disqualification of competitors without legal grounds, awarding to companies that do not meet the criteria, exerting influence on the selection committee, or in modifying bidding documents after the completion of the procedure. Fraud also occurs during the contract execution, mostly through the payment for non-existent activities or the lack of sufficient inspections of the delivery leading to lower quality services, supplies or works. To date, conflict of interest is defined more narrowly in Romanian law than EU standards, limiting the government's ability to combat it. However, this will be addressed with the transposition of the 2014 public procurement Directives^{xv}.

Nonetheless, there have been some positive developments. A promising initiative is an IT-based system of *ex-ante* checks called "Prevent" that is being developed by the National Integrity Agency (ANI) to identify conflicts of interest in the award of public contracts. All civil servants involved in procurement procedures will be required to submit relevant personal details to identify any possible conflict of interests. These data will be integrated with the existing *SEAP* platform so that the system automatically analyses and detects possible issues and reports them to contracting authorities. In its first phase, Prevent will be applied only to EU funds, with expansion to include all public procurement to follow^{xvi}.

The National Anticorruption Strategy 2012-2015 (NAS) defines the major objectives to foster integrity and good governance in all public institutions. It is based on the results from the two previous anti-corruption strategies and on an extensive public consultation that involved more than 500 public and private stakeholders. The NAS is focused on the strict application of the existing legislation and the monitoring and evaluation of its corresponding action plan^{xvii}. The latter combines prevention and prosecution measures aimed at increasing the level of anticorruption education among public employees, the effective use of administrative controls and the prevention of conflict of interests in public procurement.

Europe 2020 Agenda

The Romanian procurement system is being used to promote strategic goals in line with the Europe 2020 agenda primarily in environmental policy. The Ministry of Environment recently developed a Green Procurement Action Plan, making Romania among the last MS to do so^{xviii}. The Action Plan sets up targets for the application of green criteria in the purchase of certain product types, including cleaning products and services, construction, lighting equipment, ecological food products and drinks, furniture, IT equipment and paper. The National Environmental Protection Agency issues an annual monitoring report on the use of green procurement. The report is based on the information registered in the national e-procurement platform and on the self-reporting made by contracting authorities^{xix}. The Ministry of Environment also organises dissemination events and conferences on green public procurement as well as training programmes for public procurers in central and local administration.

As in the majority of MS, Romania lacks a dedicated national innovative public procurement policy strategy. Nevertheless, innovation itself is often mentioned as a general criterion, including via quality and effectiveness and the use of best available technologies^{xx}. In addition, SMEs currently win 59% of public contracts above thresholds and thus do not seem to be significantly disadvantaged in Romanian public procurement procedures^{xxi}.

Finally, in the social policy domain, every public tender is legally required to include minimum social requirements regarding employment protection and working conditions that are in force at national level^{xx}. As a result, the majority of contracting authorities do use social considerations in tender documents, putting Romania just ahead of the EU average.

Irregularities and findings of national Audit Authorities

Both CNSC and the National Court of Accounts' recent annual activity reports point out that many irregularities detected in public spending deal with procurement. The CNSC reports that more than two thirds of all public procurement procedures carried out in Romania were subject to complaint in 2013. Almost 40% of the complaints were about public procurement contracts financed by European Funds^{xxii}. In 2014, 1,581 challenges were submitted and resolved by the CNSC in respect to EU-funded procedures, and 2,172 challenges in respect to non-EU funded projects.

The most frequent types of irregularities include unjustified use of awarding procedures which would normally be applied as exceptions, dividing a contract into several smaller contracts to avoid procurement procedures, ignoring rules on transparency, especially those regarding the publication of the awarding notice in the period specified by law, as well as inadequate and subjective use of criteria during the evaluation of offers^{xxiii}.

The National Court of Accounts reports that most of the financial corrections applied to EU-funded programmes are due to non-compliance with the public procurement legislationⁱⁱⁱ. The main deficiencies relate to the application of restrictive qualification and selection criteria, non-compliance of the winning tender with the criteria of the tender documentation, non-compliance with the publicity and transparency requirements, award of additional addendums to the same contractor by negotiation in breach of the legal provisions on unpredictability, and non-compliance with the principle of equal treatment. When relevant, the National Court of Accounts reports its findings on non-compliance with public procurement legislation to criminal prosecution authorities. 17 cases were identified by the Audit Authority in 2013.

What is more, Romania is identified by the EC as a target country in need of a specific action plan to address public procurement weaknesses. Indeed, many financial corrections and reservations have been applied to Romanian EU-funded programmes in the past years because of public procurement irregularities and suspicion of fraud and collusion in the awarding of public contracts^{xxiv}.

Outlook

Romania adopted a comprehensive National Strategy for Public Procurement in 2015. A detailed operational action plan was annexed to the strategy, in order to increase the likelihood of success, and as foreseen in Romania's 2014 Partnership Agreement with the EC.

In the long term, the outlook is mainly focused on a number of initiatives designed for improving administrative capacity.

First, to tackle the challenges in administrative capacity, a Strategy on Strengthening the Efficiency of Public Administration 2014-2020 has been adopted as part of a

broader, on-going reform of public administration^{xxv}, together with an Action Plan for its implementation^{xxvi}. The strategy seeks to clarify mandates and competences between the central and local levels, to modernise management processes and to reduce bureaucracy and simplify procedures for both citizens and enterprises. In addition, a National Strategy for Professional Training in the field of public procurement^{xxvii} will aim at reinforcing capacities of contracting authorities^{xxviii}.

Second, an increase in the number of *ANAP* employees is envisaged in the foreseeable future. In fact, the new legislative package for the implementation of the new Directives will provide the possibility for the *ANAP* to revert to specifically authorised contractors. Romanian legislators also plan to introduce a new profession, the public procurer, which will be organised on three occupational levels: management, expert and counsellor. A centralised list of all professionals bearing the title of public procurers will be held initially by the *ANAP*, and, later on, by an independent professional body, similar to a bar association. The *ANAP* will then be able to revert to contractors when permanent staff proves insufficient.

ANALYSIS

Strengths

Since its accession to the EU, Romania has made some improvements in the legislative and regulatory framework of public procurement, and is constantly pursuing further reforms to improve the overall system. For instance, the creation of a joint working group gathering both components of the *ANAP*, as well as the *CNSC* to work on instructions and guidelines to harmonise the interpretations of national and European legislation on specific sensitive issues.

In recent years, Romania has also made some progress in fighting corruption, and in bringing a greater number of cases to trial and ultimately, conviction. In addition, several mechanisms have been created to detect possible conflict of interests at all stages of public procurement procedures and to identify and sanction fraudulent practices. The NAS is presented as a good practice at the global level by Transparency International and represents a strong framework for reforms as it takes into consideration the lessons learned and failures from the past and emphasises coordination as well as monitoring and evaluation.

Finally, the centralised set up of the e-procurement system seems to be adapted to stimulate the use of a common tool, *SEAP*, by contracting authorities and bidders to achieve the ambitious targets fixed at national level.

Weaknesses

Despite the progress made in recent years, public procurement in Romania continues to be a subject of concerns^{xxx}. Procurement legislation is generally considered to lack coordination and consistency, and to require frequent revisions. Secondary legislation and implementing regulations are often seen as contradicting the primary laws, resulting in inconsistent implementation. This inconsistency makes it difficult for honest practitioners and potential suppliers to keep up with the regulations, while making it easier for those with ulterior motives to manipulate the system.

The same holds true for the institutional set-up, which is composed of multiple actors with often overlapping responsibilities, resulting in inefficient operations and inconsistent decisions and guidance to contracting authorities. The absence of clear and practical guidelines interpreting the law is a source of uncertainty for both public practitioners and bidders^{xxix}.

Administrative capacity is another core challenge for Romania whose structural reforms and absorption of EU funds are often delayed by the lack of implementation

capacity and unstable structure of public administrations. The progress in tackling the lack of trained staff in public procurement has so far been limited^{xxx} and the administrative burden for bidders is still one of the highest in the EU^{xxxi}. Furthermore, even though the fight against corruption has become a national priority, there is still a high resistance to integrity and anti-corruption measures at political and administrative levels. The lack of a strong complaint resolution mechanisms, and of effective enforcement of court decisions also remains problematic^{xxx}.

Recommendations

- **More coherent legal structure:** Romanian procurement practitioners are hobbled by a complex, frequently changing and often even contradictory legal structure that confounds honest brokers as it creates opportunities for others to take advantage.
 - Enact fundamental reform of the procurement legal structure to streamline procedures and provide a more coherent legal framework.
 - Limit the frequency of future legal changes to once annually or less; changes should be preceded by stakeholder consultations and impact assessments to reduce the need for later adjustments; implementation should be preceded by the publication of comprehensive guidance materials.
 - Update the legal definition of conflict of interest to be more in line with EU norms.
- **Tackling corruption:** Curbing corruption in procurement is a significant priority for the Romanian government, but progress has been modest to date.
 - Increase and the harshness of penalties and strengthen enforcement efforts to deter abuse of the procurement system, and fight perception of non-prosecution, and increase confidence in the fairness of the system.
 - Develop a complaint resolution mechanism that can better address violations of procurement rules and standards, including the power to overturn improperly awarded contracts.
 - Encourage the more effective enforcement of court decisions.
 - Develop prevention and control mechanisms to prevent and detect high-level corruption such as setting up a code of conduct.
- **Improve administrative capacity:** Understaffing and lack of sufficiently skilled personnel is a limiting factor for many contracting authorities, as well as for the regulatory and control bodies at central level.
 - Offer training, and ad-hoc support through a dedicated call centre to contracting authorities who often struggle to adhere to qualitative procurement procedures.
 - Produce clear and practical guideline materials to reduce uncertainty for both public practitioners and bidders, such as step by step methodologies for the use of the different procedures and sector-specific procurement information.
 - Encourage greater use of centralised purchasing services by local authorities.
- **ANAP > ANRMAP + UCVAP:** The implementation of the consolidated procurement agency *ANAP* is an opportunity to introduce reforms to ensure that the new agency can not only rationalise the responsibilities of its predecessor agencies, *ANRMAP* and *UCVAP*, but also improve upon them.
 - Strengthen the independence of *ANAP* by creating a firewall between it and the MoF, including by eliminating political appointment of its leadership.
 - Replace blanket *ex ante* controls with targeted reviews to maximise efficiency.
 - Strengthen enforcement powers, including the ability to halt procedures.
- **Reduce the cost of bidding:** The high administrative burden discourages economic operators from competing for public contracts, weakening competition.
 - 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.

- ⁱ Government Emergency Ordinance no. 13/2015, referred to as "GEO 13/2015".
- ⁱⁱ ANRMAP (2014), Annual Activity Report 2013.
- ⁱⁱⁱ Romanian Court of Accounts (2013), Annual Activity Report.
- ^{iv} Ministry of European Funds (2014), Romania Partnership Agreement for the 2014-2020 programming period.
- ^v Partnership Agreement (2014) for Romania, in accordance with Articles 14 and 15 of Regulation (EU). N.1303/2013 of the European Parliament and of the Council of 17th December 2013, available at: http://www.fonduri-ue.ro/res/filepicker_users/cd25a597fd-62/2014-2020/acord-parteneriat/PA_2014RO16M8PA001_1_1_ro.pdf
- ^{vi} Government Decision no. 1660/2006 for approving the implementing rules of the provisions regarding the award of public procurement contracts by electronic means from GEO no. 34/2006 regarding the award of public procurement contracts, public works concession contracts and services concession contracts.
- ^{vii} European Commission (2013), DG MARKT, E-Procurement state of play report.
- ^{viii} Romania Digital Agenda Agency (AADR) (2014), Annual report.
- ^{ix} Digital Agenda Agency of Romania (2014), The Electronic System for Public Procurement – User manual.
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- ^{xi} European Commission (2014), DG HOME & DG COMM, Flash Eurobarometer 374 survey Businesses' Attitudes Towards Corruption in the EU.
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- ^{xx} Kahlenborn, Walter; Christine Moser; Joep Frijdal and Michael Essig (2011), Strategic Use of Public Procurement in Europe , Final Report to the European Commission, DG MARKT/2010/02/C, Berlin: Adelphi
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- ^{xxii} National Council for Solving Complaints (2014), Activity Report 2013.
- ^{xxiii} EurActiv (2014), Public procurement corruption in Romania, Special Report.
- ^{xxiv} European Commission (2014), DG REGIO, Annual Activity Report 2013.
- ^{xxv} Communication of the Ministry of Regional Development and Public Administration (2013), *Reforma Administrației Publice* (reform of the public administration).
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- ^{xxvii} Partnership Agreement (2014) for Romania, in accordance with Articles 14 and 15 of Regulation (EU). N.1303/2013 of the European Parliament and of the Council of 17th December 2013, available at: http://www.fonduri-ue.ro/res/filepicker_users/cd25a597fd-62/2014-2020/acord-parteneriat/PA_2014RO16M8PA001_1_1_ro.pdf
- ^{xxviii} Romanian Government (2014), *Programul Național de Reformă 2014* (National reform programme).
- ^{xxix} European Commission (2011), DG REGIO, Assessment of the Public Procurement System in Romania.
- ^{xxx} European Commission Staff Working Document (2014), Accompanying the document Recommendation for a COUNCIL RECOMMENDATION on Romania's 2014 national reform programme and delivering a Council opinion on Romania's 2014 convergence programme, COM(2014) 424 final.
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SLOVAKIA

KEY FACTS AND FIGURES

Key Facts and Figures in Slovakia						
Overview	Total procurement 8,480,000,000€		Procurement % GDP 12%		2013 GDP 73,593,200,000€	Contracting authorities 2,919
Procedures applied	Open 77%	Restricted 6%	Negotiated procedure with call 1%no call 16%		Competitive dialogue 0%	Direct award 0%Other 0%
Share of contract notices by buyer	National 23%		Regional/local 10%		Body governed by public law 37%	Other 31%
Contract type	Services 49%		Works 4%		Supplies 46%	Framework agreement 42%
Ex ante conditionality criteria as of 2014	EU rules Not met		Transparency Not met		Training Not met	Admin. capacity Not met
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Voluntary	Uptake rate N/A
Perceived corruption	Corruption widespread in society Businesses 92%		Individuals 90%		Corruption widespread in procurement At national level 66%	At local/regional level 70%
TED indicators	Value of tenders 4,836,983,562€		Of total procurement 57%		# contract notices 1,565	# contract awards 1,303
Other indicators	Received single bid 34%		# days for decision 122.0		Price only criteria 88%	MEAT criteria 12%
	Won by foreign firms 5%		Related to EU funds 28%		Joint purchase 6%	Central purchasing Yes, EKS

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Slovakia was one of the first Central European countries to adopt an act on public procurement with its 2006 law establishing a regulatory framework in line with EU guidelines. Slovakia is further characterised by its relatively centralised procurement system. Specific contracts are handled by contracting authorities at central, regional, and local levels, whilst some contracting authorities are required to purchase commonly available goods, services or works from the Ministry of the Interior (MoI), which acts as the central purchasing body. The Office for Public Procurement (UVO) acts as the central State administration authority for public procurement, and controls whether public procurement procedures are in compliance with the law.

