

EVALUATION AND FITNESS CHECK (FC) ROADMAP			
TITLE OF THE EVALUATION/FC	REFIT evaluation of the modifications introduced by Directive 2007/66/EC to Directives 89/665/EEC and 92/13/EEC concerning the European legal framework for remedies in the area of public procurement		
LEAD DG RESPONSIBLE UNIT	GROW G3	DATE OF THIS ROADMAP	12 / 2015
TYPE OF EVALUATION	Evaluation Ex-post Mixed	PLANNED START DATE	Q4 / 2013
		PLANNED COMPLETION DATE	Q2 / 2016
		PLANNING CALENDAR	http://ec.europa.eu/smart-regulation/evaluation/index_en.htm
This indicative roadmap is provided for information purposes only and is subject to change.			

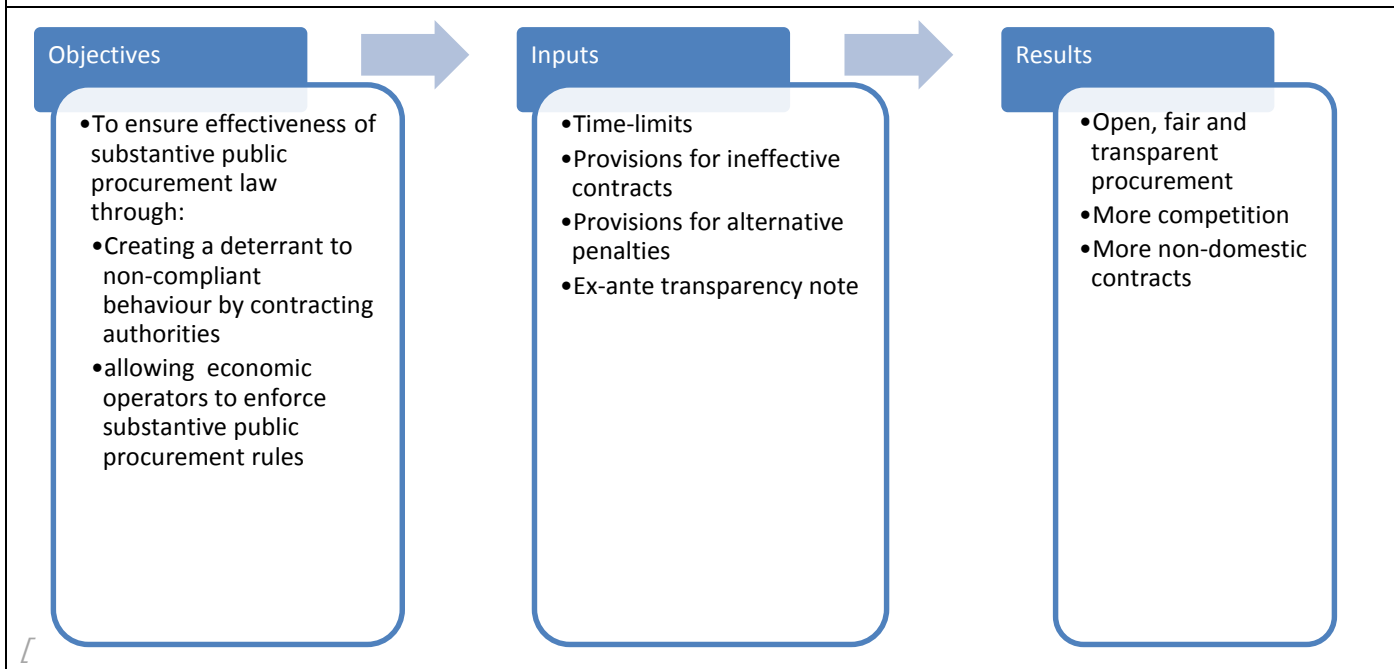
A. Purpose
(A.1) Purpose
<p>Directive 2007/66/EC has been identified as a candidate for evaluation under REFIT in 2013 (COM(2013)685) and confirmed in the Commission Work Programme 2015 (COM(2014)910). The objective of this evaluation is to assess the functioning of the provisions introduced by Directive 2007/66/EC to Directives 89/665/EEC and 92/13/EEC concerning the remedies legal framework in the area of public procurement.</p> <p>Moreover, both Public Sector Remedies Directive 89/665/EEC and the Utilities Remedies Directive 92/13/EEC as modified by Directive 2007/66/EC provide that no later than 20 December 2012, the Commission should review their implementation and report to the European Parliament and to the Council on its effectiveness, and in particular concerning alternative penalties and time limits. It was decided to postpone the preparation of the report because many Member States were late with the transposition of Directive 2007/66/EC and the experience gained at the time was deemed not sufficient. The fact that the evaluation is undertaken now will allow the Commission to carry out the assessment in the light of the new legislative package on public procurement (Directives 2014/23/EU, 2014/24/EU and 2014/25/EU).</p>
(A.2) Justification
<p>European Commission guidelines on policy evaluation foresee that an evaluation of the impact of adopted measures should be taken around 5 years after their adoption. Both Public Sector Remedies Directive 89/665/EEC and the Utilities Remedies Directive 92/13/EEC were thoroughly revised by Directive 2007/66/EC of 11 December 2007 with a deadline for transposition not later than 20 December 2009.</p>

