

LUXEMBOURG

KEY FACTS AND FIGURES

Key Facts and Figures in Luxembourg						
Overview	Total procurement 5,470,000,000€		Procurement % GDP 12%		2013 GDP 45,288,100,000€	Contracting authorities N/A
Procedures applied	Open 82%	Restricted 10%	Negotiated procedure with call no call 6% 1%		Competitive dialogue 1%	Direct award 1% Other 0%
Share of contract notices by buyer	National 38%		Regional/local 13%		Body governed by public law 9%	Other 41%
Contract type	Services 22%		Works 59%		Supplies 19%	Framework agreement 0%
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Voluntary	Uptake rate N/A
Perceived corruption	Corruption widespread in society			Corruption widespread in procurement		
	Businesses 25%		Individuals 42%		At national level 20%	At local/regional level 31%
TED indicators	Value of tenders 566,767,272€		Of total procurement 10%		# contract notices 470	# contract awards 353
Other indicators	Received single bid 7%		# days for decision 84.1		Price only criteria 79%	MEAT criteria 21%
	Won by foreign firms 16%		Related to EU funds 11%		Joint purchase 5%	Central purchasing No

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

Summary of public procurement system

Luxembourg has the highest GDP per capita in the European Union. Indeed, the Luxembourgish economy benefits from high political and social stability, an attractive legal and fiscal framework, and a qualified and multilingual workforce. As such, ESI funds do not play a significant role in the economy, representing only 0.03% of national GDPⁱ.

Luxembourg is also one of the smallest countries in the EU in terms of size, population and administrative framework. This reflects on the public procurement system, which is articulated around a single one-stop-shop public procurement portal on which all contracting authorities are obliged to publish their contracts. The public procurement system is quite stable, facing no major changes or issues in recent years. The last important evolution was the adaptation of the portal to e-procurement solutions and in particular to e-submission.

Contracting authorities and business organisations are involved in the supervision of tender procedures through the specific Tender Commission, and also take active part in building the administrative capacity of both public procurement practitioners and economic operators.

DESCRIPTION OF FEATURES

Legal features of public procurement system

EU Directives 2004/18/EC and 2004/17/EC have been transposed by the Law on public procurement of 25 June 2009 and the implementing Regulation of 3 August 2009. Both the law and the regulation are divided into three parts. The first part sets general principles applicable to contracts below EU thresholds, while the second and third parts cover contracts falling under the EU Directives 2004/18/EC and 2004/17/EC, respectively. In addition, EU Directives on defence (2009/81/EC) and remedies

(2007/66/EC) have been transposed through the Law of 26 December 2012 on defence and security public contracts and the Law of 10 November 2010 on remedies in public procurement contracts, respectively.

There are three levels of national thresholds governing procurement procedures below the EU thresholds. Simplified procedure is allowed for the two lowest thresholds. For contracts related to supplies, services or works below EUR 55,000, so-called small-scale procurement, negotiated procedures without publication is allowed. For contracts between EUR 55,000 and EUR 100,000, negotiated procedures without publication is allowed, provided that at least three bidders are invited. For contracts above EUR 100,000 for supplies and services and EUR 800,000 for works, open procedure is mandatory, except in cases where negotiated procedure with or without publication is allowed by the Directives.

Institutional system

The Public Procurement Directorate, part of the Public Works Department of the Ministry of Sustainable Development and Infrastructures (*MDDI*), is the primary policy body for public procurement. It is responsible for the regulatory framework, drafting legislation, monitoring its implementation and ensuring the external representation of the Luxembourgish authorities in the field of public procurement.

The Tender Commission is a consultative body within the *MDDI* composed of representatives from contracting authorities and chambers of commerce and cottage industries. It can act as both a supervision body, ensuring that public procurement rules are applied properly by contracting authorities, or upon the reception of complaints from tenderers. The notices and opinions published by the Tender Commission are not binding but are commonly adopted by contracting authorities.