The Slovak economy is strongly dependent on SMEsⁱ, and they are quite active in the procurement system. However, despite the large share of smaller firms participating in tenders, the share of contracts won by them is just 25%, below the EU average of 29%, indicating that SMEs struggle to compete with larger, more established firms.

DESCRIPTION OF FEATURES

Legal features of public procurement system

The EU's public procurement legislation is transposed into the Public Procurement Act (PPA) and its amendments (Act No. 25/2006 Coll. of Laws). In addition, Slovakia adopted Act No. 546/2010, which came into force in 2011, to supplement the PPA and increase transparency and remedies by making online publication of most contracts mandatory, allowing bidders to be present during the opening of, obliging contracting authorities to notify unsuccessful bidders of the winning bid, and permitting parties to appeal both the process and the results of an award.

The legislation defines specific procurement methods and procedures that have to be used, depending on the value and type of contract. The thresholds in Slovakia are

subject to frequent changes through law amendments, decrees or administrative decisions.

Slovakia applies different rules to public procurement above and below EU thresholds. For supplies, services, and works contracts of less than EUR 1,000, contracting authorities are permitted to purchase directly, without publication. Above EUR 1,000, but below EUR 20,000 for supplies and services, and EUR 30,000 for public works, simplified procedures may be applied. For goods and services contracts of EUR 20,000 up to EUR 207,000, and public works contracts of EUR 30,000 up to EUR 5,186,000, national rules apply.

For all supplies, services and works above EUR 1,000 that are widely available on the market, contracting authorities are required to use the MoI's dynamic purchasing system, the Electronic Contracting System (*EKS*).

Groceries are treated as a separate class of supplies. They are not offered via *EKS*, so use of this system is never required. Furthermore, the threshold for the use of simplified procedures is somewhat higher than for other supplies at EUR 40,000.

Institutional system

The *UVO* is the central State administration institution for Slovak public procurement. Its responsibilities include: legislative and regulatory authority; drafting and monitoring implementation of the PPA and accompanying legislation; providing *ex ante* review of public procurement documents; conducting oversight and publishing statistical information; training and publication of guidance for contracting authorities and suppliers; managing the online portal; and acting as the first-instance review body and imposing financial penalties in case of a violation of the PPAⁱⁱ.

The Supreme Audit Office (*NKU*) is the primary external control body, reviewing procurement procedures for compliance with the law and issuing recommendations to the *UVO*. This independent body carried out just 46 audits of compliance and efficiency in 2013.

The MoI acts as the central purchasing body for commonly available goods, services and works. The MoI operates an online platform, the *EKS*, which includes an e-market, dynamic purchasing system and statistical data tracking system.

The Antimonopoly Office, an independent central body within the State administration, is the main oversight institution for the competitive element of the procurement system. Its main responsibilities include investigating bid rigging and cartels.

Slovakia has a multi-stage process for aggrieved bidders to seek remedies. First, any issues with a procedure must be brought to the attention of the relevant contracting authority. If not resolved to the satisfaction of the complainant, they can bring the matter to the *UVO*, which acts as a first instance appeal body. The second instance is exercised by the Council of the *UVO* established within the *UVO*. Ultimately, administrative claims are lodged before the Regional Appeal Courts and the Supreme Court, which is the last recourse instance.

Key issues that have a bearing on administrative capacity

Human resources: The *UVO* has a dedicated staff of 186 individuals, the majority of whom are civil servantsⁱⁱⁱ, and plans to hire 20 more in the course of the year 2015. Given the broad range of responsibilities the *UVO* covers, and the need to improve administrative capacity in the management of public contracts, the Slovak government is currently working to expand the office's staffing levels. High staff fluctuation remains a challenge, and may be an indication of more fundamental issues in human resource management^{iv}.

Structures: At this time, the Slovak higher education system does not offer degree programs specifically tailored to procurement practitioners, but does include procurement topics in their economic and business law coursework. As such, the responsibility falls primarily on the *UVO* to provide future procurement practitioners, as well as external procurement advisors, with procurement-related vocational trainings. The *UVO* is also responsible for examining the professional aptitudes of procurement practitioners and re-training whoever it deems professionally suitable.

Training: The primary body for offering training in Slovakia is the *UVO*. In 2014, in cooperation with the Institute for Public Administration of the MoI, it organised 44 training sessions, which were attended by 964 participants from contracting authorities and other target groups^v. The training sessions cover a variety of topics, such as the supervision of public procurement procedures, interpreting the law on public procurement, and electronic storage of public procurement files.

The Slovak Environment Agency (*SAŽP*) organises educational activities on green public procurement for public authorities. Its training focuses on how to implement GPP criteria in tender procedures. It is free of charge, and organised in all self-governing Slovak regions in cooperation with the Ministry of Environment (*MZP*).

The anti-corruption agency, the Bureau of the Fight Against Corruption of the Presidium of the Police Force, also organises trainings related to irregularities and potential abuses in procurement processes. In 2014, two training sessions were held on common irregularities, best practices and audit procedures. Further trainings were scheduled throughout 2015.

Furthermore, the Central Coordination Authority (*CCA*) for structural and cohesion funds in Slovakia organises specialised training for personnel involved in ESI funds management^{vi}. This training includes seminars on the procedures of administrative control of public procurement in the context of the management system, presentation of the most common deficiencies identified in public procurement controls, and interpretation of the central coordinating authority's methodology concerning public procurement. As part of the 2014-2020 programming period, these types of training will be made mandatory to all staff involved in the implementation of the funds.

Systems/tools: Procurement related data such as pre-contract informational notices, calls for tenders, status of contracting processes updates, and contract award notices are made available by the *UVO* through the national electronic public procurement system, *EVO*¹. The *UVO* also offers sample tender documents and written guidance for contracting authorities, publishes past legal opinions, and operates a helpdesk to support users of the online platform.

Moreover, the *UVO* set up a Register of References² in 2014, which consists of a data collection system contracting authorities and other entities concerned with the supply of goods, performance of construction works or the provision of services by suppliers^{vii}.

Furthermore, Transparency International Slovakia manages a single-stop online portal for public procurement analysis called 'Open Public Procurement', which publishes daily automatic downloads of tender notices from the *UVO*, and provides easy-to-use tools allowing browsing and visualisation of procurement expenditures by procurers, suppliers, sectors and regions^{viii}.

¹ <http://www.uvo.gov.sk/portal-evo>

² <http://www.uvo.gov.sk/zoznam-podnikatelov/-/RegisterPodnikatelov/sreferenciami>

E-procurement

Slovakia is in the process of developing a variety of e-procurement tools, but so far adoption levels are comparatively limited^{ix}. E-notification of contract notices is mandatory for all contracts above EUR 1,000 on the national electronic public procurement system, *EVO*^x, and in the national Journal of Public Procurement^{xi}. *EVO* is equipped to handle e-submission of tenders, however, use by contracting authorities is voluntary, and is not widespread.

The MoI has also developed a separate e-marketplace system, the *EKS*, which can be used to purchase commonly available goods and services of below EU-threshold values.

Slovakia does not have a comprehensive plan in place to reach full adoption of e-procurement by the deadlines set by EU Directive. For example, the Strategic Document for Digital Growth and Next Generation Access Infrastructure 2014-2020, the MoF's central e-government strategy document, contains no information on making e-submission mandatory, or providing increased incentives for its voluntary use. Moreover, no targets have been set thus far in terms of e-procurement take-up^{xii}.

The use of e-procurement by contracting authorities is monitored annually by the Government on the basis of data provided by the *UVO*. But comprehensive data on e-procurement transactions is not currently available^{xiii}.

Corruption

Slovakia suffers from comparatively high rates of corruption compared to EU averages, as well as to other countries in the region, and procurement is frequently identified as a key challenge. The Slovak Information Service (SIS), whose responsibilities include overseeing organised crime and fraud, regularly identifies cases of corruption in entities with State participation involved in public procurement. Also, the Anti-Monopoly Office has uncovered cartels in the procurement of energy, heating, transport infrastructure, and water management services^{xiv}.

The latest anti-corruption plan adopted in 2011 calls for a number of measures, including publication of State contracts, clearer provisions for public procurement, reform of the judiciary to increase the transparency of court decisions, competitive selection of judges and presidents of courts, as well as stricter rules for judicial governance^{xv}. Concrete legislation implementing these provisions has been slow to materialise^{xvi}. In the meantime, an interdepartmental expert group on combating corruption made up of representatives of the ministries, the General Prosecutor's Office and the municipalities has been assembled to evaluate tasks based on the anti-corruption plan.

The Slovak Office of the Special Prosecutor is the leading entity for combating corruption and carrying out investigations in alleged corruption. It acts in close cooperation with the Bureau of the Fight Against Corruption^{xvii}, a specialised anti-corruption unit within the Slovak Police Organised Crime Section, which investigates corruption cases.

Europe 2020 Agenda

In terms of introducing strategic goals in public procurement, Slovakia is active in green public procurement according to the revised National Action Plan for Green Public Procurement (NAPGPP) adopted in 2012. The plan aims to increase Slovakia's share of GPP use by central state bodies from 42% to 65% by the end of 2015, and to 50% at the local level^{xviii}. To that end, the government has made it mandatory for both central and local contracting authorities to apply GPP rules. In support of this

objective, the *MZP*, the *UVO* and the *SAŽP* provide training and tender information on the use of GPP, and publish model tenders for use by contracting authorities.

As regards the improvement of SME access to public procurement, Slovakia has not yet adopted any compulsory measures into legislation. Several measures have been taken in recent years to encourage innovative entrepreneurship, including the 'Boosting the Innovation of Slovak SMEs' initiative, or BISMES, which provides analyses and information on funding available for SMEs, and the 'Innovative Deed of the Year' award, a competition organised by the Ministry of Economy (*MH*) with the objective of ensuring promotion of innovation in firms and awarding innovative entities^{xxix}.

Among the strategies being followed is the recommended splitting of contracts into lots for which SMEs are better able to compete, and the further development of online tools to lower the costs of tendering. Already in 2013, Slovakia performed above average in the number of enterprises submitting tenders online, with a participation rate of 22.4% compared to an EU average of 12.9%^{xx}.

Irregularities and findings of national audit authorities

The *NKU* carries out audits of the economy, efficiency and effectiveness of Government activities and verifies compliance with the regulations. Procurement is mostly examined as a part of financial, efficiency or compliance audits. The most recent report is based on 48 audits across a range of sectors including health, transportation and public administration. Recurrent irregularities included: failure to adequately document the procurement process; thwarting efforts to audit; division of contracts so as to avoid procurement rules or to make use of preferred procedures; excessive delays in preparing and awarding contracts; and establishing the conditions for the participation in public procurement in contradiction with the PPA^{xxi}.

From the perspective of EU funds management, Slovakia has experienced substantial issues at audit. During the 2007-2013 programming period, deficiencies impacted all nine of Slovakia's ERDF and CF funded OPs, leading to the implementation of corrective measures and requiring the audit authority to implement an action plan addressing these concerns^{xxii}. The action plan was satisfactorily implemented by the audit authority in 2014.

Irregularities in procurement have helped to hold Slovakia's 2007-2013 programming period ERDF and CF funds absorption rate among the lowest in the EU.

Outlook

In Slovakia, the near-term outlook is focused on two priorities: further strengthening the public administration and the institutional capacity at all levels, and enhancing administrative capacities.

First, with its ongoing public administration reform '*ESO*', which was commenced in 2012, Slovakia is embarking on a major shift towards centralisation of public procurement. Over the long term, the goal will be to increase capacity rather than creating space to reduce total staff numbers.

Furthermore, Slovak authorities are looking forward to improve the performance of the administrative capacities, notably by involving the *UVO* more intensely in the control of the public procurement and by implementing actions to enable correct public procurement^{xxiii}. Measures to give effect to this notably include intensifying cooperation between the managing authorities and the *UVO*, and ensuring more efficient division and delegation of tasks and powers at the level of managing authorities.

ANALYSIS

Strengths

Since joining the EU in 2004, Slovakia has implemented significant reforms in the area of public procurement, including the transposition of the EU public procurement directives into national legislation. This has resulted in substantial improvements in efficiency and transparency from the status quo *ex ante*.

Moreover, Slovakia's efforts in recent years have been geared towards the full implementation of a centralised purchasing system embodied by the *UVO*, which is now recognised as an effective and independent institution.

Furthermore, Slovakia has been moving forward in developing its e-procurement infrastructure, which is a substantial step towards a modernised system. Finally, Slovakia has developed a well-functioning contract repository, which further increases transparency.

Weaknesses

The greatest challenge facing the Slovak public procurement system is corruption. The problem is not unique to procurement, although procurement is one of the largest risk areas. A major issue here is the fact that prosecutions are infrequent, slow moving, and often dogged by the perception of political motivation, contributing to the perception that corruption is tolerated by law enforcement. Furthermore, in those cases that are prosecuted, sanctions are insufficiently harsh to have a real deterrent effect.

Another key weakness, and a contributing factor to the corruption issue, is the low level of administrative capacity which is endemic to the system. From contracting authorities through oversight bodies, Slovak procurement practitioners lack the manpower, training and resources to conduct more rigorous procedures, providing substantial opportunities for abuse.

Recommendations

- **Corruption:** Corruption is a serious issue affecting the procurement system in Slovakia, resulting in substantial efficiency losses, and harming both trust and participation in the competition for public contracts.
 - Ramp up enforcement of procurement violations and suspected corruption to deter abuse in the system; it may be necessary to move investigation and/or prosecution responsibilities to an independent agency to reduce political influence on the process.
 - Increase coordination among existing anti-corruption bodies, including the SIS, the Anti-Monopoly Office, the General Prosecutor's Office, the Bureau of the Fight Against Corruption and the Slovak Police Organised Crime Section, to reduce redundancies and overlaps of responsibilities.
 - Impose strict limitations on the cancellation of procedures pre-award to reduce the ability of contracting authorities to manipulate tenders in order to steer contracts to favoured bidders.
 - Incentivise citizens to report fraudulent practices by putting in place anonymous reporting channels as regards suspicious corruption practices.
- **Preventative measures:** The PPO's experience with voluntary *ex ante* controls has been positive, but its impact remains limited by self-selection of participants.
 - Expand the use of *ex ante* controls to catch irregularities and violations of the PPA prior to publication.

