

**FINAL REPORT**  
Measurement data and analysis  
as specified in the specific contracts 5&6 on Modules 3&4  
under the Framework Contract n° ENTR/06/61  
Report on the Public Procurement Priority Area

**EU PROJECT ON BASELINE MEASUREMENT AND  
REDUCTION OF ADMINISTRATIVE COSTS**

5<sup>th</sup> March 2009

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## Executive Summary

The European Commission has embarked on an ambitious ‘Better Regulation’ exercise aimed at a reduction of the administrative burden for European business by 25% by 2012. A key part of its Action Programme consists of measuring the administrative cost for business of meeting obligations to provide information under selected items of the EU legislation and the relevant national implementing legislation. A Consortium consisting of Capgemini, Deloitte and Ramboll Management was engaged by the European Commission to carry out the measurement.

The Standard Cost Model (SCM) that was used for this measurement is a method for determining the administrative costs for business imposed by regulation. The SCM method is a way of breaking down regulation into a range of manageable components that can be measured. The SCM neither addresses nor questions the policy objectives of each piece of regulation. As such, the measurement and analysis focus only on the administrative activities that must be undertaken in order to comply with regulation, not on the benefits that accrue from the legislation.

This document is the Final Report on the measurement of the Public Procurement Priority Area (Priority Area). Its results are based on measurements conducted in six Member States, namely Cyprus, Finland, France, Hungary, Slovakia, and Slovenia, together with existing data from three Member States – Austria, Germany and the United Kingdom - that had previously conducted baseline measurements. This report presents:

- the results of the measurement;
- cost data for all 27 Member States as input for the prioritization and analysis of future simplification work;
- analysis of the measurement data;
- first suggestions collected during interviews and workshops on how to reduce the administrative burden for business arising from the Information Obligations identified<sup>1</sup>.

The Public Procurement legislative package approved in 2004 by the European Parliament and the Council of Ministers of the European Union aims at simplifying and modernising procurement procedures.

The correct and rapid implementation of the Directives listed below will continue to open up Public Procurement, improve the functioning of the Internal Market and enable the EU to reap the full benefits of an enlarged Internal Market.

The legislation in scope for this Priority Area (Priority Area) is:

Public Procurement
Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

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<sup>1</sup> During the interviews and workshops with businesses and experts several initial simplification ideas were collected. A structured and detailed analysis of possible reduction measures is being conducted as part of Module 5. Thus, this report only contains a summary of the suggestions gathered during the measurement phase and does not represent a final list of simplification suggestions.

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts.

Commission Regulation (EC) No 1564/2005 of 7 September 2005 establishing standard forms for the publication of notices in the framework of Public Procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council (Text with EEA relevance).

This Priority Area focuses specifically on the administrative cost and burden facing economic operators, not on the cost incurred by contracting authority.

### **Main findings in the Public Procurement Priority Area**

- On the basis of two Directives and one Regulation, a total of seven EU Information Obligations (IO) and Possibilities Stated in the EU Legal Acts were identified. Commission Regulation (EC) No 1564/2005 does not include Information Obligations.
- The seven EU IOs resulted in 194 national IOs (including 26 Possibilities stated in the EU Act and three Possibilities not stated in the EU Act) across the 27 Member States.
- The total administrative cost of these seven IOs is estimated at a total of €234 million EU-wide.
- Of the €234 million of administrative cost, 92.35% (€216 million) have been classified as administrative burden<sup>2</sup>.
- Two IOs — “Submission of document(s) related to selection criteria” and “Submission of document(s) related to the exclusion criteria” (in both Directives 2004/17/EC and 2004/18/EC) — alone account for €229 million in administrative costs, representing 97.94% of the total administrative cost caused by EU IOs.

The Table below shows the total administrative cost of the top five most burdensome EU IOs.

<sup>2</sup> The UK, alone of the EU Member States, has taken a position that IOs facing business under Public Procurement legislation include a material amount of business-as-usual (BAU) costs. This is linked to a conceptual view that public procurement laws are different from others covered in the Action Programme in that they do not seek to compel businesses to act in a certain way in line with the will of the legislator – rather, they seek to regulate the practical procedures in a situation where businesses are offered commercial opportunities. The conclusion was that a “business-as-usual” percentage of 25% was attributed to the administrative cost for the UK. While we have not followed this line of thinking, we have retained the UK approach for the two IOs where existing UK measurement data has been used in our figures. That explains the presence of the €17.9 million of BAU cost in the total figures, which in fact represents 25% of the UK administrative cost for those two IOs.

Table 1: Total Administrative Cost of top five EU IOs and National Obligations going beyond EU Requirements

EU IO	EU Legislation	EU requirement	National obligation going beyond EU requirements		Total	Total Administrative Burdens	
			Possibility stated in the EC act	Possibility not stated in the EC act		Admin. costs (€ x 1,000)	Share of Admin. cost (%)
1. Submission of document(s) related to the selection criteria - 2004/18	Directive 2004/18/EC	Admin. costs (€ x 1,000)	Admin. costs (€ x 1,000)	Admin. costs (€ x 1,000)	Admin. costs (€ x 1,000)	Admin. burdens (€ x 1,000)	Share of Admin. cost (%)
		196,533.30	0	236	196,769.40	178,961.50	90.95
2. Submission of document(s) related to the exclusion criteria - 2004/18	Directive 2004/18/EC	20,406.40	0	64.2	20,470.60	20,470.60	100
3. Submission of document(s) related to the selection criteria - 2004/17	Directive 2004/17/EC	9,418.80	0	0	9,418.80	9,310.00	98.85
4. Provision of additional documentation/information	Directive 2004/18/EC	0	4,419.80	0	4,419.80	4,419.80	100
5. Submission of document(s) related to the exclusion criteria - 2004/17	Directive 2004/17/EC	2,747.60	0	0	2,747.60	2,747.60	100
<b>TOTAL</b>		<b>229,106.10</b>	<b>4,419.80</b>	<b>300.20</b>	<b>233,826.20</b>	<b>215,909.50</b>	<b>92.35</b>

This Table is based on data compiled by the Consortium.

\* Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

\*\* Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

Taking both Directives into account, the IO “Submission of document(s) related to selection criteria”<sup>3</sup> is the most expensive IO. The IO covers 88.03% of the total administrative cost of the Priority Area. Of all data requirements that are part of this IO, the technical criteria required by the contracting authority are the most time-consuming to collect.

The administrative cost of the IO “Submission of document(s) related to the exclusion criteria” accounts for 9.91% of the total cost of the Priority Area. The Possibility stated in the EU Legal Act, i.e. in Directive 2004/18/EC “Provision of additional information/documentation” accounts for nearly 1.89% of the total administrative cost of the Public Procurement Priority Area. The Consortium focused on measuring the obligations for the submission of documents related to the selection and exclusion criteria faced by economic operators when tendering under Public Procurement.

An important reality in relation to the Public Procurement Directives is that they stipulate that contracting authorities check the “suitability” of participants in tenders<sup>4</sup>. The Directives

<sup>3</sup> In some Member States only the winning business in a public procurement procedure is obliged to submit the documents related to the selection criteria (the Directives allow for that option). The population data used in this report is based on the assumption that **all businesses participating in tenders** submit these documents. While the European Commission has approved this approach, readers should be aware that the total cost figures for the IOs dealing with selection criteria are likely to be overstated as a result. See Annex 5.3 and 5.4 for an extract of the Directives

<sup>4</sup> e.g. in Directive 2004/18, article 44.

further provide a list of elements that contracting authorities may examine in performing this check, while not prescribing exactly what these authorities should do – nor stipulating either minimum or maximum requirements. However, the mandatory requirement to check tenderers' suitability is evidence that EU law requires contracting authorities to implement procedures, and that it further grants the authorities the freedom to do this in the way they decide themselves, while including detailed examples of the type of material that contracting authorities should examine. In this context, Member States have determined their own approaches to implementing the Directives. To provide the detail of the EU provisions we have included extracts from the relevant sections of the Directives in the Annex to this report.

A key point in relation to burden reduction in Public Procurement is that procurement governed by the EU Directives accounts for about 20% of all procurement in the European Union. The remaining 80%, which is below the thresholds in the Directives is regulated by national law, or is related to military procurement. However, if administrative simplification in this area is implemented by the Member States as a consequence of reform at EU level, there is every likelihood that the reformed procedures will also become implanted in national procurement practices. Moreover as some Member States use similar regulation below the threshold as well as above that at which EU law applies, the reduction potential is not only applicable for the EU legislation above the threshold, but also for the national regulations in force below the threshold. In this way the benefit of EU-level burden reduction should be greatly amplified by its extension to the “below threshold” procurement procedures of which there are many more.

In all Member States, steps have been taken to introduce eProcurement<sup>5</sup> to a broader public. Public procurement by electronic means can improve and simplify the way government procurement operates. It helps enterprises identify contract opportunities and supply their goods and services across the EU Internal Market. Examples of eProcurement platforms are: [www.publicprocurement.be](http://www.publicprocurement.be) in Belgium; [www.hankintailmoitukset.fi](http://www.hankintailmoitukset.fi) in Finland; [www.marches-publics.gouv.fr](http://www.marches-publics.gouv.fr) in France, and [www.govopps.co.uk](http://www.govopps.co.uk) in UK.

Initial simplification suggestions include ensuring that contracting authorities set clear and specific selection criteria which are proportionate to the value of the tender, interconnect databases and official registers, create a central database containing all the documents and certificates required, and provide more and better training on and awareness-raising of the procedures.

These preliminary suggestions, the baseline measurement data, the analysis of the business processes implemented by businesses to comply with the IOs and different ways of handling the IOs across Member States, all contribute to this report as a strong basis for the work the Consortium is currently performing for identifying, analysing and prioritising suggestions for reducing the administrative burdens linked to the IOs in scope of this measurement.

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<sup>5</sup> See Table 10 for the degree of Implementation of eProcurement steps in EU Member States. More information on eProcurement is also provided in the Consortium's additional deliverable no. 4 - *Report on 'implementing measures..*

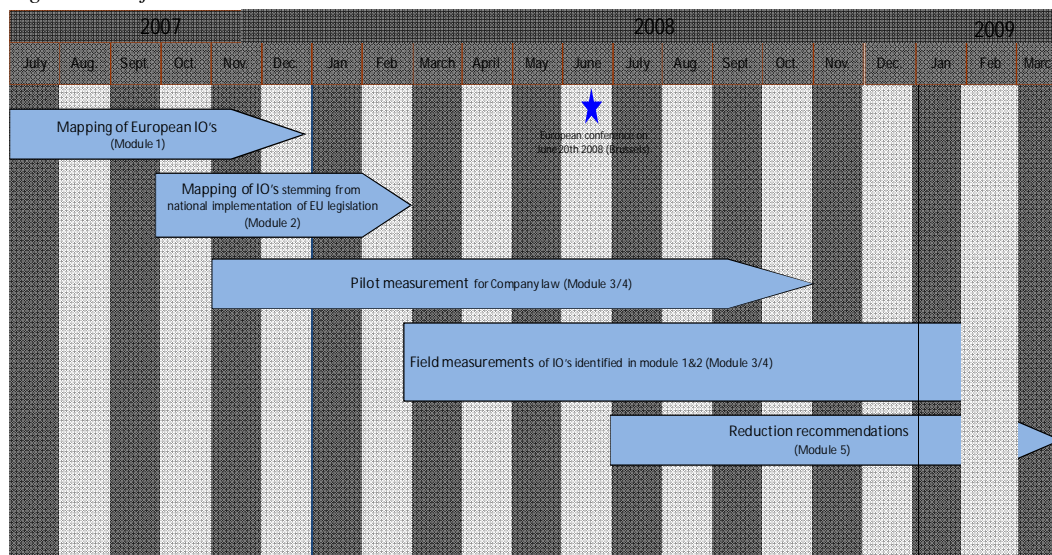
# 1. Introduction

The “EU Project on baseline measurement and reduction of administrative costs” covers Information Obligations (IOs) stemming from 42 Community legislative acts<sup>6</sup> and from the related national transposition acts, grouped into 13 Priority Areas (Priority Areas):

- Agriculture and Agricultural Subsidies
- Annual Accounts/Company Law
- Cohesion Policy
- Environment
- Financial Services
- Fisheries
- Food Safety
- Pharmaceutical Legislation
- Public Procurement
- Statistics
- Tax Law (VAT)
- Transport
- Working Environment/Employment Relations.

The Project uses the EU Standard Cost Model (SCM) methodology and is structured in five modules, as shown in the following Figure:

Figure 1: Project structure and timelines



By Capgemini/Deloitte/Ramboll Management.

As the Figure above shows, the first step was to map the Information Obligations (IOs) (Modules 1 & 2). The focus was both on the IOs stemming directly from EU legislation and on those stemming from the national implementation of EU legislation. Moreover, the “over-implementation” (or “gold-plating”) of an EU legal Act at national level, in terms of

<sup>6</sup> See [http://ec.europa.eu/enterprise/admin-burdens-reduction/docs/42\\_LegislativeActs.pdf](http://ec.europa.eu/enterprise/admin-burdens-reduction/docs/42_LegislativeActs.pdf).

additional IOs or procedural requirements, amended frequency, or population (i.e. coverage) – the so-called national obligations going beyond EU Requirements – was also documented, as it could lead to an increase in administrative costs linked to the provisions of the EU legislation.

The next phase was to determine the administrative costs resulting from the EU IOs and national obligations going beyond EU requirements (Modules 3 & 4 respectively) through interviews and workshops, along with estimates made by experts. Data was collected in a sample of businesses in six Member States (the ‘Measurement Countries’) and supplemented by existing data from Member States having already undertaken SCM measurements (the ‘Baseline Countries’)<sup>7</sup>. Based upon this dataset, the administrative cost for the remaining EU Member States (the ‘Extrapolation Countries’) was estimated through extrapolation. National obligations going beyond European requirements were measured in all countries where they occur as they are specific to each Member State (Member State).

The current work within this project focuses on the development of reduction proposals to reach the European Commission’s goal of a 25% reduction in the administrative burden by 2012 (Module 5).

This report covers the results of the work undertaken for Modules 3 and 4 for the Public Procurement Priority Area. More specifically, it contains:

- In Section 2: an overview of the Public Procurement Priority Area Framework. This section presents the focus of the Priority Area, the chosen measurement approach as well as the high-level findings of the mapping and measurement phases;
- In Section 3: an analysis of the Legal Acts and the most burdensome IOs in scope;
- In Section 4: an outlook section looking ahead to the next phase;
- Annexes, including a listing of methodological challenges faced in the Priority Area.

It does not include a detailed description of the Action Programme for Reducing Administrative Burdens in the European Union or of the underlying methodology followed by the Consortium. The Main Report on the Measurement data and analysis as specified in the specific contracts 5&6 on Modules 3&4 under the Framework Contract n° ENTR/06/61 presents both of these together with the overall results of 13 mainstream Priority Areas.

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<sup>7</sup> European Commission Communication, 24 January 2007, *Action Programme for Reducing Administrative Burdens in the European Union* – COM (2007)23 final.

## 2. Public Procurement Priority Area Framework

This section sets the scene for the detailed presentation of the results of the data collection in the sections which follow. This section contains:

- an introduction to the Directives and Regulation in scope;
- a summary of the general methodological concept and the measurement approach chosen in the Priority Area; and
- an overview of the high-level findings of the mapping phase and the measurement results.

