

## **The Swedish procurement monitoring report 2018**

The Swedish Competition Authority has been instructed by the Government of Sweden to fulfil the reporting obligations set out in Articles 83 (3) and 85 (2) and 85 (3) of Directive 2014/24/EU of the European Parliament and of the Council (Classical Directive) and the corresponding Articles of Directive 2014/23/EU (Supply Directive) and Directive 2014/25/EU (Concession Directive) of the European Parliament and of the Council.

The report follows the structure of the non-binding template issued by the EU Commission. However, all the information requested in the template cannot be stated. The template have been answered as far as possible although some information is not available. Statistical data for the previous year is not yet available in April and the procurement statistics' available today in Sweden does not contain some of the requested data or the quality of that data is too low.

The first reason will remain a problem as long as the EU Commission requests the reports in April. The other reasons will change to a certain degree in the future, if the proposed changes in the memorandum *Statistik på upphandlingsområdet* (Ds 2017:48) from the Ministry of Finance are implemented. However, some statistics will always be very hard to obtain, i.e., statistics on all direct awards regardless of value.

The report is produced in consultation with the National Agency of Public Procurement.

Sweden's report 2018 pursuant to the procurement directives is hereby submitted.

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# Procurement Monitoring Report 2018

– Sveriges rapport enligt EU:s upphandlingsdirektiv

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## Sammanfattning

Konkurrensverket fick i december 2016 i uppdrag av regeringen att, i samråd med Upphandlingsmyndigheten, fullgöra Sveriges rapporteringsskyldighet i enlighet med upphandlingsdirektiven<sup>1</sup>. Genom denna rapport genomförs det uppdraget.

Rapporten är utformad i enlighet med den icke bindande mall som EU-kommissionen har tagit fram och som diskuterats i EU:s arbetsgrupp för ekonomi och statistik (ESWG<sup>2</sup>). I arbetsgruppen har flertalet medlemsländer påpekat att samtliga efterfrågade uppgifter inte är möjliga att uppge eftersom många avser upphandlingar eller inköp under EU:s tröskelvärden. Det har i ESWG även påpekats att eftersom de nationella reglerna ser olika ut under tröskelvärdena kommer även rapporteringarna att skilja sig åt och inte vara fullt ut jämförbara.

Rapporten använder i huvudsak rubriksättningen i kommissionens mall. De uppgifter som efterfrågas i mallen redovisas så långt som möjligt, men i de allra flesta avseenden redovisas äldre uppgifter än för 2017 eller uppgifter med andra definitioner. Inom vissa områden finns dock uppgifterna inte att tillgå över huvud taget.

Rapporten har tagits fram med stöd av Upphandlingsmyndigheten. Rapporten baseras framför allt på Konkurrensverkets och Upphandlingsmyndighetens rapporter under senare år, med komplettering av ett fåtal nya uppgifter.

En uppgift som inte har publicerats tidigare är Konkurrensverkets uppskattning av värdet av de upphandlingspliktiga inköpen i Sverige 2016. Värdet uppskattas till cirka 684 miljarder kronor, vilket motsvarade en sjättedel av BNP 2016 exklusive moms.<sup>3</sup>

Andra nya uppgifter kommer från Upphandlingsmyndighetens beräkning av den statistiska fördelningen av upphandlande myndigheter och enheter utifrån i hur stor utsträckning deras annonserade upphandlingar fått enbart ett anbud. De nya uppgifterna visar att vid upphandlingar över EU:s tröskelvärden får cirka var åttonde upphandlande myndighet/enhet enbart ett anbud i minst hälften av sina annonserade upphandlingar. Vid upphandlingar under EU:s tröskelvärde är

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<sup>1</sup> Här avses rapporteringsskyldigheten enligt artikel 83.3 samt 85.3 och 85.5 i Europaparlamentets och rådets direktiv 2014/24/EU av den 26 februari 2014 om offentlig upphandling samt artikel 99.3 och 101.2 i Europaparlamentets och rådets direktiv 2014/25 av den 26 februari 2016 om upphandling av enheter som är verksamma på områdena vatten, energi, transporter och posttjänster.

<sup>2</sup> ESWG är en arbetsgrupp för statistik om den offentliga upphandlingen inom EU, och särskilt om medlemsstaternas inrapportering enligt upphandlingsdirektiven. Arbetsgruppen lyder under Kommissionens rådgivande kommitté för offentlig upphandling (EXPP).

<sup>3</sup> Metoden och källorna för beräkningen redovisas på engelska i Annex I. Metoden har dock inte ändrats sedan beräkningen av värdet för 2015, så den finns på svenska i Bilaga 1 i *Statistik om offentlig upphandling 2017*, Konkurrensverkets rapportserie 2017:11, november 2017.

andelen som får endast ett anbud i minst hälften av upphandlingarna något lägre, cirka var elfte upphandlande myndighet/enhet.

En del av de uppgifter som efterfrågas i mallen, men som inte kan redovisas i denna rapport, kommer att kunna tas fram i framtiden om förslaget i Finansdepartementets promemoria *Statistik på upphandlingsområdet* (Ds 2017:48) om en nationell statistikdatabas genomförs. Vissa uppgifter kommer dock inte kunna tas fram ens med en nationell statistikdatabas, då de förutsätter att lika omfattande uppgifter samlas in om samtliga direktupphandlingar (dvs. samtliga inköp från första kronan) som för annonserade upphandlingar över EU:s tröskelvärden.

## Summary

In December 2016, the Swedish Competition Authority (SCA) was instructed by the Government of Sweden to fulfil the reporting obligations set out in the procurement directives, in collaboration with the Swedish National Agency of Public Procurement<sup>4</sup>. Through this report, the assignment is performed.

The report is drafted in accordance with the non-binding template drawn up by the European Commission and discussed in the Economic and Statistical Working Group (ESWG<sup>5</sup>). In the working group, several Member States pointed out that it would not be possible to provide all the requested information, as much of the information pertains to procurements or purchases below the EU thresholds. Within ESWG, it has also been pointed out that, because the national regulations differ below the thresholds, the reports will differ and not be entirely comparable.

The report mainly uses the headings from the Commission's template. The information requested in the template is reported in so far as possible, but in most cases the information reported is from before 2017 or is defined in a different way. For certain areas, the information is not available in any form.

The report has been drafted with the support of the National Agency of Public Procurement. The report is based primarily on the last few years' reports from the SCA and the National Agency of Public Procurement, supplemented with some new data.

One set of data not formerly made public is the SCA's estimate of the value of all purchases with a procurement requirement in Sweden in 2016. The value is estimated at SEK 684 billion, which corresponded to a sixth of GDP 2016, VAT excluded.<sup>6</sup>

Other new data come from the National Agency of Public Procurement's calculation of the statistical distribution of contracting authorities and entities based on the extent to which their advertised procurements have received only one tender. These new data show that in procurements above the EU thresholds, about every eighth contracting authority/entity receives only one tender in at least half of its advertised procurements. In procurements below the EU thresholds, the

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<sup>4</sup> This refers to the reporting obligations in Articles 83 (3) and 85 (3) and 85 (5) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and the Articles 99(3) and 101 (2) of Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors.

<sup>5</sup> ESWG is a working group for statistics relating to public procurement in the EU, particularly relating to the Member States' reporting in accordance with the procurement directives. The working group reports to the Commission's Expert Group on Public Procurement (EXPP).

<sup>6</sup> The method and sources used are presented in English in Annex 1. The method has not changed since the value was estimated for 2015 and can be found in Swedish in Annex 1 to *Statistik om offentlig upphandling 2017*, the SCA's report 2017:11, November 2017.

proportion receiving only one tender in at least half of procurements is slightly lower: about one in every eleven contracting authorities/entities.

Some of information requested in the template which cannot be presented in this report will in future be possible to obtain, if the proposal in the memorandum *Statistik på upphandlingsområdet* (Ds 2017:48) from the Ministry of Finance on a national statistics database is realised. Certain types of information will not be possible to obtain even with a national statistics database, as they would require that equally extensive information be gathered about all direct awards (i.e., all purchases, from the first krona upwards) as are gathered for advertised procurements above the EU thresholds.

## General information

### Scope of reporting

Pursuant to the template, this report should cover the period between 1 January 2017 and 31 December 2017. For quantitative data based on procurement notices, this means that the contract award notice should have been posted during this period. Data sources available for producing this report are the Tenders Electronic Daily (TED) database and datasets from private actors.

In Sweden, there is no publicly-owned national database for publishing public procurement notices. Instead, the market for publishing procurement notices is open for competition. This has created a contestable market with several privately owned commercial databases. However, since there is no central body to gather data on a national level this means that the publicly available data on public procurements are limited. The Swedish Competition Authority and the National Agency of Public Procurement buy data (but not the copyright) from private actors. Thus, statistics on public procurements in this report are based mainly on data from the procurement database owned by Visma.

The TED database is a valuable source of information. It allows for analysis at the level of individual lots, which is not possible when using datasets from private actors. However, for Sweden, the TED database suffers from data quality issues, mainly missing values, and is therefore not used for reporting purposes. Instead, the quantitative data in this report is based on datasets from private companies. In contrast to the TED database, the datasets from private companies have information, i.e., organisational identifiers, on all submitted tenders, not only the winning one. Furthermore, the national datasets cover procurements governed by the EU directives as well as procurements governed by national legislation.

Unfortunately, data relating to the period 1 January 2017 and 31 December 2017 are not yet available in national datasets. Therefore, all statistics presented within the scope of this report are based on data covering the period 1 January 2016 and 31 December 2016. All data are based on procurement notices collected from e-platforms. However, as the dates of contract award are not available, all quantitative data on procurement notices are based on the dates of publication. In general, data required to produce statistics on procurement are not available until 6–12 months after the end of the calendar year. For example, data based on annual accounts for the year 2017, used to produce statistics on the participation of SMEs in procurements, are not available in national business registers until autumn 2018.

Sweden implemented the 2014 Directives on public procurement through three acts that came into force on 1 January 2017. Since data are not yet available on public procurements in 2017 and this report is based on data covering 2016, this

also means that the data refer to procurements under the older public procurement acts and, consequently, before service concessions were included.

This report includes data on procurement governed by the EU directives as well as procurements governed by national legislation, although the latter are presented separately. *Above thresholds* refers to contracts falling within the EU procurement directives. These calculations are based on procurement procedures. Procurement notices include cancelled procedures, unless otherwise stated. Notices on direct awards are excluded, unless otherwise stated. In national datasets, there is generally no data available at the level of individual lots, only at the level of the tenders. Therefore, the number of awarded contracts, for example, refers to the number of winning bids at the level of the tenders. In general, procedures missing values are excluded from calculations. For approximately 30 percent of all procurement procedures there is either no information or incomplete information on submitted tenders.

In general, there is limited quantitative data available that can be used to analyse green, social, and innovative procurement at the national level. More emphasis is needed on measuring and monitoring.

In October 2017, the Ministry of Finance presented a public consultation with proposals aimed at improving access to public procurement data in Sweden<sup>7</sup>.

The scope set by the Commission in the template is primarily 2017. In this report, references are made to the new Swedish Administrative Procedure Act and Local Government Act, even though they were not in force during 2017. The reason for this is that the report is submitted to the Commission in April 2018 and references to current acts appear more appropriate than references to those that no longer apply. In addition, the differences between the old and the new acts are small when it comes to conflicts of interest. Thus, references to the new acts do not affect the description of the implementation of Article 24 of the Classical Directive (and corresponding articles in the Supply and Concession Directives).

### **The National Public Procurement Strategy – an overview**

In 2017 the Swedish Government adopted the *National Public Procurement Strategy*. The objective for the policy area public procurement is that all public procurement shall be efficient, legally certain and take advantage of the competition on the market. It shall also promote innovative solutions and take environmental and social concerns into account.

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<sup>7</sup> Ministry of Finance, *Statistik på upphandlingsområdet*, (Ds 2017:48), October 2017.



The *National Public Procurement Strategy*<sup>8</sup> has relevance for several subsections of this report. In order to avoid repeating the same information several times in the report, general information about the strategy has been compiled here. The report will then present the relevant parts of the strategy in greater detail under the respective subsections.

Based on its overarching objective, the Government has formulated seven policy objectives for its procurement strategy:

1. Public procurement as a strategic tool for doing good business.
2. Effective public purchasing.
3. A multiplicity of suppliers and well-functioning competition. See section *IV Level of SMEs' participation in public procurement*.
4. Legally certain public procurement. See section *III.1 Qualitative reporting on fraud, corruption, conflict of interest etc.*
5. Public procurement that drives innovation and promotes alternative solutions. See section *V.3 Public procurement of innovation*.
6. Public procurement that is environmentally responsible. See section *V.1 Green procurement ('GPP')*.
7. Public procurement that contributes to a socially sustainable society. See section *V.2 Socially responsible public procurement ('SRPP')*.

The procurement strategy is aimed primarily at representatives of the central government authorities. The Government also intends to work to ensure that representatives of municipalities and county councils as well as other contracting authorities and entities, adopt governing documents to put the policy objectives and the Government's aims for public procurement into practice within their activities.

For more information on the implementation of the *National Procurement Strategy* see the Ministry of Finance's webpage *Nationella upphandlingsstrategin*<sup>9</sup> and the National Agency for Public Procurement's webpage *Nationella upphandlingsstrategin*<sup>10</sup> and the annual report *Trendens* no 1 2017<sup>11</sup>.

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<sup>8</sup> The Government of Sweden, Ministry of Finance, *The National Procurement Strategy*, November 2017. <http://www.government.se/information-material/2017/11/national-public-procurement-strategy/>.

<sup>9</sup> <http://www.regeringen.se/regeringens-politik/nationella-upphandlingsstrategin/>.

<sup>10</sup> <https://www.upphandlingsmyndigheten.se/organisera/nationella-upphandlingsstrategin/>.

<sup>11</sup> The National Agency for Public Procurement, *Den sunda offentliga affären – och vägen dit*, *Trendens* nr 1, February 2017.

[https://www.upphandlingsmyndigheten.se/globalassets/publikationer/trendens\\_nr1\\_feb\\_2017.pdf](https://www.upphandlingsmyndigheten.se/globalassets/publikationer/trendens_nr1_feb_2017.pdf).

## General information

Number of procurement procedures (i.e., the number of notices announcing a call for competition) pursuant to the EU directives: 7,561 (see Table 1).

Number of awarded contracts pursuant to the EU directives: 13,643 (see Table 2).

In general, in national datasets, there is no data available at the level of individual lots, only at the level of the tenders. The number of awarded contracts refers to the number of winning bids at the level of the tenders. For additional statistics on public procurement in Sweden see *Statistics on Public Procurement 2017*<sup>12</sup> and the National Agency for Public Procurement's web page *Statistik om offentlig upphandling*<sup>13</sup>.

**Table 1** Number of procurement procedures 2012–2016

	Below thresholds	Above thresholds	Total
2012	13,727	6,190	19,917
2013	13,376	6,378	19,754
2014	11,803	6,545	18,348
2015	11,318	7,027	18,345
2016	10,769	7,561	18,330

Source: VismaCommerce (data) and National Agency for Public Procurement (calculations).