- **Strengthen administrative capacity:** Procurement bodies in general, and the UVO in particular, struggle to hire and retain higher skilled staff, or to provide training to new hires.
 - Reform the UVO's human resources policy to make compensation and working conditions more competitive with other government agencies and private sector alternatives.
 - Introduce more comprehensive training program for newer hires; training should be both geographically convenient and free of charge for participants.
 - Publish a comprehensive methodology as laid out in the Partnership Agreement with the EC.
 - Develop more standardised tender documents at national level to support contracting authorities and help harmonise tender procedures in general.
- **Clarify jurisdictions:** There is overlap and ambiguity between the procurement responsibilities of several institutions in that contributes to redundancies and confusion. For example, both the UVO and MoI operate distinct e-procurement platforms, and while UVO has sole responsibility for hearing claims involving both systems, it does not have direct access the EKS platform.
 - Clarify competencies, or consider further consolidations, between procurement policy and administrative bodies to eliminate gaps and overlaps and reduce uncertainty.
 - Enhance interoperability of the two e-procurement platforms to reduce the burden of tendering for bidders, and for contracting authorities.
- **E-procurement:** Slovakia lacks a clear strategy for achieving full e-procurement implementation within the deadlines specified by the EU directives.
 - Develop and implement a comprehensive transition strategy towards adoption of full end-to-end e-procurement.
 - Implement an awareness-raising campaign to get the word out to contracting authorities on the benefits of e-procurement.

ⁱ European Commission (2014), Small Business Act Fact Sheet 2014, Slovakia, available at: http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/files/countries-sheets/2014/slovakia_en.pdf

ⁱⁱ School of Economics and Management in Public Administration, The Analysis of Public Procurement Functioning in the Slovak Republic, available at: [http://irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&image_file_name=PDF/ecchado_2013_7-8\(1\)_10.pdf](http://irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&image_file_name=PDF/ecchado_2013_7-8(1)_10.pdf).

ⁱⁱⁱ UVO (2014), Annual Activity Report, available at: <http://www.uvo.gov.sk/spravy-o-cinnosti>

^{iv} European Commission (2014), Assessment of the 2014 national reform programme and stability programme for Slovakia, available at: http://ec.europa.eu/europe2020/pdf/csr2014/swd2014_slovakia_en.pdf

^v UVO (2014), Annual Activity Report, available at: <http://www.uvo.gov.sk/en/web/opp/31>

^{vi} Partnership Agreement (2014) for Slovakia, in accordance with Articles 14 and 15 of Regulation (EU) N.1303/2013 of the European Parliament and of the Council of 17th December 2013:

http://www.partnerskadohoda.gov.sk/data/files/4898_pa-sr-2014-2020_en.docx

^{vii} Partnership Agreement (2014) for Slovakia, in accordance with Articles 14 and 15 of Regulation (EU) N.1303/2013 of the European Parliament and of the Council of 17th December 2013:

http://www.partnerskadohoda.gov.sk/data/files/4898_pa-sr-2014-2020_en.docx

^{viii} SME SK open data, Open Public Procurement, available at: tenders.sme.sk

^{ix} OECD (2014), Economic Surveys: Slovak Republic 2014, OECD publications, available at: <http://www.oecd.org/eco/surveys/economic-survey-slovak-republic.htm>

^x EVO, Ethics Tenders, available at: <http://www.evo.gov.sk>

^{xi} Office for Public Procurement, available at: <https://www.uvo.gov.sk/evestnik>

^{xii} Ministry of Finance website, available at : <http://www.informatizacia.sk/strategicky-dokument/16604s>

^{xiii} European Commission (2013), DG MARKT , Study on e-Procurement Measurement and Benchmarking – EU country-profiles, available at:

http://ec.europa.eu/internal_market/publicprocurement/docs/eprocurement/studies/130601_e-procurement-state-of-play_en.pdf

^{xiv} Antimonopoly Office of the Slovak Republic: Press releases, available at:

<http://www.antimon.gov.sk/press-releases/>

^{xv} European Commission (2014), DG HOME, EU anti-corruption report, Annex Slovakia

^{xvi} Link: <https://www.crz.gov.sk/>

^{xvii} Anti-Corruption Authorities, Profiles : Slovak Republic, available at:

<http://www.acauthorities.org/country/sk>

^{xviii} Green Public Procurement in Action, Slovakia, available at: <http://gpp-proca.eu/green-procurement/the-initial-situation-in-the-target-countries/slovakia/>

^{xix} OECD (2014), Science and Technology Outlook, available at: <http://www.oecd.org/sti/oecd-science-technology-and-industry-outlook-19991428.htm>

^{xxxx} European Commission (2014), Small Business Act Fact Sheet 2014, Slovakia, available at:

http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/files/countries-sheets/2014/slovakia_en.pdf

^{xxi} Supreme Audit Office of the Slovak Republic (2013) Annual Report, available at :

<https://www.nku.gov.sk/en/web/NKU/annual-report>

^{xxii} DG REGIO 2013 Annual Activity Report Link : http://ec.europa.eu/atwork/synthesis/aar/index_en.htm

^{xxiii} Partnership Agreement (2014) for Slovakia, in accordance with Articles 14 and 15 of Regulation (EU) N.1303/2013 of the European Parliament and of the Council of 17th December 2013, available at:

http://www.partnerskadohoda.gov.sk/data/files/4898_pa-sr-2014-2020_en.docx

SLOVENIA

KEY FACTS AND FIGURES

Key Facts and Figures in Slovenia						
Overview	Total procurement 4,450,000,000€		Procurement % GDP 13%		2013 GDP 36,144,000,000€	
Procedures applied	Open	Restricted	Negotiated procedure		Competitive dialogue	Direct award
	69%	3%	with call 11%	no call 17%	0%	1%
Share of contract notices by buyer	National 18%		Regional/local 12%		Body governed by public law 39%	Other 32%
Contract type	Services 42%		Works 9%		Supplies 50%	Framework agreement 2%
Ex ante conditionality criteria as of 2014	EU rules Not met		Transparency Fully met		Training Fully met	Admin. capacity Not met
E-procurement adoption	E-notification Mandatory		E-access Voluntary		E-submission Voluntary	Uptake rate 1%
Perceived corruption	Corruption widespread in society			Corruption widespread in procurement		
	Businesses 94%		Individuals 91%		At national level 77%	At local/regional level 71%
TED indicators	Value of tenders 2,141,795,456€		Of total procurement 48%		# contract notices 1,260	# contract awards 1,324
Other indicators	Received single bid 34%		# days for decision 63.5		Price only criteria 78%	MEAT criteria 22%
	Won by foreign firms 2%		Related to EU funds 5%		Joint purchase 12%	Central purchasing No

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Slovenia has a relatively centralised public procurement system of comparatively moderate economic significance compared to neighbouring MS.ⁱ The regulatory structure is complex, and subject to frequent revision. In particular, below the EU thresholds there are a number of relevant sub-thresholds each with its own particular requirements.

Centralisation of procurement is a priority topic of the 2015 supplementary state budget.ⁱⁱ Centralised and joint purchasing play an important role in the Slovenian public markets, with several different bodies conducting joint purchasing depending on the subject of the purchase. E-procurement is still in an early phase, as e-submission functionality was only introduced in 2014.

Persistent challenges in ESI funds management have resulted in multiple sanctions and financial penalties, including in 2013 and 2014. In response, Slovenia has intensified its efforts to improve capacity and reduce opportunities for corruption in the procurement system.

Since the approval of their Partnership Agreement in 2014, Slovenia has fully enacted the reforms laid out in its Action Plan related to the effective application of EU procurement rules, including the establishment of a special intergovernmental working group. As a result, they have now fulfilled all the *ex-ante* procurement conditionality criteria.

DESCRIPTION OF FEATURES

Legal features of public procurement system

The EU procurement Directives have been transposed into national law in the Public Procurement Act (ZJN-2, or PPA) and by the Law on Public Procurement in the Water, Energy, Transport and Postal Services Sectors (ZJNVETPS), by the Law on Public

Procurement in the field of defence and security (*ZJNPOV*) and Law on the legal protection in public procurement procedures (*ZPVPJN*) and their bylaws.ⁱⁱⁱ

Direct purchase is allowed for supplies and services contracts valued below EUR 20,000 and work contracts below EUR 40,000. All contracts above these thresholds must be posted on the Slovenian Public Procurement portal. For so-called 'low-value' contracts i.e. supplies and services between EUR 20,000 and EUR 40,000 and public work contracts between EUR 40,000 and EUR 80,000 in value, simplified procedures may be applied. Contracts above the 'low-value' limits must be procured using standard procedures, i.e. open, restricted, and negotiating procedures with or without publicised terms of the contract, and competitive dialogue.

Institutional system

The responsibilities for procurement functions in Slovenia were transferred from the Ministry of Finance to the Ministry of Public Administration in 2014. Within the Ministry of Public Administration, the Public Procurement Directorate (PPD) carries out the bulk of the functions related to public procurement. Specifically, PPD is tasked with policy development and implementation, harmonisation of Slovenian law with EU *acquis*, development of e-procurement tools and services, professional training, analysis of the procurement system and other supportive functions. Furthermore, the PPD performs joint purchasing for government entities, managing approximately 10-15 government wide joint procurement procedures per year.^{iv}

The National Review Commission for Reviewing Public Procurement Award Procedures (*DKOM*) monitors compliance with procurement legislation on the one hand, and acts as a review body on the other. It is empowered to annul award decisions, and can make legally binding advice on how award disputes should be resolved. It is independent and autonomous in its operations.

The Court of Audit is the highest authority for supervising public spending in Slovenia. It has the authority to audit any past or ongoing operation, including for the efficiency of operations. It enjoys relatively high public standing in terms of integrity.

A short-lived Public Procurement Agency was set up in 2011 to carry out joint procurement on behalf of the central government, develop e-procurement tools and foster awareness and adoption of green public procurement. It was dismantled in 2012 as part of a rationalisation and reorganisation effort. Its functions have been devolved back to the respective ministries.

Key issues that have a bearing on administrative capacity

Human resources: The level of expertise of procurement officials is mixed in Slovenia. On the one hand, contracting authorities that carry out a large number of procurement procedures often have a specialised purchasing department with good level of skills in procurement. On the other hand, most contracting authorities are too small to devote specialised personnel to procurement only, and thus frequently lack specific procurement skills.^v Staff shortages affect public procurement, too. Notably, the PPD's department dedicated to drafting and interpreting procurement legislation as well as handling communication with EU institutions is staffed with five personnel.

Nonetheless, merit-based human resource management is considered an important value in the Slovenian administration. Attention is paid to recruitment and retention of qualified personnel and the performance of civil servants is monitored on an annual basis. Publicly available "Staff Reports" have information on the education level, professional experience and working titles of public officers in order to ensure transparency of human resource management.^{vi}

Structures: The PPD is divided into three departments, namely the Department for Public Procurement System, the Department for the Implementation of Public Procurement, and the Department of E-procurement, Interpretation and Analysis. The Public Administration Academy within the Ministry of Public Administration regularly organises trainings for civil servants, including public procurement.

In addition a numbers of private companies also offer procurement-related services, such as publishing guidance materials, and offering assistance with procedures from documentation preparation to realisation of the procurement project.

Training: Starting in 2015, the Ministry of Public Administration will take responsibility for organising procurement trainings. In 2014, it was the Ministry of Finance's responsibility, which they fulfilled by organising trainings on different aspects of public procurement such as the interpretation of procurement rules, green public procurement, procurement for small value and best practices.^{vii} For the years 2013-2014 the Ministry devised a specific strategy for training and improvement of civil servants in the field of public procurement.^{viii} In 2014, targeted trainings were organised for MAs, IBs, and AA staff focusing on transparency, non-discrimination and efficient procurement. Trainings for contracting authorities cover the general interpretation of public procurement rules as well as other horizontal procurement topics, e.g. green public procurement and small value procurement^{vii}. Furthermore, several trainings have also been provided to municipalities, intermediary bodies and ministries by MAs.

Based on the draft version of Public Administration Strategy 2015-2020, one of the important goals is to improve the competences of public officials on several key areas, including public procurement. The strategy foresees the upgrade of skills of public officials and the enhancing of internal training.^{ix}

Systems/tools: The Ministry of Finance has set up tools that help contracting authorities and bidders in the procurement process. It has introduced online Frequently Asked Questions on public procurement and it offers a telephone consultation service twice a week for three hours. The phone consultation service will be strengthened within the framework of the 2014-2020 programming period. Furthermore, the Ministry of Finance publishes model tender documents, instructions for specific product groups, and useful data on commonly procured items.^x

In order to further clarify procurement rules, the Ministry of Public Administration is preparing a written explanation of all provisions of the PPA. This document will be available on its website and on the national procurement portal. Furthermore, other guidelines and sample contracts for public works and services are also under preparation.^{xi}

E-procurement

Slovenia's current e-procurement offerings are relatively underdeveloped, although a full transition to e-procurement is in progress. The PPD is currently finalising a basic functional system for e-procurement. Slovenia already has a central e-procurement portal¹ that is managed by the Official Gazette. Four additional IT modules are being developed in order to upgrade the e-procurement system. Slovenia's goal is to establish a centralised online system by April 2018. E-notification has been mandatory since 2007. Furthermore, e-invoicing has been mandatory for all contracting authorities since January 2015.

¹ <http://www.e-narocanje.si/?podrocje=portal>

E-submission lags behind in Slovenia, as it was not implemented until 2014 and is only mandatory for dynamic purchasing procedures. Some progress has been made, but major challenges need to be overcome in order to carry out the full procurement process electronically. For instance, despite the fact that e-submission is mandatory for dynamic purchasing, there is no dedicated platform for it. Therefore contracting authorities need to install tools on an *ad hoc* basis.^{xii}

The central e-procurement portal is intended to be a one-stop shop, but many of its planned modules and functionalities are still in the development phase. Once completed, the e-procurement modules will be available free of charge to government agencies. Digital certification will be required to log in to the system.

E-procurement is not monitored by the government apart from data on contract notices published online. This is partly due to the low level of development of the e-procurement environment. Nonetheless, policymakers consider that greater monitoring would be beneficial according to a 2013 study on the uptake of e-procurement.^{xiii}

Corruption

Although corruption is perceived to be lower than in other Central and Eastern European countries, it remains a serious issue in Slovenia, particularly in procurement. Efforts to tackle corruption have been ongoing for some time, led in large part by the Commission for the Prevention of Corruption (*KPK*), whose mandate is to strengthen the rule of law, and enhance integrity and transparency.