### 2.1 Focus of the Priority Area

The Table below shows the legislation in scope.

*Table 2: List of legislation in scope*

Public Procurement
Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.
Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts.
Commission Regulation (EC) No 1564/2005 of 7 September 2005 establishing standard forms for the publication of notices in the framework of Public Procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council (text with EEA relevance).

This Table is based on data compiled by the Consortium.

The target group in scope for this measurement is ‘economic operators’, covering equally the concepts of contractor, supplier and service provider. The terms ‘contractor’, ‘supplier’ and ‘service provider’ mean any natural or legal person or public entity or group of such persons and/or bodies which offers on the market, respectively, the execution of works, products or services.

### 2.2 Measurement Approach

The methodology used during this project is based on the adapted EU SCM Manual submitted as part of the final Module 1 report in mid-February 2008. A short introduction to the main characteristics of the general measurement approach as well as the approach chosen within the Public Procurement Priority Area is given below. For more information on the methodology, please see the Main Report and/or the adapted EU SCM Manual.

## 2.2.1 General Methodological Concepts

The EU Standard Cost Model (EU SCM) breaks down administrative costs imposed by Legal Acts into components that can be assessed with reasonable accuracy<sup>8</sup>. Thanks to this analytical approach, it is possible to:

- locate the most costly obligations and the greatest reduction opportunities,
- formulate reduction proposals, and
- determine at which level reduction measures should be adopted.

The EU SCM methodology neither addresses nor questions the policy objectives of each piece of legislation. As such, the measurement focuses only on the administrative activities that must be undertaken in order to comply with legislation and not on whether the legislation itself is reasonable or not.

While the methodology may also be applied to civil society and the public and private sectors, this project focuses exclusively on the administrative costs for business.

Thus, administrative costs are defined as the costs incurred by enterprises in meeting legal information obligations. An Information Obligation (IO) is a legal obligation placed on businesses to provide information on their activity or production, either to public authorities or to private parties<sup>9</sup>. Every IO has attributes that describe the:

- content of the data required or “data requirement” (what must be provided),
- target group (who must provide it), and
- frequency (when it must be provided).

IOs stemming from EU legislation are labelled EU IOs, while IOs stemming from national implementation are called national IOs.

Some EU legislative acts also mention the *possibility* for Member States to ask for additional information (i.e. “...Member States may ... require the inclusion of other statements in the annual accounts in addition to the documents referred to in the first subparagraph ...”). Such Possibilities Stated in the EU Legal Act are not to be understood as EU IOs, insofar as Member States are not obliged to ask for that information. Nevertheless such Possibilities Stated in the EU Legal Act were documented by the Consortium as they often pave the way for additional legislative requirements introduced at national level.

In many cases the possibility for Member States to ask for additional information also exists even though it is not stated in the EU legal text<sup>10</sup>. Listing such Possibilities Not Stated in the EU Legal Act as part of the description of EU legal texts would be fastidious and inefficient. Documenting cases of national obligations going beyond what the EU requires has, however, been part of the screening of national IOs.

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<sup>8</sup> The SCM does not aim at producing statistically valid results, but rather estimates (i.e. Figures based on relatively small samples or expert judgment). Considering the level of detail and the number of parameters involved, conducting statistical measurements would not be cost-efficient.

<sup>9</sup> These private parties are usually consumers and/or other businesses.

<sup>10</sup> As a general principle, Member States have the right to legislate on any issues as long as “Possibilities not Stated in the EU Legal Act” do not contradict EU law.

Together, the Possibilities stated in the EU Legal Act and the Possibilities not stated in the EU Legal Act are called “National obligations going beyond EU Requirements”.

When analysing the administrative costs, a distinction should be made between information that would be collected and processed by businesses even in the absence of the legislation and information that is solely collected because of a legal obligation. The former are called “business-as-usual” (BAU) costs<sup>11</sup>, the latter administrative burdens. Added together the administrative burdens and business-as-usual costs constitute the administrative costs. Having quantitative figures on the business-as-usual costs is of crucial importance for the Commission in the light of its reduction target, which is expressed in terms of administrative burdens (not administrative costs).

The objective of Modules 1 and 2 was to carry out a preparatory analysis of the EU and national legislation to form the foundation for the field measurements of administrative costs in the 27 European Member States. Within Module 1 and 2, the IOs stemming directly from EU legislation in scope as well as any national obligations going beyond the EU Requirements in scope of this project were identified and registered<sup>12</sup>.

In Modules 3 and 4 different approaches were used to collect and calculate the information needed to determine the administrative costs at the EU level as well as at the national level. The remainder of this section presents a brief overview of these approaches and the underlying rationales.

Experience from all previous SCM measurements shows that the top 20% most burdensome IOs in any given area will represent 80% of the costs. Following this principle, an initial assessment of population and cost parameters was conducted and an estimation of the expected administrative costs for each EU IO produced.

To prioritise the EU IOs, an expert assessment was carried out of the following:

- Expected number of businesses concerned/number of occurrences;
- Complexity of the business process that businesses implement to comply with the IO (time spent).

The purpose of the prioritisation was to select those IOs which had the highest estimated cost. The position on the priority list, i.e. if the IOs belonged to the top 20% or the remaining 80% of estimated costs, determined the manner in which data was collected. The 20% most burdensome IOs within each Priority Area were designated as Prioritised IOs and earmarked for in-depth measurement. The remaining 80% for each Priority Area were marked as Non-prioritised IOs and were therefore subject to less rigorous measurement. The Prioritised IOs were analysed and measured through workshops and interviews, whereas IOs with lower estimated costs were costed through telephone interviews and expert assessments, or similar less intensive methods. In this way, the resources were

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<sup>11</sup> A description on how the BAU costs were calculated can be found in chapter 5.2. of the Main Report.

<sup>12</sup> For more information on Module 1 and 2, please see first edition of the adapted EU SCM manual and the Final Report for Module 1 and 2.

predominantly concentrated on collecting data on the most costly IOs.<sup>13</sup> The demarcation between Prioritised IOs and Non-prioritised IOs was made at Priority Area level only and not at overall project level, as to have done the latter would have led to some of the less burdensome Priority Areas having only Non-prioritised IOs.

The IOs selected for interviews and workshops were clustered in groups of IOs that could logically be covered by interviews at about the same time, most often because they involved the same target group and administrative tasks that the same employee type usually performs. The result was a list of one group of IOs.

EU IOs were measured in a sample of six Member States. The data collected in the six Measurement Countries supplemented with data from existing measurements on the EU IOs from the Baseline Countries were extrapolated to similar IOs in the other countries and aggregated to the EU level. However, for the national obligations going beyond EU requirements, data was collected in each country where they were identified. For the Public Procurement Priority Area some additional expert assessments were needed possibilities not stated in the EU Legal Act. Obviously, extrapolation cannot apply to these as they are peculiar to the specific country.

The extrapolation exercise consisted of predicting cost and can basically be understood as generating the best estimates of the administrative activities conducted by businesses in a country where data has not been collected, based on data from other countries where data was collected. The SCM does not aim at producing statistically valid results, but rather estimates (i.e. figures based on relatively small samples or expert judgment). Considering the level of detail and the number of parameters involved, conducting statistical measurements would not have been cost-efficient.

The selection of Member States for measuring the prioritised IOs was based on the following criteria:

- Population of the countries
- Spread of geographic location
- Duration of EU Membership
- If/when legislation is applicable
- Implementation of Possibilities Stated in the EU Legal Acts.

The purpose of using the selection criteria was to guarantee that the results represented different population/country sizes within the EU. Furthermore, it ensured that the data collection covered different geographical regions (geographically and in terms of the historical development of the EU). Lastly, the selection criteria were designed to ensure that the Member States chosen for data collection had transposed the legislation. Combined, the selection criteria ensured a sound foundation for the extrapolation.

One of the requirements of the EU project on baseline measurement and reduction of administrative costs was to follow a ‘full Member State coverage measurement approach’.

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<sup>13</sup> In a few cases the data collection showed that non-prioritised IOs were more cost intensive than prioritised IOs. Due to the iterative process in the project and the time and resource constraints, this had to be accepted without changing the data collection approach.

Thus Member States which were relatively less important in terms of size were also part of the measurement. As a result, the sample selected is not always representative for each Priority Area. Further studies would be needed to achieve fully representative results.

When data collection was carried out, the results were summarised for each business interviewed. These empirical results were then standardised with the objective of providing a single estimate of what would be required for a normally efficient business to complete each administrative activity in order to comply with a given national IO.

By combining the data collected from the workshops, face-to-face interviews and telephone interviews, a qualitative assessment was made of the resources a business devotes to each cost parameter related to fulfilling an IO. More specifically, an assessment was conducted on internal time spent and employee type per activity, consultancy costs, and costs of equipment. The goal of the standardisation is not to average the cost data obtained through the workshops and interviews, but to get a plausible result for a normally efficient business for each IO. The normally efficient business is defined as a business within the target group that performs administrative activities required by the IO neither better nor worse than may reasonably be expected.

## 2.2.2 Measurement Approach Chosen for the Public Procurement Priority Area

The prioritised Information Obligations (IOs) are:

- “Submission of document(s) related to the selection criteria” (Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors);
- “Submission of document(s) related to the exclusion criteria” (Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors);
- “Submission of document(s) related to the selection criteria” (Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts);
- “Submission of document(s) related to the exclusion criteria” (Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts).

The other, non-prioritised IOs are:

- “Provision of additional documentation/information” (Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts);
- “Provision of details on the constituent elements of an abnormally low tender” (Directive 2004/17/EC of the European Parliament and of the Council of 31 March

2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors);

- “Provision of details on the constituent elements of an abnormally low tender” (Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts).

The prioritised IOs were addressed specifically in the interviews and workshops with businesses. For the non-prioritised IOs, the administrative costs were assessed by holding interviews with experts.

For the prioritised IOs, data were collected via interviews, together preceded by sending an information package and follow up if needed by second interviews. A representative sample of economic operators was selected per country in order to perform the measurement, with a focus on the construction sector, as agreed with DG MARKT. For the prioritised IOs, data was obtained from at least five economic operators.

The Member States chosen for measurement were Cyprus, Finland, France, Hungary, Slovakia and Slovenia. In addition to those six countries, data from countries with existing measurements were also used if usable. Those countries were Austria, Germany, Denmark, the Netherlands and the United Kingdom. Unfortunately, there was no usable information for Denmark and the Netherlands that could be used in the scope of the Public Procurement Priority Area.

### 2.3 High-level findings of the EU and national mapping in the Public Procurement Priority Area

The following section summarises the main findings of the EU and national mapping in the Public Procurement Priority Area which resulted from the work done during Module 1 on the identification and classification of EU IOs and Possibilities Stated in the EU Legal Act, followed by the identification of national IOs transposing EU legislation as well as the linking of EU IOs and national IOs in Module 2. The full results of this were presented in the final reports on Modules 1 and 2 of the EU project on baseline measurement and reduction of administrative costs<sup>14</sup>.

#### 2.3.1 Main Results of the EU Mapping

The Table below provides an overview of EU IOs and Possibilities Stated in the EU Legal Act per item of legislation.

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<sup>14</sup> For the details of the mapping please refer to the reports on Modules 1 and 2.

Table 3: Total Number of EU IOs and Possibilities Stated in the EU Legal Act within the Public Procurement Priority Area

EU Legislation	Number of EU IOs	Number of possibilities	Total
Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors	3	0	3
Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts	3	1	4
Total	6	1	7

This Table is based on data compiled by the Consortium.

The following EU IOs were identified in Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors:

- “Submission of document(s) related to the exclusion criteria”
- “Submission of document(s) related to the selection criteria”
- “Provision of details on the constituent elements of an abnormally low tender”.

The following EU IOs were identified in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts:

- “Submission of document(s) related to the exclusion criteria”
- “Submission of document(s) related to the selection criteria”
- “Provision of details on the constituent elements of an abnormally low tender”.

The following Possibility stated in the EU Legal Act was identified in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts:

- “Provision of additional documentation/information.”

Commission Regulation (EC) No 1564/2005 does not include Information Obligations.

### 2.3.2 Main Results of the National Mapping

The Table below provides an overview of the IOs identified and National Obligations going beyond EU Requirements identified per country.

We would like to draw attention to the fact that there are a number of cases where no national equivalent of the EU requirements was found. An IO may be ‘missing’ because:

- The IO was not found in the pieces of legislation, and this was validated by the European Commission and the national Single Points Of Contact for this project;
- The EU Directive is not applicable in a Member State;
- The EU Directive had not been transposed in a Member State
- The EU Directive had been transposed, but after the baseline date for this project (9 July 2007).

Table 4: Overview of National IOs and National Obligations going beyond EU Requirements

	EU Requirements				National Obligations going beyond EU Requirements		Total # of national IOs
	# of EU Requirements Identified	# of EU Requirements not transposed	# of EU Requirement transposed in MS	# of National IOs transposing EU Requirements	Possibilities stated in the EU Act	Possibilities not stated in the EU Act	
AT	6		6	6	1	0	7
BE	6		6	6	1	1	8
BG	6		6	6	1	0	7
CY	6		6	6	1	0	7
CZ	6		6	6	1	0	7
DK	6		6	6	1	0	7
EE	6		6	6	1	0	7
FI	6		6	6	1	0	7
FR	6		6	6	1	0	7
DE	6		6	14	1	0	15
EL	6		6	6	1	1	8
HU	6		6	6	1	1	8
IE	6		6	6	1	0	7
IT	6		6	6	1	0	7
LV	6		6	6	1	0	7
LT	6		6	6	1	0	7
LU	6		6	6	1	0	7
MT	6		6	6	1	0	7
NI	6		6	6	1	0	7
PL	6		6	6	1	0	7
PT	6		6	6	0	0	6
RO	6		6	6	1	0	7
SK	6		6	6	1	0	7
SI	6		6	6	1	0	7
ES	6	2	4	4	1	0	5
SE	6	3	3	3	1	0	4
UK	6		6	6	1	0	7
Total	162	5	157	165	26	3	194

This Table is based on data compiled by the Consortium.

The EU IOs identified in the Directives in scope for the Public Procurement Priority Area resulted in 194 national IOs, of which 26 were Possibilities Stated in the EU Legal Act and three Possibilities Not Stated in the EU Legal Act. The Possibilities Not Stated in the EU Legal Act relate to the content of the IO, stipulating in most cases that more detailed information is required in terms of documents related to the selection criteria (Greece and Hungary) or in terms of documents related to the exclusion criteria (Belgium).

Table 5: Overview of Possibilities not stated in the EU Legal Act listed by type

	N° Possibilities not stated in the EU Legal Act	due to content	due to freq or TG
BE	1	1	0
EL	1	1	0
HU	1	1	0
Total	3	3	0

This Table is based on data compiled by the Consortium.

