



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 - Summary

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ABSTRACT

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

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

EXECUTIVE SUMMARY

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

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

Background and context

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

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

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

Methodology

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

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

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

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

Survey results

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

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

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

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

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

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

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

Country profiles

Section 4 presents the individual country profiles for each MS, included in Appendix 3. A sample table at the beginning summarises some of the most salient procurement facts and figures in each MS including information on the annual value of procurement, the procedures used, the share of procurement by buyer and contract type, fulfilment of the procurement ex ante conditionality criteria at the start of the 2014-2020 ESIF programming period, as well as indicators on e-procurement, and perceived corruption.

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

Case studies

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

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

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

Good practice

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

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

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

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

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

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

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

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

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

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

Conclusion and recommendations

Section 7 presents the main conclusions of the study, including policy recommendations for both the MS and the European Commission (EC) based on the information gathered through the desk research, the field visits conducted in 15 MS, the case studies and the survey of public procurement practitioners. While country-specific recommendations are

included in each country profile, a number of common issues and themes emerged during the course of the study that are broadly applicable to many MS. The recommendations have been elaborated around 7 topics, including human resources, systems and tools, governance structures, better policy making, law enforcement, data collection, and transparency.

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

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

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

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

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

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

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

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

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

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