Currently, anti-corruption efforts are governed by the Law on Integrity and Prevention of Corruption that was introduced in 2010 and amended in 2011. Among other elements, it authorises cooperation between the *KPK* and civil society organisations, strengthens whistle-blower protections and calls for the integration of anti-corruption clauses in public contracts^{xiv}.

The scale of the remaining problem has been highlighted by a series of recent high profile scandals, prompting a renewed focus on the issue. As part of the response, the government recently introduced a two-year action plan on "Government Measures for Combating Corruption 2015-2016" putting in place a code of ethics for civil servants, establishing a corruption risk register and strengthening transparency through the "*Supervizor*" web tool that monitors financial flows of public bodies.^{xv} However, political will for curbing corruption appears to be in decline.^{xvi}

The *KPK* considers that public procurement is one of the key risk areas for corruption and conflict of interest, and procurement related complaints are common. Areas of weaknesses highlighted are the perception of tailor-made tenders, and the unjustified use of negotiated procedures without prior notification.^{xvii} Sectors such as energy, construction, urban planning and healthcare are considered particularly susceptible to corruption given their close connection to the political domain. Some of these complaints are related to suspected violations of the principles of economy, efficiency and financial performance, in other words, bidders are addressing the *KPK* as a review authority, which may indicate a lack of trust in the institutions that are meant to perform these specific tasks.

Europe 2020 Agenda

Slovenia lacks a strong strategic orientation of public procurement, and some areas, such as innovation policy, have suffered. Nevertheless, SME participation in procurement in particular is strong, with more than 40% of contracts by value and 70% in number being awarded to SMEs, which compares well to the EU average.^{xviii} Policies for green and social public procurement have also been introduced. Efforts are made at the international level too, as the PPD is involved in the EU project GPP 2020.

In terms of GPP, the Green Procurement Action Plan adopted in 2009 set a target of 50% of awarded contracts incorporating green public procurement by 2012 for eight product categories, including paper, electricity, office equipment, furniture, transport, food and catering, construction, cleaning products and services^{xix}. However, in 2013, contracting authorities applied GPP requirements for only 11.7% of contracts, or just 8% by value. The share of contracts that include social aspects is even smaller: 2.37% by number and 1.12% by value^{xx}.

Irregularities and findings of national Audit Authorities

In its 2013 Annual Report, the Court of Audit highlights the most common errors and irregularities detected with respect to public procurement. Among these figure insufficient planning, unjustified application of less competitive procedures, unjustified use of exemptions, access to technical specifications before publication of the tender, splitting of contracts, unjustified “unforeseen works”, and lack of control over the implementation of the contract.^{xxi} Additional works often occur in the case of price ‘dumping’ and when projects are only vaguely described. This allows the contractor to require follow-up works after the initial low-price contract has been signed. The Court also observes discriminatory criteria and overly complex tender specifications as areas of concern.

In 2014, the *DKOM* decided on 353 disputes for contracts worth of EUR 1.5 billion. This represents a 35% decrease in cases compared to the previous year. Also the cases related to EU co-funding have decreased from approximately one third of award procedures in 2013, to approximately one fifth in 2014.^{xxii} In 36% of all disputes the claims were upheld, either partially or fully, while this figure is 38% for procedures that use EU co-funding. Frequent errors in procurement are related to the provision of false statements and evidence in the bid. Other irregularities in procurement occur at the level of the technical specifications. The *DKOM* is very quick by EU standards in processing claims and is able to take decisions within 13.2 working days on average. Priority cases can be resolved in 11 days.^{xxiii}

Shortcomings were detected in the audits of the ERDF and the CF leading to the suspensions of payments in 2014. The findings referred to lengthy public procurement procedures, long national spatial planning procedures as well as a vulnerable construction sector.^{xxiv}

Outlook

Slovenia has an ambitious agenda for strengthening public administration, which in turn should have a positive impact on public procurement. With the newly adopted Strategy for Public Administration 2015-2020, the country is making a multi-pronged effort to tackle corruption and enhance capacity. The fight against corruption within the administration is an important aspect in this regard. In order to formulate appropriate policies and measures, the Strategy calls for greater involvement of civil society and NGOs. Enhancing internal control mechanisms and strengthening the role of the *KPK* are other aspects of the anti-corruption agenda.

Professionalisation of public officials is an important pillar of the strategy. Attention will be paid to the training of civil servants, performance, monitoring, and merit-based reward system. Public procurement features as an area in need of professional development^{ix}.

Aggregation of demand is a further area of attention for the government. Currently, centralisation of procurement is being implemented as a pilot program in the health care sector.

Slovenia also has a number of obligations to meet by 2016 under the terms of its Partnership Agreement with the EC. These include implementation of the

recommendations of an *ad-hoc* intergovernmental working group for public procurement that was set up in order to identify and address key issues related to public procurement, such as the need for greater simplification and standardisation, e.g. through the preparation of sample tender documents and procedural checklists. Other actions include an increase in dedicated public procurement staff.^{vii} Additionally, a special advisory unit, or “Help desk,” within the Ministry of Public Administration has been established in order to support the preparation of tender documentation and to accompany contracting authorities throughout the procurement procedure from publication to completion.^{xxv} In addition, a comprehensive training strategy comprising 8 modules has been prepared.

ANALYSIS

Strengths

Slovenia has made important steps in fighting corruption and increasing transparency in recent years. Overall, it has sufficiently strong institutions to detect and highlight corruption. The Court of Audit is well recognised as an independent and authoritative institution. Similarly, the *KPK* enjoys high level of trust. Slovenia’s efforts in enhancing transparency have been remarkable and have been noticed by the international community.

The Transparency project, and particularly the online application *Supervizor*, are an important case in point. *Supervizor* gives the public access to the transactions of public sector bodies, including information on contracting parties, recipients of funds, date, amount as well as purpose of transactions. The application is available for civil society, media, private sector as well as other regulatory and supervisory bodies.^{xxvi} *Supervizor* was recognised with a UN Public Sector Service Award in 2013.

The commitment to transparency also extends to voluntary reporting by contracting authorities. For instance, the pre-publishing of contracts to be awarded by negotiated procedure is not mandatory, but contracts were published regardless in 761 out 790 cases.^{xviii}

Legal protections for economic operators are considered strong in Slovenia. Applicants have the right to request an audit of the procurement procedure to the contracting authority. If approved, the audit is carried out and the procedure is interrupted, as the contracting authority cannot sign a contract during the course of the audit. If rejected, the applicant can refer to the *DKOM*. While guaranteeing a high level of legal protection, audits contribute to a longer duration of procurement procedures.

Furthermore, in those areas where weaknesses have been identified, successive Slovenian governments have been quite active in initiating reform, particularly in the management of EU funds. Amendments to the PPA have attempted to simplify procurement procedures.^{xxvii} This is also true in the case of the ongoing preparation for the transposition of the 2014 procurement Directives.

Weaknesses

Despite the fact that Slovenia has a fairly well-developed regulatory and policy framework for public procurement, a significant gap persists between the rules on paper and actual practices due to a series of structural challenges.

Corruption remains the largest area of weakness for public procurement. The main shortcomings of the anti-corruption framework are the lack of anti-corruption safeguards in some procurement domains (e.g. energy, construction, health care) as well as the lack of effective control mechanisms. Furthermore, anti-corruption and prosecution bodies are limited in their operational independence.^{xxviii} A weak point also relates to the civil society, which is not strongly developed and lacks resources as well

as legislative support in order to be effective. As a result, its role in influencing important reforms is limited. Another aspect that is open to criticism is the fact that there is no possibility to appeal the decisions of the *DKOM*. This has the potential to negatively affect the review procedures.^{xxviii} On top of the systemic elements of corruption, there has been backsliding in recent years in terms of political will to counter corruption. In 2013, three leading figures of the *KPK* resigned in order to protest against the limited political backing that the *KPK* enjoys.^{xvi} The newly appointed leadership has been broadly criticised.^{xxviii}

An additional weakness in the performance of Slovenia's public procurement system stems from the fact that it has been subject to numerous institutional and regulatory changes in a short span of time, resulting in uncertainty about applicable rules and procedures. For instance, the Agency for Public Procurement mentioned above was set up and dismantled less than two years later. Similarly, responsibilities for public procurement have shifted among the Ministry of Finance to the Ministry of Public Administration. The PPA has been amended multiple times often without substantial consultations with stakeholders. To complicate matters further, different rules apply for EU Funds as opposed to national rules. As a result, contracting authorities are unclear about their legal and procedural obligations. The lack of a stable legal framework was highlighted in the 2015 analysis of the public procurement system, which decries the frequent and hasty reforms and calls for greater legal certainty.^{xviii}

The many amendments and fixes of the public procurement law have negatively impacted the quality of the legal text, too. An effort was made to make the current legislation detailed enough to cover all possible issues, but limitations remain. Subsequent fixes have diminished its clarity even further and led to diverging interpretation by different contracting authorities.

The implementation and management of EU Funds poses a continuous challenge for Slovenia, despite an overall above average absorption capacity of ESI Funds. In fact, payments have been suspended for the second year in a row in 2014. The suspension of funds is due to shortcomings in the first-level management controls by MA and irregularities with public procurement procedures. Actions have been taken to address these shortcomings, yet the procurement system is still vulnerable to corruption in many areas such as energy and construction.^{xxviii}

Weak administrative capacity also hinders the full usage of ESI Funds. In an effort to maximise the receipt of ESI Funds, municipalities often submit as many tenders as possible with little regard for the quality of the tender documentation. However, errors and irregularities in the tender procedure as well as problems with project implementation are the likely outcome of this practice. Lack of continuity due to staff changes in the management of ESI Funds has contributed to implementation challenges. Furthermore, delays linked to long procurement procedures have negatively impacted the absorption of the Cohesion Fund in some sectors such as rail and waste-water.^{xxix}

Also, procurement procedures take a very long time, with the average open procedure lasting 203 days and as much as two years^{xviii}. Factors contributing to the delays include both *ex-ante* reviews of tender documents, and audits requested by bidders. Slovenia has taken action to address both of these issues. While the *ex-ante* review has proven helpful in preventing errors early on, the 2014-2020 programming period foresees a strengthening of the support to contracting authorities through a Help Desk instead of an *ex-ante* review. Also, bidders were previously allowed to request multiple audits for one tender procedure. This has been limited to one audit to be carried out within a relatively quick timeframe.

E-procurement is another area that can be greatly strengthened in Slovenia. In fact, much of the e-procurement system was not fully functioning until 2014, and the infrastructure is not yet completely developed. Slovenia currently has the lowest

uptake of e-procurement in the EU^{xxix}. In part this may be explained by the fact that e-procurement appears not to have been high on the government's agenda in recent years.^{xxx}

Lastly, public procurement is not used to its potential to achieve strategic goals. A potential barrier is related to the fact that some procurement practitioners lack the technical and commercial competencies for the preparation of quality tender documents. Accordingly, the added complexity of including strategic aspects of procurement would only complicate matters further without bringing the expected.^v

Recommendations

- **Fight corruption:** Abuse of the procurement process is perhaps the most serious issue facing Slovenian public markets, sapping efficiency and reducing participation by honest but disillusioned economic operators.
 - Increase the use of targeted *ex ante* controls to identify tailor-made criteria and unjustified use of negotiated procedures, particularly in sectors prone to corruption risk such as energy, construction, and healthcare.
 - Enhance internal control mechanisms and strengthen the role of the *KPK* as called for in the 2015-2020 Strategy for Public Administration.
 - Facilitate oversight by civil society groups by providing greater and more timely access to procurement data, as well as official recognition.
- **Reform the legal framework:** The complexity and lack of clarity in the current legal framework is a serious issue for Slovenian procurement practitioners, resulting in both confusion and abuse.
 - Initiate a fundamental overhaul of the legal framework to simplify and clarify procedures; in order to be successful, this process should be slow and deliberate, including sustained involvement by a range of public private stakeholders, and being accompanied by a significant roll-out and training campaign upon implementation.
- **The right tools for the job:** Many contracting authorities lack the staff or the experience to prepare high quality tender documents, resulting in frequent errors and undue delays.
 - Establish a live help desk to provide expert *ad hoc* support to procurement practitioners and economic operators.
 - Develop template tender documents for common products and services.
 - Produce specific training and guidance materials on how to write tender specifications and technical requirements.
- **Promote digitisation:** The use of e-procurement is limited due primarily to the underdeveloped infrastructure.
 - Accelerate the development of the planned e-procurement modules and functionalities.
 - Deploy an awareness-raising and training campaign to accompany the finalisation of the e-procurement tools to achieve buy-in and build capacity among contracting authorities and economic operators.
- **Get strategic:** Public procurement is not used to its full potential to achieving strategic objectives.
 - Implement an awareness-raising and training campaign to promote the value of sustainable procurement and the use of non-price criteria to maximise value for money and social impact.
- **Allow appeals of *DKOM* decisions:** Currently, it is not possible to appeal the decisions of the *DKOM*.
 - Introduce a swift and efficient system for appeals of *DKOM* decisions.