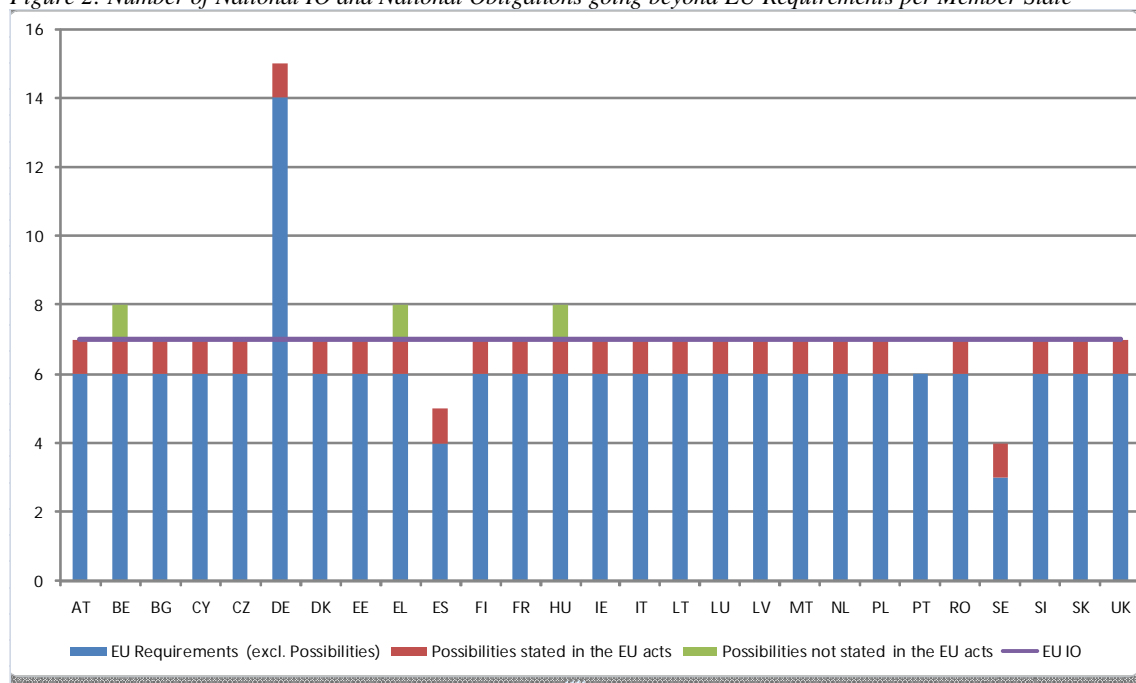
Details on the Possibilities not stated in the EU Legal Act are provided in Chapter 3 which describes the administrative cost and burden per Measurement Country.

At the time of the national mapping, Luxembourg had not transposed Directives 2004/17/EC and 2004/18/EC. The legislation in force was still the result of the transposition of the previous Directives on Public Procurement (93/36/EEC, 93/37/EEC, 92/50/EEC, 93/38/EEC). However, excluding Luxembourg from this model would suggest that the administrative cost is zero. This is not a reasonable representation of the reality, as the IOs in the 2004 Directives differ little from those in the previous legislation. We have therefore assumed that the situation in Luxembourg is the same as in most other Member States and have proceeded as if this were the case. However this is a deviation from our methodology and was done at the specific request of the European Commission.

Spain transposed two IOs after the baseline date<sup>15</sup> and Sweden transposed three IOs after the baseline date.

The Figure below provides an overview of the total number of national Information Obligations and Possibilities not stated in the EU Legal Act.

Figure 2: Number of National IO and National Obligations going beyond EU Requirements per Member State



By Capgemini/Deloitte/Ramboll Management.

Most Member States have a relatively ‘clean’ 1-to-1 transposition (reflected by the horizontal line) but three Member States have a Possibility Not Stated in the EU Legal Act as mentioned before.

At the baseline date, Spain had not transposed two IOs and Sweden three IOs. Portugal did not transpose one Possibility that was stated in the EU legal Act. The obligations that were

<sup>15</sup> July 9<sup>th</sup>, 2007.

not transposed or were not mapped are excluded from the calculation of the total administrative cost.

Germany does not have a clear 1-to-1 implementation of the EU Directives, and has transposed the two Directives into three specific German acts. The three acts set rules on the award of supply and service contracts, construction contracts and freelance service contracts. In terms of IOs, the three acts contain the same IOs (with only slight differences). However, as the subjects regulated in the three acts have different contracting rules, the IOs were mapped separately. The German implementation resulted in a total of 15 mapped IOs which is different from all other Member States.

## 2.4 High-level findings of the measurement in the Public Procurement Priority Area

The following section presents the total administrative costs and administrative burdens in the Public Procurement Priority Area. This is followed by a differentiated analysis by Legal Act and by Member State as well as an overview of the most burdensome IOs. This will form the basis for the detailed analysis in the next chapter.

The total administrative cost for the Public Procurement Priority Area is €234 million. 7.65% of these costs are considered as business-as-usual<sup>16</sup>. Therefore, the administrative burden amounts to €16 million for the Public Procurement Priority Area.

It should be noted that unlike other Priority Areas, this measurement covers all EU legislation relevant to the Priority Area and not only a selection of the Priority Area.

### 2.4.1 Administrative costs and administrative burdens per EU legislation

The 42 pieces of legislation in the 13 priority areas chosen for the measurement exercise within the Action Programme are believed to account for over 80 % of the administrative burden of EU origin<sup>17</sup>. Yet, as expected, within this group large differences were to be found in the costs per Legal Act. An analysis of the administrative costs and burdens stemming from the Legal Acts in scope of the Public Procurement Priority Area follows.

The Table below provides an overview of the total costs per Directive of the EU IOs, National Obligations going beyond EU Requirements as well as the total administrative burden in the Public Procurement Priority Area.

<sup>16</sup> See footnote 2 in relation to UK treatment of BAU.

<sup>17</sup> Commission Working Document, 30 January 2008, COM(2008) 35 final, Reducing administrative burdens in the European Union 2007 progress report and 2008 outlook, p. 3.

Table 6: Administrative Cost and Administrative Burden per item of EU legislation by EU Requirements and National Obligations going beyond EU Requirements

	EU requirement	National obligation going beyond EU requirements		Total Administrative Costs	Total Administrative Burdens		
		Possibility stated in the EC act	Possibility not stated in the EC act		Admin. costs (€ x 1,000)	Admin. burdens (€ x 1,000)	Share of administrative cost (%)
		Admin. costs (€ x 1,000)	Admin. costs (€ x 1,000)				
Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors	12,189.00	0	0	12,189.00	12,080.20	99.11	
Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts	217,314.00	4,419.80	300.3	222,034.00	204,226.10	91.98	
<b>Total</b>	<b>229,502.90</b>	<b>4,419.80</b>	<b>300.30</b>	<b>234,223.00</b>	<b>216,306.30</b>	<b>92.35</b>	

This Table is based on data compiled by the Consortium.

The most burdensome piece of legislation is Directive 2004/18/EC. This piece of legislation accounts for 94.42% of the overall administrative burden in the Priority Area, representing at the same time 94.80% of the total administrative cost for the Public Procurement Priority Area. Of the total administrative cost of Directive 2004/17/EC, 0.89% can be considered as a business-as-usual cost, while 8.02% is attributable to for Directive 2004/18/EC. This small BAU cost comes from the existing measurement in the UK<sup>18</sup>. The Possibility Stated in the EU Legal Act in Directive 2004/18/EC accounts for 1.89% of the total cost of the Priority Area.

Few Possibilities not stated in the EU Legal Act were identified in national legislation. Moreover they only occur rarely and are therefore difficult to quantify. More details about these Possibilities not stated in the EU Legal Act can be found in Chapter 3.

#### 2.4.2 Administrative Costs stemming from EU IOs of International Origin

Each EU IO was analysed in relation to any relevant international regulation. Only the IO “Submission of document(s) related to the exclusion criteria” stems ultimately from international regulation, which has been transposed in both Directives 2004/17/EC and 2004/18/EC in scope of the project. In cases where legally binding international regulation had a similar or analogous content to the EU IO, the EU IO was categorised as an EU IO of International Origin.

The international origin of the IO “Submission of document(s) related to the exclusion criteria” stems from the International Labour Organisation Convention concerning Labour Clauses in Public Contracts<sup>19</sup>, Convention:C094. This accounts for 9.91% of the total administrative cost for Public Procurement.

#### 2.4.3 Administrative costs and administrative burdens per Member State

The project offers the opportunity to identify differences in transposing and administering IOs at national level and thus obtain an insight into factors determining the level of administrative costs. This is important in identifying good practice and in learning how the costs for businesses can be reduced.

<sup>18</sup> UK treatment of BAU – see footnote 2

<sup>19</sup> see <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C094>

### 2.4.3.1 Different methodological approaches

When comparing costs (minutes spent and additional cost) at national level it is essential to recall that the data were collected in three different ways within this project:

- measurement in six Measurement Countries;
- reuse of existing data in the so-called Baseline Countries;
- extrapolation to other Member States of the cost data collected (Extrapolation Countries).

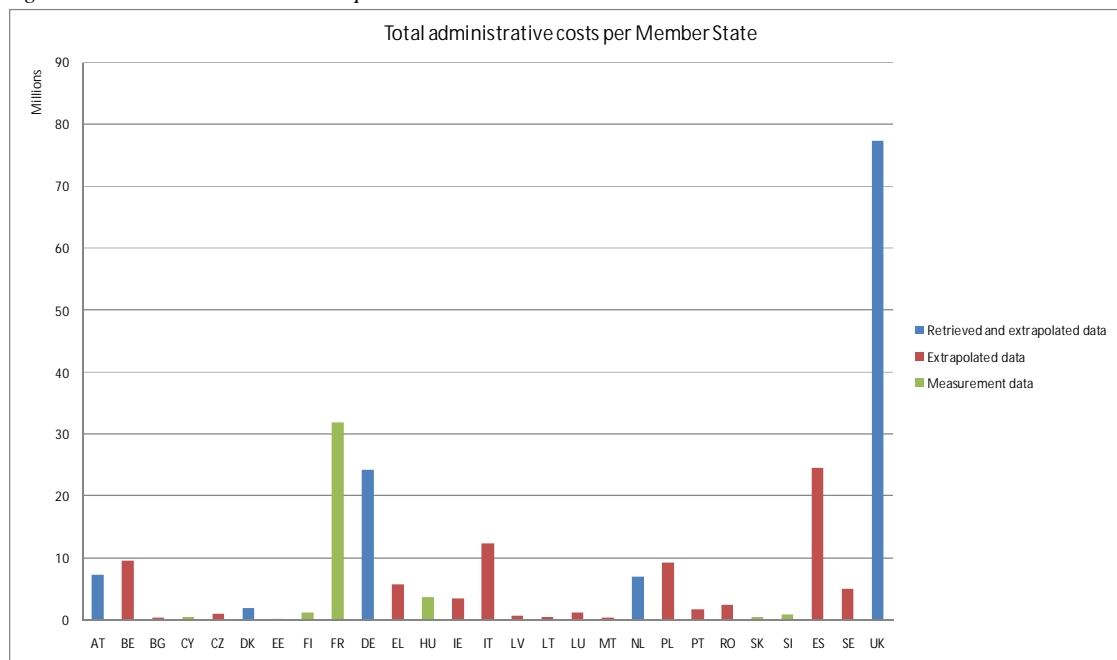
The combination of these three different approaches within the project creates special challenges when comparing data, i.e. Baseline Countries which have conducted measurements in the past have chosen different methodological approaches. This reduces the comparability of their results. This has to be borne in mind when reading the following data comparisons.

The extrapolated costs are naturally less precise and less detailed than the measured costs. Analyses of specific legislative requirements should therefore only be based on data from countries that were measured. However, the indicative total impact of EC legislation can be assessed using the extrapolated costs.

For the collection of the population data, please see Annex 5.2.

The Figure below shows an overview of the total administrative cost by Member State.

Figure 3: Total Administrative Cost per Member State



By Capgemini/Deloitte/Ramboll Management.

The administrative costs are concentrated in France, Germany, Spain and the United Kingdom. They are also relatively significant for Belgium, Italy and Poland. Further explanations will be provided later in this report

The Table below provides an overview of the total costs per country of the EU IOs, and national obligations going beyond EU Requirements - and the total administrative burden.

Table 7: Total Administrative Cost and Burden per Member State

Country	EU requirement		National obligation going beyond EU requirements				Total Administrative Costs	Total Administrative Burdens	
	# of IOs	Admin. costs (€ x 1,000)	Possibility stated in the EC act		Possibility not stated in the EC act			Admin. costs (€ x 1,000)	Admin. burdens (€ x 1,000)
			# of IOs	Admin. costs (€ x 1,000)	# of IOs	Admin. costs (€ x 1,000)			
AT Retrieved and extrapolated data	6	7,297.60	1	46	0	0	7,343.60	7,343.60	100
BE Extrapolated data	6	9,377.70	1	180.8	1	64.2	9,622.80	9,622.80	100
BG Extrapolated data	6	342.2	1	1.1	0	0	343.3	343.3	100
CY Measurement data	6	536.9	1	7.9	0	0	544.8	544.8	100
CZ Extrapolated data	6	971.8	1	5.2	0	0	977	977	100
DE Retrieved and extrapolated data	6	23,639.50	1	582.8	0	0	24,222.30	24,222.30	100
DK Retrieved and extrapolated data	6	1,858.10	1	20.3	0	0	1,878.50	1,878.50	100
EE Extrapolated data	6	112.5	1	0.6	0	0	113.1	113.1	100
EL Extrapolated data	6	5,378.00	1	62	1	183.5	5,623.50	5,623.50	100
ES Extrapolated data	4	23,208.30	1	1,260.70	0	0	24,469.00	24,469.00	100
FI Measurement data	6	1,279.70	1	27	0	0	1,306.70	1,306.70	100
FR Measurement data	6	31,775.10	1	131.7	0	0	31,906.90	31,906.90	100
HU Measurement data	6	3,549.50	1	54.2	1	52.6	3,656.40	3,656.40	100
IE Extrapolated data	6	3,429.90	1	39.4	0	0	3,469.30	3,469.30	100
IT Extrapolated data	6	11,126.90	1	1,165.70	0	0	12,292.60	12,292.60	100
LT Extrapolated data	6	408.9	1	4.7	0	0	413.6	413.6	100
LU Extrapolated data	6	1,208.80	1	14.3	0	0	1,223.10	1,223.10	100
LV Extrapolated data	6	571	1	1	0	0	572	572	100
MT Extrapolated data	6	145.1	1	56	0	0	201.1	201.1	100
NL Retrieved and extrapolated data	6	6,834.00	1	81.2	0	0	6,915.20	6,915.20	100
PL Extrapolated data	6	9,019.50	1	99.3	0	0	9,118.80	9,118.80	100
PT Extrapolated data	6	1,607.70	0	0	0	0	1,607.70	1,607.70	100
RO Extrapolated data	6	2,345.00	1	25.8	0	0	2,370.70	2,370.70	100
SE Extrapolated data	3	4,987.10	1	62.8	0	0	5,049.90	5,049.90	100
SI Measurement data	6	951.4	1	5.3	0	0	956.8	956.8	100
SK Measurement data	6	496.6	1	0.3	0	0	496.9	496.9	100
UK Retrieved and extrapolated data	6	77,044.00	1	483.5	0	0	77,527.50	59,610.80	76.89
Grand Total	157	229,502.90	26	4,419.80	3	300.30	234,223	216,306.30	92.35

This Table is based on data compiled by the Consortium.