Luxembourgish law provides tenderers with two methods for contesting a contract award. On the one hand, the complaints can address either the contracting authority directly, without affecting the award procedure, or to the Tender Commission. On the other hand, judicial appeals have to be submitted to the administrative court or to civil and commercial courts if the aggrieved bidder claims damages.

There are two main independent supervision bodies of the public procurement system. The National Court of Auditors investigates every year a set of public organisations. Among the topics covered are the public procurements carried out by these organisations, although no specific report on the public procurement system is issued. In addition, the Competition Council is responsible for fair competition between economic operators in Luxembourg. It regularly issues decisions on unfair competition in public procurement, mainly caused by collusion between economic operators.

Key issues that have a bearing on administrative capacity

Human resources: At central level, the Public Procurement Directorate employs 20 persons, of whom 5 manage the public procurement portal and 4 work for the Tender Commission. While there is no precise count, there are approximately 300 contracting authorities currently registered with the central e-procurement portal, of which it can be broadly estimated that 50 are local and regional authorities.

Structures: The National Institute of Public Administration (*INAP*) is the government's leading civil service training school in Luxembourg. It provides initial and vocational training for public employees at the State and local levels.

Training: Several organisations conduct trainings and capacity building sessions for public procurement officials and tenderers. The *INAP* provides 3 hours seminars for newly recruited and senior officials at the State and municipal levels on public

procurement legislation and its evolution through EU Directives and jurisprudence as well as the introduction of environmental considerations in tendersⁱⁱ.

Professional organisations also participate in public procurement capacity building among their affiliated companies, in particular organising training sessions or issuing information notes, for instance about the e-procurement portal.

In addition, contracting authorities can receive training from the Luxembourg Institute of Science and Technology (LIST) regarding the use of the e-procurement portal.

Systems/tools: The e-procurement portal serves as an information and communication platform on public procurement for the whole country. It provides contracting authorities and economic operators with information on general principles and guidelines, applicable legislation, notification of contracts and guidance on procedures including applicable thresholds, submission conditions and timelines as well as standardised tender specifications which have been recently introduced for public worksⁱⁱⁱ. Another tool called Prometa Spec has been developed for the State administration to automatically create and tailor tender documents according to some basic standardised elements^{iv}.

In addition, the uniform application of procurement law is ensured through direct communication between contracting authorities and public procurement officials from the central administration^v.

E-procurement

The Luxembourg's e-government plan 2010–2014^{vi} is targeted at offering an extensive e-procurement system for contracting authorities and tenderers through the Public Procurement Portal (*PMP*), including secure information transfer between contracting authorities and tenderers, and an e-submission solution. However, the level of e-procurement uptake in Luxembourg is still very low^{vii}. Indeed, while the *PMP* has been implemented since 2006 and e-notification has been mandatory for all contracting authorities, e-submission has only been available since September 2014. In 2013, 295 contracting authorities from Luxembourg were registered on the *PMP*, representing the majority part of contracting authorities^{viii}.

All tender notices in the country are published on a single platform within the *PMP*, but the related tender documents are not all e-accessible. Indeed, although e-access is mandatory, there is no penalty for a contracting authority that does not comply, hence the relatively modest rate of 43% e-access uptake of in 2014^{ix}.

In order to further promote e-procurement, campaigns for raising awareness among economic operators and contracting authorities have recently been launched. For instance, in February 2014, a conference organised by the *MDDI* to present the e-submission solution attracted 150 participants^x.

Corruption

Luxembourg has the second lowest level of perceived corruption in public procurement within the EU^{xi}. There is no national anti-corruption strategy targeting public procurement, nonetheless a set of legal instruments has been developed to prevent corruption in tender processes. These include limitations for companies previously convicted of corruption from participating in public procurement for a period up to two years^{xii} and the application of a price analysis for financial offers that are 15% below the average price of its competitors^{xiii}. In addition, public procurement practitioners benefit from training on anti-corruption measures.