**Table 2** Number of awarded contracts (winning bids) 2012–2016

	Below thresholds	Above thresholds	Total
2012	15,219	11,591	26,810
2013	15,062	11,799	26,861
2014	13,204	12,541	25,745
2015	13,722	12,164	25,886
2016	12,883	13,643	26,526

Source: VismaCommerce (data) and National Agency for Public Procurement (calculations).

<sup>12</sup> The SCA and the National Agency for Public Procurement, *Statistik om offentlig upphandling 2017*, <http://www.konkurrensverket.se/en/news/public-procurements-worth-sek-642-billion/>.

<sup>13</sup> The National Agency for Public Procurement's web page: *Statistik om offentlig upphandling [Statistics on Public Procurement]*, <https://www.upphandlingsmyndigheten.se/verktyg/statistik-om-offentlig-upphandling/>, (2018-04-11, 12:32)

## Information on monitoring and reporting bodies

This report is written by the Swedish Competition Authority (SCA) in consultation with the National Agency for Public Procurement.

The SCA is the supervisory body for public procurement in Sweden<sup>14</sup>. The Authority's task is to work for effective public procurement to the benefit of the general public and the market participants. The supervisory activities are therefore prioritised, with a focus on illegal direct awards of contracts, but also identifying infringements which are of major importance or of special interest<sup>15</sup>. This includes detection and law enforcement of four Swedish public procurement acts<sup>16</sup>, the act on system of choice in the public sector<sup>17</sup> and public procurements in accordance with Article 5 of Regulation (EC) no 1370/2007 of the European Parliament and of the Council<sup>18</sup>. In addition, the SCA has the tasks of submitting proposals to the Government for amending the rules and proposing measures to eliminate obstacles to effective competition in the private and public sectors and to achieve more efficient public procurement. The SCA also has the tasks of stimulating research in the field of competition and public procurement and contributing to the development of qualitative and quantitative research through allocating funds for research projects and commissioned research.<sup>19</sup>

The National Agency for Public Procurement is responsible for developing and supporting the procurements carried out by contracting authorities and entities in Sweden. The Agency's task is to work for effective and socially and environmentally sustainable public procurement to the benefit of society and the participants on the markets. The Agency provides general support to contracting authorities, entities, and suppliers on all aspects of public procurement, including environmentally and otherwise sustainable public procurement, promotes innovative procurement and contributes to strengthening public procurement of strategic importance for the public sector. Providing support regarding state aid also falls within the Agency's responsibilities.

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<sup>14</sup> A description of the supervisory activities can be found in *The Swedish Competition Authority's supervision over public procurement*, June 2016, [http://www.konkurrensverket.se/globalassets/english/procurement/konkurrensverkets-tillsynsverksamhet-for-upphandling\\_english.pdf](http://www.konkurrensverket.se/globalassets/english/procurement/konkurrensverkets-tillsynsverksamhet-for-upphandling_english.pdf).

<sup>15</sup> *The Swedish Competition Authority's Prioritisation Policy for Enforcement*, April 2016, [http://www.konkurrensverket.se/globalassets/english/about-us/english\\_prioritisation\\_policy\\_for\\_enforcement.pdf](http://www.konkurrensverket.se/globalassets/english/about-us/english_prioritisation_policy_for_enforcement.pdf).

<sup>16</sup> Lagen (2016:1145) om offentlig upphandling, lagen (2016:1146) om upphandling inom försörjningssektorerna, lagen (2016:1147) om upphandling av koncessioner samt lagen (2011:1029) om upphandling inom försvars och säkerhet.

<sup>17</sup> Lagen (2008:962) om valfrihetssystem, <http://rkrattsbaser.gov.se/sfst?bet=2008:692>.

<sup>18</sup> Chapter 4a of the Public Transport Act (lagen [2010:1065] om kollektivtrafik).

<sup>19</sup> Förordning (2007:1117) med instruktion för Konkurrensverket, <http://rkrattsbaser.gov.se/sfst?bet=2007:1117>.

Public procurements are reviewed by administrative courts. An application for a review can be made by a supplier that has been harmed or risks being harmed due to a violation of a provision in anyone of the Swedish Public Procurement Acts. The administrative courts may also order a contracting authority or entity to pay a procurement fine upon receiving an application from the SCA. An application for a fine may for instance be made if a contracting authority or entity has made an illegal direct award of a contract (i.e., awarded a contract without a prior contract notice). The procurement fine is a penalty that passes to the central government. The judgement by an administrative court can be appealed to an administrative court of appeal.

The Supreme Administrative Court is the supreme general administrative court and considers determinations on appeal from any of the four administrative courts of appeal in Sweden. Not all appeals will be considered by the Supreme Administrative Court, but only those where the Supreme Administrative Court grants leave to appeal. The main rule is that leave to appeal is only granted if the Supreme Administrative Court's determination may be of importance as a precedent, i.e., can provide guidance on how other similar cases should be considered. The fact that it may be considered that an administrative court of appeal has made an erroneous judgment is not normally sufficient for the Supreme Administrative Court to try the case.

#### *Serious irregularities governed by the Swedish Public Procurement Acts*

Many of the serious irregularities listed in the template are among the mandatory and voluntary grounds for exclusion that are governed by the four Swedish Procurement Acts. These correspond to the grounds for exclusion in the procurement directives. Tenderers that consider themselves unfairly excluded, e.g., a bidder who that believes that a competitor should have been excluded, may apply to a general administrative court for a review.

An award decision in a public procurement can also be reviewed because of conflicts of interest. The application for a review can in these cases be based on the principles of equal treatment and non-discrimination in the Swedish Public Procurement Acts (Chapter 4, Section 1 of the Public Procurement Act or corresponding sections of the other three procurement acts). Alternatively, the application for review can be based on the rules against conflicts of interest in the Administrative Procedure Act (see below).

#### *Other legislations and supervising bodies handling serious irregularities in public procurement*

In Sweden, procurement fraud, corruption, conflicts of interest, and other serious irregularities in public procurements are mainly not governed by the Public Procurement Acts. All such violations fall under the same legislative acts, whether they take place in public procurements or in other areas. Therefore, the monitoring bodies for these infringements vary.

*The Swedish Economic Crime Authority* is a specialised authority within the public prosecution service that fight economic crime in Sweden (for example tax crimes, including the use of undeclared labour, false accounting, and embezzlement). This includes economic crimes that take place in connection with public procurement.

The task of working with prevention, detection, and prosecution of corruption is assigned to *the Swedish Police* and *the Swedish Prosecution Authority*. Both agencies have special units for investigating crimes involving corruption, namely the National Anti-Corruption Police Unit (NACPU) at the Swedish Police and the National Anti-Corruption Unit at the Swedish Prosecution Authority. These units work with both prevention and law enforcement.

An overview of the rules about *conflicts of interest* can be found in section III.1. Each contracting authority and entity has the task of detecting and preventing situations where conflicts of interest can arise. In cases where a violation of the Penal Code is suspected, the matter is investigated by the Swedish Police.

*The Swedish Competition Authority* is the supervisory body regarding infringements of the Swedish Competition Act and of Articles 101 and 102 in the Treaty of the Functioning of the European Union (TFEU). In doing so the SCA places an emphasis on combating cartels and on intervening against private and public market participants that abuse their positions on the market. Therefore preventing, detecting, and combatting collusion in public procurements are among the Authority's tasks in this area.

## **I. Estimation of the aggregated total value of procurement which would have been covered by the directives if its value had exceeded the relevant thresholds**

### **I.1 Estimation of the aggregated total value of procurement which would have been covered by the directives if its value had exceeded the relevant thresholds**

Pursuant to the template this stands for:

the value of procurement informally referred to as: 'below the EU threshold'. In this context, the term 'value of procurement' should be understood as the value of the awarded contracts, so as to be comparable with estimates from contract award notices for above-threshold procurement. (Not as, for example, the value of procurement which could have taken place if a contractor was found, i.e. business opportunities, nor on the level of actual spending, i.e. paid invoices).

At present, data is not collected in Sweden in a manner that makes it possible to obtain a total value of procurements below the EU threshold. There are several reasons for this.

First of all, in the national procurement legislation, there is no requirement on contract award notices for procurements not covered by EU directives. This means that in so far as there is data on values in the statistics currently available for national procurements, these are values estimated in the procurement notices. These values may differ from the values of the awarded contracts. In addition, a relatively large proportion of the national procurements have missing values for the procurement value.

Secondly, the scope which the Commission states in the template assumes that there is data on the value of each directly awarded contract. In the report pursuant to the Classic and Supply Directives of 2004<sup>20</sup>, the Swedish Competition Authority and Statistics Sweden conducted a survey among contracting authorities and entities to collect data on the total value of directly awarded contracts. Experiences from those studies show that the methodology was resource- and time-consuming for the authority that collected the data, as well as the authorities and entities that provided the data. In addition, the results were unreliable, since the responses were often based on estimates. Therefore, the method is subject to both low reliability and low validity. Since there is a high risk that such a collection will be misleading, the assessment has been that it is not suitable to conduct such collection for this report.

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<sup>20</sup> Article 75 of the Directive 2004/18/EG, and Article 67 of the Directive 2004/17/EG.

The Ministry of Finance has taken an initiative to improve statistics on public procurement<sup>21</sup>. If the model proposed in the memorandum, or similar, is implemented it is possible that that value of procurements above the national threshold can be calculated in a few years.

However, each year, the total value of all purchases subject to the procurement regulations is estimated. This thus encompasses the value of procurements conducted by Swedish contracting authorities and entities that should have been published if they had been above the national thresholds. This estimate is provided in this report. About the method for calculating the estimation, see below.

*Estimated value of purchases subject to the procurement regulations in 2016*

Every year, the total value of purchases covered by the procurement regulations in Sweden is estimated, i.e., the value of procurements conducted by Swedish contracting authorities and entities that should have been published if they had been above the national thresholds. These estimates are included in this report for the years 2012–2016, see Table 3. It is not possible to estimate how much of this total value is attributable to procurements above the EU thresholds. However, the value can be set in relation to fixed-price GDP, which makes it possible to see how public procurement has developed over time in relation to the economy in general.

The method used for making the estimates is described in Annex 1. Due to the fact that national accounts and some other official statistics are published with some delay, the estimations are made with a few years' delay and the most recent one refers to 2016.

**Table 3 Estimated value of public procurements in Sweden, 2012–2016**

	2012	2013	2014	2015	2016
Estimated value (SEK, millions)	615	623	633	642	684
Share of GDP at fixed price	18.9 %	18.7 %	18.1 %	17.3 %	17.6 %

Source: Statistics Sweden (data GDP at fixed price) and the Swedish Competition Authority (calculations).

<sup>21</sup> Ministry of Finance, Ds 2017:48, *Statistik på upphandlingsområdet*, October 2017.

## **II. Most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules**

### **II.1 Qualitative reporting on application of public procurement rules**

#### Main sources of wrong application or of legal uncertainty

The qualitative reporting below is compiled mainly from empirical observations by the SCA and the National Agency for Public Procurement.

The empirical observations made by the SCA and the National Agency for Public Procurement give an indication of which are the most frequent sources of wrong application or of legal uncertainty. However, there are no guarantees that there are no other sources that are equally or more frequent, though no one has yet realised or brought to attention that they lead to wrong applications or legal uncertainty.

Every year, the SCA publishes a public procurement supervision report. These reports contain descriptions of the cases on violations of the Swedish Public Procurement Acts that the SCA has handled during the previous year and which problem areas that have been identified. The report for 2017<sup>22</sup> has identified the following:

- The majority of the cases have concerned illegal direct awards.
- Other cases have referred to the rules concerning areas such as framework agreements, the configuration of technical specifications and the obligation to document procurements.
- Some cases that the SCA often deem to be illegal direct awards are cases where significant changes are made to the contract or framework agreement, which render the contract or agreement materially different in character from what was initially set out in the procurement documents.
- There has also been a case when purchases were divided in order to circumvent the public procurement legislation.
- The SCA has no clear indications that wrong application or legal uncertainty is more frequent in any one phase of the procurement process. It is likely that all phases have certain types of problems; there may be challenges in preparation, specification of requirements, qualification (application of the exclusionary grounds), and/or evaluation.

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<sup>22</sup> The Swedish Competition Authority, Report 2018:4, *Konkurrensverkets upphandlingstillsyn 2017*, April 2018.



In the case of customised specifications, the SCA cannot, from its supervision, see any major attempts to reduce deadlines for targeting procurement. However, in 2017, the SCA has seen an overuse of the exception for particular urgency, especially related to the refugee crisis.

Drawing conclusions about which contracting authorities and entities that more frequently violate the public procurement legislation from which ones that are subject to supervision is precarious. Most of the SCA's cases originate from tip-offs or external monitoring, mainly local media coverage of public procurements. Therefore, there is no information about which authorities/entities that make violations that are not noted.

The National Agency for Public Procurement provides support and guidance by telephone and through an online question forum<sup>23</sup>. The most frequent cases of legal uncertainty that have been observed are:

- ESPD (e.g. not expressly allowing ESPD in a tendering procedure pursuant to EU procurement rules).
- Illegal direct award of contracts (e.g. not having published a contract notice when needed).
- Shortcomings in the tender documents causing the procedure to recommence (e.g. tender documents that violates the general principles or contain formal defects).

In 2017, the National Agency for Public Procurement published a report on applications for review of public procurement in Sweden<sup>24</sup>. The report is based on a study of 1000 procurement procedures made in 2015 and 2016 that have been subject to a review procedure. In addition, interviews were conducted with stakeholders such as suppliers, contracting authorities, courts and attorneys. According to the study, the most common reasons behind an application for review were shortcomings in the tender documents (45 %), incorrect handling of qualification criteria (40 %), and incorrect handling of the technical requirements on the supplies, services or works to be procured (30 %). The sum exceeds 100 percent since many of the applications were made for more than one reason.

The SCA and the National Agency for Public Procurement have observed almost the same reasons for wrong application or legal uncertainty. Often they seem to be related to inadequate or deficient planning and strategy, lack of resources, lack of procurement skills or limited knowledge of the scope of the regulations, political pressure or procurement documents that are difficult to understand.

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<sup>23</sup> The National Agency for Public Procurement's web page: *Frågeportalen*, <https://frageportalen.upphandlingsmyndigheten.se/org/upphandlingsmyndigheten/>

<sup>24</sup> The National Agency for Public Procurement, Report 2017:7, *Kartläggning och analys av mål om överprövning*, December 2017. <https://www.upphandlingsmyndigheten.se/globalassets/publikationer/rapporter/rapport-2017-7-kartlaggning-och-analys-av-mal-om-overprovning.pdf>

### Specific legal provisions which appear to raise significant problems of application

The SCA and the National Agency for Public Procurement have made almost identical observations of legal provisions which appear to raise significant problems:

- ESPD, for example, if contracting authorities are obligated to provide a prepared ESPD to the economic operators, and how the Commission's online ESPD service should be applied.
- The means of proof for exclusion and the application of the evidence catalogue. For example, how economic operators shall formulate a solemn declaration or what evidence contracting authorities can demand from economic operators based in Sweden or other member states.
- The scope of the public procurement, especially regarding the application of: Article 59 (European Single Procurement Document), and Article 60 (means of proof).
- The application of the procurement principles on procurements below the national threshold for direct awards.
- Voluntary grounds for exclusion.
- The obligation to document direct awards.
- Clarification of unclear requirements.
- The combination of the requirement to divide procurements to facilitate SMEs' participations and the prohibition against dividing procurements to circumvent the legislation.
- The principle of proportionality.
- Negotiated procedure with advertising – how is it done?
- Innovation partnerships.
- The principle of equal treatment in relation to meetings with suppliers in preparation for a procurement and conflict of interest.