The Possibility stated in the EU Legal Act “Provision of additional information/documents” has been implemented in almost all Member States. The IO provides the opportunity to the contracting authority to request extra information or documents related to the selection criteria. The type of information requested depends entirely on the contracting authority. Therefore, the cost of this IO varies considerably per occurrence and is not a standardised process. It is clearly difficult to analyse this Possibility and from the data we were able to obtain, it only represents 1.89% of the total administrative cost. More detail on this Possibility is provided in section 3.1.3.

## eProcurement

Table 8: Degree of Implementation of eProcurement steps in EU Member States

	Project	Automated step (including pilot projects and partially automated steps)					
	e-Procurement	Notification about tenders	Publication of tenders	Submission of tenders	Evaluation of tenders	Ordering	Invoicing
AT	yes	yes	yes	yes	-	-	-
BE	yes	yes	yes	-	-	-	-
CY	yes	-	-	-	-	-	-
CZ	yes	yes	yes	-	-	yes	-
DK	yes	yes	yes	yes	yes	yes	yes
EE	yes	yes					
FI	yes	yes	yes	yes	yes	-	-
FR	yes	yes	yes	yes	-	yes	-
DE	yes	yes	yes	yes	yes	-	-
EL	yes	-	-	-	-	-	-
HU	yes	yes	-	-	-	-	-
IE	yes	yes	yes	yes	-	-	-
IT	yes	yes	yes	yes	-	yes	-
LV	yes	yes	yes	-	-	-	-
LT	yes	-	-	-	-	-	-
LU	yes	-	-	-	-	-	-
MT	yes	yes	yes	yes	-	-	-
NL	yes	yes	-	-	-	-	-
PL	yes	yes	yes	-	-	-	-
PT	yes	yes	yes	-	-	-	-
SK	yes	-	-	-	-	-	-
SI	yes	-	-	-	-	-	-
ES	yes	yes	yes	yes	-	-	-
SE	yes	yes	yes	yes	-	-	-
UK	yes	yes	yes	yes	yes	yes	-

Source: G Pennella 'eProcurement in an Eastern Mediterranean Comparative Context', OECD 2006.

The Table above is an extract from research into eProcurement systems published in January 2006. However, this research is based on publicly available information and therefore not definitive. Nevertheless, it gives indicative insights into why certain Member States show different results in terms of average time spent and cost occurred by companies on the EU IOs.

In France for example, since 1 January 2005, all French public entities have been obliged to accept bids submitted electronically in response to formal calls for tenders with a value above a legal threshold. All central government ministries – with the exception of the Ministry of Defence, which has its own platform – can meet this requirement by using the Government-wide eProcurement platform ‘www.Marches-Publics.gouv.fr’. The platform allows public sector bodies to publish calls for tenders online and receive electronic bids. Its use by local authorities is optional, as they are free to develop their own eProcurement solutions or to adopt commercial solutions, if they wish to do so.<sup>20</sup>

In addition to this study, the study Preliminary Study on the electronic provision of certificates and attestations usually required in Public Procurement procedures<sup>21</sup> carried out by Siemens and published in July 2007, investigated if and how electronic certificates and attestations are currently issued, accepted and validated in public procurement procedures across Europe.

<sup>20</sup> Source: <http://www.epractice.eu>.

<sup>21</sup> [http://ec.europa.eu/internal\\_market/publicprocurement/docs/e-Procurement/ecertificates-study\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/e-Procurement/ecertificates-study_en.pdf)

### 2.4.3.2 Measurement Countries

The measurement of the Information Obligation took place in six preselected Member States. As stated above, the Member States chosen for measuring the prioritised IOs in the Public Procurement Priority Area were:

- Cyprus
- Finland
- France
- Hungary
- Slovakia
- Slovenia.

The Table below provides an overview of the total costs per Measurement Country of the EU IOs, and the National Obligations Going beyond EU Requirements - and the total administrative burden.

Table 9: Administrative Cost and Administrative Burden for the six Measurement Countries

Country	National obligation going beyond EU requirements		Total Administrative Costs	Total Administrative Burdens		
	EU requirement	Possibility stated in the EC act		Possibility not stated in the EC act	Admin. burdens (€ x 1,000)	Share of administrative cost (%)
	Admin. costs (€ x 1,000)	Admin. costs (€ x 1,000)	Admin. costs (€ x 1,000)	Admin. costs (€ x 1,000)	Admin. burdens (€ x 1,000)	Share of administrative cost (%)
CY	536.9	7.9	0	544.8	544.8	100
FI	1,279.70	27	0	1,306.70	1,306.70	100
FR	31,775.10	131.7	0	31,906.90	31,906.90	100
HU	3,549.50	54.2	52.6	3,656.40	3,656.40	100
SK	496.6	0.3	0	496.9	496.9	100
SI	951.4	5.3	0	956.8	956.8	100
Total	38,589.30	226.5	52.60	38,868.4	38,868.40	100

This Table is based on data compiled by the Consortium

Of the six Measurement Countries, France accounts for 82.09% of the administrative cost. This can be explained by the size of the country and the number of entities affected. The average internal time spent complying with a tender in France is lower than in most of the other Measurement Countries as the legislation has been implemented for a longer period than in the Eastern European countries. Hungary accounts for 9.41% of the administrative cost of the Measurement Countries. This is partially explained by the higher time spent in replying to a tender. The remaining countries account for 8.50% of the administrative cost in the Measurement Countries.

The Possibility stated in the EC Directive accounts for 0.58% of the total administrative cost in the Measurement Countries. The countries with the highest administrative cost for this Possibility are France and Hungary.

The Table above indicates the differences in total cost between the different Measurement Countries. Chapter 3 of this document provides a more detailed overview of the differences in implementation across the Member States per Information Obligation. Most costs stem from the EU IOs “Submission of document(s) related to the selection criteria” and

“Submission of document(s) related to the exclusion criteria”, together with the Possibility stated in the EU Legal Act.

### 2.4.3.3 Baseline Countries

A central aspiration of the project was to learn from measurements, which had already been undertaken in Member States. These measurements were an important input as they constitute the current “state of play” in those countries which have already carried out work in the SCM field<sup>22</sup>. Existing measurements were reused whenever possible and efficient. This was mainly the case when complete baseline measurements were available for a Priority Area and where the methodology used in the Baseline Countries was comparable enough to the EU SCM not to distort the extrapolation approach.

The Table which follows gives an overview of the administrative costs in the Baseline Countries, but Denmark and the Netherlands have been removed. Although they are included in the Baseline Countries, there was either no measurement available (Denmark) or the mapping from the existing measurement (Netherlands) of the EU IOs in scope of this project was not possible because of the different scope. Therefore, both countries have been extrapolated and are mentioned in the Table of Extrapolation Countries.

Table 10: Administrative Cost and Administrative Burden for the Baseline Countries

Country	EU requirement	National obligation going beyond EU requirements		Total Administrative Costs	Total Administrative Burdens	
		Possibility stated in the EC act	Possibility not stated in the EC act		Admin. costs (€ x 1,000)	Share of administrative cost (%)
	Admin. costs (€ x 1,000)	Admin. costs (€ x 1,000)	Admin. costs (€ x 1,000)	Admin. costs (€ x 1,000)	Admin. burdens (€ x 1,000)	
AT	7,297.6	46.0	0	7,343.6	7,343.6	100.00
DE	23,639.5	582.8	0	24,222.3	24,222.3	100.00
UK	77,044.0	483.5	0	77,527.5	59,610.8	76.89
Total	107,981.1	1,112.3	0.00	109,093.4	91,176.7	83.58

This Table is based on data compiled by the Consortium

For all Baseline Countries in the above Table, only partial data was available in a reusable condition. All other data in the report is the result of extrapolation.

The total administrative cost of the Baseline Countries accounts for 46.64% of the total cost for the Priority Area.

The UK accounts for the largest part (71.07%) among the Baseline Countries. This can be explained by its high rates per hour and high population figures.

It is also the only country that makes a distinction between administrative cost and administrative burden. The UK has attributed a 25% Business-as-usual Cost to the IO

<sup>22</sup> Wherever possible, data from the national baseline measurements was reused. However, where no comparable data was available the administrative costs were extrapolated. More specific information on the reuse of data from national baseline measurements is provided in the Annex ‘Challenges and constraints of reusing existing data from previous baseline measurements’.

“Submission of document(s) related to the selection criteria” for both Directives 2004/17/EC and 2004/18/EC.<sup>23</sup>

The UK measurements for this IO were made in 2008. The population data that was provided with the existing measurement for this IO has been adapted to the population data that was agreed upon with the EC. The adapted population data, which is based on statistical data provided by the EC, was higher than that from the existing measurement. This explains why the UK has such a high number for this IO.

As there was no measurement available for the other IOs, they have been extrapolated.

The German data provided for Public Procurement does not come from the German baseline measurement, but has been transferred from the project “Measurement of the Public Procurement procedures for supplies, services and construction from perspective of business and public awarding authorities” which was carried out by Rambøll Management on behalf of the Federal Ministry of Economy and Technology in 2007. As previously explained there was no 1-to-1 mapping with the EU IOs in this study. It has more (15) National IOs mapped. The IO “Provision of additional documentation/information” was not measured in this project, so this IO was extrapolated.

The existing measurement in Austria was carried out in 2007. What sets the Austrian measurement apart is that, rather than using EU data for the annual number of tender procedures, it applies a frequency of 1.5 per annum to all Austrian companies. Given the difference between this approach and the population data we have used for the other Member States, we have decided to exclude the Austrian data from the input data for the extrapolation data. We have therefore added the Austrian existing measurement results to the extrapolated totals.

The segments in the Austrian measurement were more detailed, and therefore straightforward to map with the segments and IOs defined in this project.

The IO “Provision of additional documentation/information” was not measured in Austria and thus was extrapolated.

#### 2.4.3.4 Extrapolation Countries

As indicated above, the measurement was conducted in a sample of Member States. The results from the Measurement Countries and the Baseline Countries were used to estimate the costs in countries where no measurement was undertaken<sup>24</sup>. This extrapolation process provided the indicative total costs for European businesses of complying with EU legislation. The Table below shows the administrative costs for the Extrapolation Countries.

Whenever the extrapolation model gave rise to results that were not consistent with what might have been anticipated based on economic analysis, this was further discussed with DG Enterprise, with whom a basis for manual extrapolation was agreed.

<sup>23</sup> UK treatment of BAU – see footnote 2

<sup>24</sup> The Consortium did however collect population data for all IOs for all 27 Member States.

Table 11: Administrative Cost and Administrative Burden for the 18 Extrapolation Countries

Country	EU requirement	National obligation going beyond EU requirements		Total Administrative Costs	Total Administrative Burdens	
		Possibility stated in the EC act	Possibility not stated in the EC act		Admin. costs (€ x 1,000)	Share of administrative cost (%)
	Admin. costs (€ x 1,000)	Admin. costs (€ x 1,000)	Admin. costs (€ x 1,000)	Admin. costs (€ x 1,000)	Admin. burdens (€ x 1,000)	Share of administrative cost (%)
BE	9377.7	180.8	64.2	9622.8	9622.8	100
BG	342.2	1.1	0	343.3	343.3	100
CZ	971.8	5.2	0	977	977	100
DK	1858.1	20.3	0	1878.5	1878.5	100
EE	112.5	0.6	0	113.1	113.1	100
EL	5378	62	183.5	5623.5	5623.5	100
IE	3429.9	39.4	0	3469.3	3469.3	100
IT	11126.9	1165.7	0	12292.6	12292.6	100
LV	571	1	0	572	572	100
LT	408.9	4.7	0	413.6	413.6	100
LU	1208.8	14.3	0	1223.1	1223.1	100
MT	145.1	56	0	201.1	201.1	100
NL	6834	81.2	0	6915.2	6915.2	100
PL	9019.5	99.3	0	9118.8	9118.8	100
PT	1607.7	0	0	1607.7	1607.7	100
RO	2345	25.8	0	2370.7	2370.7	100
ES	23208.3	1260.7	0	24469	24469	100
SE	4987.1	62.8	0	5049.9	5049.9	100
Total	82,932.50	3080.9	247.70	86261.2	86,261.20	100

This Table is based on data compiled by the Consortium

The exercise of predicting cost through statistical modelling results in cost data with a different level of accuracy compared to the data collected through interviews. The extrapolated costs are for these reasons less precise and less detailed than the measured costs. Analyses of specific requirements should therefore only be based on data from countries that were measured, whereas the total impact of EC legislation and of changes in legislation can be assessed using the extrapolated costs.

The total administrative cost of the extrapolation (non-measured) countries accounts for 36.88% of the total cost for the Public Procurement Priority Area. Belgium, Italy, Poland, and Spain account for the largest part of the cost. This can be explained by the interaction of both high population data and hourly wage rates.

#### 2.4.4 Administrative Costs related to Irritation Potential of Most Burdensome EU IOs

The overall objective of the Action Programme is to achieve a reduction in administrative burdens of 25% by 2012. Previous SCM projects at national level have proved that reduction efforts will be seen as especially successful if the public authorities manage to lower the *perceived* burdens for businesses. Thus, two dimensions should be taken into account when analysing how burdensome an IO is:

- Level of administrative burden
- Level of irritation for businesses.

The extent to which business experience IOs as “irritating” was assessed based on the businesses’ responses to the following six statements:

- The information/data that the authorities require from me is linked to the information/data that are available from my own business process.
- I understand why the authorities want this information/data from me.
- I understand why the authorities ask me for this information/data with this frequency.
- The authorities make sure that I have to deliver this information/data only once and not to different authorities.
- The amount of information/data that the authorities ask for is in line with the objectives of the IO.
- The request for information/data is so clear that every entrepreneur/employee is able to comply with the request.

The responses given to the six statements were subsequently transposed to a numerical value. The data collected on the irritation level is, however, not conclusive. Thus any statements on irritation are indicative and no conclusions should be drawn on this basis at Priority Area or IO level. The Main Report on the measurement data and analysis as specified in the specific contracts 5&6 on Modules 3&4 under the Framework Contract n° ENTR/06/61 contains a high level overview of the irritation levels of all Priority Areas. It includes a thorough analysis on the total dataset.

The IOs “Submission of document(s) related to the exclusion criteria” and “Submission of document(s) related to the selection criteria” are the most costly from a quantitative perspective. When tendering, the competent authority requests that the economic operator comply with a number of requirements. Details to be provided on the following data requirements from IO “Submission of document(s) related to the selection criteria” are not interpreted as very irritating:

- "Economic and financial standing",
- "Quality assurance standards",
- "Environmental management standards".

The economic operators understand the objective behind the request for this data.

However, the data requirements “Suitability to pursue the professional activity” and “Technical and/or professional ability” are felt to be necessary but irritating. Our interviews have shown that in many countries these data requirements are not always set out clearly and can be interpreted in different ways, leading to additional time being spent on fulfilling the requirements an related to that more irritation.