Nevertheless, a public procurement corruption case reported in 2011^{xiv} involving public officials and two bidders on public construction projects has shed light on some pitfalls

of the public procurement regulatory framework. Indeed, Luxembourg law does not ban conflicts of interest in public procurement, which implies for instance that civil servants can be employed in the private sector without respecting a standstill period.

Europe 2020 Agenda

The Luxembourgish public procurement law formally encourages contracting authorities to make use of tender procedures to promote sustainable development and social objectives^{xv}.

Similarly, the National Plan for Sustainable Development adopted in 2010 by the *MDDI* explicitly sets the objective of promoting green and social criteria in public procurement. For instance, it intends to promote the social economy as well as the inclusion of disabled persons and of the long-term unemployed through public procurement. However, the plan does not set any target objectives, specific measures or mandatory criteria to promote green public procurement^{xvi}.

The *PMP* provides some guidance on criteria that can be required in the terms of references and links to EU green public procurement website and toolkit. Guidelines for sustainable construction works are also available^{xvii}.

The inclusion of social considerations in tender procedures is also foreseen by the public procurement law. Contracting authorities may restrict tenders to social enterprises, or to enterprises that favour the inclusion of disabled persons or that participate in labour inclusion programmes^{xviii}.

There is no specific action to promote SMEs in public procurement, and they already represent a substantial share of contracts awarded. On average, SMEs have won 70% of above-threshold contracts between 2009 and 2011^{xix}.

Irregularities and findings of national Audit Authorities

The National Court of Auditors issues annual audit reports in which some irregularities related to public procurement procedures are reported. Three public procurement-related irregularities were reported in 2012, and three in 2013^{xx} relating either to selection criteria or to the procedure adopted. However the number of irregularities is too low to consider them as endemic weaknesses.

The Tender Commission also reports on irregularities. It issued 79 opinions on disputed procurement in 2013, and 84 opinions in 2012^{xxi}. However, its decisions are not publicly available and no comprehensive analysis of the system has been published so far.

Outlook

A recent significant change in the public procurement system was the introduction of an e-submission solution in the *PMP* in September 2014. Even though it is not mandatory yet, contracting authorities seem to express high demand for e-submission, which may quickly increase the level of e-procurement take up^{ix}.

In addition the Luxembourgish government made a step towards integration of environmental criteria in tenders. It recently agreed on the participation of the State to the Resource Centre of Technologies and Innovation for buildings, which is responsible for the standardisation of clauses in procurement contracts, in particular regarding sustainable buildings^{xxii}.

It will provide standardised specifications for public contracts which are a set of clauses to be applied to either all public contracts or to sector-specific procurement.

This on-going work will help to promote the adoption of environmental and social criteria in tenders.

Finally, the Parliament recently adopted eight bills related to reforms in the public administration including some reinforcement of training capacity building for civil servants at State and local levels^{xxiii}.

ANALYSIS

Strengths

The Luxembourgish public procurement system is structured around the *PMP*, which provides comprehensive information for all contracting authorities and economic operators. The recent development of e-submission services will also contribute to a further harmonisation of processes through this common portal.

The Tender Commission is a unique consultative and supervision body of the public procurement system. In practice, it also acts as a dispute resolution body that prevents some cases from being brought before the administrative court by expressing recognised opinions. This mechanism contributes to significant procedural cost savings for contracting authorities and economic operators.

Finally, the training regime on offer on public procurement in Luxembourg contributes to the strong overall performance of the system and ensures a uniform application of the rules and procedures. In addition, the high level of involvement of professional organisations in training and awareness raising actions contributes to the proper dissemination of knowledge and skills among economic operators.

Weaknesses

First, the supervision and monitoring of public procurement in Luxembourg is relatively limited. The two main independent supervision bodies of the public procurement system do not investigate specifically on public procurement, and there is therefore no publicly available report dealing with the overall performance of the system or with the main irregularities found. This is prejudicial to public information and understanding of the main issues faced by public procurement in Luxembourg.