What constitutes a separate operating unit is a matter that is of importance for the calculation of the value of a contract, taking into account the rule on aggregation of contracts of the same kind. The value of the contract in turn affects if and how a procurement is to be published. With the aim to reduce the legal uncertainty on separate operating units the SCA commissioned a research report on this topic. Dr Kirsi-Maria Halonen at the University of Lapland, Finland, was given the assignment and has identified what constitutes a contracting authority or a separate operating unit. In the report<sup>25</sup> the author points out that the status of an individual unit may vary depending on the type and value of the contract, thus requiring an analysis in each case. For this reason, the author has presented a practical checklist to facilitate the evaluation of a unit's status.

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<sup>25</sup> Halonen, K-M., *Characteristics of Separate Operational Units – A Study on Aggregation Rules under Public Procurement Law*, Konkurrensverkets uppdragsforskningsrapport 2017:1, February 2017.  
[http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk-rapport\\_2017-1.pdf](http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk-rapport_2017-1.pdf)

With the aim to reduce the legal uncertainty about what types of qualification requirements of financial position that are appropriate in public procurements the SCA commissioned a research report on this topic. Associate Professors Tobias Indén and Johan Lundberg at Umeå University was given the assignment. In the report<sup>26</sup> the authors have problematised what requirements that are reasonable; on the one hand, financial capacity may be required to secure a satisfactory delivery and quality in accordance with the contract. On the other hand, far-reaching requirements may prevent potential bidders from participating, with the consequence of reducing competitive pressure and increasing prices. At the same time the requirements must also be consistent with the public procurement legislation. The authors points out that a contracting authority must in the context of each individual procurement assess whether the requirements are proportional to the purpose of the same. The authors have presented a checklist to facilitate the assessment of what contracting authorities can demand from potential suppliers in the public procurement at hand.

Within the framework of the SCA's commissioned research, Professors Björn Lundell and Stefan Tengblad and Assistant Professor Jonas Gamalielsson have reviewed how explicit and implicit requirements on the use of different types of IT standards affect conditions for competition for different stakeholders on the market. Specifically, analysis was performed of strategies by which organisations have been able to avoid and unlock different types of lock-in situations in the development and procurement of IT systems. An important conclusion in the report<sup>27</sup> is that there is a significant need for increased knowledge about standards in IT projects conducted by public stakeholders. The authors presents a practical checklist that could contribute to minimising the risk of lock-in to various IT standards.

An assessment on whether a wrong application of rules might exist, by observing patterns of application of the rules which does not by themselves constitute cases of wrong application of the rules, but nonetheless point at structural or recurring problems yielding a sub-optimal outcome

There is limited data on which to base an assessments on whether a wrong application of rules might exist, by observing patterns of application of the rules which do not by themselves constitute cases of wrong application of the rules, but nonetheless point at structural or recurring problems yielding a sub-optimal outcome. In general, there are quantitative data for Sweden on elements such as the use of award criteria, procedures, and the number of bidders and how these

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<sup>26</sup> Indén, T. and Lundberg, J., *Offentlig upphandling, kvalificering och ekonomisk ställning*, Konkurrensverkets uppdragsforskningsrapport 2018:3, mars 2018.

[http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk-rapport\\_2018-3.pdf](http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk-rapport_2018-3.pdf).

<sup>27</sup> Lundell, B., Gamalielsson, J. and Tengblad, S., *IT-standarder, inläsning och konkurrens – En analys av policy och praktik inom svensk förvaltning*, Konkurrensverkets uppdragsforsknings 2016:2, October 2016.

[http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk\\_rapport\\_2016-2.pdf](http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk_rapport_2016-2.pdf).

elements change over time and differ by contracting authority or entity or by type of procurement. However, there is little basis for determining what constitutes systemic use of award criteria, overly frequent use of procedures, or particularly low numbers of bidders.

## II.2 Supporting documents

*The empirical observations by the Swedish Competition Authority are based on the following published reports and other sources of information, all reports contain at least a summary in English:*

- The Swedish Competition Authority's supervisory report, *Konkurrensverkets upphandlingstillsyn 2017*, rapport 2018:4, April 2018.
- The Swedish Competition Authority's online question forum *Konkurrensverkets frågeforum*, <https://kundo.se/org/konkurrensverket/>.
- The Swedish Competition Authority, Rapport 2017:6, *Tillsyn av efterannonsering*, May 2017. <http://www.konkurrensverket.se/en/news/worst-in-the-eu-at-notifying-the-value-of-contract-awards/>.
- The Swedish Competition Authority and the National Agency for Public Procurement, *Konkurrensverkets rapport 2017:1, Mellanhänder i offentlig upphandling (Intermediary solutions in public procurements)*, January 2017. <http://www.konkurrensverket.se/en/news/new-report-on-the-role-of-intermediaries-in-public-procurement/>.
- The Swedish Competition Authority, Rapport 2016:11, *Direktupphandlingar – en kartläggning av riktlinjer och rutiner (Direct awards – a review of guidelines and routines)*, December 2016. <http://www.konkurrensverket.se/en/news/nine-in-ten-public-authorities-have-guidelines-for-the-use-of-direct-awards/>.
- Halonen, K-M., *Characteristics of Separate Operational Units – A Study on Aggregation Rules under Public Procurement Law*, *Konkurrensverkets uppdragsforskningsrapport 2017:1*, February 2017. [http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk-rapport\\_2017-1.pdf](http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk-rapport_2017-1.pdf).
- Lundell, B., Gamalielsson, J. and Tengblad, S., *IT-standarder, inläsning och konkurrens – En analys av policy och praktik inom svensk förvaltning*, *Konkurrensverkets uppdragsforskningsrapport 2016:2*, October 2016. [http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk-rapport\\_2016-2.pdf](http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk-rapport_2016-2.pdf).

*The empirical observations by the National Agency for Public Procurement are based on the following sources:*

Statistics on the most frequent requests for guidance:

1. *Telephone support*. During the period 21 November 2017 to 1 February 2018, a total of 503 questions in 67 different categories were registered.
  - Seven percent of the questions were related to ESPD.
  - Six percent of the questions were related to selection criteria and evidence catalogue (excl. ESPD).

2. *Online question forum*<sup>28</sup>. During the period 1 August 2017 to 31 January 2018, a total of 729 posts were registered. The online question forum uses tags instead of categories. Each post can have several tags. A total of 180 different tags were registered during the period.
- Nine percent of the tags were related to selection criteria and evidence catalogue (excl. ESPD).
  - Eight percent of the tags were related to ESPD.

The reporting does not include requests for guidance considered to be national, such as public access to information and secrecy regulations.

### **Mapping and analysis of applications for review of public procurement in Sweden**

In 2017, the National Agency for Public Procurement published a report on applications for review of public procurement in Sweden<sup>29</sup>. The report is based on a study of 1000 procurement procedures performed in 2015 and 2016 and subject to a review procedure. In addition, interviews were conducted with stakeholders such as suppliers, contracting authorities, courts, and attorneys.

According to the study, the most common reasons behind an application for review were shortcomings in the tender documents (45 %), incorrect handling of the qualification criteria (40 %), and incorrect handling of the technical requirements on the supplies, services or works to be procured (30 %). The sum exceeds 100 percent since many of the applications were made for more than one reason. The study shows that suppliers that appointed a legal representative when applying for review gained success more often than suppliers that did not appoint a legal representatives. Also, large enterprises gained success in court to a greater extent than small and medium-sized enterprises. Furthermore, the results of the study showed that 97 percent of the applications for review were made after the contract award decision. Suppliers gained success in about 20 percent of the decisions that were settled in court, including the Swedish Administrative Courts of Appeal and the Supreme Administrative Court. The courts decided that the contracting authority or entity must recommence the procurement procedure in 11 percent of the decisions and in 9 percent of cases decided that the procurement procedure should be concluded only after corrections had been made. Thus, the courts found no reason to intervene in 80 percent of the reviews.

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<sup>28</sup> The National Agency for Public Procurement's web page: *Frågeportalen*, <https://frageportalen.upphandlingsmyndigheten.se/org/upphandlingsmyndigheten/> (2018-04-11, 12:34)

<sup>29</sup> The National Agency for Public Procurement, Report 2017:7, *Kartläggning och analys av mål om överprövning*, December 2017. [https://www.upphandlingsmyndigheten.se/globalassets/publikationer/rapporter/rapport-2017\\_7-kartlaggning-och-analys-av-mal-om-overprovning.pdf](https://www.upphandlingsmyndigheten.se/globalassets/publikationer/rapporter/rapport-2017_7-kartlaggning-och-analys-av-mal-om-overprovning.pdf)

The interviews suggest that a supplier will consider several factors in the decision to apply for review. It is not necessarily only one individual factor that is crucial for the supplier, instead several factors are considered. These include the probability of a successful outcome, the strategic or economic value of the contract, and the risk of a deteriorated relationship with the contracting authority or entity. Furthermore, the study shows that the frequency of applications for review varies with the subject of procurement (CPV). The study suggests that dialogue between contracting authorities/entities and supplier markets, at all stages of the procurement process is important to reduce the number of reviews, given that it reduces misunderstandings between the parties involved.

### **II.3 Quantitative indicators**

#### Indicators about the national review system

In total 1,353 of the procurement procedures (i.e., the number of notices announcing a call for competition) performed in 2016 had been registered as reviewed on 1 September 2017. This corresponds to 7.4 percent of all procurement procedures in 2016. As a proportion of procurement procedures, it is more common that procurements above the EU thresholds are subject to review than procurements below the thresholds, see Table 4. While most of the reviewed procurements were published by municipalities, county councils have the highest percentage of reviewed procurements, see Table 5. The proportion of procurement procedures reviewed varies between different segments; the most common are reviews of procurement procedures within CPV code 30 (Office and computing machinery, equipment and supplies except furniture and software packages) where almost 18 percent were reviewed. These were followed by CPV code 35 (Security, fire-fighting, police and defence equipment) and 60 (Transport services [excl. Waste transport]), with just above 16 percent of the procurement procedures reviewed, see Table 6.

The registration of procurement procedures as reviewed is not based on applications for review, but on judgements in the first instance. This means there is a delay between a procurement procedure being subject to review and it being registered as reviewed. Therefore, the number of procurement procedures registered as reviewed will increase when a new set of data is available. The registration of a procurement as reviewed includes reviews regarding the procurement processes as well as reviews of the validity of contracts.

**Table 4** Number and percentage of reviewed public procurements, 2016.

	<b>Above threshold</b>	<b>Below threshold</b>	<b>Total</b>
Number of procurement procedures	7,561	10,769	18,330
Of which reviewed	747	606	1,353
Percentage reviewed	9.9 %	5.6 %	7.4 %

Source: The SCA and National Agency of Public Procurements, *Statistik om offentlig upphandling 2017*.

**Table 5** Number and percentage of reviewed procurements by type of authority 2016.

	<b>Number of procurement procedures</b>	<b>Of which reviewed</b>	<b>Percentage reviewed</b>
Municipalities	12,644	885	7.0 %
County councils	1,907	214	11.2 %
Central governmental agencies	3,273	240	7.3 %
Other contracting agencies or entities	506	14	2.7 %
<b>Total</b>	<b>18,330</b>	<b>1 353</b>	<b>7.4 %</b>

Source: The SCA and National Agency of Public Procurements, *Statistik om offentlig upphandling 2017*.

**Table 6** Number and percentage of procurement procedures reviewed 2016 for the ten CPV codes with the highest percentage reviewed.

CPV code		Number of procurement procedures	Of which reviewed	Percentage reviewed
30	Office and computing machinery, equipment and supplies except furniture and software packages	330	56	17.9 %
35	Security, fire-fighting, police and defence equipment	261	43	16.5 %
60	Transport services (excl. Waste transport)	457	75	16.4 %
18	Clothing, footwear, luggage articles and accessories	196	28	14.3 %
85	Health and social work services	776	102	13.1 %
22	Printed matter and related products	143	18	12.6 %
63	Supporting and auxiliary transport services; travel agencies services	194	24	12.4 %
39	Furniture (incl. office furniture), furnishings, domestic appliances (excl. lighting) and cleaning products	638	76	11.9 %
33	Medical equipments, pharmaceuticals and personal care products	927	102	11.0 %
75	Administration, defence and social security services	131	14	10.7 %

Source: The SCA and National Agency of Public Procurements, *Statistik om offentlig upphandling 2017*.

Data on the outcome and the average length of the review procedure are based on review cases in the administrative courts. Data are not available for above and below the EU thresholds separately. However, the number of reviewed cases in the administrative courts is not the same thing as the number of reviewed procurements. For example, if several bidders file for a review of the same procurement, this results in multiple cases of review in court. Therefore, information on the number of review cases is included here before information on the outcome and the average length of the review procedure, see Table 7.

Out of the cases tried in the Administrative Courts in 2016 the courts ruled (in whole or in part) in favour of the applicant in 29 percent, see Table 8. The average length of the review procedure in the Administrative Courts was 2.4 months in 2016, while the average review procedure in the Administrative Courts of Appeal was 3.2 months for cases with review permits, see Table 9.



**Table 7 Numbers of applications for review or appeal, 2012–2017**

	2012	2013	2014	2015	2016	2017
The Administrative Courts	3,267	3,209	3,508	2,973	4,190	3,279
The Administrative Courts of Appeal	771	778	798	621	795	925
The Supreme Administrative Court	218	222	236	206	202	385

Source: The Swedish National Courts Administration (data) and the SCA (adaptation)

**Table 8 Outcome of review procedures in the Administrative Courts, 2012–2017**

	2012	2013	2014	2015	2016	2017
In whole or in part in favour of the applicant	37 %	30 %	25 %	29 %	29 %	24 %
Not in favour of the applicant	63 %	70 %	75 %	71 %	71 %	76 %

Source: The Swedish National Courts Administration (data) and the SCA (adaptation)

**Table 9 Length of review procedure (in months), 2015–2016**

	Number of review procedures		Average length of review procedure		Longest review procedure	
	2015	2016	2015	2016	2015	2016
The Administrative Courts	2,868	3,737	2.4	2.4	14.5	20.8
The Administrative Courts of Appeal – review permit denied	359	429	1.4	1.5	4.9	6.8
The Administrative Courts of Appeal – review permit granted	281	307	3.7	3.2	16.2	16.0
The Supreme Administrative Court – review permit denied	194	142	1.4	2.0	9.7	12.9
The Supreme Administrative Court – review permit granted	6	9	4.4	14.7	11.6	18.2

Source: The Swedish National Courts Administration (data) and the SCA (adaptation)

Histogram of values of procedures, covering also procedures below the threshold

The data necessary for making the calculation that is needed to analyse the matter of bunching of procedures below the EU thresholds, e.g., type of procurement or applicable law, are missing in national datasets. Also, in national datasets, there is no data available on estimated contract values, upon which an analysis could be based.

### **III. Prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interests and other serious irregularities**

#### **III.1 Qualitative reporting on fraud, corruption, conflict of interest etc.**

Describe the actions undertaken and/or mechanisms put in place to ensure compliance with the new provisions on the prevention, detection and adequate reporting of public procurement irregularities including fraud and corruption.