### 3. Legal Acts and the Most Burdensome IOs

As a general rule, a relatively small number of IOs represent the major part of the cost in any Priority Area and it is therefore worthwhile focusing on these. This section does that, relating each IO to the EU Legal Act from which it stems. The Table below shows the indicative total administrative cost for the most burdensome EU IOs and the cost of the corresponding National Obligations going beyond EU Requirements

Table 12: Total Administrative Cost of the most burdensome EU IOs by EU IO and National Obligations going beyond EU Requirements

EU IO	EU Legislation	Article number	National obligation going beyond EU requirements			Total	Total Administrative Burdens		
			EU requirement	Possibility stated in the EC act	Possibility not stated in the EC act		Administrative costs (€ x 1,000)	Admin. burdens (€ x 1,000)	Share of administrative cost (%)
			Admin. costs (€ x 1,000)	Admin. costs (€ x 1,000)	Admin. costs (€ x 1,000)				
1. Submission of document(s) related to the selection criteria - 2004/18	Directive 2004/18/EC	Art. 42 par. 5(d); (See Notes)	196,533.30	0	236	196,769.40	178,961.50	90.95	
2. Submission of document(s) related to the exclusion criteria - 2004/18	Directive 2004/18/EC	Art. 42 par. 5(d); Art. 45; Art 33 par. 2; Art. 33 par. 4	20,406.40	0	64.2	20,470.60	20,470.60	100	
3. Submission of document(s) related to the selection criteria - 2004/17	Directive 2004/17/EC	Dir 2004/18 Art. 42(5)(d) (see notes)	9,418.80	0	0	9,418.80	9,310.00	98.85	
4. Provision of additional documentation/information	Directive 2004/18/EC	Art. 51	0	4,419.80	0	4,419.80	4,419.80	100	
5. Submission of document(s) related to the exclusion criteria - 2004/17	Directive 2004/17/EC	Dir 2004/18 Art.42(5)(d), 45; Dir 2004/17 Art.54(4),15(2)(4)	2,747.60	0	0	2,747.60	2,747.60	100	

This Table is based on data compiled by the Consortium.

The above five most burdensome EU IOs account for 99.96% of the total cost for Public Procurement Priority Area

As mentioned before, a total of three Possibilities not stated in the EU Legal Act were been identified in three Member States (Belgium, Greece and Hungary). However, during measurement it was found that the economic operators found it difficult to make the distinction between what was required in the “Mother IO”, with which the Possibility is linked, and what was required in the Possibilities not stated in the EU Legal Act. The fact that these extra documents have to be provided at the same time as compliance with the “Mother IO” makes it hard to quantify the time spent. Therefore, additional expert assessments were needed to obtain the cost data.

We grouped the target groups of both Directives 2004/17/EC and Directive 2004/18/EC in the measurement and analysis. The prioritised IOs consist of the same data requirements and it was assumed that there is no (big) difference between the time spent on the Directive 2004/17/EC and Directive 2004/18/EC for the same EU IOs “Submission of document(s) related to the selection criteria” and “Submission of document(s) related to the exclusion criteria”.

As explained in Chapter 2.4.2.1, quantifying the IO “Provision of additional information/documentation”, which is a Possibility stated in the EU Legal Act, and analysing the implementation cost across the different Member States is rather difficult due to its nature. More explanation will be given on this in Chapter 3.1.3.

Since the total administrative costs and burdens are indicative because they include extrapolated data, the most burdensome IOs are analysed on the basis of the detailed data collected in the six Measurement Countries only. In the section below, each of these IOs is described in detail in relation to the following topics:

- Explanation of the legal aspects of the IO
- Underlying steps in the business process
- Reasons why the IO is burdensome/irritating
- Data requirements
- Demarcation between the burdensome IO and closely related IOs
- Business-as-usual costs
- Potential reduction measures.

### 3.1 Directives 2004/17/EC and 2004/18/EC

The data below indicates that 5.20% of the total administrative cost of the Public Procurement Priority Area is covered by Directive 2004/17/EC and the remaining 94.80% by Directive 2004/18/EC. Directive 2004/17/EC focuses on coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (the so-called excluded sectors). Directive 2004/18/EC focuses on the coordination of procedures for the award of all other public works, supply and service contracts.

Table 13: Share of total Administrative Cost per Directive for Public Procurement Priority Area

EU Legislation	Administrative costs (€ x 1,000)	Share of total (%)	Admin. burdens (€ x 1,000)	Share of administrative cost (%)
Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors	12,189.0	5.2	12,080.2	99
Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts	222,034.0	94.8	204,226.1	92
<b>Total</b>	<b>234,223.0</b>	<b>100.0</b>	<b>216,306.3</b>	<b>92</b>

This Table is based on data compiled by the Consortium.

The two Directives apply only to procurements with an estimated value above a certain threshold, below which the national procurement laws apply.<sup>25</sup>

Both Directives apply to contracts with a value (excluding VAT) estimated to be no less than the following amounts (thresholds applicable before the baseline date<sup>26</sup>):

<sup>25</sup> The Commission estimates that this “below-threshold” procurement amounts to 80% of all Public Procurement procedures in the EU.

- €137,000 for public supply and service contracts awarded by central government authorities (ministries, national public establishments);
- €111,000 for public supply and service contracts: awarded by contracting authorities \* which are not central government authorities; covering certain products in the field of defence awarded by the central government authorities; concerning certain services in the fields of research and development (RTD), telecommunications, hotels and catering, transport by rail and waterway, provision of personnel, vocational training, investigation and security, certain legal, social and sanitary, recreational, cultural and sporting services;
- €5,278,000 in the case of works contracts;
- €422,000 in the case of supply and service contracts (utility services).

The following different types of Public Procurement procedures exist:

1. The open procedure:  
In an open procedure, any interested economic operator may submit a tender;
2. The restricted procedure:  
In the case of restricted procedures, any economic operator may ask to participate, but only candidates then invited to do so may submit a tender;
3. The negotiated procedure:  
In a negotiated procedure, the contracting authority consults selected economic operators and negotiates the terms of the contract with them;
4. A new procedure: the competitive dialogue (only for Directive 2004/18/EC);  
A contracting authority may make use of the competitive dialogue for complex contracts if it is not able to define by itself the technical solutions to satisfy its needs or is not able to specify the legal and/or financial make-up of a project. Large infrastructure projects are an example of procurements for which this type of dialogue might be appropriate.

The section below describes the differences in requirements, criteria and time spent in the different Measurement Countries.

### 3.1.1 IO1 “Submission of Document(s) related to the exclusion criteria”

As agreed with the European Commission, the definition of IO “Submission of document(s) related to the exclusion Criteria” is ‘Submission of documents (restricted, negotiate and open procedure) related to the exclusion criteria. For restricted and negotiated procedures, exclusion criteria are submitted during the Expression of Interest Phase.’

The description of the IO is ‘The tenderer shall submit, before expiry of the time limit for submission of tenders or requests to participate, the documents, certificates and declarations referred to in Art. 45 of Directive 2004/18/EC. The timing of the submission(s) may depend on the type of procedure (open, restricted, negotiated, qualification system, Dynamic Purchasing System...).

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<sup>26</sup> Thresholds are revised every two years. Full and up to date thresholds can be checked on the EU Public Procurement website [http://ec.europa.eu/internal\\_market/publicprocurement/key-docs\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/key-docs_en.htm).

### 3.1.1.1 Characteristics of the IO

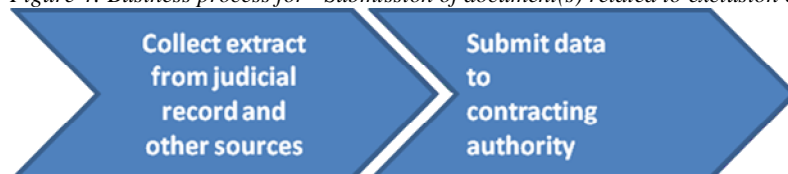
As stated above, Directive 2004/17/EC focuses on coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors. Directive 2004/18/EC focuses on the coordination of procedures for the award of all other works, supplies and services. The purpose of these Directives is to help simplify and modernise procurement procedures and the IO addressed here aims at providing clear criteria for the contracting authorities to assess bidders' suitability for the contract and to specify minimum requirements in the selection process for the procurement procedure.

The IO "Submission of documents related to exclusion criteria" was measured in all six countries through interviews with a sample of businesses<sup>27</sup>, with a focus on the construction sector

### 3.1.1.2 Process for complying with IO

The Figure below shows the main steps of the business process to comply with the IO.

Figure 4: Business process for "Submission of document(s) related to exclusion criteria"



By Capgemini/Deloitte/Ramboll Management.

Economic operators must collect the documents, certificates and declarations requested by the contracting authority stating that they have never been convicted of an illegal act, found guilty of not fulfilling obligations related to paying taxes or social security, never been subject to bankruptcy proceedings, accused of professional misconduct or misrepresented information. This can be provided via an 'extract from the judicial record' or, if not available, by means of an equivalent document issued by a competent judicial or administrative authority.

Typical documents<sup>28</sup> to be provided are; a "certificate of good behaviour and mores", an extract from the "criminal record", an "attestation of non-bankruptcy", and certificates from tax and social security authorities.

Once these documents have been collected and/or prepared, the tenderer submits them to the contracting authority.

### 3.1.1.3 Costs and explanatory Variables

The Tables below provide a breakdown of the total administrative cost of the IO "Submission of document(s) related to the exclusion criteria" per Measurement Country. The Tables indicate the total administrative cost and burden per entity per occurrence of the IO, the number of entities affected, the internal time spent per occurrence, the equipment

<sup>27</sup> See footnote 3 related to only winning businesses having to submit documents related to selection criteria.

<sup>28</sup> The example of typical documents to be provided were mentioned in the interviews of this phase of the project and were also found in the Siemens Study (op. cit.) ([http://ec.europa.eu/internal\\_market/publicprocurement/docs/e-Procurement/ecertificates-study\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/e-Procurement/ecertificates-study_en.pdf)).

and consultancy costs<sup>29</sup>, the average hourly wage used and the total administrative cost per Measurement Country for this IO.

Table 14: Breakdown of the Administrative Cost per country for the IO “Submission of document(s) related to the exclusion criteria” for Directive 2004/18/EC

Submission of document(s) related to the exclusion criteria - 2004/18						
	Measurement Countries					
	CY	FI	FR	HU	SK	SI
Internal time per occurrence (minutes)	240	26	35	870	220	60
Average hourly tariff (€)	23	31.77	21.86	4.4	3.36	10
Equipment costs per occurrence (€)	0	0	0	75	10	0
Consulting costs per occurrence (€)	0	0	0	0	0	0
Dominant employee type	professionals	professionals	clerks	elementary occupations	clerks	clerks
Number of occurrences	2,111	15,662	224,210	9,860	1,293	5,343
Total administrative costs per occurrence (€)	92	13.77	12.75	138.83	22.33	10
Total administrative burden per occurrence (€)	92	13.77	12.75	138.83	22.33	10
Total costs	194,212.00	215,613.53	2,858,677.50	1,368,896.67	28,877.00	53,430.00

This Figure is based on data compiled by the Consortium.

Table 15: Breakdown of the Administrative Cost per country for the IO “Submission of document(s) related to the exclusion criteria” for Directive 2004/17/EC

Submission of document(s) related to the exclusion criteria - 2004/17						
	Measurement Countries					
	CY	FI	FR	HU	SK	SI
Internal time per occurrence (minutes)	330	40	38	870	220	60
Average hourly tariff (€)	25.45	37.2	22.58	4.4	3.36	10
Equipment costs per occurrence (€)	0	0	0	75	10	0
Consulting costs per occurrence (€)	0	0	0	0	0	0
Dominant employee type	professionals	legislators, senior officials, managers	clerks	elementary occupations	clerks	clerks
Number of occurrences	125	2,047	19,109	1,748	813	726
Total administrative costs per occurrence (€)	140	24.8	14.3	138.83	22.33	10
Total administrative burden per occurrence (€)	140	24.8	14.3	138.83	22.33	10
Total costs	17,500.00	50,765.60	273,258.70	242,680.67	18,157.00	7,260.00

This Table is based on data compiled by the Consortium.

Collecting the documents relating to the exclusion criteria is a relatively straightforward process which is in almost all Measurement Countries carried out by a clerk or equivalent. In Hungary, half the time spent replying to a tender is used for collecting the documents relating to the exclusion criteria. In Cyprus, 27.5% of the time is taken for this process. The other Measurement Countries require between 5% and 10% of the time used to collect the documentation related to the exclusion criteria. The difference can be explained by the fact that the certificates required related to the exclusion criteria can be more easily obtained from local authorities in the latter countries.

The time spent is also reflected in the total administrative cost per Measurement Country for this IO. Hungarian businesses require more time than do the other Measurement Countries. Most interviewees in Hungary were SMEs who experienced the Hungarian public procurement process as complicated and time-consuming.

<sup>29</sup> For description see manual “Adaptation of the EU SCM Manual”, prepared for the European Commission, Phase 2 and Phase 3, (Covering Modules 3 & 4 of the Action Programme), Version 1.0”

### 3.1.2 IO2 “Submission of Document(s) related to the selection criteria”

As agreed with the European Commission, the definition of the IO is: “Expressions of interest (restricted and negotiated procedure) and proposals (open procedure) for which documents related to the selection criteria are submitted”

The description of the IO is ‘The tenderer shall submit, before expiry of the time limit for submission of tenders or requests to participate, the documents, certificates and declarations referred to in art. 46-50, 51, 52. These data requirements (DR) include: "Suitability to pursue the professional activity"; "Economic and financial standing"; "Technical and/or professional ability"; "Quality assurance standards" and "environmental management standards". The timing of the submission(s) may depend on the type of procedure (open, restricted, negotiated, qualification system, Dynamic Purchasing System...).’

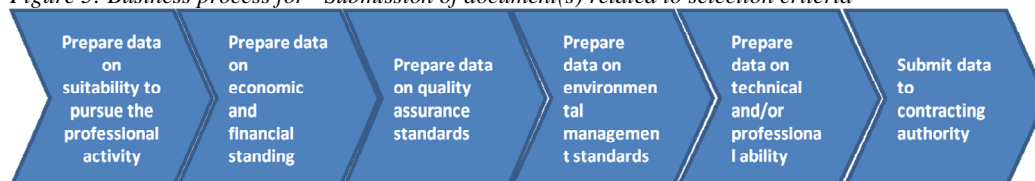
#### 3.1.2.1 Characteristics of the IO

Parallel to the “exclusion criteria” IO, the IO “Submission of documents related to selection criteria” was measured in all six countries via a representative sample of the abovementioned sectors with a focus on the construction sector. The IO in scope of this section aims to provide clear criteria and requirements in the exclusion process of the procurement procedure.

#### 3.1.2.2 Process for complying with IO

The Figure below shows the main steps of the business process to comply with the IO

Figure 5: Business process for “Submission of document(s) related to selection criteria”



By Capgemini/Deloitte/Ramboll Management.

When an economic operator wants to tender, they need to provide the data requirements that are referred to in the Directive and specified in detail by the contracting authority.

These data requirements usually cover:

- Data on suitability to pursue the professional activity.  
Typical documents<sup>30</sup> to be provided are:
  - “certificate of registration” (as individual contractor or company),
  - proof of “membership in a chamber or association”,
  - a “business permit or a license”
- Data on economic and financial standing:

<sup>30</sup> The examples of typical documents to be provided were listed in the Study “Preliminary Study on the electronic provision of certificates and attestations usually required in public procurement procedures” carried out for the Commission by Siemens in 2007 ([http://ec.europa.eu/internal\\_market/publicprocurement/docs/e-Procurement/ecertificates-study\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/e-Procurement/ecertificates-study_en.pdf)), and confirmed in the interviews we performed for the measurement.