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- ⁱⁱ Ministry of Finance of Slovenia website, available at: http://www.mf.gov.si/nc/si/medijsko_sredisce/novica/article//2278/
- ⁱⁱⁱ Ministrstvo za Javno Upravo (Ministry of Public Administration), public procurement Directorate, available at: <http://www.djn.mju.gov.si/sistem-javnega-narocanja>
- ^{iv} Public Procurement Network (2010), Authority for the Supervision of Public Contracts, The comparative survey on the national public procurement systems across the PPN.
- ^v ERAPRISM (2010), Public Procurement for Innovation in Small European Countries.
- ^{vi} Group of States against Corruption (GRECO) (2008), Second Evaluation Round Addendum to the Compliance Report on Slovenia.
- ^{vii} Partnership Agreement for the 2014-2020 programming period, Annex 2 – Ex ante conditionalities.
- ^{viii} Ministrstvo za Finance (Ministry of Finance) (2012), *Strategija usposabljanja in izpopolnjevanja javnih uslužbencev na področju javnega naročanja za obdobje 2013-2014* (Strategy for the training of civil servants in the field of public procurement for the period 2013-2014).
- ^{ix} Ministrstvo za Javno Upravo (Ministry of Public Administration) (2014), *Javna Uprava 2020, Strategija Razvoja Javne Uprave 2015-2020* (public administration 2020 strategy), *Delovno Gradivo* (working materials).
- ^x Partnership Agreement for the 2014-2020 programming period, Annex 2 – Ex ante conditionalities.
- ^{xi} *Ibid*
- ^{xii} European Commission (2015), DG MARKT, E-procurement uptake.
- ^{xiii} European Commission (2013), DG MARKT, Study on e-Procurement Measurement and Benchmarking - EU-country-profiles.
- ^{xiv} Ministrstvo za Javno Upravo (Ministry of Public Administration) (2014), *Javna Uprava 2020, Strategija Razvoja Javne Uprave 2015-2020* (public administration 2020 strategy), *Delovno Gradivo* (working materials).
- ^{xv} Information available at: http://www.mju.gov.si/nc/en/media_room/news/article//5855/
- ^{xvi} European Commission (2014), DG HOME, EU anti-corruption report, Annex Slovenia.
- ^{xvii} Komisija Za Preprečevanje Korupcije (Corruption Prevention Commission) (2013), *OCENA STANJA* (assessment of the situation).
- ^{xviii} Ministrstvo za Javno Upravo (Ministry of Public Administration) (2015), *Analiza stanja na področju javnega naročanja* (Analysis of the situation in the field of public procurement).
- ^{xix} European Commission (2014), DG ENV, National GPP Action Plans (policy and guidelines).
- ^{xx} Information available at: http://www.mju.gov.si/nc/en/media_room/news/article//5855/
- ^{xxi} National Court of Audit (2014), Annual Report 2013.
- ^{xxii} National Review Commission (2014), *Letno poročilo Državne revizijske komisije za 2013* (Annual report for 2013).
- ^{xxiii} National Review Commission, Personal interview with PwC, 8 May 2015.
- ^{xxiv} European Commission (2015) DG REGIO Annual Activity Report 2014.
- ^{xxv} DELO, *Ministrica Smerkoljeva v Romuniji* (Minister Smerkolj in Romania), press article, available at : <http://www.delo.si/gospodarstvo/finance/ministrica-smerkoljeva-v-romuniji.html>
- ^{xxvi} Commission for the prevention of Corruption, available at: <https://www.kpk-rs.si/en/project-transparency/supervisor-73>
- ^{xxvii} 2014, One year in office of the Government under Alenka Bratušek, available at: http://www.vlada.si/fileadmin/dokumenti/si/projekti/2014/Obletnica_vlade_AB/Achievements_and_priorities_of_the_Government_of_the_Republic_of_Slovenia.pdf
- ^{xxviii} European Commission Staff Working Document (2014), Assessment of the 2014 national reform programme and stability programme for SLOVENIA.
- ^{xxix} European Commission Staff Working Document (2015) Country Report Slovenia.
- ^{xxx} European Commission (2013), DG MARKT, E-Procurement state of play report.

SPAIN

KEY FACTS AND FIGURES

Key Facts and Figures in Spain							
Overview	Total procurement 99,600,000,000€		Procurement % GDP 10%		2013 GDP 1,049,181,000,000€	Contracting authorities 8,339	
Procedures applied	Open 82%	Restricted 2%	Negotiated procedure with call 4%no call 10%		Competitive dialogue 0%	Direct award 2%	Other 0%
Share of contract notices by buyer	National 15%		Regional/local 40%		Body governed by public law 16%	Other 29%	
Contract type	Services 55%		Works 4%		Supplies 41%	Framework agreement 8%	
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met	
E-procurement adoption	E-notification Mandatory		E-access Voluntary		E-submission Mandatory	Uptake rate N/A	
Perceived corruption	Corruption widespread in society Businesses 97%		Individuals 63%		Corruption widespread in procurement At national level 83%	At local/regional level 90%	
TED indicators	Value of tenders 13,350,010,157€		Of total procurement 13%		# contract notices 8,706	# contract awards 9,088	
Other indicators	Received single bid 19%		# days for decision 106.8		Price only criteria 24%	MEAT criteria 76%	
	Won by foreign firms 1%		Related to EU funds 12%		Joint purchase 2%	Central purchasing Yes, DGRCP	

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

The Spanish public procurement system is composed of one single legal framework and a wide diversity of contracting, management and oversight institutions, due largely to the country's decentralised political system. The diffusion of authority creates an opportunity for experimentation, as with the number of e-procurement platforms and purchasing bodies that have been created in recent years at national, regional and local levels, but can result in redundancies. The lack of clarity and transparency of governments is a further barrier to effectiveness.

Spain is several years into a major reform of their contracts system in order to address some of their challenges, as well as transposing the 2014 EU Directives. Substantial efforts are underway to improve the centralisation and harmonisation of the system to reduce the costs of its current dispersed nature. In addition, reforms have been implemented to strengthen the monitoring and control of public contracts to promote transparency and reduce irregularities, fraud, and corruption.

DESCRIPTION OF FEATURES

Legal features of public procurement system

The Spanish legislative framework for public procurement consists of three main laws: the Revised text of the Law on Public Sector Contracts approved by Royal Decree 3/2011 of 14 Novemberⁱ, and the Law on public procurement in the water, energy, transport and postal services sectors 31/2007 of 30 October, and the Law on Public Procurement in the defence and security sectors 24/2011 of 1 August. These three laws transpose the Public Sector Directive 2004/18/EC, the Utilities Directive 2004/17/EC, and the Defence Directive 2009/81/EC respectively. This national legislation is further developed at the regional level through either regional implementation laws or implementation guidelines. Exceptionally, the autonomous

community of Navarra has its own regional law on public procurement (Foral Law 6/2006 of 9 June).

There is no difference between selection and award procedures used for tenders above and below EU thresholds. However, time limits fixed by national legislation are narrower when the contract falls below the EU thresholdsⁱⁱ.

Simplified procedures are available for two types of contracts. Firstly, negotiated procedures can be used for contracts between EUR 18,000 and EUR 60,000 for services and supplies, and from EUR 50,000 to EUR 200,000 for public works, as long as the launching of the tenders is communicated to 3 tenderers. Secondly, so-called “minor contracts” that have a duration of less than one year and a value below EUR 18,000 for services and supplies and EUR 50,000 for public works. These contracts can be awarded directly to any supplier without publication. These simplified procedures are frequently used by some regional and local authorities, for instance, 86% of public contracts awarded in Andalusia in 2011 were minor contractsⁱⁱⁱ.

In order to standardise technical and economic requirements for public procurement procedures, Spain also makes use of a company classification system wherein enterprises can request certification as operating in one or more of 22 existing categories of business according to their field. For larger value contracts (more than EUR 200,000 for services, EUR 500,000 for public works) contracting authorities can restrict eligibility to firms with the relevant classification, even under open procedures^{iv}.

The Ministry of Finance and Public Administrations publishes through the State Consultative Board on Administrative Procurement a regularly updated list of enterprises with formal prohibition to engage with public administrations due to a lack of quality or service delivery problems detected in past contracts or solvency problems (technical or financial)^v.

Institutional system

The Ministry of Finance and Public Administrations is in charge of national public procurement policy through two main bodies. The first is the Directorate General for State Assets, which is responsible for the general regulatory framework on public procurement, setting the national strategy for e-procurement and operating the national e-procurement platform. The second, the Directorate General for Rationalisation and Centralisation of Procurement, focuses on the harmonisation and centralisation of national public procurement, operates as the central purchasing body for the State administration and State-related entities, and has developed a centralised procurement catalogue called Conecta-Centralización, directly connected to the State e-procurement platform. This catalogue is used by regional and local authorities on a case-by-case basis as most of them also have their own centralised purchase systems.

The State Consultative Board on Administrative Procurement is an autonomous body within the Ministry of Finance and Public Administrations that provides legal advice and guidance to improve the administrative, technical and financial aspects of public contracts. In addition, 15 out of the 17 regions have their own consultative boards that produce reports and recommendations to improve public procurement.

Two specific registries have been set up at the central level by the Ministries of Finance and of Public Administration. According to the public procurement law, the 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 to 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. On the other hand, 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.

The main oversight bodies are the National Court of Auditors and the General State Comptrollers (IGAE), along with the General Regional Comptrollers operating in the 17 autonomous regions and 2 autonomous cities. Comptrollers at the state and regional levels are internal overseers, verifying that the institutions under their jurisdiction respect the principles of legality, economy, efficiency, and efficacy.

As independent agencies, the Courts of Auditors provide external oversight. According to Law 7/1988 of 5 April, all public sector contracts are subject to the audit and control activities of the National Court. In addition, specific monitoring and control of ESI Funds-related procurement is carried out at the regional level by the Regional Comptrollers in coordination with the Intermediate Bodies in charge of programme management. MAs at the central level only conduct quality control of the regional oversight procedures.

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 an average timeframe of 26 days^{vi}. The majority of sanctions imposed on contracting authorities involve the invalidation of contracts, but TACRC is also authorised to impose fines on the grounds of bad faith and recklessness when challenging the award. In addition, 7 autonomous communities have created their own Territorial Administrative Courts of Contractual Appeals which operate independently at the regional level and might provide different interpretations of the law.

The Ministry of Economy also funds a National Observatory of Public Procurement (ObCP) at the University of Zaragoza to produce independent research and analysis, and to disseminate information on the evolution of national and European procurement laws and practices.

Key issues that have a bearing on administrative capacity

Human resources: Public procurement in Spain is carried out by more than 8,000 contracting authorities at the national, regional, supra-local, and local levels, including the central administration and its agencies, public-funded bodies, universities, and healthcare services^{vii}. Despite this complex administrative and territorial structure, the administrative capacity of public authorities is generally adequate, in particular in managing EU funds^{viii}.

Structures: The National Institute of Public Administration (INAP) is the government's leading civil service training school in Spain. In addition, each autonomous region has created its own training school providing similar services to regional public employees. They undertake many activities involving the recruitment, training and professional improvement of public employees, as well as conducting research on public administration and public policies. At the local level, public procurement practitioners benefit from much less training and support.

Training: In terms of capacity building, numerous training seminars and e-learning courses are organised by the INAP and the regional training schools for public procurement practitioners and administrators. The training courses generally provide participants with practical instruments and tools focusing either on the general implementation of the legislation or on specific topics such as transparency, competition, or green, social and innovative procurement.

Systems/tools: The INAP and the regional training schools produce implementation guidelines and provide e-learning courses on public procurement. Many national

agencies public-funded bodies have developed their own implementation rules and instructions to support their staff in charge of public procurement. However, no standardised tender forms or documents have been developed so far to support contracting authorities and in particular non-frequent procurers operating mostly at the local level.

E-procurement

The use of e-procurement in Spain remains quite limited^{ix}. The one area in which utilisation is more advanced is e-publication of contract notices through individual procurement profiles for each administration, which was made mandatory for all contracting authorities as part of the 2011 reforms. E-submission of bids is not mandatory and thus not usually offered by contracting authorities. Just 9% of enterprises submitted electronic tenders in 2011 compared to an EU average of 13%. Qualified national digital signatures (*DNI-e*) are currently being assigned to Spanish enterprises for use in e-submission, but are not available to foreign suppliers.

The State Public Procurement Platform (*PLACE*) hosts a central registry for contracting authorities to post tenders launched in the country, and which automatically sends that information to the State Official Journal (*BOE*) and to the OJEU. However, usage of the platform is limited due in part to the fact that several public agencies and regional authorities operate their own competing procurement platforms often via private IT providers^x. Currently, authorities in Aragon, Cantabria and Madrid are working with the Ministry of Finance to integrate their platforms with the central portal to share notices and bidder registries. The Ministry of Finance and Public Administrations is currently preparing additional e-procurement integration efforts in order to concentrate the publication of tenders on a unique public procurement platform for the public sector^{xi}.

Because contracting authorities are not required to report e-procurement data, monitoring is necessarily limited. Ministry of Finance and Public Administrations reporting is limited to data on the activities of the national e-procurement platform only.

Corruption

The perception of corruption is very high, with the share of Spanish survey respondents reporting that corruption personally affects their daily lives higher than in any other MS^{xii}, and almost unanimous support for the view that corruption is widespread and constitutes the second major problem of the country, after unemployment^{xiii}. This view is likely impacted by a number of high profile corruption cases in recent years that have drawn considerable public attention to the issue. As many as one thousand high-level officials have been investigated for corruption in Spain in recent years^{xiv}. The number of investigations has notably increased since the 1990s thanks to the creation of a specialised Prosecution Office for the Fight Against Corruption and Organised Crime (*FECCO*) whose autonomy and capacity have been reinforced across the years.

According to the National Observatory of Public Procurement, there is a strong link between corruption and public procurement in Spain, and many of the prominent national corruption cases are connected to procurement in some way. Corruption cases at the regional and local levels are particularly an issue, especially in the construction and waste collection sectors. Notably, alleged violations have increased recently, particularly concerning irregularities in the application of procurement rules, such as splitting of contracts and the unjustified use of urgent procedures, indicating weaknesses in the control systems of public procurement^{xv}. In late 2013, the Government acknowledged the need to address corruption as a matter of priority and has approved a Plan for Democratic Regeneration^{xvi} including 40 measures to fight corruption and improve transparency in public administrations.

More positive developments in the fight against corruption include the reinforcement of penal sanctions for public officials and the introduction of Law 19/2013 on Transparency, Access to Information and Good Governance. In particular, this law has led to the creation of a Transparency Portal that publishes, among other things, the list of all contracts awarded by the State administration with the corresponding amounts and names of contractors. Regional portals have been developed as well providing the same kinds of information.

Moreover, initiatives to modernise public administration are also under way, for example through the Law 27/2013 on Rationalisation and Sustainability of Local Administration, which aims to enhance control and to improve coordination among the national, regional and local administrations.

Europe 2020 Agenda

Environmental, innovation, and social considerations are not systematically taken into account in evaluating tenders in Spain, although they may be considered on a case-by-case basis, or as a “tie-breaker” criterion between otherwise equivalent bids^{xvii}.

The Green Public Procurement Plan^{xviii} adopted in 2008 set up national targets to increase the use of GPP up to 25% of total procedures and 100% of public purchase for specific products and services. In this context, the Ministry of Environment regularly produces tools and guidelines for the inclusion of environmental criteria in tendering processes, publishes good practices reviews on different types of contracts, organises dissemination and awareness raising events for public procurement practitioners, and monitors annually the use of GPP by the central administration. In 2011, GPP was mainly used in the fields of waste collecting and treatment, public works, energy efficiency in public buildings, IT supplies and cleaning services^{xix}. Most regions have developed their own GPP strategies and action plans, and some of them also monitor GPP. For instance, the government of the Basque Country has set up a Commission for the inclusion of environmental criteria in public procurement that publishes data annually^{xx}.