##### *The implementation of Article 57 (1 and 2) and Article 73*

When implementing the 2014 procurement directives, Article 57 (1 and 2) of the Classical Directive and the corresponding articles of the Supply and Concessions Directives, on the mandatory exclusion grounds for serious irregularities, were implemented through Chapter 13 Sections 1 and 2 of the Public Procurement Act<sup>30</sup> (and the corresponding sections of the Procurement in the Supply Sectors Act<sup>31</sup> and the Procurement of Concessions Act<sup>32</sup>).

Article 73 of the Classical Directive and the corresponding articles of the Supply and Concessions Directives, on termination of contract, are implemented through Chapter 17 Section 17 of the Public Procurement Act and the corresponding sections of the Procurement in the Supply Sectors Act<sup>33</sup> and the Procurement of Concessions Act<sup>34</sup>.

##### *A monitoring report on prevention, detection and adequate reporting of public procurement irregularities pursuant to Article 83 (3)*

As mentioned in the section *Information on monitoring and reporting bodies*, fraud, corruption and other serious irregularities are not mainly governed by the four Public Procurement Acts. Instead, such violations fall under the same legislation and are handled by the same authorities, whether they take place in public procurements or in other contexts. When implementing the 2014 Public Procurement Directives, no changes were made in that regard.

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<sup>30</sup> Lagen (2016:1145) om offentlig upphandling, An English translation of the Swedish Public Procurement Act in English can be downloaded here <http://www.konkurrensverket.se/globalassets/english/publications-and-decisions/swedish-public-procurement-act.pdf>.

<sup>31</sup> Chapter 13 Section 1 and 2 of the Procurement in the Supply Sectors Act (lagen [2016:1146] om upphandling inom försörjningssektorerna).

<sup>32</sup> Chapter 11 Section 1 and 2 of the Procurement of Concessions Act (lagen [2016:1147] om upphandling av koncessioner).

<sup>33</sup> Chapter 16 section 17 of the Procurement in the Supply Sectors Act (lagen [2016:1146] om upphandling inom försörjningssektorerna).

<sup>34</sup> Chapter 14 section 17 of the Procurement of Concessions Act (lagen [2016:1147] om upphandling av koncessioner).

The Swedish Administrative Procedure Act<sup>35</sup> states that each government agency is to provide assistance to other agencies within the framework of its own activities. Thus, each agency has an important basis for cooperation with other agencies, as well as with contracting authorities and entities, as regards prevention, detection, and reporting of various, but occasionally interlinked, serious irregularities.

The National Public Procurement Strategy's policy objective number 4 *Legally certain public procurement* focuses on creating trust in the due functioning of legal certainty among both suppliers and citizens. The strategy emphasises among other things that contracting authorities and entities need to be aware of signs of corruption, bid rigging cartels and other signals of distorted competition. Also, it highlights the importance of effective contract follow-up to demonstrate to other tenderers compliance with the contracts concluded.<sup>36</sup>

A broader concept of unfair competition in public procurement involves for example bid-rigging, corruption, fraud, tax evasion, and infringements on working environment rules. One assumption is that firms that circumvent competition rules to make profits are also likely to circumvent other kinds of regulation, and vice versa. If that is true, and different types of infringements tend to be interlinked, the SCA believes that agencies fighting different types of serious irregularities would have much to gain from working together on developing methods for detecting antitrust and bribery cases related to public procurement. Hence, the SCA cooperates with several other authorities concerning areas of common interest. One example is the cooperation with the National Anti-Corruption Unit regarding corruption and another is the cooperation with the Swedish Economic Crime Authority.

### **Corruption**

Corruption is covered by Chapter 10 Sections 5 through 5e of the Penal Code, whether it takes place in public procurements or other situations. Contrary to what appears from EuroPAM there is, for example, a prohibition for civil servants to receive gifts from providers and others<sup>37</sup>. It is equally illegal to give gifts to a civil servant<sup>38</sup>. Trading influence<sup>39</sup> is also prohibited, regardless of what was gained in exchange.

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<sup>35</sup> Section 8 of the Administrative Procedure Act (förvaltningslagen [2017:900]).

<sup>36</sup> The Government of Sweden, Ministry of Finance, *National Public Procurement Strategy*, November 2017.

<sup>37</sup> *Tagande av muta och grovt tagande av muta*, Chapter 10 Sections 5a and 5c of the Penal Code (brottsbalken [1962:700]).

<sup>38</sup> *Givande av muta och grovt givande av muta*, Chapter 10 Sections 5b and 5c of the Penal Code (brottsbalken [1962:700]).

<sup>39</sup> *Handel med inflytande*, Chapter 10 Section 5d of the Penal Code (brottsbalken [1962:700]).

Cases of suspected corruption are investigated by the National Anti-Corruption Police Unit (NACPU) at the Swedish Police and the National Anti-Corruption Unit at the Swedish Prosecution Authority. The work of investigating corruption violations is largely what is commonly called intelligence-based, i.e., based on information collected, processed and analysed. In Sweden, approximately 100 cases of corruption are investigated annually. The corruption cases that are investigated are mainly within municipalities and county councils. The motive is often to win a procurement or to influence decision-makers to make certain decisions in a desired direction.<sup>40</sup>

As stated above regarding the *National Public Procurement Strategy*, each contracting authority and entity has a responsibility to prevent corruption in public procurements. The Government's objective is that all contracting authorities and entities should have internal guidelines on how they should prevent the occurrence of irregularities. With all contracting authorities and entities working actively to prevent corruption and conflicts of interest in their organisations, the goal of a legally certain and reassuring system of public procurement can be attained.<sup>41</sup>

Both the National Anti-Corruption Police Unit (NACPU) at the Swedish Police and the National Anti-Corruption Unit at the Swedish Prosecution Authority work with crime prevention, for example, through advocacy, spreading knowledge, and informing authorities, municipalities and county councils about corruption. NACPU also assists with advice and support to authorities and organisations when drafting policy documents against corruption. The preventive work of both are targeted towards corruption in general and therefore include, among other situations, corruption in public procurement.

*The Swedish Agency for Public Management* is assigned the task of contributing to and coordinating the government agencies' work towards a sound administrative culture. This includes working to develop and intensify the agencies' efforts to detect and prevent corruption and other irregularities. This is done, inter alia, through a network of 220 governmental agencies against corruption. The network is divided into two groups; one general group for all agencies that want to participate and one group aimed at agencies that make large purchases and operate close to the construction industry.<sup>42</sup>

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<sup>40</sup> The Swedish Police's web page: *Nationella korruptionsgruppen – polisens arbete*, <https://polisen.se/om-polisen/polisens-arbete/nationella-korruptionsgruppen/>, (2018-03-25 16:40).

<sup>41</sup> The Government of Sweden, Ministry of Finance, *National Public Procurement Strategy*, November 2017.

<sup>42</sup> The Swedish Agency for Public Management's web page: *Myndighetsnätverket mot korruption [the network of governmental authorities against corruption]*, <http://www.statskontoret.se/var-verksamhet/myndighetsnatverket-mot-korruption/>, April 2018.

*The National Agency for Public Procurement* offers guidance on anti-corruption measures at a strategic level<sup>43</sup> and measures at different phases of the procurement process<sup>44</sup>. There is also a guidance paper “Corruption in public procurement: what is it and how can it be prevented?”<sup>45</sup> The paper encompasses information on the legal framework surrounding corruption and conflicts of interest, as well as practical information on how to work with these issues on an organisational level and in the procurement process. The Agency also offers training material for contracting authorities and entities to raise the awareness of the concept of corruption and conflict of interest, both in general and in public procurement specifically, as well as information on best practice.

There are also a number of other actors who work to prevent corruption. For example, *The Swedish Association of Local Authorities and Regions* offers general guidance to local authorities and regions on anti-corruption.<sup>46</sup> *The Swedish Anti-Corruption Institute*<sup>47</sup> has developed a code of conduct for economic operators: *Code on Gifts, Rewards and other Benefits in Business*<sup>48</sup>. Cartels and corruption are different ways to manipulate the purchasing process and they have the ability to enable and strengthen each other, therefore they often occur together. For that reason, *the Swedish Competition Authority* also work with the prevention of corruption.<sup>49</sup>

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<sup>43</sup> The National Agency for Public Procurement’s web page: *Strategiskt arbete för att förebygga korruption [Strategic work to prevent corruption]*, <https://www.upphandlingsmyndigheten.se/organisera/strategiskt-inkopsarbete/forebygga-korruption/>, (2018-04-09, 16:05).

<sup>44</sup> The National Agency for Public Procurement’s web page: *Förebygga korruption i inköpsprocessen [To prevent corruption in the purchasing process]*, <https://www.upphandlingsmyndigheten.se/upphandla/forebygga-korruption-i-inkopsprocessen/>, (2018-04-09, 16:08)

<sup>45</sup> The National Agency for Public Procurement, guidance No. 4(2017), *Corruption in public procurement: what is it and how can it be prevented?*, October 2017, <https://www.upphandlingsmyndigheten.se/verktyg/publikationer/korruption-i-offentlig-upphandling--vad-ardet-och-hur-kan-det-forebyggas/>.

<sup>46</sup> Swedish Association of Local Authorities and Regions’ web page: *Motverka korruption [Counter corruption]*, <https://skl.se/demokratiledningstyrning/politiskstyrningfortroendevalda/fuskoegentligheterkorruptioninternkontroll/motverkakorruption.1314.html>, (2018-04-09 15:58)

<sup>47</sup> The Swedish Anti-Corruption Institute is a non-profit organisation. The principals of the Institute is the Stockholm Chamber of Commerce, the Federation of Swedish Enterprises and the Swedish Association of Local Authorities and Regions. (<http://www.institutetmotmutor.se/en/about-us/>)

<sup>48</sup> The code can be downloaded in English or Swedish here: <http://www.institutetmotmutor.se/en/publications/business-code/>.

<sup>49</sup> The Authority’s work in this area is described in chapter 3.3.3 of the *Competition supervision report 2017*. The SCA’s report 2018:5, April 2018.

**Fraud**

Fraud is covered by the same legislation, regardless of whether it takes place in public procurements or in other contexts. Chapter 9 in the Penal Code<sup>50</sup> deals with fraud. However, however cases of tax crime are covered by the Tax Offences Act<sup>51</sup>. It is thus the same authorities that investigate fraud, regardless of context.

Cases of suspected fraud are primarily investigated by the Swedish Prosecution Authority and the Swedish Police. However, cases of suspected tax crime or accounting fraud can also be investigated by the Swedish Economic Crime Authority. The Swedish Tax Agency works with detection and reporting as well as prevention of tax crime.

The Swedish Economic Crime Authority also works with crime prevention in order to reduce the risk of economic crime. This entails, for instance, assisting with advice and support to contracting authorities and entities in public procurements identified as carrying a high risk of attracting, e.g., entities within organised crime or tenderers relying on subcontractors that use undeclared labour.

The *National Public Procurement Strategy* emphasises that contracting authorities and entities risk losing quality and efficiency, as well as losing credibility as contractual partners, by not following up on contracts during the contract period. This will also tend to encourage dishonest suppliers to compete for public contracts. It should be a matter of course to always check that goods and services received and used in the public business activity conform to what the authority actually specified, ordered and paid for. Follow-up is therefore essential for preventing as well as detecting fraud in public procurements.

**Collusion and bid-rigging**

Anti-competitive behaviours such as collusion and bid-rigging in public procurement are covered by Chapter 2 Section 1 of the Swedish Competition Act<sup>52</sup>.

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<sup>50</sup> Brottsbalken (1962:700), <http://rkrattsbaser.gov.se/sfst?bet=1962:700>.

<sup>51</sup> Skattebrottslagen (1971:69), <http://rkrattsbaser.gov.se/sfst?bet=1971:69>.

<sup>52</sup> Konkurrenslagen (2008:579), <http://rkrattsbaser.gov.se/sfst?bet=2008:579>.

In the work to prevent and detect collusion in public procurements, the SCA has several tools:

- a tip-off line,
- an anonymous whistle-blower system,
- the leniency programme<sup>53</sup>,
- screening of procurement data with the purpose of detecting and investigating infringements related to public procurement (see below),
- an online question forum<sup>54</sup>,
- a checklist: Twelve ways to detect bid-rigging cartels<sup>55</sup>,
- an interactive guidance for tenderers on cooperation in public procurement<sup>56</sup>, and
- a guide describing the rules governing cooperation between competing companies within the framework of an industry organisation<sup>57</sup>.

The SCA believes that one way of increasing the chance of detection is by analysing procurement data to search for geographical patterns, price similarities, and percentage differences between bids and deviations from competitively optimal bids. The Swedish Competition Authority has therefore, over the past few years, used different types of cartel screens on several different markets. The markets under scrutiny have in most cases been identified based on tip-offs. This is an area where the SCA believes there is a great potential for further development. A national statistical database for procurement, as suggested by the Ministry of Finance, would improve the possibilities for cartel screening, as well as for screening of other types of serious irregularities.

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<sup>53</sup> The Swedish Competition Authority's web page: *Leniency – Immunity and Reduction of Fines*, <http://www.konkurrensverket.se/en/Competition/Aboutthecompetitionrules/Prohibitionagainstanti-competitivecooperation/LeniencyImmunityandReductionofFines/>.

<sup>54</sup> Konkurrensverket, *Konkurrensverkets frågeforum*, <https://kundo.se/org/konkurrensverket/>.

<sup>55</sup> The Swedish Competition Authority's web page: *Checklista – tecken på anbudskarteller*, <http://www.konkurrensverket.se/konkurrens/om-konkurrensreglerna/samarbete-som-begransar-konkurrensen/karteller/checklista---tecken-pa-anbudskarteller/>.

<sup>56</sup> Konkurrensverket, *Vägledning – samarbete i upphandlingar*, <http://www.konkurrensverket.se/konkurrens/om-konkurrensreglerna/samarbete-som-begransar-konkurrensen/vagledning-for-samarbeten/vagledning--samarbete-i-upphandlingar/>.

<sup>57</sup> Konkurrensverket, *Vägledning för branschorganisationer*, <http://www.konkurrensverket.se/konkurrens/om-konkurrensreglerna/samarbete-som-begransar-konkurrensen/vagledning-for-samarbeten/vagledning-for-branschorganisationer/>.

Describe the actions undertaken and/or mechanisms put in place to ensure compliance with the new provisions on the prevention, detection and adequate reporting of conflicts of interests

When implementing the 2014 procurement directives, the Swedish Government made the assessment that Sweden already complied with the requirements laid down in the conflicts of interest clauses in Article 24 of the Classical Directive, Article 42 of the Supply Directive and Article 35 of the Concession Directive. Therefore, it was considered neither necessary nor appropriate to include specific rules on conflicts of interest in the new Public Procurement Acts.

On 1 July 2018, a new Swedish Administrative Procedure Act<sup>58</sup> will enter into force and on 1 January 2018, a new Swedish Local Government Act<sup>59</sup> entered into force. The scope set by the Commission in the template is primarily 2017. However, references to specific chapters and sections included in this part of the report will be made to the new Administrative Procedure Act and Local Government Act.

The general rules regarding conflicts of interest are found in Sections 16–18 of the Administrative Procedure Act. However, for members of the municipal council or county council and other elected representatives in municipalities and county councils, the rules on conflicts of interest are found in Chapter 5, Sections 47–49, and Chapter 6, Sections 28–32, of the Local Government Act.