Typical documents (see footnote 30) to be provided are: appropriate “bank statement”, extracts from the “balance sheets”, statement of “the undertaking's overall turnover”;

- Data on quality assurance standards:  
Typical document (see footnote 30) to be provided is: “certificates drawn up by independent bodies attesting the compliance with certain quality assurance standards”;
- Data on environmental management standards:  
Typical document (see footnote 30) to be provided is: “certificate drawn up by independent body attesting the compliance of the economic operator with the environmental management standards”;
- Data on technical and/or professional ability:  
Typical documents to be provided are: “list of the works carried out”, “the educational and professional qualifications of the economic operators and/or those of the undertaking's staff”, a statement of “the average annual manpower”, samples, descriptions and/or photographs of the products to be supplied.

These data are, in general, collected by professionals and their assistants. The employer type varies depending on the sector and the size of the company. For example, in large construction companies, the process is more straightforward, because of the frequency with which these companies take part in a procedure. Therefore, it is executed by less expensive employee types because a standard package is often already prepared, whereas in smaller construction companies, the data are collected by staff higher up in the hierarchy.

Once the abovementioned data have been collected, the tenderer must submit the documents to the contracting authority. The timing depends on the type of procedure. The documents can be submitted in paper form or electronically, depending on the approach laid down by the contracting authorities.

### 3.1.2.3 Costs and explanatory variables

Economic operators in the six Measurement Countries all spent about the same amount of time on providing the contracting authorities with data or certificates for the requirements of the IO “Submission of document(s) related to the selection criteria”; "Economic and financial standing", "Quality assurance standards" and "Environmental management standards". Economic operators in Hungary, Slovakia and Slovenia spent more time on these requirements as the governmental bodies where the certificates can be obtained are less streamlined than, for example, in Finland or France, implying that more time is needed to gather the data.

The most significant differences occur, however, for the requirement "Technical and/or professional ability". In countries such as Hungary, Slovakia and Slovenia, and to a lesser extent Cyprus, it was mentioned during the interviews that contracting authorities often set unclear selection criteria or require the selection criteria to be disproportionately extensive. In these countries, small economic operators are in the majority and these unclear selection

criteria are a heavy burden on them. The smaller economic operators do not have the – specialised – staff to prepare the requisite data, which means they need more time to do this than do large economic operators.

The Tables below provide the total administrative cost of the IO “Submission of document(s) related to the exclusion criteria” per Member State. The Tables indicate the total administrative cost and burden per entity per occurrence of the IO, the number of entities affected, the internal time spent per occurrence, the equipment and consultancy costs<sup>31</sup>, the average hourly wage used and the total administrative cost per Member State for the IO.

Table 16: Breakdown of the administrative cost per country for the IO “Submission of document(s) related to the selection criteria” for Directive 2004/18/EC

Submission of document(s) related to the selection criteria - 2004/18						
	Measurement Countries					
	CY	FI	FR	HU	SK	SI
Internal time per occurrence (minutes)	435	73	257	890	2855	760
Average hourly tariff (€)	20	33.63	22.63	6.05	3.85	10
Equipment costs per occurrence (€)	0	15	25	77	30	0
Consulting costs per occurrence (€)	0	0	0	0	0	25
Dominant employee type	professionals	professionals	clerks	clerks	technicians, associate professionals	clerks
Number of occurrences	2,111	15,662	224,210	9,860	1,293	5,343
Total administrative costs per occurrence (€)	145	55.92	121.95	166.75	213.42	151.67
Total administrative burden per occurrence (€)	145	55.92	121.95	166.75	213.42	151.67
Total costs	306,095.00	875,766.83	27,342,409.50	1,644,155.00	275,947.75	810,355.00

This Table is based on data compiled by the Consortium.

Table 17: Breakdown of Administrative Cost per country for the IO “Submission of document(s) related to the selection criteria” for Directive 2004/17/EC

Submission of document(s) related to the selection criteria - 2004/17						
	Measurement Countries					
	CY	FI	FR	HU	SK	SI
Internal time per occurrence (minutes)	435	79	165	890	2855	507
Average hourly tariff (€)	20	38.39	23.18	6.05	3.85	10
Equipment costs per occurrence (€)	0	15	0	77	30	0
Consulting costs per occurrence (€)	0	0	0	0	0	25
Dominant employee type	professionals	legislators, senior officials, managers	clerks	clerks	technicians, associate professionals	clerks
Number of occurrences	125	2,047	19,109	1,748	813	726
Total administrative costs per occurrence (€)	145	65.55	63.75	166.75	213.42	109.57
Total administrative burden per occurrence (€)	145	65.55	63.75	166.75	213.42	109.57
Total costs	18,125.00	134,180.85	1,218,198.75	291,479.00	173,507.75	79,545.40

This Table is based on data compiled by the Consortium.

The time spent on IO “Submission of document(s) related to the selection criteria” is similar across the two Directives – with exceptions in two of the Measurement Countries. Differences in total cost can be explained by different number of entities affected, and different wage levels. The equipment costs generally consist of courier expenses and

<sup>31</sup> For description see manual “Adaptation of the EU SCM Manual, Prepared for the European Commission, Phase 2 and Phase 3, (Covering Modules 3 & 4 of the Action Programme), Version 1.0”

copying costs. For some Measurement Countries, the cost of an encrypted key for eProcurement is also included.

When complying with the IOs "Submission of document(s)", most of the time that goes into preparing the requisite information and documents is spent on the selection criteria (78%) rather than on the exclusion criteria. For the total time spent in the six Measurement Countries on the IO "Submission of document(s) related to the selection criteria" 72% is spent on collecting the data on technical and/or professional ability and 10% on collecting the data on economic and financial standing. The rest of the time is spread over the four other data requirements within this IO.

The new Member States in general spent more time. This is understandable as both the Directives have only recently been implemented in those Member States.

The sections below provide an overview of the variations in time spent in the Measurement Countries to comply with the IO.

#### Cyprus

A tender document in Cyprus consists of two sections, which can be confusing. The economic operators are mainly small and have difficulties in complying with the selection criteria as the forms are not yet standardised and the data needs to be collected from different authorities. Only original certificates are accepted and cannot be re-used. They must be produced for each new procurement. The feedback we received from economic operators interviewed suggests that not all tools provided for in the law are yet utilised by the contracting authorities (e.g. electronic submission of offers). This suggests that part of the time spent by the economic operators in Cyprus might be avoided by streamlining the process and providing the economic operators with more guidance.

The general comment during the interviews was that the law has been revised and practice improved in recent years. Some of the documents that previously had to be submitted during the proposal stage are now being requested only from the successful tenderer, for example:

- Financial ability: the tenderers only have to complete a table stating their turnover for the last three years (on occasion, the profit, or cash and cash equivalents for the last three years also need to be provided). The table is signed by a representative of the tenderer and no other legal proof is requested during the selection criteria.
- Personal situation of the tenderer: a solemn declaration is requested during the proposal stage. Proof in the form of certificates from authorities is only submitted by the successful tenderer.

#### Finland

Economic operators in Finland seem to spend the least time of those in the Measurement Countries.

Since 1 June 2007, contracting authorities have placed contract notices for publication with the HILMA<sup>32</sup> system for all supply and service contracts over €15,000 and public works contracts over €100,000.

An aspect considered as irritating by some interviewees was the fact that the level of detail and the amount of criteria to be met during the selection process were not entirely in line with the objective. In addition, it was pointed out that the use of the Dynamic Purchasing System is restricted by national data security law.

#### France

French economic operators spend on average four hours complying with the IO for the 18<sup>th</sup> Directive. Most of the time is spent retrieving and adjusting data which the operator already holds. The majority of these tasks are performed by clerks. Managers check the documents before they are transmitted.

More time is needed for Directive 2004/18/EC (compared with Directive 2004/17/EC) to comply with the same IO relating to the documentation on selection criteria. This can be explained by the fact that:

- contracting authorities tend to request more ad-hoc documentation;
- the occurrence of large procurement contracts where bidders use subcontractors who also have to submit documents (e.g.) the Annex related to the presentation of the subcontractor, a procedure known as “DC 13” in France);
- the fact that there are more multi-disciplinary contracts under Directive 2004/18 than 2004/17.

The equipment cost for Directive 2004/18/EC is due to the greater incidence of electronic procurement than in procurements under Directive 2004/17/EC. This implies a higher (initial) equipment cost due to the acquisition of, for example, specific software and encrypted keys to guarantee the confidentiality of documents.

EProcurement has recently been introduced in France. This is very well perceived but not yet widely used due to technical issues and the cost of the encrypted keys (€140).

#### Hungary

The measurement shows that the economic operators spend almost the same amount of time on the selection criteria as on the exclusion criteria IOs.

All information needs to be submitted on paper, which increases the time spent. Efforts to introduce e-submission are ongoing, but at the time of measurement had not yet been implemented.

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<sup>32</sup> HILMA is a free electronic channel maintained by the Ministry of Employment and the Economy via which procurement units announce their public procurement contracts. Companies may access HILMA to obtain real-time information on ongoing procurement contracts and advance information on future procurements

## Slovakia

Both EU Directives had only recently been implemented in Slovakia at the time of measurement. Economic operators in Slovakia spent three times the average amount of time in complying with the obligations than in the other Measurement Countries. The reasons that the interviewed businesses gave for needing six days to comply with the obligations include:

- unclear selection criteria, mainly for the technical part of the tender;
- disproportional selection criteria;
- a requirement that all certifications, including those issued by international institutions (ISO), and diplomas, must be translated into Slovak.

The fact that it takes ten times longer to comply with the IO “Submission of document(s) related to the selection criteria” than with the IO “Submission of document(s) related to the exclusion criteria” is due to the amount of information to be provided (e.g. description of the phases of activities; outputs of the phases and price; timetable of activities; number of person days and additional facts, ...).

The equipment cost represents the cost of obtaining copies of the necessary documents.

## Slovenia

Slovenia is the only Measurement Country where a consulting cost was measured. It refers to the expert analysis needed when tendering for a building project.

As for the difference on time spent between Directive 2004/18/EC and 2004/17/EC, our interviews were mainly with larger companies who have better internal systems for obtaining and storing the relevant information which can be reused.

## eProcurement

Table 8 (Degree of Implementation of eProcurement steps in EU Member States) provides indicative insights into why certain Measurement Countries show different results in terms of average time spent and cost incurred by companies on the EU IOs “Submission of document(s) related to the selection criteria” and “Submission of document(s) related to the exclusion criteria”. France and Finland are well ahead in this domain compared with Cyprus, Hungary, Slovakia and Slovenia.

In the “Preliminary Study on the electronic provision of certificates and attestations usually required in Public Procurement procedures”<sup>33</sup> France and Finland emerge as the most advanced across the six Measurement Countries. Although they do not provide e-certificates for all official documents, the contracting authorities accept scanned formats. In Cyprus, according to the study, no issue of e-certificates is possible as there are no e-ID cards and there is no platform for electronic signatures.

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<sup>33</sup> [http://ec.europa.eu/internal\\_market/publicprocurement/docs/e-Procurement/ecertificates-study\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/e-Procurement/ecertificates-study_en.pdf)

For Hungary, the study states that there is no electronic equivalent available for virtually all documents. The possibility of using an unsigned PDF document rather than a paper document exists only for the quality assurance standards and the environmental management standards.

In Slovakia there are a few pilot projects (Ministry of Transport, Post and Telecommunication and project of Central E-Registry on a Central Portal for Public Administration) where it is technically possible to deliver certificates in electronic form, but paper certificates are still commonly used.

In Slovenia no electronic document/certificate exists. However there are sometimes different electronic versions of applications which can be used to request the paper certificate.

Opportunities to reduce the administrative burden linked to eProcurement will be investigated during the next phase of this project.

### 3.1.3 IO3 “Provision of additional documentation/information”

As agreed with the European Commission, the definition of this IO is ‘Expressions of interest (restricted and negotiated procedure) and proposals (open procedure) under the 18th directive for which additional documentation/information has to be provided’.

The description of the IO is “The contracting authority may invite economic operators to supplement or clarify the certificates and documents submitted pursuant to article 45-50.”

#### 3.1.3.1 Costs and explanatory variables

Table 18: Breakdown of the Administrative Cost per country for the IO “Provision of additional documentation/information” for Directive 2004/18/EC

Provision of additional documentation/information, Directive 2004/18/EC						
	Measurement Countries					
	CY	FI	FR	HU	SK	SI
Internal time per occurrence (minutes)	0	46	25	639	75	120
Average hourly tariff (€)	0	45	23.4	5.63	4	10
Equipment costs per occurrence (€)	0	0	2	50	0	0
Consulting costs per occurrence (€)	0	0	0	0	0	0
Dominant employee type	professionals	legislators, senior officials, managers	clerks	clerks	technicians, associate professionals	clerks
Number of occurrences	106	783	11,210	493	65	267
Total administrative costs per occurrence (€)	74.58	34.5	11.75	109.98	5	20
Total administrative burden per occurrence (€)	74.58	34.5	11.75	109.98	5	20
Total costs	7,905.33	27,013.50	131,717.50	54,221.78	325.00	5,340.00

This Table is based on data compiled by the Consortium.

The Tables above provide a breakdown of the total administrative cost of the Possibility Stated in the EU Legal Acts “Provision of additional documentation/information” per Member State. The Tables indicate the total administrative cost and burden per entity per occurrence of the IO, the number of entities affected, the internal time spent per occurrence,

the equipment and consultancy costs<sup>34</sup>, the average wage tariff used and the total administrative cost per Member State for the IO.

The Possibility Stated in the EU Legal Acts provides the opportunity for the contracting authority to request additional information or documents related to the selection criteria. The type of information requested depends entirely on the contracting authority. Therefore, the cost of this Possibility Stated in the EU Legal Act varies considerably per occurrence and is not a standardized process.

In Hungary, we found that tenderers often run out of time to submit all documentation before the deadline or do not submit the documents accurately. As a result, the contracting authorities often ask bidders to provide additional documents. The reason that the documents requested are often submitted incorrectly is partly that the tender documentation is not easy to understand. In France an updated version of the documents (e.g. most recent balance sheet) sometimes needs to be resubmitted.

#### 3.1.4 First simplification suggestions

A key point in relation to burden reduction in Public Procurement is that procurement governed by the EU Directives accounts for about 20% of all procurement in the European Union. The remaining 80% is regulated by national law. However, if administrative simplification in this area is implemented by the Member States as a consequence of reform at EU level, there is every likelihood that the reformed procedures will also become implanted in national procurement practices. In this way the benefit of EU-level burden reduction should be greatly amplified by its extension to the much larger national markets.

During the interviews and workshops with business and experts several initial simplification ideas were collected. A structured and detailed collection and analysis of possible reduction measures is being conducted during Module 5. This section therefore merely contains a summary of the suggestions gathered and does not represent a final list of simplification suggestions nor does it represent the point of view of the Consortium.

#### Recommendations:

- Create a tenderers' portal in which each tenderer has their own profile, uploading the information specific to them related to the selection and exclusion criteria;
- Create a central database where all the documents and certificates required can be stored or create an interconnection between the different databases and official registers;
- Set clear selection criteria: more precise specifications are needed from the contracting authority;
- Gather all relevant information on the selection criteria in one section of the call for tender instead of referring to other sections for more details;
- Set criteria in proportion to the value of the tender;
- Require only the winning bidder to submit all requisite documents;

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<sup>34</sup> For description see manual "Adaptation of the EU SCM Manual, Prepared for the European Commission, Phase 2 and Phase 3, (Covering Modules 3 & 4 of the Action Programme), Version 1.0"

- Interconnect databases and official registers.