The 2011 procurement reforms included recommendations for the integration of research and development and innovation criteria in public procurement. Subsequently, several guidelines and catalogues of good practices have been published to promote the inclusion of those criteria. For instance, a Guide on Innovative Public Purchase was produced by the Ministry of Economy in 2011 as part of the State Innovation Strategy (E2i). More recently, the 2014-2020 ERDF Operational Programme on Smart Growth established a specific support in the form of grants or loans to public bodies at the national, regional and local levels to foster the use of public procurement for innovation.

The public procurement law provides a set of recommendations for the inclusion of social considerations in different steps of public procurement procedures, including evaluation of technical capacity, exclusion criteria, selection criteria, and conditions of implementation of the contract. Practical tools and guidelines have been developed regarding social objectives such as equal opportunities between men and women, lifelong learning education, labour inclusion of disabled persons and of people at risk of exclusion, and promotion of fair trade. In addition, the law allows contracting authorities to restrict the award of some contracts to social enterprises or employment centres if relevant.

Irregularities and findings of national Audit Authorities

The National Court of Auditors publishes annual findings and recommendations on the use of public procurement by state level contracting authorities. Irregularities related to public procurement are generally attributed to a lack of rigour in the preparation and awarding phases of public contracts, leading to additional delays and unexpected costs, as well as a deficient control and monitoring of the contracts implementation.

The National Court of Auditors also regularly assesses the main risk areas in public procurement at regional and local levels. It highlighted in 2012 that the most frequent irregularities found involve the breaking down of large contracts into smaller tenders to avoid public procurement requirements, the use of tailor-made criteria in favour of a specific tenderer, the lack of selection criteria and clear award decisions as well as the lack of penalties applied to high priced offers^{xxi}.

In addition, the appeals presented to the TACRC during the past years show that the types of sectors most affected by procurement problems were the infrastructure, security and social services. In 2014, half of the appeals (50%) referred to irregularities related to the awarding of the contract. Other major issues referred to the tender specifications (23%) and to the exclusion of a tenderer (21%).

Outlook

The on-going reforms of the public administration, the public procurement system, and anti-corruption policies are expected to increase efficiency and transparency in the management of public funded contracts. In particular, several measures for the further centralisation of processes are currently foreseen concerning the use of a central purchasing body for national administration and regional/local authorities, a unique register of bidders, and a common e-procurement platform for the public sector gathering information from national and regional contracting authorities. E-procurement has been recently strengthened by making e-invoicing mandatory in January 2015 for all contracting authorities. It will be also reinforced through the further development of e-submission^{xxii}.

Further integration of different levels of government are also planned, for example through conventions between national and regional public procurement boards, administrative courts of contractual appeals and between national and regional training schools of public employees to increase collaboration and to clarify the distribution of competences.

ANALYSIS

Strengths

Spain has undertaken substantial efforts to remake their procurement system in recent years, launching a number of new programs, tools, and initiatives. Notable improvements have been made thanks to the creation of a specific administrative jurisdiction of contractual appeals, and to the adequate capabilities of public authorities in particular for the management of EU funds.

The spate of recent corruption scandals has helped to put ambitious anti-corruption and transparency reforms at the top of the political agenda, creating a real opportunity for positive change.

In addition, the economic crisis and the increasing pressure on public finances have led to the launching of a structural reform of public administration aimed at reducing inefficiencies and at reinforcing simplification, transparency, and harmonisation of public procurement procedures among the different levels of government.

Weaknesses

The high number and diversity of contracting authorities in Spain has caused the multiplication of implementation rules and procedures in public procurement at the cost of clarity and transparency for procurers and tenderers^{xxiii}. The decentralised territorial and institutional structure of the country does not necessarily justify the duplication of public procurement bodies at national and regional levels, including oversight bodies, consultative boards, administrative courts, and training schools for public employees. As pointed out by the Commission for the Reform of Public Administrations (CORA)^{xi}, the redundancy of competences and procedures has to be corrected to reduce overlapping, inconsistencies in the implementation of rules within the country, and unnecessary delays and costs.

In addition, while the reforms undertaken have been positive, more remains to be done. Perception of corruption and distrust in government remain high, and continue to be a barrier to participation in procurement by both local and international suppliers. Moreover, although Spain's above average use of open procedures has advantages for transparency and despite the recent development of transparency portals publishing statistics and information on awarded contracts, there is still room for improvement. This concerns in particular the access, interoperability and user-friendliness of information on public tenders and the transparency of selection criteria.

Public procurement oversight mechanisms also need to be strengthened particularly by enhancing on-site controls of the execution of contracts. Furthermore, the current sanctions imposed to both contracting authorities and economic operators have not had a sufficient deterrent effect^{xv}.

In addition, the use of e-procurement is still largely limited to e-publication of contract notices and e-invoicing.

Recommendations

- **Coordination between regions and with the central administration:** Spain's decentralised administrative and territorial structure gives substantial autonomy to regions, which results in redundancies and overlaps between bodies dealing with public procurement. Greater coordination and cooperation between such bodies could reduce uncertainty for practitioners and improve efficiency:
 - Increase coordination between specialised courts of contractual appeals to better harmonise the interpretation of procurement law among the regions.
 - Increase coordination between, and consider mergers of consultative boards on public procurement. These innovative and promising institutions mostly operate locally and independently, leading to overlaps and possible inconsistencies between regions, creating confusion for economic operators and contracting authorities.
 - Increase coordination between public procurement oversight bodies at regional and national levels such as IGAE and regional comptrollers, in order to ensure a consistent application of the single legislative framework on public procurement across the country.

- **Control and oversight:** Public procurement oversight shows some deficiencies in reducing fraud and recurrent irregularities.
 - Increase sanctions for violations of procurement rules to have a more deterrent effect.
 - Enhance monitoring and control of the execution of contracts with on-site checks and visits to reduce cost overruns and delays.
 - Require the publication of annual procurement planning by contracting authorities to increase transparency and facilitate monitoring and oversight by regional and national comptrollers (IGAE) and citizens.
 - National ESI Funds MAs should issue clearer, more centralised instructions and guidance materials for Intermediate Bodies and regional comptrollers to promote a more harmonised interpretation of the rules. Coordination among MAs could result in even greater simplification.
- **E-procurement:** E-procurement uptake remains quite limited, due in part to the large number of disparate tools and platforms, which makes using e-procurement excessively complex and time consuming for economic operators
 - Increase interoperability between local and regional e-procurement platforms and the central e-procurement platform PLACE. The coordination established among regional platforms in Aragon, Cantabria, and Madrid and the PLACE platform could serve as a model. Consolidating e-notification services should be the first priority.
 - Enhance interoperability among the different registries of bidders at national and regional levels.
 - Promote a pro-e-procurement culture among contracting authorities through awareness raising campaign and improvement of e-procurement tools.
- **Local training and support:** While there are substantial training opportunities at the national and regional levels, local practitioners are underserved in terms of training and support.
 - Make training organised for national and regional administrations accessible to local public procurement practitioners.
 - Develop standardised tender forms and documents at national level to support contracting authorities and in particular non-frequent procurers.
 - Create a one-stop shop portal for public procurement info to facilitate contracting authorities access to official guidelines and tools.

ⁱ State Official Gazette (2011), *Real Decreto Legislativo 3/2011, de 14 de noviembre, por el que se aprueba el texto refundido de la Ley de Contratos del Sector Público* (Law on Public Sector Contracts), available at: <http://www.boe.es/buscar/act.php?id=BOE-A-2011-17887>

ⁱⁱ Public Procurement Network (2010), Authority for the Supervision of Public Contracts, The comparative survey on the national public procurement systems across the PPN.

ⁱⁱⁱ Court of Audit of Andalusia (2011), *Informes de Fiscalización de la Cuenta General, Contratación Pública y Fondos de Compensación Interterritorial ejercicios 2005 y 2011* (Audit report on public procurement and the Territorial Compensation Funds - years 2005 and 2011).

^{iv} State Consultative Board on Administrative Procurement, *Clasificación de empresas* (Company classification), available at: <http://www.minhap.gob.es/es-ES/Servicios/Contratacion/Junta%20Consultiva%20de%20Contratacion%20Administrativa/Paginas/ClasificacionDeEmpresas.aspx>

^v State Consultative Board on Administrative Procurement, *Lista de empresas en situación de prohibición para contratar* (Companies forbidden from entering into contractual agreements or classified as suspended), available at: <http://www.minhap.gob.es/es-ES/Servicios/Contratacion/Junta%20Consultiva%20de%20Contratacion%20Administrativa/Paginas/prohibicion.aspx>

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- ^{xxiii} National Commission for Markets and Competition (CNMC) (2015), *Análisis de la contratación pública en España: oportunidades de mejora desde el punto de vista de la competencia* (Analysis of public procurement in Spain: opportunities for improvement in terms of competition).

SWEDEN

KEY FACTS AND FIGURES

Key Facts and Figures in Sweden						
Overview	Total procurement 68,680,000,000€		Procurement % GDP 16%		2013 GDP 436,342,400,000€	Contracting authorities 3,700
Procedures applied	Open 88%	Restricted 2%	Negotiated procedure with call 7% no call 0%		Competitive dialogue 0%	Direct award 3% Other 0%
Share of contract notices by buyer	National 23%		Regional/local 64%		Body governed by public law 1%	Other 13%
Contract type	Services 53%		Works 11%		Supplies 35%	Framework agreement 2%
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met
E-procurement adoption	E-notification Mandatory		E-access Voluntary		E-submission Voluntary	Uptake rate 34%
Perceived corruption	Corruption widespread in society Businesses 43% Individuals 40%			Corruption widespread in procurement At national level 22% At local/regional level 33%		
TED indicators	Value of tenders 15,653,246,403€		Of total procurement 23%		# contract notices 6,382	# contract awards 3,795
Other indicators	Received single bid 11%		# days for decision 62.0		Price only criteria 55%	MEAT criteria 45%
	Won by foreign firms 1%		Related to EU funds 1%		Joint purchase 10%	Central purchasing Yes, Kammerkolegiet

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Sweden is characterised by a high performing public procurement system, which is fairly advanced in its strategic dimension, including green, innovation and social criteria. Also, it remains quite dispersed and decentralised, despite the presence of national organisations for public procurement on the subnational level.

Disbursing an estimated EUR 68 billion annually, public procurement plays a significant role in Sweden's economy, consistent with the relatively large size of the country's public sector. As a result, the effectiveness of procurement procedures and competition promotion efforts are particularly significant. Both of these goals are promoted by the existence of a central purchasing body, the National Procurement Services (NPS).

Irregularities and corruption are not a significant issue in Sweden, largely as a result of its highly developed and well-resourced legal and institutional frameworks.

DESCRIPTION OF FEATURES

Legal features of public procurement system

The EU Directives 2004/18/EC, 2004/17/EC and 2009/81/EC have respectively been incorporated into Swedish law by the Public Procurement Act (2007:1091, or *LOU*), the Act on Procurement within the Water, Energy, Transport and Postal Services Sectors (2007:1092, or *LUF*), and the Act on Defence and Sensitive Security Procurement (2011:1029, or *LUFSS*). Each of these is divided into two parts: one defining the EU-based rules for above threshold contracts, and the other outlining national rules for procurement not covered by the EU Directives. Below the threshold, contracting authorities may use a simplified or a selection procedure, which allow the contracting authority to negotiate directly with tenderers.

Sweden also offers a unique take on procurement of services under the Act on System of Choice in the Public Sector (2008:962, or *LOV*), which allows individuals to choose from a set of approved private providers of municipal services such as in-home care for the elderly. It works much like a framework contract where lots are awarded by the individual beneficiaries. As a mere authorisation system, it is not covered by EU public procurement legislation.

Institutional system

Sweden has two main institutions for procurement policy, the Swedish Competition Authority (*KKV*), which operates under the Ministry of Enterprise and Innovation (MoE) and the newly created National Agency for Public Procurement (*UHM*) which operates under the Ministry of Finance (MoF).

The *KKV* plays an important supervisory role, overseeing procurement for efficiency and adherence to regulations, and is empowered to forward and irregularities to the administrative courts for investigations and eventually sanctions under the *LOU* and the *LUF*. In addition to its supervisory role, the *KKV* provides administrative and methodological support to both contracting authorities and economic operators on issues relating to public procurement, particularly in the fields of innovation and sustainability.

The *UHM* is responsible for developing and maintaining support functions to public procurement. In addition, it promotes legal certainty, socially and environmentally sustainable procurement, as well as innovative solutions in public procurement.

In addition, the Swedish Agency for Economic and Regional Growth (SAERG), operating under the Ministry of Industry, is a national government agency mandated to promote sustainable industrial development and regional growth. The agency helps to strengthen the competitiveness of enterprises through knowledge, networking and financing, and by creating better conditions and attractive regional environment in which businesses can develop.

Oversight of public procurement is also carried out by the National Audit Office (NAO). As the highest authority for supervising public spending in Sweden, it performs external controls of regulatory compliance and provides Parliament with information and recommendations on the use of public fund.

The Administrative Courts of First Instance have competence for issuing penalties related to public procurement irregularities. The court can also revoke a contract or render it void. Appeals can be made directly to the Administrative Courts of Appeal, whose decisions may be reviewed by the Supreme Administrative Court.

The NPS, a department within the Legal, Financial and Administrative Services Agency of the MoF, acts as the central purchasing body for the State administration and State-related entities. It was established in January 2011 with a mandate to offer central government authorities coordinated framework agreements for goods and services of general use. Furthermore, the Swedish National Financial Management Authority, a central administrative Government agency that operates under the MoF, procures and manages central Government framework agreements for administrative systems and associated services.

Key issues that have a bearing on administrative capacity

Human resources: The Swedish Government recently conducted an investigation into modernising administrative capacity in the procurement system, concluding that “support, information and guidance on public procurement needed to be concentrated, improved and enhanced”ⁱ. As a result, currently dispersed responsibilities are being concentrated in the *KKV*, whose staff is being expanded significantly.

Structures: Public procurement forms part of the general curriculum during the studies of law at the University of Göteborg. Additionally, a few specialised private providers offer courses to future practitioners in matters of procurement.

The KKV is however considered the primary organisation for training and consultancy in the Swedish Government. In this regard, it implements training as well as short-term seminars, and provides contracting authorities with information and advice on procurement.

Trainings: The KKV holds frequent, one to two day long open seminars throughout the country on diverse topics on procurement practice. In addition, the Swedish Government Agency for Research and Development (*Vinnova*) delivers training on innovation processes to public procurement practitioners.