The Swedish rules concerning conflicts of interest have a wider scope than Article 24 of the Public Procurement Directive (and corresponding articles in the other directives). Among other things they include personal involvement, conflicts of private interests, family ties, conflicts of organisational roles, and representative conflicts. Furthermore, the rules also include a general clause stating that those who, on behalf of an authority, are part of a proceeding in a manner that may affect the authority's decision in a matter, have a conflict of interest if there is any other particular circumstance that makes his or her impartiality in the matter questionable.

Anyone who is aware of a circumstance likely to constitute a conflict of interests for him or her shall immediately report it to the authority where the case is being handled or the decision is being made. The authority shall investigate if a conflict of interest is at hand as soon as possible, since a person having a conflict of interest may neither participate in the handling of the case nor attend when the matter is settled. Should anyone participate in a decision, despite having a conflict of interest, the subject of the decision may appeal the decision to the administrative courts.

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<sup>58</sup> Förvaltningslagen (2017:900), <http://rkrattsbaser.gov.se/sfst?bet=2017:900>.

<sup>59</sup> Kommunallagen (2017:725), <http://rkrattsbaser.gov.se/sfst?bet=2017:725>.



Contrary to what appears from EuroPAM<sup>60</sup>, in some cases, violations of conflicts of interest law may result in penalties. Under Sections 14–16 of the Public Employment Act<sup>61</sup>, an employee who intentionally or negligently violates his or her duties in employment may be subject to disciplinary action in the form of a warning or a salary deduction. Knowingly allowing conditions of conflict of interest to, in any respect, affect one's actions may also be punishable under Chapter 20, Section 1, of the Penal Code<sup>62</sup>.

### III.2 Supporting documents

#### *Reports and guidance*

- The Government of Sweden, Ministry of Finance, *National Public Procurement Strategy*, November 2017.  
<http://www.government.se/4aba88/contentassets/9ec42c71c00442a39d67169d3c25faed/national-public-procurement-strategy.pdf>.
- The Government of Sweden, *Om mutor och jäv - en vägledning för offentligt anställda* [About bribes and conflict of interest – a guidance for civil servants], April 2015, <http://www.regeringen.se/informationsmaterial/2006/06/om-mutor-och-jav---en-vagledning-for-offentligt-anstallda/>.
- The National Agency for Public Procurement, guidance No. 4(2017), *Corruption in public procurement: what is it and how can it be prevented?*, October 2017, <https://www.upphandlingsmyndigheten.se/verktyg/publikationer/korruption-i-offentlig-upphandling--vad-ar-det-och-hur-kan-det-forebyggas/>.
- The Swedish Anti-Corruption Institute, Code of conduct for economic operators, *Code on Gifts, Rewards and other Benefits in Business*, November 2012.  
<http://www.institutetmotmutor.se/en/publications/business-code/>.
- The Swedish Competition Authority, Konkurrensverkets rapportserie 2018:5, *Konkurrensverkets konkurrenstillsyn 2017* [Competition supervision report 2017], April 2018.
- The Swedish Competition Authority, *Vägledning – samarbete i upphandlingar* [Guidance – cooperation in public procurements], October 2017,  
<http://www.konkurrensverket.se/konkurrens/om-konkurrensreglerna/samarbete-som-begransar-konkurrensen/vagledning-for-samarbeten/vagledning--samarbete-i-upphandlingar/>.
- The Swedish Competition Authority, *Vägledning för branschorganisationer* [Guidance for industry organisations], October 2017,  
<http://www.konkurrensverket.se/konkurrens/om-konkurrensreglerna/samarbete-som-begransar-konkurrensen/vagledning-for-samarbeten/vagledning-for-branschorganisationer/>

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<sup>60</sup> EuroPAM, web page: [http://europam.eu/?module=country-profile&country=Sweden#info\\_COI](http://europam.eu/?module=country-profile&country=Sweden#info_COI) (2018-04-09, 17:04).

<sup>61</sup> Lagen (1994:260) om offentlig anställning, <http://rkrattsbaser.gov.se/sfst?bet=1994:260>.

<sup>62</sup> Brottsbalken (1962:700), <http://rkrattsbaser.gov.se/sfst?bet=1962:700>.

### Webpages

- The Swedish Police's web page *Nationella korruptionsgruppen – polisens arbete*, <https://polisen.se/om-polisen/polisens-arbete/nationella-korruptionsgruppen/>, (2018-03-25 16:40).
- Swedish Association of Local Authorities and Regions' web page: *Motverka korruption [Counter corruption]*, <https://skl.se/demokratiledningstyrning/politiskstyrningfortroendevalda/fuskoegentligheterkorruptioninternkontroll/motverkakorruption.1314.html>, (2018-04-09 15:58).
- The Swedish Competition Authority's web page: *Leniency – Immunity and Reduction of Fines*, <http://www.konkurrensverket.se/en/Competition/Aboutthecompetitionrules/Prohibitionagainstanti-competitivecooperation/LeniencyImmunityandReductionofFines/>, (2018-04-13, 15:11).
- The Swedish Competition Authority's web page: *Konkurrensverkets frågeforum*, <https://kundo.se/org/konkurrensverket/>, (2018-04-13, 15:12).

### Swedish laws

- The Public Procurement Act (lagen [2016:1145] om offentlig upphandling), An English translation can be downloaded here <http://www.konkurrensverket.se/globalassets/english/publications-and-decisions/swedish-public-procurement-act.pdf>.
- The Procurement in the Supply Sectors Act (lagen [2016:1146] om upphandling inom försörjningssektorerna), <http://rkrattsbaser.gov.se/sfst?bet=2016:1146>.
- The Procurement of Concessions Act (lagen [2016:1147] om upphandling av koncessioner), <http://rkrattsbaser.gov.se/sfst?bet=2016:1147>.
- The Administrative Procedure Act (förvaltningslagen [2017:900]), <http://rkrattsbaser.gov.se/sfst?bet=2017:900>.
- The Competition Act (konkurrenslagen [2008:579]), <http://rkrattsbaser.gov.se/sfst?bet=2008:579>.
- The Local Government Act (kommunallagen [2017:725]), <http://rkrattsbaser.gov.se/sfst?bet=2017:725>.
- The Penal Code (brottsbalken [1962:700]) <http://rkrattsbaser.gov.se/sfst?bet=1962:700>.
- The Tax Offences Act (skattebrottslagen [1971:69]), <http://rkrattsbaser.gov.se/sfst?bet=1971:69>.
- The Public Employment Act (lagen [1994:260] om offentlig anställning), <http://rkrattsbaser.gov.se/sfst?bet=1994:260>.

### III.3 Quantitative indicators

#### Statistical distribution of buyers by frequency of actual competition

Table 10 shows the statistical distribution of contracting authorities and entities by frequency of tenders with only one bid. For example, above thresholds, 32 contracting authorities and entities received only one bid in 30–40 percent of all procurement procedures. The calculations include only contracting authorities and entities with at least three contract awards over the reporting period and exclude all framework agreements as well as contracts based on framework agreements. For approximately 30 percent of all procurement procedures there is either no information or incomplete information on the number of bids. These procurement procedures are excluded. For additional statistics on public procurement in Sweden, see *Statistics on Public Procurement 2017*<sup>63</sup>.

**Table 10 Statistical distribution of buyers by frequency of actual competition 2016**

	Above thresholds	Below thresholds	Total
<0%, 10%>	78	142	147
(10%, 20%>	43	69	107
(20%, 30%>	41	98	130
(30%, 40%>	32	58	74
(40%, 50%>	9	23	18
(50%, 60%>	11	15	20
(60%, 70%>	8	19	14
(70%, 80%>	0	4	4
(80%, 90%>	0	0	0
(90%, 100%	0	3	0
<b>TOTAL</b>	<b>222</b>	<b>431</b>	<b>514</b>

Source: VismaCommerce (data) and National Agency for Public Procurement (calculations).

<sup>63</sup> The SCA and National Agency for Public Procurement, the SCA's report 2017:11, *Statistik om offentlig upphandling 2017*, November 2017, <http://www.konkurrensverket.se/en/news/public-procurements-worth-sek-642-billion/>.

Statistical distribution of buyers by frequency of using a negotiated procedure without the prior publication of a call of competition

Table 11 shows the statistical distribution of contracting authorities and entities by frequency of using a negotiated procedure without the prior publication of a call for competition. For example, five contracting authorities/entities used a negotiated procedure without the prior publication of a call for competition in 20–30 percent of all procedures. The calculations include procurement procedures which resulted in at least one contract award and include only contracting authorities and entities that performed at least three procurement procedures.

**Table 11 Statistical distribution of buyers by frequency of using a negotiated procedure without the prior publication of a call for competition, 2016**

	<b>Above thresholds</b>
<0%, 10%>	435
(10%, 20%>	9
(20%, 30%>	5
(30%, 40%>	2
(40%, 50%>	1
(50%, 60%>	0
(60%, 70%>	0
(70%, 80%>	0
(80%, 90%>	0
(90%, 100%	0
<b>TOTAL</b>	<b>452</b>

Source: VismaCommerce (data) and National Agency for Public Procurement (calculations).

Quantitative assessment of collusion risks

The data necessary for the calculation needed to make a quantitative assessment of collusion risks from public procurement data in accordance with the method given in the template is not available. This might change if a national statistical database on public procurement will be introduced.

### Risk of undiscovered conflict of interest

The Swedish Companies Registration Offices has the assignment to keep the Swedish register of beneficial ownerships<sup>64</sup> and at the same time the SCA and the National Agency for Public Procurement have access to a register on companies that have been awarded contracts in public procurements. However, it has not been possible to combine information from the registry of beneficial owners with the register on companies that have been awarded contracts in public procurements. One reason is that while there is a tool that could combine the information, due personal data regulations the Swedish Companies Registration Office is not allowed to use that tool for this purpose. Thus, at present there is no information available on the percent of contracts awarded to companies with concealed ownership structure.

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<sup>64</sup> The Swedish Companies Registration Offices' web page: *Beneficial ownership register*, <http://bolagsverket.se/en/us/about/beneficial-ownership-register>, (2018-04-13, 10:45).

## IV. Level of SMEs' participation in public procurement

This section of the report is based on information provided by the National Agency for Public Procurement.

### IV.1 Qualitative reporting on SME participation.

*Key challenges encountered:*

- Disproportionate requirements due to insufficient knowledge about the market.
- Lack of contract monitoring.
- Lack of dialogue before, during, and after procurement.
- Complex procedures and overly complicated tender documents.

*Measures taken to overcome them:*

- Guidelines and information.
- Activities to promote dialogue in procurement.

### IV.2 Supporting documents

The National Public Procurement Strategy's policy objective number 3 *A multiplicity of suppliers and well-functioning competition* includes measures, achievements, and challenges relating to the promotion of small and medium-sized enterprises in public procurements. For more information about the procurement policy, see the subsection *The National Public Procurement Strategy – an overview*.

The National Agency for Public Procurement offers general guidance to suppliers<sup>65</sup> and in relation to the participation of SMEs in public procurement<sup>66</sup>. A large number of companies also makes use of the Agency's support and guidance by telephone and/or through the online question forum<sup>67</sup>. For more information on guidance targeted at contracting authorities and entities see the web page about how to facilitate small and midsized enterprises' participation in public procurement.<sup>68</sup>

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<sup>65</sup> The National Agency for Public Procurement's web page: *Delta som leverantör i offentlig upphandling - så fungerar det [participating as a public procurement provider – this is how it works]*, <https://www.upphandlingsmyndigheten.se/leverantor/>, (2018-04-09, 17:12).

<sup>66</sup> The National Agency for Public Procurement's web page: *Små och medelstora företag [Small and midsized enterprises]*, <https://www.upphandlingsmyndigheten.se/omraden/SME/>, (2018-04-09, 17:14).

<sup>67</sup> The National Agency for Public Procurement's web page: *Frågeforum [Online question forum]*, <https://frageportalen.upphandlingsmyndigheten.se/org/upphandlingsmyndigheten/>, (2018-04-09, 17:15)

<sup>68</sup> The National Agency for Public Procurement's web page: *Underlätta för små och medelstora företag [Facilitate small and midsized enterprises]*, <https://www.upphandlingsmyndigheten.se/omraden/SME/underlatta-for-sma-och-medelstora-foretag/> (2018-04-11, 12:43).

### IV.3 Quantitative indicators

The National Agency for Public Procurement and the Swedish Competition Authority regularly publish statistics on the participation of small and medium-sized enterprises (SME:s) in public procurement. Tables 12–14 below show that, above thresholds, 86 percent of all tenderers are SMEs pursuant to the EU definition. Above thresholds, 66 percent of tenders received are submitted by SMEs and 66 percent of contracts awarded are awarded to SMEs. There is no reliable data available that allows for an analysis based on values, only based on count.

All calculations are based on information available in business registers, i.e., information from annual accounts on staff headcount, turnover, and balance sheet totals, and using organisational identifiers for suppliers, available in national procurement datasets. Thus, the calculations are not based on the SME-specific fields in the standard forms. Importantly, no consideration is taken of partnerships or linkages between individual enterprises. For approximately 30 percent of all procurement procedures there is either no information or incomplete information on submitted tenders. For more information, see the report *Statistics on Public Procurement 2017*<sup>69</sup> and the National Agency for Public Procurement's web page *Statistik om offentlig upphandling*<sup>70</sup>.

**Table 12 Number of tenderers (contractor/supplier/bidder) by company category, 2016**

Company category	Below thresholds		Above thresholds		Total	
	Number of enterprises	Percentage of enterprises	Number of enterprises	Percentage of enterprises	Number of enterprises	Percentage of enterprises
Micro	3,906	38 %	3,007	35 %	6,073	40 %
Small	3,670	36 %	3,125	37 %	5,267	35 %
Medium-sized	1,249	12 %	1,201	14 %	1,681	11 %
Large	436	4 %	499	6 %	579	4 %
Unclassified	1,021	10 %	701	8 %	1,538	10 %
<b>Total</b>	<b>10,282</b>	<b>100 %</b>	<b>8,533</b>	<b>100 %</b>	<b>15,138</b>	<b>100 %</b>

Source: VismaCommerce (data) and National Agency for Public Procurement (calculations).

<sup>69</sup> The Swedish Competition Authority and the National Agency for Public Procurement, the SCA's report 2017:11, *Statistics on Public Procurement 2017*, November 2017. The report can be downloaded in Swedish with a summary in English here: <https://www.upphandlingsmyndigheten.se/verktyg/statistik-om-offentlig-upphandling/>.

<sup>70</sup> The National Agency for Public Procurement's web page: *Statistik om offentlig upphandling [Statistics on public procurement]*, <https://www.upphandlingsmyndigheten.se/verktyg/statistik-om-offentlig-upphandling/>, (2018-04-09, 17:34).