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## 4. Conclusion and Outlook

In total the Administrative Cost resulting from the legislation in scope of the Public Procurement Priority Area is €234,222,962. Of the total for the Priority Area, 92.35% (€16,306,294) has been classified as Administrative Burden<sup>35</sup>, while €4,720,014 stems from National Obligations going beyond EU Requirements.

The highest cost for the Public Procurement Priority Area occurs in the IO “Submission of document(s) related to the selection criteria” and in IO “Submission of document(s) related to the exclusion criteria”. The other IOs represent a marginal element in the total cost.

It is clear that businesses in Member States where both Directives have only recently been transposed into national legislation need more time to comply with the obligations than their counterparts in EU-15 Member State. After a certain amount of time, when the economic operators become more familiar with the regulation, the administrative costs can be expected to decrease.

In all Member States, steps have been taken to introduce eProcurement systems.

The focus of this study is the administrative cost imposed on businesses due to IOs within the Public Procurement Priority Area. Hence the study does not look at the benefits of legislation or the direct financial or substantive costs. As objectives and benefits have a significant impact on any potential decision as to whether to amend, replace, or reconsider certain regulatory frameworks or IOs as suggested in this report, these should be clearly analysed and considered before any such decision is made.

Changes of the kind put forward here are part of a highly dynamic environment and cannot be considered separately from this context. How a suggested change will impact the business and its stakeholders are important elements to include in further studies of the simplification suggestions. A structured approach to analysing simplification suggestions is being conducted in Module 5.

The first part of Module 5 was started in parallel to the measurement work presented in this report and focuses on conducting national events in all Member States as well as a large SCM event at EU level, the Cutting Red Tape for Europe Conference<sup>36</sup>. The events were conducted to:

- disseminate the early results of this project
- involve and activate national and EU stakeholders further, and
- collect input into the analysis of the simplification suggestions.

To maintain and develop further the positive results of these activities, an e-magazine on important SCM news is produced quarterly and DG Enterprise’s Administrative Burdens Reduction website has been restructured and editorial input provided.

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<sup>35</sup> See footnote 2 in relation to UK treatment of BAU.

<sup>36</sup> Held in Brussels on June 20<sup>th</sup> 2008; see [www.cuttingredtape.eu](http://www.cuttingredtape.eu).

The Module 5 work is building further on the results from Modules 3 and 4 to deliver reduction recommendations for the Priority Areas in this project based on a specially developed reduction methodology. This methodology is currently being used to identify and distinguish changes to EU Legislation (IOs stemming from EU legislation), changes to implementing/transposition measures adopted by the Member States (better practice, including possible elimination of additional requirements). Furthermore, a monetary evaluation of the reduction recommendations will be conducted along with an analysis on their implementability. In addition to the input stemming from this project, additional input from best-practice countries, EU level experts within and across Priority Areas, and existing reduction recommendations and strategies are being used. The results of this work are expected by the end of March 2009.

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## 5. Annex

### 5.1 Methodological challenges in the Priority Public Procurement

A representative sample of economic operators was selected per country in order to perform the measurement. It consisted in almost all Measurement Countries of businesses from the following sectors: construction, services, transport, postal, energy. Businesses were in general cooperative in making time available for interviews. Upfront information packages (containing information on the IOs, methodology, purpose of the programme etc) were provided to the interviewees in order to make the interview as efficient as possible and the data on the processes as detailed as possible. Once some interviews had been carried out in a specific country, some follow-up interviews were carried out, either by phone or face to face in order to detail the information received and to challenge the figures received. Constant interaction between the Priority Area Lead and the Country Team performing the interviews guaranteed a consistent and qualitative approach throughout all Member States.

### 5.2 Collection and extrapolation of population data

A detailed description of the process of population data collection and extrapolation can be found in the Main Report covering all Priority Areas.<sup>37</sup> This Annex covers only the specific Priority Area and describes the efforts that were carried out to obtain population data and the quality assurance.

For the Public Procurement Priority Area, the Consortium collected 91 % of the data points for all IOs. For the seven IOs in this Priority Area, in average nine data points were collected per Member State<sup>38</sup> (excluding the so-called Baseline Countries). In turn, 9% of the data points were extrapolated. Additional and supplemental information on specific issues was obtained from DG MARKT and database queries at the Eurostat homepage as well as interviews with the respective authorities.

The Member States provided us with the population data without taking into account the threshold for both Directives. Their information was based on any hardly statistical data. As a result, DG MARKT provided us with statistical data with which we were able to calculate more precise population data for all IOs.

For the Public Procurement Priority Area, an environment variable was set up to extrapolate the missing data points for Bulgaria and Romania. This environment variable was based on the value of Public Procurement which is openly advertised calculated as a percentage of GDP. This environment variable was tested against Gross National Product, nominal economic growth, number of businesses in different areas and other specific information.

The quality assurance for this Priority Area was integrated in the process of data collection and extrapolation. More information concerning the quality assurance of the data collection

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<sup>37</sup> The extrapolation model as well as the process of population data collection and extrapolation is further described in the Annex of the Main Report.

<sup>38</sup> The sources for individual data points can be found in the database.

and extrapolation can be found in the Main Report. After extrapolation, the plausibility of the figures was again checked by expert assessment and by comparing the extrapolation results to the output of the desk research and to the results of the Baseline Countries.

### 5.3 Extract from Directive 2004/18/EC

#### TITLE II “Rules on public contracts” CHAPTER V I I “Conduct of the procedure”

##### Section I General provisions

#### Article 44

#### **Verification of the suitability and choice of participants and award of contracts**

1. Contracts shall be awarded on the basis of the criteria laid down in Articles 53 and 55, taking into account Article 24, after the suitability of the economic operators not excluded under Articles 45 and 46 has been checked by contracting authorities in accordance with the criteria of economic and financial standing, of professional and technical knowledge or ability referred to in Articles 47 to 52, and, where appropriate, with the non-discriminatory rules and criteria referred to in paragraph<sup>3</sup>.

2. The contracting authorities may require candidates and tenderers to meet minimum capacity levels in accordance with Articles 47 and 48. The extent of the information referred to in Articles 47 and 48 and the minimum levels of ability required for a specific contract must be related and proportionate to the subject-matter of the contract.

These minimum levels shall be indicated in the contract notice.

3. In restricted procedures, negotiated procedures with publication of a contract notice and in the competitive dialogue procedure, contracting authorities may limit the number of suitable candidates they will invite to tender, to negotiate or to conduct a dialogue with, provided a sufficient number of suitable candidates is available. The contracting authorities shall indicate in the contract notice the objective and nondiscriminatory criteria or rules they intend to apply, the minimum number of candidates they intend to invite and, where appropriate, the maximum number.

In the restricted procedure the minimum shall be five. In the negotiated procedure with publication of a contract notice and the competitive dialogue procedure the minimum shall be three. In any event the number of candidates invited shall be sufficient to ensure genuine competition.

The contracting authorities shall invite a number of candidates at least equal to the minimum number set in advance. Where the number of candidates meeting the selection criteria and the minimum levels of ability is below the minimum number, the contracting authority may continue the procedure by inviting the candidate(s) with the required capabilities. In the context of this same procedure, the contracting authority may not include other economic operators who did not request to participate, or candidates who do not have the required capabilities.

4. Where the contracting authorities exercise the option of reducing the number of solutions to be discussed or of tenders to be negotiated, as provided for in Articles 29(4) and 30(4), they shall do so by applying the award criteria stated in the contract notice, in the specifications or in the descriptive document. In the final stage, the number arrived at shall make for genuine competition insofar as there are enough solutions or suitable candidates.

## Section 2

### Criteria for qualitative selection

#### Article 45

#### **Personal situation of the candidate or tenderer**

1. Any candidate or tenderer who has been the subject of a conviction by final judgment of which the contracting authority is aware for one or more of the reasons listed below shall be excluded from participation in a public contract:

(a) participation in a criminal organisation, as defined in Article 2(1) of Council Joint Action 98/733/JHA (1);

(b) corruption, as defined in Article 3 of the Council Act of 26 May 1997 (2) and Article 3(1) of Council Joint Action 98/742/JHA (3) respectively;

(c) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities (4);

(d) money laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (1).

Member States shall specify, in accordance with their national law and having regard for Community law, the implementing conditions for this paragraph.

They may provide for a derogation from the requirement referred to in the first subparagraph for overriding requirements in the general interest.

For the purposes of this paragraph, the contracting authorities shall, where appropriate, ask candidates or tenderers to supply the documents referred to in paragraph 3 and may, where they have doubts concerning the personal situation of such candidates or tenderers, also apply to the competent authorities to obtain any information they consider necessary on the personal situation of the candidates or tenderers concerned. Where the information concerns a candidate or tenderer established in a State other than that of the contracting authority, the contracting authority may seek the cooperation of the competent authorities. Having regard for the national laws of the Member State where the candidates or tenderers are established, such requests shall relate to legal and/or natural persons, including, if appropriate, company directors and any person having powers of representation, decision or control in respect of the candidate or tenderer.

2. Any economic operator may be excluded from participation in a contract where that economic operator:

(a) is bankrupt or is being wound up, where his affairs are being administered by the court, where he has entered into an arrangement with creditors, where he has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;

(b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or of an arrangement with creditors or of any other similar proceedings under national laws and regulations;

(c) has been convicted by a judgment which has the force of resjudicata in accordance with the legal provisions of the country of any offence concerning his professional conduct;

(d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate;

(e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;

(f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;

(g) is guilty of serious misrepresentation in supplying the information required under this Section or has not supplied such information. Member States shall specify, in accordance with their national law and having regard for Community law, the implementing conditions for this paragraph.

3. Contracting authorities shall accept the following as sufficient evidence that none of the cases specified in paragraphs 1 or 2(a), (b), (c), (e) or (f) applies to the economic operator:

(a) as regards paragraphs 1 and 2(a), (b) and (c), the production of an extract from the 'judicial record' or, failing that, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or the country whence that person comes showing that these requirements have been met;

(b) as regards paragraph 2(e) and (f), a certificate issued by the competent authority in the Member State concerned.

Where the country in question does not issue such documents or certificates, or where these do not cover all the cases specified in paragraphs 1 and 2(a), (b) and (c), they may be replaced by a declaration on oath or, in Member States where there is no provision for declarations on oath, by a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin or in the country whence that person comes.

4. Member States shall designate the authorities and bodies competent to issue the documents, certificates or declarations referred to in paragraph 3 and shall inform the Commission thereof. Such notification shall be without prejudice to data protection law.

#### Article 46

### **Suitability to pursue the professional activity**

Any economic operator wishing to take part in a public contract may be requested to prove its enrolment, as prescribed in his Member State of establishment, on one of the professional or trade registers or to provide a declaration on oath or a certificate as described in Annex IX A for public works contracts, in Annex IX B for public supply contracts and in Annex IX C for public service contracts.

In procedures for the award of public service contracts, insofar as candidates or tenderers have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the contracting authority may require them to prove that they hold such authorisation or membership.

#### Article 47

### **Economic and financial standing**

1. Proof of the economic operator's economic and financial standing may, as a general rule, be furnished by one or more of the following references:

- (a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
- (b) the presentation of balance-sheets or extracts from the balancesheets, where publication of the balance-sheet is required under the law of the country in which the economic operator is established;
- (c) a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last three financial years available, depending on the date on which the undertaking was set up or the economic operator started trading, as far as the information on these turnovers is available.

2. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing an undertaking by those entities to that effect.

3. Under the same conditions, a group of economic operators as referred to in Article 4 may rely on the capacities of participants in the group or of other entities.

4. Contracting authorities shall specify, in the contract notice or in the invitation to tender, which reference or references mentioned in paragraph 1 they have chosen and which other references must be provided.

5. If, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, he may prove his economic and financial standing by any other document which the contracting authority considers appropriate.

### **Technical and/or professional ability**

1. The technical and/or professional abilities of the economic operators shall be assessed and examined in accordance with paragraphs 2 and 3.
2. Evidence of the economic operators' technical abilities may be furnished by one or more of the following means according to the nature, quantity or importance, and use of the works, supplies or services:
  - (a) (i) a list of the works carried out over the past five years, accompanied by certificates of satisfactory execution for the most important works. These certificates shall indicate the value, date and site of the works and shall specify whether they were carried out according to the rules of the trade and properly completed. Where appropriate, the competent authority shall submit these certificates to the contracting authority direct; (ii) a list of the principal deliveries effected or the main services provided in the past three years, with the sums, dates and recipients, whether public or private, involved. Evidence of delivery and services provided shall be given:
    - where the recipient was a contracting authority, in the form of certificates issued or countersigned by the competent authority,
    - where the recipient was a private purchaser, by the purchaser's certification or, failing this, simply by a declaration by the economic operator;
  - (b) an indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and, in the case of public works contracts, those upon whom the contractor can call in order to carry out the work;
  - (c) a description of the technical facilities and measures used by the supplier or service provider for ensuring quality and the undertaking's study and research facilities;
  - (d) where the products or services to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the supplier or service provider is established, subject to that body's agreement, on the production capacities of the supplier or the technical capacity of the service provider and, if necessary, on the means of study and research which are available to it and the quality control measures it will operate;
  - (e) the educational and professional qualifications of the service provider or contractor and/or those of the undertaking's managerial staff and, in particular, those of the person or persons responsible for providing the services or managing the work;
  - (f) for public works contracts and public services contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;
  - (g) a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years;
  - (h) a statement of the tools, plant or technical equipment available to the service provider or contractor for carrying out the contract;
  - (i) an indication of the proportion of the contract which the services provider intends possibly to subcontract;

- (j) with regard to the products to be supplied:
- (i) samples, descriptions and/or photographs, the authenticity of which must be certified if the contracting authority so requests;
  - (ii) certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to specifications or standards.

3. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for the execution of the contract, for example, by producing an undertaking by those entities to place the necessary resources at the disposal of the economic operator.

4. Under the same conditions a group of economic operators as referred to in Article 4 may rely on the abilities of participants in the group or of other entities.

5. In procedures for awarding public contracts having as their object supplies requiring siting or installation work, the provision of services and/or the execution of works, the ability of economic operators to provide the service or to execute the installation or the work may be evaluated in particular with regard to their skills, efficiency, experience and reliability.

6. The contracting authority shall specify, in the notice or in the invitation to tender, which references under paragraph 2 it wishes to receive.

#### Article 49

### **Quality assurance standards**

Should they require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, contracting authorities shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators.

#### Article 50

### **Environmental management standards**

Should contracting authorities, in the cases referred to in Article 48(2) (f), require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the Community Eco-Management and Audit Scheme (EMAS) or to environmental

management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.

#### Article 51

### **Additional documentation and information**

The contracting authority may invite economic operators to supplement or clarify the certificates and documents submitted pursuant to Articles 45 to 50.

TITLE II “Rules on public contracts”  
CHAPTER V I I “Conduct of the procedure”  
S e c t i o n 1

#### General provisions

#### Article 44

##### Verification of the suitability and choice of participants and award of contracts

1. Contracts shall be awarded on the basis of the criteria laid down in Articles 53 and 55, taking into account Article 24, after the suitability of the economic operators not excluded under Articles 45 and 46 has been checked by contracting authorities in accordance with the criteria of economic and financial standing, of professional and technical knowledge or ability referred to in Articles 47 to 52, and, where appropriate, with the non-discriminatory rules and criteria referred to in paragraph 3.