Moreover, as laid out in the Partnership Agreement between the EC and Sweden for the years 2014-2020ⁱⁱ, the Swedish ESF Council, a government agency under the Ministry of Labour responsible for managing Sweden's Social Fund and Integration Fund, conducts a series of training programs with a focus on risk and materiality. It also initiated a working group in 2014, with the aim to exchange experiences related to public procurement.

Systems/tools: Guidance materials, methodological support and best practices are provided on the KKV's dedicated website. The KKV website also features a 'criteria library' collecting environmental and social provisions that can be included as selection and award criteria by those preparing tender documentationⁱⁱⁱ.

Moreover, the newly created UHM has set up a 'one-stop-shop' providing a variety of tools for contracting authorities. With regard to GPP/SRPP, it provides an online criteria wizard, which allows choosing three different levels of ambition – basic, advanced, frontrunner –, and manages the CSR Compass tool for SRPP¹.

Finally, the SAERG² also provides guidance and information on applying for and using ESI Funds through its website³, offering *ad hoc* support services and publishing template documents and a digital handbook for EU projects for the 2014-2020 period.

E-procurement

The Swedish e-procurement environment is well developed, making use of a mix of public and privately managed platforms to achieve one of the highest take-up rates in the EU. The National Debt Office uses a private platform called Visma TendSign, which claims to be the largest e-procurement provider in the Northern EU countries⁴.

E-notification is mandatory, and is hosted on the Avropa web portal, one of four privately-run services. E-submission is not mandatory, and is left exclusively to private service providers.

In addition to e-procurement services, Sweden is quite advanced in post-award phase services such as e-ordering and e-invoicing. E-invoicing was made compulsory for all governmental agencies in 2008, while e-ordering was only mandated for use in 2013 for agencies with more than 50 employees.

At local and regional levels, however, councils and municipalities, whose overall status is independent, have the possibility to freely organise their e-procurement processes.

¹ www.upphandlingsmyndigheten.se/

² www.mercell.com

³ www.eu.tillvaxtverket.se/

⁴ www.tendsign.com/

Corruption

Sweden is one of the least corrupt countries in the EU thanks to its strong commitment to openness and transparency. The legal and institutional framework is highly developed, adequately resourced, and well enforced. Despite the absence of major corruption cases or chronic shortcomings, Sweden recently conducted several risk assessment studies and reports on corruption. They concluded that corruption is principally an urban phenomenon, with more than half of all cases registered with the National Anti-Corruption Unit located in the Stockholm County alone, and that procurement was a particular area of concern^{iv}. Municipal governments are also susceptible to corruption due to lack of appropriate resources to manage the risks that arise in their operations.

As a response to these deficiencies, the Government recently called on the *KKV* to expand and improve the support provided to contracting authorities at all levels, as well as for participating companies. On the preventive side, the Government's response has been to create a group called "the Value Delegation", whose main tasks consist in maintaining public confidence in the civil service by promoting a culture of corruption prevention^v.

Europe 2020 Agenda

Sweden has a highly developed set of tools and policies for implementing strategic goals consistent with the Europe 2020 Strategy in its procurement policy, including environmental, innovation and social policies. The newly created *UHM* regroups all support functions for strategic public procurement in a 'one-stop-shop', to increase the availability, consistency and visibility of procurement support for procurement stakeholders.

With respect to the environmental dimension, Sweden has been active in GPP for over a decade. It adopted a first Green Procurement Action Plan in 2007. A new plan extending the actions of the first one was endorsed in 2011, and is currently in working progress in the MoE.

The Swedish Environmental Protection Agency monitors GPP and reports to the MoE, while the *KKV* is responsible for its overall implementation^{vi}, with the support of the Swedish Environmental Management Council, which is incorporated in its services since 2014. In addition, the MoE supports public purchasers that want to specify environmental requirements, notably through training and a web-based tool, the Swedish Instrument for Ecologically Sustainable Procurement.

Sweden is also active in promoting innovation through the procurement process. Since 2011, *Vinnova* financially supports national procurers to undertake innovation procurements via its "Innovation Capacity in the Public Sector" programme. Adding to this, the *KKV* provides methodology support and guidelines for innovation procurement. Furthermore, the *UHM* provides ad-hoc consultation and support to contracting authorities, which are interested in carrying PPI.

In an effort to counteract a decline in SME participation in procurement in recent years, the *KKV* issues guidelines on how to facilitate participation for innovative SMEs. These include best practices, such as gathering market information pre-advertising, rapidly answering questions about ongoing procurements, and advertising up-coming procurements as early as possible.

Irregularities and findings of national audit authorities

The NAO carries out audit reports and surveys examining the public procurement situation and its organisation at national level. Over the past years, the NAO's audits and surveys notably revealed lop-sidedness in public procurement procedures. For

instance, its 2014 audit report on the “State and civil society in the integration process”^{vii} indicated that both the complexity of the procurement procedures carried out under the *LOU* and the way agencies were dividing up the procurements both geographically and in terms of volume were hindering the ability of civil society groups to be competitive for public contracts. A similar report from the previous year identified public procurement as the activity likely to generate the greatest risk of corruption within local authorities, especially at municipal level, due to weak auditing procedures^{viii}.

In parallel with the NAO’s work, several inquiry committees^{ix} were set up by the Government to examine, amongst other issues, the Swedish public procurement situation and evaluate the procurement rules, both from a social as well as an economic perspective^x. In line with the committees’ work, the Government called for improvements and enhancement of support, information and guidance on public procurement.

Outlook

Innovative public procurement is increasing in importance in the Swedish procurement system and work is currently under way to set up organisations that support it^{xi}. The 2015 budget proposes a number of new innovation proportion policies for the coming years. The strategy will also involve greater participation at, and thus closer collaboration with, the regional and local levels.

ANALYSIS

Strengths

In Sweden, the strength of public procurement stems from a solid legal basis, adequate capacity among central procurement organisations, and the efficiency of the complaints and review systems. In addition, the Government is making steady progress in upgrading the competences of public procurement practitioners via a growing number of trainings and other measures to further strengthen the responsiveness of the administration.

Sweden is also a frontrunner in promoting innovation and environmental policy goals through the procurement process, establishing a number of innovative tools for procurement practitioners and coordinating capacity building by making broadly available know-how on public procurement procedures for innovation procurement.

Lastly, Sweden is active in reducing barriers for SMEs in accessing public procurement. Since the mid-2000s, the *KKV* has made increasing the participation of SMEs in public procurement proceedings a priority^{xii}. The subsequent increase in participation of SMEs in public contracts, especially at local level suggests those efforts have paid off.

Weaknesses

The primary weakness of the Swedish public procurement system is the dispersion of State support responsibilities. The existence of multiple central Government procurement bodies with similar and sometimes overlapping mandates leads to redundancy and inefficiency, and can lead to confusion among contracting authorities and bidders in need of answers. The creation of the UHM is a step in the right direction, but more can be done.

Another key weakness identified in the Swedish public procurement system is the overall perception that the procurement legislation is difficult and inflexible^{xiii}. Critics cite avoidable legal review procedures, unnecessary delays and recurring difficulties in providing public services due in part to the high number of appeals. In fact, these difficulties may have more to do with the capacities of individual contracting

authorities, particularly ones which procure less frequently, than the legislation as such.

Finally, Sweden lacks a central e-notification platform incorporating all public procurements. This could potentially lead to tenderers not bidding on relevant requests.

Recommendations

- **One stop shop:** There is a fair amount of overlap and confusion among the multiple state level procurement organisations and systems.
 - Focus centralised purchasing and support activated in a single entity, such as the newly-created National Agency for Public Procurement (*UHM*).
 - Build a central search portal for all online notifications that links to the various platforms.
- **Simplify the rules:** Swedish procurement legislation is perceived as complex and relatively inflexible, resulting in avoidable administrative burdens and delays.
 - Conduct a review of procurement laws, regulations and procedures from the perspective of contracting authorities and economic operators to identify ways to streamline the procurement process.

ⁱ Competition Authority's new responsibility for providing Support to contracting Authorities and Economic Operators in Area of Public Procurement, available at:

http://ec.europa.eu/competition/ecn/brief/01_2014/sv_proc.pdf

ⁱⁱ Partnership Agreement (2014) for Sweden, in accordance with Articles 14 and 15 of Regulation (EU) N.1303/2013 of the European Parliament and of the Council of 17th December 2013:

<http://www.regeringen.se/content/1/c6/23/05/86/15e0beb7.pdf>

ⁱⁱⁱ Swedish Competition Authority, Sustainable procurement criteria, available at:

<http://www.kkv.se/en/publicprocurement/sustainable-public-procurement/use-sustainable-criteria/sustainable-procurement-criteria/>

^{iv} Brå report N. 2013:22 (2013), Reported Corruption in Sweden: Structure, risk factors and countermeasures, available at:

http://www.bra.se/download/18.12caa4f91440b31239f1fed/1395400931564/2013_22_Reported_Corruption_in_Sweden.pdf

^v Available at: <http://www.regeringen.se/sb/d/119/a/213443>

^{vi} Open House (2010), Best practice on green or sustainable PP and new guidelines, Seventh Framework Programme, available at: http://www.openhouse-fp7.eu/assets/files/D1.4_Best_practice_on_green_or_sustainable_public_procurement_and_new_guidelines.pdf

^{vii} National Audit Office (2014), Audit report RiR 2014:3, "The State and civil society in the integration process", available at: http://www.riksrevisionen.se/PageFiles/20328/summary_2014_3.pdf

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^{ix} Swedish Competition Authority (2012), The cost of different goals of public procurement, available at: <http://www.kkv.se/globalassets/english/publications-and-decisions/the-cost-of-different-goals-of-public-procurement.pdf>

^x Competition Authority's new responsibility for providing Support to contracting Authorities and Economic Operators in Area of Public Procurement, available at: http://ec.europa.eu/competition/ecn/brief/01_2014/sv_proc.pdf

^{xi} Available at: ftp://ftp.cordis.europa.eu/pub/innovation-policy/studies/13_sweden.pdf

^{xii} Pranvera Këllezi (2014), Antitrust for Small and Middle Size Undertakings and Image Protection from non competitors, Springer.

^{xiii} Available at: <http://www.regeringen.se/content/1/c6/21/03/99/c477c8f2.pdf>

UNITED KINGDOM

KEY FACTS AND FIGURES

Key Facts and Figures in United Kingdom							
Overview	Total procurement 274,600,000,000€		Procurement % GDP 14%		2013 GDP 2,017,193,800,000€	Contracting authorities 5,000	
Procedures applied	Open 45%	Restricted 37%	Negotiated procedure with call 8%no call 2%		Competitive dialogue 2%	Direct award 4%	Other 1%
Share of contract notices by buyer	National 13%		Regional/local 38%		Body governed by public law 34%	Other 14%	
Contract type	Services 62%		Works 9%		Supplies 30%	Framework agreement 43%	
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met	
E-procurement adoption	E-notification Voluntary		E-access Voluntary		E-submission Voluntary	Uptake rate 31%	
Perceived corruption	Corruption widespread in society Businesses 46%		Individuals 64%		Corruption widespread in procurement At national level 38%	At local/regional level 37%	
TED indicators	Value of tenders 90,349,740,982€		Of total procurement 33%		# contract notices 10,159	# contract awards 7,681	
Other indicators	Received single bid 10%		# days for decision 83.6		Price only criteria 7%	MEAT criteria 93%	
	Won by foreign firms 2%		Related to EU funds 13%		Joint purchase 21%	Central purchasing Yes, CCS	

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Procurement in the UK is unique in the EU in three ways: it is the largest in value EU-wide, makes the greatest use of restricted procedures and competitive dialogue, and is regulated by two different legal systems. According to national statistics, the UK procurement system spends approximately EUR 316 billionⁱ annually, making it the largest in the EU by value. However, only a relatively small portion of this is ESI funds and therefore the procurement of EU projects cannot be considered representative of the overall procurement system in place in the UK.

The UK's high use of restricted procedures makes it an outlier as it is the only MS in which open procedures are not used for the majority of contracts. This is made even more notable by the fact that elsewhere in the EU, the use of restricted tenders is in decline. UK public bodies favour restricted procedures because they limit the number of tenderers per contract, thus reducing the cost of evaluating bids, as well as the cost of bidding for the candidates. However, the two-stage tendering process takes longer than an open procedure, and can be more restrictive for potential suppliers to comply with, due to the quality of tender submissions requiredⁱⁱ.

The UK's administrative structure also impacts its procurement system, with unique legal regimes for England, Wales and Northern Ireland on the one hand, and Scotland on the other one. Implementation of procurement is even more decentralised, with national institutions in Wales and Northern Ireland as well.

Like many MS, the UK procurement system is currently undergoing a wave of reforms, the second to be launched in the past five years. The goal of these reforms is to increase standardisation and centralisation of procurement at the UK level, and to improve capacity at all levels.

DESCRIPTION OF FEATURES

Legal features of public procurement system

The UK's legal framework means that procurement is governed by two sets of laws. In England, Northern Ireland and Wales, EU Directive 2004/18/EC is transposed as Public Contracts Regulations 2006, and 2004/17/EC as Utilities Contracts Regulations 2006. In Scotland, the same laws are transcribed as Public Contracts (Scotland) Regulations 2006 and Utilities Contracts (Scotland) Regulations 2006. Below the EU thresholds there is no specific law covering public procurement in the UK, but EU Treaty principles still apply.

The UK has also expressed an interest in transposing the 2014 EU Directives as soon as possible in order to "take advantage of new flexibilities."ⁱⁱⁱ Directive 2014/24/EU on public procurement, as well as a number of national reforms designed to make public procurement more accessible to small businesses^{iv}, have already gone into effect as part of Public Contracts Regulation 2015, and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport, and postal services sectors came into force in the summer 2015. The implementing legislation for Directive 2014/23/EU on the award of concession contracts will come into force by April 2016, in time to meet the deadline for transcription in national law^v.

Institutional system

The primary procurement institution for England, Wales and N. Ireland is the Efficiency and Reform Group (ERG), which is responsible for improving operational efficiency government-wide. ERG plays several roles, including in transposing EU Directives, handling infraction cases, supervising procurement activity for value, and providing guidance and training for contracting authorities. However, the obligations and liabilities on specific procurement procedures remain with the contracting authority. In Scotland, the Scottish Procurement and Commercial Directorate (SPD) plays a comparable role^{vi}. Contracting authorities, on the other hand, bear the liability for the fulfilment of obligations related to public procurement procedures.

The Crown Commercial Service (CCS) acts as one of the central purchasing bodies, and is designed to increase UK's value for money by aggregating purchasing power, providing advice and support to other government departments, and having the lead on procurement policy on behalf of the UK government. Efforts by the CCS's predecessor agency, the Government Procurement Service, generated EUR 4.26 billion in savings in 2013. In addition to the CCS, several administrations are acting as central purchasing bodies at regional and local levels.