**Table 13 Number of tenders submitted by company, category 2016**

<b>Company category</b>	<b>Below thresholds</b>		<b>Above thresholds</b>		<b>Total</b>	
	<i>Number of tenders submitted</i>	<i>Percentage of tenders submitted</i>	<i>Number of tenders submitted</i>	<i>Percentage of tenders submitted</i>	<i>Number of tenders submitted</i>	<i>Percentage of tenders submitted</i>
Micro	6,565	23 %	4,818	18 %	11,383	21 %
Small	8,899	31 %	7,275	28 %	16,174	29 %
Medium-sized	5,522	19 %	5,366	20 %	10,888	20 %
Large	6,184	21 %	7,589	29 %	13,773	25 %
Unclassified	1,665	6 %	1,208	5 %	2,873	5 %
<b>Total</b>	<b>28,835</b>	<b>100 %</b>	<b>26,256</b>	<b>100 %</b>	<b>55,091</b>	<b>100 %</b>

Source: VismaCommerce (data) and National Agency for Public Procurement (calculations).

**Table 14 Number of contracts awarded (winning bid) by company category, 2016**

<b>Company category</b>	<b>Below thresholds</b>		<b>Above thresholds</b>		<b>Total</b>	
	<i>Number of awarded contracts</i>	<i>Percentage of awarded contracts</i>	<i>Number of awarded contracts</i>	<i>Percentage of awarded contracts</i>	<i>Number of awarded contracts</i>	<i>Percentage of awarded contracts</i>
Micro	2,802	23 %	2,354	18 %	5,156	21 %
Small	3,826	31 %	3,565	28 %	7,391	30 %
Medium-sized	2,331	19 %	2,604	20 %	4,935	20 %
Large	2,406	20 %	3,607	28 %	6,013	24 %
Unclassified	876	7 %	643	5 %	1,519	6 %
<b>Total</b>	<b>12,241</b>	<b>100 %</b>	<b>12,773</b>	<b>100 %</b>	<b>25,014</b>	<b>100 %</b>

Source: VismaCommerce (data) and National Agency for Public Procurement (calculations).



## V. Information on the practical implementation of national strategic procurement

This section of the report is primarily based on information provided by the National Agency for Public Procurement. Information about commissioned research reports is provided by the SCA.

Green, socially responsible and innovative procurements are a political priority in Sweden. In general, however, there are limited quantitative data available that can be used to analyse these procurements at the national level. In general, more emphasis is needed on measuring and monitoring. In October 2017 the Swedish Ministry of Finance presented the memorandum *Statistik på upphandlingsområdet* (Ds 2017:48) with proposals aiming to improve access to open data on public procurement in Sweden.

### V.1 Green procurement ('GPP').

#### V.1.1 Qualitative reporting

##### Key challenges encountered:

- Lack of simple tools and criteria to help contracting authorities and entities to use GPP.
- Lack of methods for measuring results and effects.

##### Measures taken to overcome them:

- Development of life-cycle costing tools (LCC tools) and GPP criteria.
- More emphasis on measuring and monitoring.

Within the framework of the SCA's commissioned research, Assistant Professors Carl Dalhammar and Charlotte Leire at Lund University have investigated the long-term effects of environmental requirements for public procurement. The authors of the report<sup>71</sup> find that knowledge is limited, from a business perspective, regarding the environmental impacts of procurements, both short- and long-term. This is due to a number of factors, such as lack of follow-up of requirements, lack of evaluations of long-term effects, and inadequate statistics. Above all, there is no established method for systematically mapping the long-term effects. Few studies specifically describe the operational effects that have actually occurred in the longer term. There is therefore a need for more research in the field and sound evaluations of procurement with environmental requirements.

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<sup>71</sup> Dalhammar C., Leire C. *Långsiktiga effekter av miljöanpassad upphandling*, Konkurrensverkets uppdragsforskningsrapport 2017:5, May 2017.  
[http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk\\_rapport\\_2017-5.pdf](http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk_rapport_2017-5.pdf).

## V.1.2 Supporting documents

The National Public Procurement Strategy's policy objective number 6 *Public procurement that is environmentally responsible* includes measures, achievements and challenges relating to the promotion of green public procurement. For more information about the procurement policy, see the subsection *The National Public Procurement Strategy – an overview*.

The National Agency for Public Procurement provides information on *environmental labels*<sup>72</sup> and *environmental management systems*<sup>73</sup> or standards. In general, recommendations within certain areas are inspired by the EU criteria.

The National Agency for Public Procurement also provides a criteria library containing recommendations on environmental and social requirements to be used when purchasing goods, services and works. There are three levels of environmental criteria: basic, advanced, and spearhead.

The criteria are available within the following product groups:<sup>74</sup>

- IT and telecom,
- Building and property,
- Cleaning and chemicals,
- Vehicles and transport,
- Office and textiles,
- Food,
- Nursing and care, and
- Toxic-free pre-school

The library contains approximately 600 criteria. The criteria are recommendations and all criteria can be used freely. For more information see the National Agency for Public Procurement's webpage *Sustainability criteria*<sup>75</sup>.

Dalhammar C. and Leire C. *Långsiktiga effekter av miljöanpassad upphandling, Konkurrensverkets uppdragsforskningsrapport 2017:5, May 2017.*<sup>76</sup>

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<sup>72</sup> The National Agency for Public Procurement's web page: *Användning av märkning*, <https://www.upphandlingsmyndigheten.se/hallbarhet/stall-hallbarhetskrav/Anvandning-av-markning/>

<sup>73</sup> National Agency for Public Procurement's web page: *Miljöledningssystem*, <https://www.upphandlingsmyndigheten.se/hallbarhet/stall-hallbarhetskrav/utforma-egna-hallbarhetskrav/miljoledningssystem/>

<sup>74</sup> The National Agency for Public Procurement's webpage *Sustainability criteria* contains links to the criteria per product group, see <https://www.upphandlingsmyndigheten.se/en/sustainable-public-procurement/sustainable-procurement-criteria/>.

<sup>75</sup> The National Agency for Public procurement's web page: *Sustainability criteria*, <https://www.upphandlingsmyndigheten.se/en/sustainable-public-procurement/sustainable-procurement-criteria/> (2018-04-12, 09:29).

<sup>76</sup> The report, including an English summary, can be downloaded here: [http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk\\_rapport\\_2017-5.pdf](http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk_rapport_2017-5.pdf).

### V.1.3 Quantitative indicators

Beyond to what is stated in the beginning of this chapter, there is no general monitoring of the percentage of public procurement procedures incorporating green criteria out of the whole volume of procurement at national level. However, there are some studies with limited scope. For example, the National Agency for Public Procurement has carried out a minor study based on approximately 600 tender documents for 30 selected product groups. The result showed that 90 percent of the tender documents analysed contained some form of environmental criteria, either criteria from the National Agency for Public Procurement or criteria developed by the contracting authority or entity.

## V.2 Socially responsible public procurement ('SRPP')

### V.2.1 Qualitative reporting

#### Key challenges encountered:

- Lack of capability and experience among contracting authorities, suppliers, and decision-makers.
- Lack of guidance and support, for example guidance materials and criteria.
- In relation to employment-opportunities: lack of a common national model, lack of e-tools, platforms for planning and follow-up, and lack of acceptance in the private sector and among suppliers.
- Lack of methods for measuring results and effects.

#### Measures taken to overcome them:

- Promoting dialogue (with supplier market and throughout the entire procurement process).
- Developing simple guidelines and national models for socially responsible procurement.
- More emphasis on measuring and monitoring.

Within the framework for the SCA's commissioned research, Professor Dominique Anxo and Associate Professor Thomas Ericson at Linnaeus University have conducted a study on potential effects of employment requirements for public procurement. They have also clarified how an evaluation of procurement with employment requirements should be performed. In the report<sup>77</sup> the authors shows, among other things, that there are currently few evaluations of employment requirements in public procurements. Evaluations often lack impact assessments and there also seems to be a lack of knowledge on how employment requirements should be formulated. The authors of the report have developed a description of how an evaluation should be designed to answer the question of if

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<sup>77</sup> Anxo, D., Ericson, T., *Metoder för att utvärdera sysselsättningskrav vid offentlig upphandling - en översikt*, Konkurrensverkets uppdragsforskningsrapport 2017:2, February 2017, [http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk-rapport\\_2017-2.pdf](http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk-rapport_2017-2.pdf).

including employment requirements in public procurements is an effective method for increasing employment or reducing the vulnerability of vulnerable groups.

## V.2.2 Supporting documents

The National Public Procurement Strategy's policy objective number 7 *Public procurement that contributes to a socially sustainable society* includes measures, achievements and challenges relating to the promotion of socially responsible public procurement. For more information about the procurement policy, see the subsection *The National Public Procurement Strategy – an overview*. On 1 June 2017, the Swedish procurement legislation was supplemented by provisions stating that certain above thresholds contracts should contain specific labour conditions.

The National Agency for Public Procurement offers guidance and support on socially responsible public procurement<sup>78</sup>, social labels<sup>79</sup> and on labour conditions<sup>80</sup>. This includes support for using SRPP, such as guidelines and SRPP-criteria. The focus is on working conditions in Sweden (in accordance with Swedish collective agreements) and outside of Sweden in global supply chains (in accordance with the ILO core conventions on human rights, environmental protection, and anti-corruption). The National Agency for Public Procurement carries out a EU funded project on employment opportunities through public procurement<sup>81</sup> with the aim to increase the number of contracting authorities that use employment requirements in their procurement.

Anxo, D. and Ericson, T., *Metoder för att utvärdera sysselsättningskrav vid offentlig upphandling – en översikt [Methods for evaluating employment requirements in public procurements – an overview]*, Konkurrensverkets uppdragsforskningsrapport 2017:2, February 2017.<sup>82</sup>

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<sup>78</sup> The National Agency for Public Procurement's web page: *Socialt ansvarsfull upphandling*, <https://www.upphandlingsmyndigheten.se/hallbarhet/socialt-ansvarsfull-upphandling/>, (2018-04-11, 12:47).

<sup>79</sup> The National Agency for Public Procurement's web page: *Användning av märkning*, <https://www.upphandlingsmyndigheten.se/hallbarhet/stall-hallbarhetskrav/Anvandning-av-markning/>, (2018-04-11, 12:49).

<sup>80</sup> The National Agency for Public Procurement's web page: *Arbetsrättsliga villkor*, <https://www.upphandlingsmyndigheten.se/hallbarhet/socialt-ansvarsfull-upphandling/arbetsrattsliga-villkor/>, (2017-04-11, 12:50)

<sup>81</sup> The National Agency for Public Procurement's web page: *Sysselsättning genom offentlig upphandling*, <https://www.upphandlingsmyndigheten.se/hallbarhet/socialt-ansvarsfull-upphandling/sysselsattning-mojligheter/projekt-sysselsattning-genom-offentlig-upphandling/>, (2018-04-11, 12:54).

<sup>82</sup> The report, including an English summary, can be downloaded here: [http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk-rapport\\_2017-2.pdf](http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk-rapport_2017-2.pdf).

### V.2.3 Quantitative indicators

See the information in the beginning of this chapter, *Information on the practical implementation of national strategic procurement*.

## V.3 Public procurement of innovation

### V.3.1 Qualitative reporting

#### **Key challenges encountered:**

- Formulation and establishment of long-term innovation procurement strategies at the regional and local levels.
- The need for measuring and monitoring gains and benefits of innovation procurement.
- The need for a combined approach of financial and methodological support to mitigate risks and increase knowledge.
- The development of services for contracting authorities and entities in their roles as needs owners and helping them with needs identification and needs analysis.
- The need to target different clients and stakeholders. End-users and managers are very important.
- The need for increased cooperation between contracting authorities/entities. An example can be through pre-procurement purchasing groups.

#### **Measures taken to overcome them:**

- More emphasis on measuring and monitoring.
- More in-depth support to innovation procurement projects – build structural support.
- Combine financial and methodological support.
- More cooperation between contracting authorities/entities to bundle demand
- Increase support to a wide variety of target groups.
- Enhance international activities through the EU-project Procure2Innovate.

Within the framework of the SCA's commissioned research, Professor Stefan Fölster has investigated to what extent and in what contexts innovation competitions can be complementary to the procurement or innovation funding that is taking place today. In the report<sup>83</sup> the author finds that Grand Challenge innovation competitions with technological advances are an overlooked type of leverage for meeting societal challenges. Therefore, there are good reasons for Sweden to invest more in innovation competitions. The author has also contributed to describing the legal situation for how and when it is possible to

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<sup>83</sup> Fölster S. *Innovationstävlingar med krav på tekniksprång – en förbisedd hävstång för att möta samhällsutmaningar*, Konkurrensverkets uppdragsforskningsrapport 2018:1, March 2018.  
<http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/innovationstavlingar.pdf>.

utilize innovation competitions as a possible instrument for promoting innovation.

### V.3.2 Supporting documents

The National Public Procurement Strategy's policy objective number 5 *Public procurement that drives innovation and promotes alternative solutions* relates to the promotion and implementation of innovation procurement. The strategy gives guidance on a wide variety of innovation procurement aspects to national, regional and local levels of government as well as to suppliers. For more information about the procurement policy, see the subsection *The National Public Procurement Strategy – an overview*.

The National Agency for Public Procurement offers guidance in relation to innovation procurement<sup>84</sup>:

- Knowledge and experience sharing services such as training for contracting authorities/entities, guidelines, best practice, networking opportunities for suppliers and contracting authorities/entities, and information and awareness events for all stakeholders.
- Methodological support and consultation in specific innovation procurement projects. This includes public procurement of innovation (PPI) as well as procurement of research and development (R&D) through pre-commercial procurement or other methods.
- Enhancing innovation procurement by giving support so that "pre-procurement purchasing groups" can be formed by contracting authorities/entities, at national, regional and local levels, which have similar needs for innovative solutions (i.e., bundling of demand). This includes supporting the creation of more groups, without necessarily facilitating them.

For more information on guidance on procurement of innovation, see the National Agency for Public Procurement's web page *Early dialogue and Innovation*<sup>85</sup>. For contracting authorities that are interested in more advanced forms of innovation procurement, it has been possible to apply for financial support at the Swedish Innovation Agency (Vinnova). The financed projects include pre-commercial procurements (PCP), PPI, and basic financial support for purchasing groups.

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<sup>84</sup> The National Agency for Public Procurement's web page: *Innovation*, <https://www.upphandlingsmyndigheten.se/omraden/dialog-och-innovation/innovation-i-upphandling/>, (2018-04-11, 13:18)

<sup>85</sup> The National Agency for Public Procurement's web page: *Tidig dialog och innovation*, <https://www.upphandlingsmyndigheten.se/omraden/dialog-och-innovation/>, (2018-04-11, 13:20).

Fölster S. *Innovationstävlingar med krav på tekniksprång – en förbisedd hävstång för att möta samhällsutmaningar [Grand Challenge innovation competitions with technological advances – an overlooked leverage to meet societal challenges]*, Konkurrensverkets uppdragsforskningsrapport 2018:1, March 2018.<sup>86</sup>

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<sup>86</sup> The report, including an English summary, can be downloaded here:  
<http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/innovationstavlingar.pdf>.

## VI. Replicability

Sweden does not have a national database for publishing of procurement notices or contract award notices. Instead, there are several commercial databases that are operated by private companies. Furthermore, there is no central body which gathers data on procurements. Thus, raw data on public procurements is collected and owned by the private companies supplying e-notification and e-submission platforms (e-senders). This means that the publicly available data on public procurements is limited.

Therefore, the SCA and the National Agency for Public Procurement buy access (but not the copyright) to data on public procurements from private companies. Since neither the SCA nor the National Agency for Public Procurement own the copyrights of the raw data on public procurements, there are restrictions on how to use these datasets and they cannot be published as open data.