2. The contracting authorities may require candidates and tenderers to meet minimum capacity levels in accordance with Articles 47 and 48. The extent of the information referred to in Articles 47 and 48 and the minimum levels of ability required for a specific contract must be related and proportionate to the subject-matter of the contract.

These minimum levels shall be indicated in the contract notice.

3. In restricted procedures, negotiated procedures with publication of a contract notice and in the competitive dialogue procedure, contracting authorities may limit the number of suitable candidates they will invite to tender, to negotiate or to conduct a dialogue with, provided a sufficient number of suitable candidates is available. The contracting authorities shall indicate in the contract notice the objective and nondiscriminatory criteria or rules they intend to apply, the minimum number of candidates they intend to invite and, where appropriate, the maximum number.

In the restricted procedure the minimum shall be five. In the negotiated procedure with publication of a contract notice and the competitive dialogue procedure the minimum shall

be three. In any event the number of candidates invited shall be sufficient to ensure genuine competition.

The contracting authorities shall invite a number of candidates at least equal to the minimum number set in advance. Where the number of candidates meeting the selection criteria and the minimum levels of ability is below the minimum number, the contracting authority may continue the procedure by inviting the candidate(s) with the required capabilities. In the context of this same procedure, the contracting authority may not include other economic operators who did not request to participate, or candidates who do not have the required capabilities.

4. Where the contracting authorities exercise the option of reducing the number of solutions to be discussed or of tenders to be negotiated, as provided for in Articles 29(4) and 30(4), they shall do so by applying the award criteria stated in the contract notice, in the specifications or in the descriptive document. In the final stage, the number arrived at shall make for genuine competition insofar as there are enough solutions or suitable candidates.

## Section 2

### Criteria for qualitative selection

#### Article 45

#### **Personal situation of the candidate or tenderer**

1. Any candidate or tenderer who has been the subject of a conviction by final judgment of which the contracting authority is aware for one or more of the reasons listed below shall be excluded from participation in a public contract:

(a) participation in a criminal organisation, as defined in Article 2(1) of Council Joint Action 98/733/JHA <sup>(1)</sup>;

(b) corruption, as defined in Article 3 of the Council Act of 26 May 1997 <sup>(2)</sup> and Article 3(1) of Council Joint Action 98/742/ JHA <sup>(3)</sup> respectively;

(c) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities<sup>(4)</sup>;

(d) money laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering <sup>(1)</sup>.

Member States shall specify, in accordance with their national law and having regard for Community law, the implementing conditions for this paragraph.

They may provide for a derogation from the requirement referred to in the first subparagraph for overriding requirements in the general interest.

For the purposes of this paragraph, the contracting authorities shall, where appropriate, ask candidates or tenderers to supply the documents referred to in paragraph 3 and may, where they have doubts concerning the personal situation of such candidates or tenderers, also apply to the competent authorities to obtain any information they consider necessary on the

personal situation of the candidates or tenderers concerned. Where the information concerns a candidate or tenderer established in a State other than that of the contracting authority, the contracting authority may seek the cooperation of the competent authorities. Having regard for the national laws of the Member State where the candidates or tenderers are established, such requests shall relate to legal and/or natural persons, including, if appropriate, company directors and any person having powers of representation, decision or control in respect of the candidate or tenderer.

2. Any economic operator may be excluded from participation in a contract where that economic operator:

- (a) is bankrupt or is being wound up, where his affairs are being administered by the court, where he has entered into an arrangement with creditors, where he has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;
- (b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or of an arrangement with creditors or of any other similar proceedings under national laws and regulations;
- (c) has been convicted by a judgment which has the force of *res judicata* in accordance with the legal provisions of the country of any offence concerning his professional conduct;
- (d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate;
- (e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;
- (f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;
- (g) is guilty of serious misrepresentation in supplying the information required under this Section or has not supplied such information. Member States shall specify, in accordance with their national law and having regard for Community law, the implementing conditions for this paragraph.

3. Contracting authorities shall accept the following as sufficient evidence that none of the cases specified in paragraphs 1 or 2(a), (b), (c), (e) or (f) applies to the economic operator:

- (a) as regards paragraphs 1 and 2(a), (b) and (c), the production of an extract from the 'judicial record' or, failing that, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or the country whence that person comes showing that these requirements have been met;
- (b) as regards paragraph 2(e) and (f), a certificate issued by the competent authority in the Member State concerned.

Where the country in question does not issue such documents or certificates, or where these do not cover all the cases specified in paragraphs 1 and 2(a), (b) and (c), they may be replaced by a declaration on oath or, in Member States where there is no provision for declarations on oath, by a solemn declaration made by the person concerned before a

competent judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin or in the country whence that person comes.

4. Member States shall designate the authorities and bodies competent to issue the documents, certificates or declarations referred to in paragraph 3 and shall inform the Commission thereof. Such notification shall be without prejudice to data protection law.

#### Article 46

### **Suitability to pursue the professional activity**

Any economic operator wishing to take part in a public contract may be requested to prove its enrolment, as prescribed in his Member State of establishment, on one of the professional or trade registers or to provide a declaration on oath or a certificate as described in Annex IX A for public works contracts, in Annex IX B for public supply contracts and in Annex IX C for public service contracts.

In procedures for the award of public service contracts, insofar as candidates or tenderers have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the contracting authority may require them to prove that they hold such authorisation or membership.

#### Article 47

### **Economic and financial standing**

1. Proof of the economic operator's economic and financial standing may, as a general rule, be furnished by one or more of the following references:

- (a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
- (b) the presentation of balance-sheets or extracts from the balancesheets, where publication of the balance-sheet is required under the law of the country in which the economic operator is established;
- (c) a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last three financial years available, depending on the date on which the undertaking was set up or the economic operator started trading, as far as the information on these turnovers is available.

2. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing an undertaking by those entities to that effect.

3. Under the same conditions, a group of economic operators as referred to in Article 4 may rely on the capacities of participants in the group or of other entities.

4. Contracting authorities shall specify, in the contract notice or in the invitation to tender, which reference or references mentioned in paragraph 1 they have chosen and which other references must be provided.

5. If, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, he may prove his economic and financial standing by any other document which the contracting authority considers appropriate.

#### Article 48

### **Technical and/or professional ability**

1. The technical and/or professional abilities of the economic operators shall be assessed and examined in accordance with paragraphs 2 and 3.

2. Evidence of the economic operators' technical abilities may be furnished by one or more of the following means according to the nature, quantity or importance, and use of the works, supplies or services:

(a) (i) a list of the works carried out over the past five years, accompanied by certificates of satisfactory execution for the most important works. These certificates shall indicate the value, date and site of the works and shall specify whether they

were carried out according to the rules of the trade and properly completed. Where appropriate, the competent authority shall submit these certificates to the contracting authority direct; (ii) a list of the principal deliveries effected or the main services provided in the past three years, with the sums, dates and recipients, whether public or private, involved. Evidence of delivery and services provided shall be given:

— where the recipient was a contracting authority, in the form of certificates issued or countersigned by the competent authority,

— where the recipient was a private purchaser, by the purchaser's certification or, failing this, simply by a declaration by the economic operator;

(b) an indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and, in the case of public works contracts, those upon whom the contractor can call in order to carry out the work;

(c) a description of the technical facilities and measures used by the supplier or service provider for ensuring quality and the undertaking's study and research facilities;

(d) where the products or services to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the supplier or service provider is established, subject to that body's agreement, on the production capacities of the supplier or the technical capacity of the service provider and, if necessary, on the means of study and research which are available to it and the quality control measures it will operate;

(e) the educational and professional qualifications of the service provider or contractor and/or those of the undertaking's managerial staff and, in particular, those of the person or persons responsible for providing the services or managing the work;

(f) for public works contracts and public services contracts, and only in

- appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;
- (g) a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years;
  - (h) a statement of the tools, plant or technical equipment available to the service provider or contractor for carrying out the contract;
  - (i) an indication of the proportion of the contract which the services provider intends possibly to subcontract;
  - (j) with regard to the products to be supplied:
    - (i) samples, descriptions and/or photographs, the authenticity of which must be certified if the contracting authority so requests;
    - (ii) certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to specifications or standards.

3. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for the execution of the contract, for example, by producing an undertaking by those entities to place the necessary resources at the disposal of the economic operator.

4. Under the same conditions a group of economic operators as referred to in Article 4 may rely on the abilities of participants in the group or of other entities.

5. In procedures for awarding public contracts having as their object supplies requiring siting or installation work, the provision of services and/or the execution of works, the ability of economic operators to provide the service or to execute the installation or the work may be evaluated in particular with regard to their skills, efficiency, experience and reliability.

6. The contracting authority shall specify, in the notice or in the invitation to tender, which references under paragraph 2 it wishes to receive.

#### Article 49

### **Quality assurance standards**

Should they require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, contracting authorities shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators.

## Article 50

### **Environmental management standards**

Should contracting authorities, in the cases referred to in Article 48(2) (f), require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the Community Eco-Management and Audit Scheme (EMAS) or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.

## Article 51

### **Additional documentation and information**

The contracting authority may invite economic operators to supplement or clarify the certificates and documents submitted pursuant to Articles 45 to 50.

## 5.4 Extract from Directive 2004/17/EC

TITLE II Rules applicable to contracts

Chapter VII Conduct of the procedure

### S e c t i o n 1

Qualification and qualitative selection

#### Article 52

Mutual recognition concerning administrative, technical or financial conditions, and certificates, tests and evidence

1. When selecting participants for a restricted or negotiated procedure, in reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities shall not:

- (a) impose administrative, technical or financial conditions on certain economic operators which would not be imposed on others;
- (b) require tests or evidence which would duplicate objective evidence already available.

2. Where they request the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, contracting entities shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification.

Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators.

3. For works and service contracts, and only in appropriate cases, the contracting entities may require, in order to verify the economic operator's technical abilities, an indication of the environmental management measures which the economic operator will be able to apply when carrying out the contract. In such cases, should the contracting entities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the EMAS or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification.

Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.

### Article 53

#### **Qualification systems**

1. Contracting entities which so wish may establish and operate a system of qualification of economic operators.

Contracting entities which establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification.

2. The system under paragraph 1 may involve different qualification stages.

It shall be operated on the basis of objective criteria and rules for qualification to be established by the contracting entity.

Where those criteria and rules include technical specifications, the provisions of Article 34 shall apply. The criteria and rules may be updated as required.

3. The criteria and rules for qualification referred to in paragraph 2 may include the exclusion criteria listed in Article 45 of Directive 2004/18/EC on the terms and conditions set out therein.

Where the contracting entity is a contracting authority within the meaning of Article 2(1)(a), those criteria and rules shall include the exclusion criteria listed in Article 45(1) of Directive 2004/18/EC.

4. Where the criteria and rules for qualification referred to in paragraph 2 include requirements relating to the economic and financial capacity of the economic operator, the latter may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting entity that these resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to that effect.

Under the same conditions, a group of economic operators as referred to in Article 11 may rely on the capacity of participants in the group or of other entities.

5. Where the criteria and rules for qualification referred to in paragraph 2 include requirements relating to the technical and/or professional abilities of the economic operator, the latter may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting entity that those resources will be available to it throughout the

period of the validity of the qualification system, for example by producing an undertaking by those entities to make the necessary resources available to the economic operator. Under the same conditions, a group of economic operators referred to in Article 11 may rely on the abilities of participants in the group or of other entities.

6. The criteria and rules for qualification referred to in paragraph 2 shall be made available to economic operators on request. The updating of these criteria and rules shall be communicated to interested economic operators.

Where a contracting entity considers that the qualification system of certain other entities or bodies meets its requirements, it shall communicate to interested economic operators the names of such other entities or bodies.

7. A written record of qualified economic operators shall be kept; it may be divided into categories according to the type of contract for which the qualification is valid.

8. When establishing or operating a qualification system, contracting entities shall in particular observe the provisions of Article 41(3) concerning notices on the existence of a system of qualification, of Article 49(3), (4) and (5) concerning the information to be delivered to economic operators having applied for qualification, of Article 51(2) concerning the selection of participants when a call for competition is made by means of a notice on the existence of a qualification system as well as the provisions of Article 52 on mutual recognition concerning administrative, technical or financial conditions, certificates, tests and evidence.

9. When a call for competition is made by means of a notice on the existence of a qualification system, tenderers in a restricted procedure or participants in a negotiated procedure shall be selected from the qualified candidates in accordance with such a system.

#### Article 54

#### **Criteria for qualitative selection**

1. Contracting entities which establish selection criteria in an open procedure shall do so in accordance with objective rules and criteria which are available to interested economic operators.

2. Contracting entities which select candidates for restricted or negotiated procedures shall do so according to objective rules and criteria which they have established and which are available to interested economic operators.

3. In restricted or negotiated procedures, the criteria may be based on the objective need of the contracting entity to reduce the number of candidates to a level which is justified by the need to balance the particular characteristics of the procurement procedure with the

resources required to conduct it. The number of candidates selected shall, however, take account of the need to ensure adequate competition.

4. The criteria set out in paragraphs 1 and 2 may include the exclusion criteria listed in Article 45 of Directive 2004/18/EC on the terms and conditions set out therein.

Where the contracting entity is a contracting authority within the meaning of Article 2(1)(a), the criteria and rules referred to in paragraphs 1 and 2 of this Article shall include the exclusion criteria listed in Article 45(1) of Directive 2004/18/EC.

5. Where the criteria referred to in paragraphs 1 and 2 include requirements relating to the economic and financial capacity of the economic operator, the latter may where necessary and for a particular contract rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator shall prove to the contracting entity that the necessary resources will be available to it, for example by delivering an undertaking by those entities to that effect.

Under the same conditions, a group of economic operators as referred to in Article 11 may rely on the capacities of participants in the group or of other entities.

6. Where the criteria referred to in paragraphs 1 and 2 include requirements relating to the technical and/or professional abilities of the economic operator, the latter may where necessary and for a particular contract rely on the abilities of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting entity that for the performance of the contract those resources will be available to it, for example by delivering an undertaking by those entities to make the necessary resources available to the economic operator.

Under the same conditions, a group of economic operators as referred to in Article 11 may rely on the abilities of participants in the group or of other entities.

## S e c t i o n 2

### Award of the contract

#### Article 55

#### **Contract award criteria**

1. Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the criteria on which the contracting entities shall base the award of contracts shall:

(a) where the contract is awarded on the basis of the most economically advantageous tender from the point of view of the contracting entity, be various criteria linked to the subject-matter of the contract in question, such as delivery or completion date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, environmental

characteristics, technical merit, aftersales service and technical assistance, commitments with regard to parts, security of supply, and price or otherwise  
(b) the lowest price only.

2. Without prejudice to the provisions of the third subparagraph, in the case referred to in paragraph 1(a), the contracting entity shall specify the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

Those weightings can be expressed by providing for a range with an appropriate maximum spread.

Where, in the opinion of the contracting entity, weighting is not possible for demonstrable reasons, the contracting entity shall indicate the criteria in descending order of importance.

The relative weighting or order of importance shall be specified, as appropriate, in the notice used as a means of calling for competition, in the invitation to confirm the interest referred to in Article 47(5), in the invitation to tender or to negotiate, or in the specifications.