While technically not part of the expenditure cycle, the independent National Audit Office (NAO) performs an important role in the procurement system. Specifically, it carries out oversight activity focused on verifying value for money. Although the NAO does not publish annual reports, their findings are reported to Parliament, which can in turn be used to hold government departments to account. The Audit Commission has traditionally performed these functions at local level, but pursuant to a 2014 law, these duties will be devolved to a private company, and their findings will be published by the NAO.

Suppliers can bring proceedings against contracting authorities in the High Court of England, Wales and Northern Ireland, or the Court of Session or Sherriff Court in Scotland, which are empowered to award damages or other penalties, issue injunctions, or invalidate unlawfully taken decisions. Their rulings can be appealed in the Civil Division of the Court of Appeal, and ultimately in the Supreme Court of the UK^{vii}.

In addition, during the 2007-2013 programming period, procurement carried out with ESI Funds was audited by three multi-fund Audit Authorities; two Audit Authorities dedicated to the ERDF, and one Audit Authority dedicated to the ESF^{viii}. For the current programming period, ESI Funds Audit Authorities have been reorganised to one per nation, namely the Cross Departmental Internal Audit Service (XDIAS) for England, the European Funds Audit Team of the Welsh Government, the Internal Audit Division of the Scottish Government and the Department of Enterprise, Trade and Investment (DETI) of Northern Ireland.

Key issues that have a bearing on administrative capacity

Human resources: In recent years, the UK's procurement workforce has experienced two cross-cutting trends. On the one hand, the austerity policy put in place in the aftermath of the economic crisis has resulted in significant headcount reduction across government agencies, including in their procurement departments. Between 2010 and 2012, the number fell 17% from approximately 3,900 to 3,200, although over the same period, the number of staff holding Chartered Institute of Purchasing and Supply (CIPS) qualifications has increased.

At the same time, the move toward greater centralisation in the CCS is increasing the professionalisation of procurement. In 2014, CCS had a staff of more than 750.

Structures: The ERG and CCS share responsibility for building the capacity of procurement practitioners in the UK. While CCS is primarily responsible for skill building through training, ERG provides policy guides, sample tender documents and other guidance materials. Most notably, they put out regular Procurement Policy Notes explaining official government policy, best practices and regulatory and procedural updates. There is also a telephone help line available to purchasers with questions on the application of the Notes.

Outsourcing of the legal review of the procurement processes to private law firms is a common practice in the UK. Law firms provide advice on procurement strategy and procurement law both to contracting authorities and economic operators in different stages of complex procurement processes.

Training: The government's overall procurement training programme is laid out in the Commercial Skills and Competency Framework, a detailed schedule of competencies required of procurement professionals at different stages in their careers and the trainings and certifications available to fulfil these requirements.

The CCS provides the training coursework under the framework that is specific to procurement. The curriculum offers no less than eight one-day courses, given annually in London, Birmingham and Manchester, on topics including systems and procedures, negotiating, and EU procurement rules. The courses are free of charge to central government employees, but individuals must pay their own travel and accommodations^{ix}.

CCS also offers an e-learning module and specific training on the use of lean sourcing methods in procurement^{ix}. The overall aim contemplated by the government in this training is to reduce the time from the contract notice to the contract award.

Systems/tools: One tool for improving efficiency involves promoting standardisation of procurement procedures at all levels of government. To that end, ERG publishes standardised templates that can be used by UK contracting agencies for general goods and services contracts, in addition to regular guidance and reports on procurement policy for contracting agencies and beneficiaries alike.

Another tool is the application of the LEAN management approach to the procurement system, which emphasises streamlined, standardised processes in order to shorten the

time lag from publication to award to 95 days. In order to achieve this goal, the government invested substantially in reforming its procedures, such as by reducing the length of pre-qualification questionnaires (PQs), and investing in training staff across agencies and ministries. As a result, the 95-day goal has been met^x.

E-procurement

The UK is an EU leader in e-procurement with one of the highest uptake rates of any MS, despite the fact that neither e-notification nor e-submission is mandatory. More than 50% of all contracts are currently published online, with the exception of sensitive military contracts. Estimates of the levels of e-submission uptake place the UK in the range between 50% and 75%, with approximately 75% of central government bodies carrying out procurement fully electronically^{xi}. The Government procurement portal includes a searchable database of contract notices called Contracts Finder, as well as a pipeline to allow potential bidders to prepare for up-coming procurements. It also hosts a Spend Analysis Tool with regularly updated information on procurement organised by category and supplier.

In addition to the UK-wide site, there are the Public Contracts Scotland, Sell2Wales and eSourcing NI sites providing similar data for Scotland, Wales and Northern Ireland respectively.

Corruption

The degree of corruption and fraud in the UK's procurement system is relatively low by EU standards. Annual losses deriving from procurement fraud, including bribes and kickbacks, are estimated at EUR 3.17 billion annually or less than 1% of total procurement expenditure^{xii}. However, because procurement is identified as a key potential loss area, it remains a target for anti-corruption and anti-fraud efforts.

The most recent UK Anti-Corruption Plan published in December 2014 gives an overview of the measures taken by the government to avoid corruption from spreading in the public sector^{xiii}. The primary tools in the fight against corruption are the transparency efforts being made, such as publishing all tenders of significant value, and the sanctions imposed on fraudulent suppliers including exclusion of individuals or businesses that have been convicted of fraud, bribery or corruption from procurement contracts.

Europe 2020 Agenda

The use of procurement to promote environmental, innovation and social priorities consistent with the Europe 2020 Strategy is quite advanced in the UK. In the area of green procurement, government buying standards for sustainable procurement in contracts have been instituted as best practices for all contracts and are mandatory for selected product groups. These standards take into account energy and water use, carbon footprint, resource efficiency, and life-cycle costs in order to set minimum standards of sustainability for government purchases.

Promoting access to government contracts for SMEs is another priority, and the UK has set a goal of 25% of all procurement awarded to SMES by 2015. In order to promote this goal, the government seeks to remove barriers to SME access by eliminating PQs on smaller-value contracts, standardising them for larger ones, mandating prompt payments to make government contracts more economically viable for smaller firms with tighter cash flow needs, and appointing SME advocates to the CCSⁱ. The Small Business Research Initiative (SBRI)^{xiv} is another tool for promoting SME access to government contracts by encouraging pre-commercial procurement to drive innovation and to address future challenges^{xv}.

Finally, with regard to social issues, the UK passed legislation called the Public Services (Social Value) Act 2012, requiring contracting authorities in England and Wales to consider the economic, social, and environmental impact of services procurement on the community. Works contracts are exempt. Northern Ireland has taken its own steps towards promoting social goals via procurement by integrating gender equality and equal opportunities into the application/procurement process.

Irregularities and findings of National Audit Authorities

Because the NAO is accountable exclusively to Parliament, it does not make its annual findings available to the public directly, although it did issue a report on Improving Government Procurement in 2013 that includes some of their conclusions. Specifically, the NAO notes that the then ongoing reform strategy has the potential to achieve significant savings, but faces a number of challenges including quality and consistency of data collected, and reported lack of accountability between agencies and the central purchasing body GPS, inconsistent contract management across categories of goods, and the quality of customer service^{xvi}.

The Mystery Shopper Programme, through which small businesses can report on their experiences with government and any issues they encounter therein, is another channel through which irregularities in the procurement system can be tracked. The most recent reports highlight a number of problems, including the length and complexity of PQQs, the design of framework agreements or the fact that authorities did not provide sufficient advance warning on the opportunity to form a consortium^{xvii}.

Auditors from the EC and ECA have detected a number of irregularities in the field of public procurement related to mixing of selection and award criteria, lack of documentation and audit trail, direct negotiation with bidders during the evaluation process, adjustment of contracts in the absence of unforeseen or unforeseeable circumstances, and use of overly restrictive selection criteria that disadvantage foreign firms, undermining the single market. These irregularities have contributed to the imposition of multiple financial corrections. National authorities are currently implementing an Action Plan to review procurement procedures for ESI funds above EU thresholds. Welsh and Scottish authorities have also faced financial corrections arising from irregularities.

HM Treasury has expressed its intention to improve their management of ESI funds, for example via a statement in 2012 on the use of the EU budget and measures to counter mismanagement indicating their intention to strengthen Parliamentary scrutiny over the government's management of EU funds^{xviii}. An interim report has also been published by the UK government in order to maintain transparency on the use of EU funds^{xix}.

Outlook

UK procurement policy will focus on two tasks in the coming years: implementing the current set of reforms, and enacting the remaining EU procurement Directives. The former includes meeting a number of currently unrealised goals, including in e-procurement uptake, central procurement service utilisation, SME penetration, and staffing levels. In addition, the UK government has set a goal of substantially expanding its pool of suppliers. Currently, EUR 55 billion go to just 39 suppliers. It also means working out the transitional issues in already existing reforms to ensure a smoother functioning and improved customer service.

In terms of the latter goal, coming into compliance with the new EU Directives will pose its own implementation challenges. In particular, the new regulation should lead to a shift away from restricted procedures towards more open formats, a substantial departure for UK contracting bodies and suppliers that will likely result in transition costs for existing contracting authorities.

ANALYSIS

Strengths

In terms of perception of corruption, the UK procurement system appears to be one of the more efficient and corruption-free systems in the EU, delivering significant value for money to taxpayers and a relatively fair and transparent process to businesses. The e-procurement environment is quite advanced and is being widely used, and there are adequate feedback channels and remedies for those who experience irregularities.

Despite the strong performance of UK institutions, efforts to improve the system through reform appear to be ongoing, and have shown real success. E-procurement uptake rates and SME involvement are increasing, delays between publication and award are decreasing, centralisation and standardisation of contracts and procedures are progressing, and estimated financial savings to citizens are substantial.

In addition, despite the still challenging economic environment, the UK has been incorporating social and environmental priorities as mandatory elements of the procurement process.

Weaknesses

Given the pace of reform in recent years, it is not surprising that the system is experiencing some transitional issues in implementation. Agency use of centralised purchasing services has repeatedly fallen short of established targets due to a lack of integration and inconsistent quality of centralised contracts. In some cases, central purchasing service platforms were incompatible with agency systems, leading to technical barriers^{xvi}.

Despite the progress made, public opinion of the procurement system indicates there is still room for improvement. According to a 2013 survey by the Confederation of British Industry trade group, 35% of firms surveyed say they are still facing long PQQs, and 61% feel that procurement practitioners lack commercial understanding when dealing with procurement tenders^{xx}.

In terms of ESI funds management, the UK continues to face issues at audit related to non-compliance with the principles of transparency, non-discrimination and equal treatment of the candidates.

Recommendations

- **ESI funds management issues:** The UK has been subject to repeated sanctions by EU auditors for its non-compliance with the principles of transparency, non-discrimination and equal treatment of the candidates.
 - EU standards and regulations must be incorporated into the UK system in a more systematic way.
 - Transparency and recordkeeping in particular should be prioritised.
- **Integrate CCS:** The recently established central purchasing body and managed purchases services at the CCS are still in a state of transition.
 - Enhance the harmonisation of systems between the CCS and other central government agencies to make centralise and managed purchasing more seamless.
- **Improve bidder experience:** Economic operators cite excessive administration burdens, such as long PQQs, and lack of commercial expertise on the part of public procurement practitioners, as problematic.
 - Continue efforts to streamline administrative burdens, including further reduce the length of PQQs to less than 95 days.

- Develop market knowledge and business orientation through dedicated training and in taking these aspects into account when hiring procurement professionals.

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- ⁱ HM Government (2013), Small Business: GREAT Ambition, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266212/bis-13-1313-small-business-great-ambition-FINAL.pdf
- ⁱⁱ Llywodraeth Cymru Welsh Government, Procurement Route Planner, Driving best-practice procurement in Wales, available at: <http://prp.wales.gov.uk/planners/social/planning/developprocplan/selectionapprtender/restrictedtenderprocedure/>
- ⁱⁱⁱ Cabinet Office - Government Response to the Consultation on UK Transposition of new EU Procurement Directives, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/400242/Government_Response_to_the_Consultation_on_UK_Transposition_of_new_EU_Procurement_Directives_Public_Contracts_Regulations_2015.pdf
- ^{iv} Cabinet Office (2015), Crown Commercial Service, Procurement Policy Note 02/15 : Public Contracts Regulations 2015, 6 February 2015, available at: <https://www.gov.uk/government/publications/procurement-policy-note-0215-public-contracts-regulations-2015>
- ^v European Directives on Procurement and Concessions Status of Transposition Process, available at: http://www.linklaters.com/pdfs/mkt/paris/Transposition_of_European_Directives_on_Procurement_and_Concessions.pdf
- ^{vi} The Scottish Government – Scottish Procurement & Commercial Department, available at: <http://www.scotland.gov.uk/About/People/Directorates/SPCD>
- ^{vii} OECD, Public Procurement Review Procedures Report, available at: [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=ccnm/sigma/puma\(2000\)114](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=ccnm/sigma/puma(2000)114)
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- ^{ix} Crown Commercial Service Commercial and procurement training, available at: <https://www.gov.uk/commercial-and-procurement-training>
- ^x Government Procurement Service (2014) Annual Reports and Accounts 2013/2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/340927/4060-14_government_procurement_service_Annual_RA_201314.pdf
- ^{xi} European Commission (2015), DG MARKT, E-procurement uptake.
- ^{xii} National Fraud Authority (2013), Annual Fraud Indicator, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/206552/nfa-annual-fraud-indicator-2013.pdf
- ^{xiii} HM Government (2014), UK Anti-Corruption Plan, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388894/UKantiCorruptionPlan.pdf
- ^{xiv} SBRI Innovate UK website, available at: <https://sbri.innovateuk.org/competitions>
- ^{xv} SBRI Innovate UK website, available at: <https://sbri.innovateuk.org/sbri-for-government-departments-public-bodies>
- ^{xvi} National Audit Office (2013), Annual Report from the Comptroller and Auditor General, Improving Government Procurement, p.8 , available at: <http://www.nao.org.uk/wp-content/uploads/2013/03/government-proc-full-report.pdf>
- ^{xvii} Mystery Shopper Progress Report: Trends from the first three years, February 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/337080/Mystery_Shopper_Three_Year_-_Report.pdf
- ^{xviii} CBI (2014), Getting a better purchase, Public Sector Procurement Report, February 2014, available at: http://www.cbi.org.uk/media/2587768/20140218_final_getting_better_purchase.pdf
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