Data from the Swedish National Courts Administration on review cases in the administrative courts are not published as open data. However, some of the data are published on the SCA's web page *Överprövningsärenden i domstol*<sup>87</sup>.

Annex 1 contains information on the method and data sources used to estimate the value of purchases subject to the Swedish procurement regulations in 2016.

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<sup>87</sup> The Swedish Competition Authority's web page: *Överprövningsärenden i domstol* [Review cases in courts], <http://www.konkurrensverket.se/upphandling/statistik/overprovningssarenden-i-domstol/>, (2018-04-09, 17:50)



## **Annex 1: Methodology for estimating the value of procurement which would have been covered by the directives if its value had exceeded the relevant thresholds**

As mentioned in section I.1 it is not possible to make such an estimation. Instead an estimated value of purchases subject to the procurement regulations has been included in this report. The method for calculating this estimate is described below.

### **Methodology for an estimated value of purchases subject to the Swedish procurement regulations in 2016**

Every year the Swedish Competition Authority makes an estimation of the total value of purchases subject to the procurement regulations. For 2016 this estimation amounted to approximately SEK 684 million. This section of the report describes the method used and assumptions made for the calculation. Since the calculations contain a number of assumptions and estimations, the total cost should be viewed as an estimation rather than as a definitive value. Several assumptions have been made regarding the demarcation of procurement obligations. These have been made purely in order to estimate the value of public procurements and should not be viewed as legal standpoints.

The calculation is based on one of the methods that Mats Bergman developed in the report *Offentlig upphandling och offentliga inköp – Omfattning och sammansättning*<sup>88</sup>. This means that the calculations are based on the public purchases detailed in the national accounts. First, those public purchases that are not subject to procurement regulations are deducted from the public purchases according to the national accounts. Then, purchases that are subject to procurement regulations but which are not included in the national accounts are added. The calculation refers to 2016 since this is the latest year with complete statistical information.

Table 15 illustrates the composition of the calculation for 2012–2016 which is described above. When comparing individual expense items between years, account should be taken of the fact that the amounts are not inflation-adjusted. Furthermore, some assumptions have changed over the years. In addition, certain definitions of the data on which the calculation is based and the availability of public information has changed. Therefore, comparisons between the years are best achieved by looking at the sums as percentages of the total public expenditure, since the nominal values are described using current prices<sup>89</sup>.

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<sup>88</sup> Bergman, M., *Offentlig upphandling och offentliga inköp – Omfattning och sammansättning [Public procurement and public purchases – Scope and composition]*, Swedish Competition Authority uppdragsforskningsrapport 2008. [http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk\\_rap\\_offentliga\\_inkop.pdf](http://www.konkurrensverket.se/globalassets/publikationer/uppdragsforskning/forsk_rap_offentliga_inkop.pdf).

<sup>89</sup> Even comparisons of the percentages should be conducted with caution since certain public statistical information has changed, and because some assumptions used in the calculations have changed over the years.

**Table 15 Estimation of purchases subject to procurement regulations based on the national accounts (NA) for 2012–2016, SEK billions**

<b>Purchases</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Public purchases according to NA excl. VAT	568	587	608	633	675
Public purchases not included in NA	53	57	59	62	66
Public purchases not subject to procurement regulations	-167	-184	-200	-196	-200
<i>Total of authorities' purchases subject to procurement regulations</i>	<i>454</i>	<i>460</i>	<i>467</i>	<i>499</i>	<i>541</i>
Public companies' purchases according to NA	275	273	268	255	257
Government-owned companies not subject to the procurement regulations	-87	-83	-77	-89	-89
Public companies' purchases not subject to procurement regulations					
<i>Total of publicly owned companies' purchases subject to procurement regulations</i>	<i>150</i>	<i>153</i>	<i>154</i>	<i>130</i>	<i>130</i>
<i>Private companies purchases under procurement laws</i>	<i>11</i>	<i>11</i>	<i>12</i>	<i>12</i>	<i>13</i>
<b>Total purchases subject to procurement regulations</b>	<b>615</b>	<b>623</b>	<b>633</b>	<b>642</b>	<b>684</b>
GDP at base price	3,254	3,333	3,487	3,720	3,894
<b>Total purchases subject to procurement regulations as percentage of GDP at base price</b>	<b>18.9%</b>	<b>18.7%</b>	<b>18.1%</b>	<b>17.3%</b>	<b>17.6%</b>

Note: All sums are rounded to the nearest whole figure.

Source: Separate sources for the various items and calculations by the SCA, see the description of the respective items below.

#### The authorities' purchases that are subject to procurement regulations

The total public purchases excluding VAT are estimated to SEK 675.2 billion in 2016.

Purchases made by authorities that were subject to procurement regulations has been arrived at by adding together public expenditure according to the national accounts for the cost items "intermediate goods", "investments" and "social non-cash benefits" for the government, municipalities and county councils.

Consequently, expenditure that is not purchase-related is not included here. In 2016 the public purchases according to the national account amounted to SEK 772.6 billion, including VAT.

The values in the national accounts are calculated at market price, i.e. including VAT. Details of procurements are traditionally given exclusive of VAT. We therefore deduct VAT from the purchases, in accordance with the national accounts. The calculation of VAT is based on the same assumptions as in Bergman's 2008 calculation, i.e. that the average VAT is 14 percent for intermediate goods, 19 percent for investments and 2 percent for social non-cash benefits. On this basis, we estimate VAT to be SEK 97.3 billion (see Table 16).

**Table 16 Public purchases based on the 2016 national accounts**

<b>Public purchases</b>	<b>SEK billions</b>
Social non-cash benefits	170.0
Fixed gross investments	193.2
Intermediate goods	409.3
<b>Total public purchases according to the national account, including VAT</b>	<b>772.5</b>
Deduction of VAT	-97.4
<b>Total public purchases according to the national accounts, excluding VAT</b>	<b>675.1</b>

Note: All amounts are rounded to one decimal place.

**Calculations:** the Swedish Competition Authority, March 2018.

**Source of Data:** Statistics Sweden's Statistics database, *Inkomster och utgifter samt kapitaltransaktioner (ENS2010), efter institutionell sektor och transaktionspost, löpande priser år 1950-2017*, Nationalräkenskaper, Sektorräkenskaper årsdata. [Income and expenditure and capital transactions (ENS20120) per institutional sector, and transaction items, current prices, for the years 1950-2017, National accounts, Sector accounts, annual data.], Mars 2018.

#### *Public purchases not included in the national accounts*

To the public purchases detailed in accordance with the national accounts those public purchases not covered by the national accounts postings "intermediate goods", "fixed gross investments" and "social non-cash benefits" must be added (see Table 17). This involves, for example, purchases of activities conducted between public bodies, such as healthcare. Even things like purchases of public transport and waste management on the public's behalf are not included in the national accounts and so they also need to be added. Altogether, these purchases, which were not included in the national accounts, amounted to SEK 65.5 billion.

**Table 17 Public purchases not included in the 2016 national accounts**

<b>Public purchases</b>	<b>SEK billions</b>
Public bodies' internal purchases of activities	14.2
Costs for local and regional public transport in Sweden	45.6
Municipal purchases of educational activities from public suppliers	3.8
Purchases of waste management services from external parties	1.9
<b>Total public purchases not included in the national accounts, excluding VAT</b>	<b>65.5</b>

Note: All amounts are rounded to one decimal place.

Calculations: the Swedish Competition Authority, March 2018.

Sources of Data: Statistics Sweden (SCB), *Kommunernas finanser – räkenskapsammandraget 2016*, August 2017. Swedish Association of Local Authorities and Regions (SKL), *Statistik om hälso- och sjukvård samt regional utveckling, 2016* (table annex), November 2017. Swedish Association of Local Authorities and Regions (SKL), *Köp av verksamhet 2016 – Kommuner, landsting och regioner 2006–2016*, January 2018. Transport Analysis, *Statistik 2017:20, Regional scheduled public transport 2016*, (table annex), June 2017.

Because of the Teckal provisions, not all purchases should actually be included in "internal purchases". Since we cannot distinguish purchases made in accordance with the Teckal provision in these statistics, we cannot make a deduction for this. There may also be a certain amount of overlapping between municipal purchases from county councils, and municipal purchases of educational activities from public suppliers. In other words, municipal purchases from county councils include a certain amount of educational activities.

#### *Public purchases that are not subject to procurement regulations*

Finally, purchases that are not subject to procurement regulations are not to be included under public purchases. Altogether, these add up to an estimated SEK 125.7 billion (see Table 18).

**Table 18 Purchases not subject to procurement regulations in 2016**

<b>Public purchases</b>	<b>SEK billions</b>
Social non-cash benefits, not subject to procurement regulations	-74.3
Defence material, not subject to procurement regulations	-7.5
Hire of premises	-99.1
Monopoly services	-4.5
Patented farmaceuticals, not subject to procurement regulations	-6.8
In-house investments	-7.8
<b>Total public purchases not subject to procurement regulations</b>	<b>-200.0</b>

Note 1: All amounts are rounded to one decimal place.

Source: Separate sources for the respective items. See description of each item below.

*Social non-cash benefits* are costs that the public sector has for subsidies for goods and services that other providers produce and supply direct to households. If a subsidy or payment is made according to a particular piece of legislation, then the compensation is not subject to the procurement regulations. The public purchases shall thus be reduced to reflect that which is not procured. This value amounted to SEK 74.3 billion in 2016 (see Table 19).

**Table 19 Social non-cash benefits not subject to procurement regulations in 2016**

<b>Social non-cash benefits</b>	<b>SEK billions</b>
Independent schools, day nurseries, etc.	43.0
Pharmaceutical benefits	21.8
Incontinence products	0.6
Dental subsidies	5.5
Compensation to private doctors working under compensation laws	1.7
Compensation to private physiotherapists working under compensation laws	1.3
Car support for the disabled	0.3
<b>Total of all social non-cash benefits not subject to procurement regulations</b>	<b>74.3</b>

**Note:** All amounts are rounded to one decimal place.

**Calculations:** the Swedish Competition Authority, March 2018.

**Sources of Data:** Försäkringskassan, *Socialförsäkringen i siffror 201x*, månad år. National board of Health and Welfare, *Statisticals on Pharmaceuticals 2016*, March 2017. Statistics Sweden (SCB), *Landstingens finanser – räkenskapssammandraget 2016*, November 2017. the Swedish Association of Local Authorities and Regions (SKL), *Antal läkare som verkat enligt lag om läkarvårdsersättning, antal besök, antal telefonrådgivningar och utbetald ersättning efter specialitet/grupp av specialiteter 2016* and *Antal fysioterapeuter som verkat enligt lag om ersättning för fysioterapi, antal besök, antal telefonkonsultationer samt utbetald ersättning efter arvodeskategori 2016*, February 2018.

*Defence materiel* is another item where the public purchases need to be reduced to reflect those procurements that are exempt within the area of defence. According to the Swedish Defence Materiel Administration (FMV), such procurements amounted to SEK 7.5 billion in 2016.

One of the largest postings where public purchases are to be reduced is *hire of premises*. In the national accounts, hire of premises is included as intermediate consumption, but according to the procurement laws this is not subject to procurement regulations. The total for the hire of premises posting was SEK 99.1 billion in 2016<sup>90</sup>.

<sup>90</sup> Statistics Sweden (SCB), *Kommunernas finanser – räkenskapssammandraget 2016*, August 2017, and Statistics Sweden (SCB), *Landstingens finanser – räkenskapssammandraget 2016*, November 2017.

*Monopoly products and services*<sup>91</sup> need not be procured in accordance with the procurement regulations and should therefore be removed from public purchases. This includes district heating and electrical network services which totalled SEK 4.5 billion in 2016.

The calculation of purchases of district heating is based on the district heating market turning over SEK 33.1 billion in 2016<sup>92</sup>. There is no acceptable statistics for the purchase of electricity grid services for public premises. Previous versions of this calculation have been based on the value from Bergman's 2006 calculation and they have then been increased to reflect the development of the electricity network prices for business customers. With effect from 2012 however, SCB's statistics in respect of the development of electrical network services do not include business customers. This item has therefore been based on the price development for electricity for industrial customers as an average of the different consumption categories. This results in approximately SEK 2.5 billion for electricity grid services in 2016.

Public premises are assumed to make up an eighth of the total area. Based on this percentage we have estimated the value of the public premises' district heating and electricity grid services to SEK 4.5 billion. The weakness of this calculation is, however, that it assumes that all premises have the same price per square metre, which is probably not the case. However, in absence of better data this is the estimation used.

*Patented pharmaceuticals* need not be procured by the healthcare provider. According to the National Board of Health and Welfare's pharmaceutical statistics, the total cost of pharmaceuticals for institutional care was SEK 8.0 billion in 2016<sup>93</sup>. In information provided prior to the calculation of the 2011 public procurement figures, the Board stated that approximately 85 percent of the total cost related to original pharmaceuticals – the vast majority of which are patented. There might be a marginal percentage of pharmaceuticals where the patent has expired and competition has yet to arise. We have based this year's calculation on the assumption that the state of affairs is primarily the same as before. The cost for patented pharmaceuticals within institutional care has therefore been estimated at 85 percent of the total cost for pharmaceuticals within institutional care.

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<sup>91</sup> Refers to contracts which, for legal reasons, can only be conducted by a particular supplier, and where there are no similar products available on the market

<sup>92</sup> Swedish Energy Markets Inspectorate, *Sammanställning av fjärrvärmeföretagens årsrapporter för år 2010-2016 – Resultaträkning ver 2.02*, October 2016.

<sup>93</sup> National board of Health and Welfare, *Statistics on Pharmaceuticals 2016*, March 2017.

Finally, certain *in-house investments* are not subject to procurement regulations. We estimate these at SEK 7.8 billion for 2016. The estimation is based on the in-house investments' share of public purchases remaining unchanged since Mats Bergman's 2008 calculation, i.e. just over one percent.

#### Purchases made by publicly owned companies that are subject to the procurement regulations

The purchases made by publicly owned companies that are subject to procurement regulations is estimated at SEK 130 billion for 2016 (see Table 20). In the national accounts, the activities of publicly owned companies are assigned as gainful economic activity. For this reason, the purchases made by these companies which are subject to procurement regulations need to be included in order to estimate the total value of purchases subject to procurement regulations.

**Table 20 Purchases made by publicly owned companies that are subject to procurement regulations, 2016**

Category	SEK billions
Publicly owned companies' purchases according to NA	257.0
Deductions for government-owned companies with no particular social mission	-89.3
Deduction for publicly owned companies' purchases not subject to procurement regulations	-38.0
<b>Total of publicly owned companies' purchases subject to procurement regulations</b>	<b>129.7</b>

**Note:** All amounts are rounded to one decimal place.

**Source:** Separate sources for the respective items, calculations by the Swedish Competition Authority. See description of each item below.

The calculation of *publicly owned companies' purchases* is based on SCB's statistics in respect of company turnover. In 2016, the combined turnover for companies owned by the government, the municipalities and the county councils was SEK 535.4 billion<sup>94</sup>. The intermediate consumption percentage has been calculated based on the companies' net turnover and gross investments and intermediate consumption for financial and non-financial companies<sup>95</sup>. Publicly owned

<sup>94</sup> Statistics Sweden's Statistics database, *Nettoomsättning i offentligt ägda företag, mkr efter sektor, ägarkategori, näringsgren SNI 2007 och år*, Offentlig ekonomi, Offentligt ägda bolag. [Net sales in publicly owned companies, SEK million by sector, owner category, industry SNI 2007 and year, Public Economy, Publicly owned companies], Mars 2018.