Second, the promotion of the Europe 2020 Agenda through public procurement has, at this point, not been made concrete. Indeed, no targets have been defined and few concrete measures have been implemented to ensure the adoption of environmental and social criteria in tender procedures. The responsibility of including such criteria is left to contracting authorities, and little guidance is provided on how to effectively integrate these criteria into their purchases.

Recommendations

- **Target supervision:** Procurement in Luxembourg is not currently governed by a dedicated procurement body, and public access to oversight data is limited.
 - Increase procurement oversight activities within the *MDDI*, including collection of comprehensive data and publication of annual reports.
- **Low uptake of e-procurement:** Despite a well-functioning infrastructure, e-procurement uptake remains very low.
 - Promote the use of the *PMP* e-procurement portal through awareness-raising activities and incentives.
 - Develop authoritative and accessible guidance documents on the use of e-procurement tools.

- **Powerful purchasing:** Public procurement is not used to its full potential to achieving strategic objectives.
 - Set, implement and monitor well-defined objectives to ensure that environmental, social and innovation goals are included in tender procedures.
 - Produce hands-on guidance for contracting authorities to implement these criteria.
 - Set up and maintain an inventory of ready-to-use environmental, social and innovative criteria for different product groups.

ⁱ Partnership Agreement between Luxembourg and the European Commission on ESI Funds for the 2014-2020 programming period (2014).

ⁱⁱ Training catalogue of the National Institute of Public Administration (*INAP*), available at: <http://www.fonction-publique.public.lu/fr/formations/catalogue/index.html>

ⁱⁱⁱ Regulation of the Grand Duchy of 24 March 2014 for the institution of standardised tender specifications for public procurement procedures.

^{iv} Ministry of Public Service, *Business Process Management: Framework PROMETA from model to monitoring*, available at: <http://www.fonction-publique.public.lu/fr/formations/catalogue/secteur-etatique/04ORGANISAT/04-3-QUALITE/04-3-1-93/index.html>

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

^{vi} Ministry of State Administration and Administrative Reform, *Plan Directeur de la mise en œuvre des technologies de l'information au sein de l'État 2010-2014* (Plan for the implementation of ICT within the State).

^{vii} European Commission staff working document (2014), Assessment of the 2014 national reform programme and stability programme for LUXEMBOURG.

^{viii} Department of Public Works (2014), Annual Report 2013.

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

^x E-procurement conference, Chambre des métiers du Luxembourg, 19 February 2014, available at: <http://www.cdm.lu/news/2014/02/marches-publics-electroniques>

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

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

^{xiii} OECD (2010), Public Procurement in EU Member States - The Regulation of Contract Below the EU. Thresholds and in Areas not Covered by the Detailed Rules of the EU Directives, SIGMA Papers, No. 45, OECD Publishing, available at: <http://dx.doi.org/10.1787/5km91p7s1mxv-en>

^{xiv} GRECO (2013), Fourth Evaluation Round.

^{xv} Law of 25 June 2009 on public procurement, Official Journal of the Grand Duchy of Luxembourg.

^{xvi} Ministry of Sustainable Development and Infrastructure (MDDI) (2010), National Plan for Sustainable Development (PNDD).

^{xvii} The Resource Centre for Environmental Technologies (CRTE) (2010), Sustainable Construction Guide.

^{xviii} Proposition text on the social aspects for the transposition of the Public Procurement Directive 2014/24/UE, Chambers of employees, 27 February 2015.

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

^{xx} Court of Auditors of Luxembourg (2014), Special report on public organisations.

^{xxi} Department of Public Works (2014), Annual Report 2013.

^{xxii} Summary of the works of 27 February 2015, news release from the Luxembourg Government, available at: <http://www.gouvernement.lu/4473749/27-conseil-gouvernement>

^{xxiii} Law of 25 March 2015 on Public Service Reforms.