B. Content and subject of the evaluation
(B.1) Subject area
<p>Directives 89/665/EEC and 92/13/EEC offer procedural guarantees to the economic operators to ensure that their rights are enforced properly by the national contracting authorities in the context of procurement procedures covered by EU public procurement directives. Member States must ensure that the review procedures are available at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement.</p>

(B.2) Original objectives of the intervention

Directives 89/665/EEC and Directive 92/13/EC, as amended through Directive 2007/66/EC, were adopted as flanking measures aimed at ensuring that economic operators everywhere in the EU would have access to clear and effective procedures for seeking redress in cases where they consider contracts had been unfairly awarded. The objective of the intervention was to ensure the effectiveness of substantive public procurement law through i) creating a deterrent to non-compliant behaviour by contracting authorities and ii) allowing economic operators to enforce substantive public procurement rules. This was crucial to making sure contracts ultimately go to the company which has made the best offer, and therefore to building confidence among businesses and the public that public procurement procedures are open, fair, competitive, transparent and allow for a cross-border participation.

(B.3) How the objectives were to be achieved



C. Scope of the evaluation/FC

(C.1) Topics covered

- Functioning of Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts;
- Particular focus will be on period after the transposition period of Directive 2007/66/EC.

(C.2) Questions/issues to be examined

This evaluation assesses the operation of the modifications introduced by Directive 2007/66/EC, i.e. whether the Directive has achieved its objectives and whether its operation is still fit-for-purpose today. The evaluation criteria are the Directive’s: (1) effectiveness; (2) efficiency; (3) relevance; (4) EU added value; and (5) coherence with other policies.

The evaluation will focus in particular on:

- whether the Directive contributes to transparency, fairness and openness of the market;
- the main costs and benefits of the Directive for CAEs and economic operators;
- whether the original need for intervention evolved in recent years;
- possible effects if the Directive were to be withdrawn.

(C.3) Other tasks

On the basis of expectations as indicated by stakeholders and duly substantiated by the evaluator, develop recommendations that can serve as inputs for further policy development and/or policy initiatives to be considered by the Commission.

D. Evidence base
(D.1) Evidence from monitoring
<ul style="list-style-type: none"> - Impact assessment of Directive 2007/66/EC. - An external contractor has been commissioned a study on December 2013. In that context, data are collected through <i>Stakeholder interviews, Member State Authority interviews, Case studies and Market data collection</i>. Contractor's Final report has been finalized in April 2015 (http://ec.europa.eu/growth/single-market/public-procurement/modernising-rules/evaluation/index_en.htm). - Legal literature and other reports (e.g. JUST scoreboard). - Contacts with stakeholders (e.g. SEGPP, EXPP, academics, professional organisations, industry...), including an open consultation open from 24 April to 20 July 2014.
(D.2) Previous evaluations and other reports
<ul style="list-style-type: none"> - Impact assessment of Directive 2007/66/EC. - An external contractor has been commissioned a study on December 2013. In that context, data is collected by <i>Stakeholder interviews, Member State Authority interviews, Case studies and Market data collection</i>. Contractor's Final report is expected by April 2015.
(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)
<p>Many Member States were late with the transposition of Directive 2007/66/EC and infringement procedures for non-communication of national transposition measures were launched without being referred to the Court. The experience in the application of the Directive is limited. Few complaints have been received on this matter and two infringement procedures have been launched. So far, no infringement procedure has been referred to Court. However, the EU Court has had the occasion to interpret the provisions introduced by Directive 2007/66/EC in the context of preliminary rulings (in particular, on time limits, on <i>locus standi</i>, on scope of review procedures and on fees).</p>
(D.4) Consultation
<p>The Commission departments:</p> <ul style="list-style-type: none"> - conducted a public consultation between 24 April 2015 and 20 July 2015, whose results will be published; - organised a meeting with first instance specialised administrative review bodies of 11 Member States on 30 September 2015; - participated in a seminar about remedies in public procurement organised by the Association representing the Supreme Administrative Courts of the EU (ACA) on 22-23 October 2015; - conducted a consultation with the Member States between 15 October 2015 and 23 November 2015.
(D.5) Further evidence to be gathered
N/A

E. Other relevant information/ remarks
N/A