<sup>95</sup> **Calculations:** the Swedish Competition Authority, March 2018. **Data:** Statistics Sweden's Statistics database, *Preliminära resultaträkningsposter enligt Företagens ekonomi efter näringsgren SNI 2007 och år*, Näringsverksamhet, Företagens ekonomi. [Preliminary income statement items according to Corporate Finance, SEK million by Income statement and year, Business Activities, Structural Business statistics], Mars 2018, and Statistics Sweden's Statistics database, *Inkomster och utgifter samt kapitaltransaktioner (ENS2010), efter institutionell sektor och transaktionspost, löpande priser år 1950-2017*, Nationalräkenskaper, Sektorräkenskaper årsdata. [Income and expenditure and capital transactions (ENS20120) per institutional sector, and transaction items, current prices, for the years 1950-2017, National accounts, Sector accounts, annual data.], Mars 2018.

companies' purchases have thus been estimated at a total of 48 percent of turnover, with gross investments equivalent to 9 percent and intermediate consumption to 39 percent. Consequently, purchases have been estimated at SEK 257.0 billion.

*Government-owned companies not subject to the procurement regulations*

For government-owned companies, the purchases need to be reduced to reflect those purchases made by companies that are not subject to the procurement regulations. To estimate the percentage of the government-owned companies' purchases to be deducted, this calculation has been based on the notion that those government-owned companies that have, according to the Ministry of Finance, "a particular social mission", are subject to procurement regulations.

The same estimate of gross investment and intermediate consumption is used here as before, i.e., a total of 48 percent of turnover. In total, the item amounts to SEK 89.3 billion in 2016.

*Publicly owned companies' purchases not subject to procurement regulations*

Even some publicly owned companies are subject to exemptions from the procurement regulations, which means that certain purchases are not affected by the regulations (see Table 21).

**Table 21 Purchases made by publicly owned companies not subject to procurement regulations in 2016**

<b>Purchase</b>	<b>SEK billions</b>
Hire of premises	15.2
Fuel etc. for electricity and district heating production	12.7
Radio and TV programmes	1.9
Monopoly services	1.8
In-house investments	6.4
<b>Total of publicly owned companies' purchases not subject to procurement regulations</b>	<b>38.0</b>

Note 1: All amounts are rounded to one decimal place.

Source: Separate sources for the respective items. See description of each item below.

The costs for *hire of premises* in 2016 are calculated at over SEK 15.2 billion. This is based on the same assumptions as in Bergman's 2008 calculation, i.e., that the public companies have more or less the same costs for premises as the government-owned companies, but that only two thirds of this sum is to be deducted. The remaining third represents those public companies not subject to procurement regulations and has therefore been removed in another manner.



Fuel etc. for electricity and district heating production by publicly owned energy companies are not subject to procurement regulations and need to be deducted. The calculation is based on the same assumptions as in Bergman's 2008 calculation, i.e., that the municipal companies and Vattenfall accounted for 60 percent and 8 percent respectively of the district heating companies' production and purchases. For other fuels, we have assumed that the total percentage is 54 percent (see Table 22).

**Table 22 Estimated purchases of fuel, etc. for publicly owned companies, 2016, SEK billions**

Purchase	Total value	Assumed percentages	Assumed value,
Fuel for district heating production	15.3	68%	10.4
Fuel for electricity production	4.2	54%	2.3
<b>Total purchases of fuel for electricity and district heating production</b>			<b>12.7</b>

Note: All amounts are rounded to one decimal place.

Calculations: the Swedish Competition Authority, March 2018. Source of data: Sweden Statistics, EN11SM1701, Electricity supply, district heating and supply of natural gas 2016, November 2017.

The purchases of radio and TV programmes made by Sveriges Radio and Sveriges Television (including production facilities, co-productions and other costs for external participation) have been calculated at SEK 1.9 billion for 2016<sup>96</sup>.

Finally, for 2016, purchases for monopoly services is estimated at SEK 1.8 billion and in-house investments at SEK 6.4 billion. This is based on the same assumptions as in Bergman's 2008 calculation, i.e., that the public companies use 0.7 percent of purchases for monopoly services and 2.5 percent for in-house investments.

#### Private companies' purchases that are subject to procurement regulations

According to LUF, even some *private companies' purchases* are subject to the procurement regulations. This primarily concerns purchases made by electricity network companies but private district heating companies and the A-Train company are also affected. Private companies' purchases that are subject to procurement regulations are estimated to SEK 13.1 billion in 2016 (see Table 23). This value is based on the electricity network market in total turning over SEK 32.5 billion<sup>97</sup>, on the district heating market turning over SEK 33.8 billion<sup>98</sup>, and on A-Train turning over SEK 864 million<sup>99</sup> in 2016. It has been subsequently assumed

<sup>96</sup> Sveriges Radio, *Public Service redovisning 2016, 2017* and Sveriges Television, *Public Service-redovisning 2016, 2017*.

<sup>97</sup> Sweden Statistics, EN11SM1701, *Electricity supply, district heating and supply of natural gas 2016*, November 2017.

<sup>98</sup> Sweden Statistics, EN11SM1701, *Electricity supply, district heating and supply of natural gas 2016*, November 2017.

<sup>99</sup> A-Train AB, *Årsredovisning 2016*, May 2017.

that private electricity network companies represent 50 percent of the electricity network market, and that private district heating companies represent 30 percent of the district heating market. Finally, the same assumptions were used for publicly owned companies, i.e., that intermediate consumption corresponds to 39 percent of turnover, and investments to 9 percent of turnover.

**Table 23 Private companies' purchases subject to procurement regulations, 2016**

<b>Purchase</b>	<b>SEK billions</b>
Private companies on the electricity network market, purchases subject to procurement regulations	7.8
Private companies on the district heating market, purchases subject to procurement regulations	4.9
A-Train, purchases subject to procurement regulations	0.4
<b>Total of privately owned companies' purchases subject to procurement regulations</b>	<b>13.1</b>

**Note:** All amounts are rounded to one decimal place.

**Calculations:** the Swedish Competition Authority, March 2018. **Source of data:** Sweden Statistics, EN11SM1701, *Electricity supply, district heating and supply of natural gas 2016*, November 2017. A-Train AB, *Årsredovisning 2016*, May 2017.

## **Annex 2: Procurement Monitoring Report Template**

In view of the Member States' reporting process under the Directives 2014/23/EU, 2014/24/EU and 2014/25/EU

### **Purpose and key features of the template**

- This template aims at facilitating Member States' (MS) reporting in the context of the new procurement directives. The template sets out the scope of the reporting requirements and recommends MS a methodology to gather and systematise the collection of relevant information. Furthermore, it strives to propose a harmonised structure of the reports so as to allow easier comparison of the information provided by the MS.
- The questions in this template are non-binding specifications of the directives' legal obligations on monitoring reports. The template should be followed only as far as possible by the Member State, especially as concerns the availability of quantitative information. When information is not available, this may be noted in the report, possibly together with an explanation of whether there are plans to start collecting such information and including it in the future edition of the report.
- MS' reports will be published on the European Commission website. The information will feed the new Report on the implementation and best practices of national procurement policies in the internal market to be issued by the European Commission. The information provided by the MS will support the policy analysis work of the Commission.
- The template covers all domains for which reporting requirements are defined under the 2014 procurement directives.
- The template contains the following types of questions:
  - i. qualitative descriptions and assessments,
  - ii. supporting documents which provide the evidence for the descriptions and assessment made above,
  - iii. quantitative indicators.

- In the tables below, the left side contains the name of the information to be submitted, while the right side contains further specifications of what this means. The report should be submitted as a text (.doc) and PDF document based on this template.
- To avoid duplication of reporting obligations and reduce administrative burden, MS are invited to indicate any information/data requested in this template that has been already provided to the Commission via another channel (e.g. procurement irregularities falling within the scope of ESIF funds). When it is the case, please specify these channels, the context of the reporting and the nature of the information already provided.

### General information

<b>Scope of reporting</b>
<p>The report should cover the period between 1<sup>st</sup> January 2017 and 31<sup>st</sup> December 2017. For quantitative data based on procurement notices, this means that the contract award notice should have been awarded in this period. If an MS has transposed later than on 1<sup>st</sup> January 2017, the reporting period should still start on the 1<sup>st</sup> January 2017.</p> <p>If the scope of your report is broader than that indicated in the directives (e.g. because of lower thresholds, broader definition of contracting authorities, contracting entities, or subsidised contracts), please indicate this here. In such a case, for every indicator, information about procurement according to the EU directives and any other information should be presented separately, so that the same information can be compared between EU MS.</p>
<b>General information</b>
<p>Number of procurement procedures (i.e. the number of notices announcing a call for competition)</p> <p>Number of awarded contracts</p>
<b>Information on monitoring and reporting bodies</b>
<p>This section should include a list of the body/bodies performing the public procurement monitoring activities required by the public procurement directives and the entities in charge with the drafting of the report to be provided to the European Commission on the results of the monitoring activities.</p>

**I. Estimation of the aggregated total value of procurement which would have been covered by the directives if its value had exceeded the relevant thresholds**

<p><b>Estimation of the aggregated total value of procurement which would have been covered by the directives if its value had exceeded the relevant thresholds</b></p>	<p>This stands for the value of procurement informally referred to as "below the EU threshold".</p> <p>This section should include information on the estimated value of procurement as well as the methodology used. The methodology used for the estimation should be explained in <b>Annex I</b>.</p> <p>"Value of procurement" should be understood as the value of the awarded contracts, so as to be comparable with estimates from contract award notices for above-threshold procurement. (Not as, for example, the value of procurement which could have taken place if a contractor was found, i.e. business opportunities, nor on the level of actual spending, i.e. paid invoices.)</p>
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**II. Most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules**

<p><b>II.1. Qualitative reporting on application of public procurement rules</b></p>	
<p>Main sources of wrong application or of legal uncertainty</p>	<p>The information should focus on:</p> <ul style="list-style-type: none"> <li>- the most frequent cases of wrong application of the rules and of legal uncertainty</li> <li>- the key causes for the wrong application of the rules and the legal uncertainty, including their relative importance, as well as the circumstances that explain their occurrence.</li> </ul> <p><i>Possible relevant (non-exhaustive) elements for consideration may be:</i></p> <ul style="list-style-type: none"> <li>• <i>types of contracting authorities particularly affected by public procurement errors</i></li> <li>• <i>types of procedures or contracts particularly affected by public procurement errors</i></li> <li>• <i>recurrent patterns pointing at specific difficulties at a particular stage of the procedure</i></li> </ul>

<p>Specific legal provisions (from EU or national law) which appear to raise significant problems of application</p>	<p>The information should focus on:</p> <ul style="list-style-type: none"> <li>- the specific legal provisions in question</li> <li>- a description of the type of difficulties identified, if any</li> </ul> <p><i>Possible relevant (non-exhaustive) elements for consideration may be:</i></p> <ul style="list-style-type: none"> <li>• <i>lack of consistent application of a given provision by the contracting authorities</i></li> <li>• <i>high frequency of requests for guidance as to how to understand or interpret a given provision</i></li> <li>• <i>recurrence of the incorrect application of a given provision</i></li> <li>• <i>need to issue (additional) interpretative guidance on a given provision</i></li> </ul>
<p>An assessment on whether a wrong application of rules might exist, by observing patterns of application of the rules which do not by themselves constitute cases of wrong application of the rules, but nonetheless point at structural or recurring problems yielding a sub-optimal outcome.</p>	<p>The information should focus on:</p> <ul style="list-style-type: none"> <li>- the specific type of problems identified, if any</li> <li>- any possible assessment of the impact of these difficulties on the efficiency of the public procurement process</li> </ul> <p><i>Possible relevant (non-exhaustive) elements for consideration may be</i></p> <ul style="list-style-type: none"> <li>• <i>bias towards the systematic use of certain award criteria irrespective of the context (e.g. systematic use of lowest price as award criterion)</i></li> <li>• <i>overly frequent use of derogatory procedures or shortest possible deadlines</i></li> <li>• <i>recurrent, particularly low number of bidders or of non-domestic bidders</i></li> </ul>
<p><b>II.2 Supporting documents</b></p>	
<p>Please provide any available evidence of the issues identified under section II.1.</p>	<p><i>Possible relevant (non-exhaustive) documents for consideration may be as follows (please provide a link to the document, and if possible, a summary of the document in English, if the document is in another language):</i></p> <ul style="list-style-type: none"> <li>• <i>Audit reports on identified irregularities related to public procurement, including auditors specialising in ESIF irregularities</i></li> <li>• <i>Existing typologies of the most frequent errors in public procurement</i></li> <li>• <i>Reports on the most frequent requests for guidance</i></li> <li>• <i>Additional interpretative guidance documents published in order to clarify legal issues</i></li> <li>• <i>Policy or other administrative documents discussing issues in relation to the implementation of the rules</i></li> </ul>

<b>II.3. Quantitative indicators</b>	<i>This section contains quantitative indicators related to section II.1. Other indicators can also be included in the report.</i>
Indicators about the national review system	<p>A list of proposed specific indicators will be drafted in the course of 2017, linked to a future remedies scoreboard, a part of the European Commission's Single Market Strategy. The indicators will be defined on the basis of the findings of a study to be commissioned by DG GROW in 2017 and further discussions with Member States, including in the context of the network of first instance administrative review bodies.</p> <p>A first study commissioned by the Commission services on the subject of procurement remedies is already available at <a href="http://bookshop.europa.eu/en/economic-efficiency-and-legal-effectiveness-of-review-and-remedies-procedures-for-public-contracts-pbKM0414023/">http://bookshop.europa.eu/en/economic-efficiency-and-legal-effectiveness-of-review-and-remedies-procedures-for-public-contracts-pbKM0414023/</a>.</p> <p>This study, together with other materials (including public and ad-hoc consultations), are the basis for the Commission's report and evaluation on the operation of the Remedies Directives.</p> <p>Based on all this, indicators such as the numbers of complaints, the number of appealed procurement procedures, the number of resolved complaints, the number of complaints resolved in favor of the complainant, or the average length of the review procedure could be considered.</p>
Histogram of values of procedures, covering also procedures below the thresholds	<p>Please include histograms of values of procedures (i.e. calls for competition). These should be split at least to one for works and one for supplies and services, ideally also further by types of EU threshold.</p> <p>The aim is to find "spikes" in the distribution of values, indicating a bunching of procedures below the EU threshold.</p> <p>To improve comparability, please use histogram bins with a breadth of EUR 10 000 (or the national currency equivalent).</p> <p>For more information on bunching analysis methodology, please see the Swedish Competition Authority's report <a href="http://www.konkurrensverket.se/globalassets/publikationer/uppdraagsforskning/forsk_rap_2015_3.pdf">http://www.konkurrensverket.se/globalassets/publikationer/uppdraagsforskning/forsk_rap_2015_3.pdf</a>, in particular section 3.4.2., or the recent article from the American Economic Association available at <a href="https://www.aeaweb.org/articles?id=10.1257%2Fpol.20150511&amp;&amp;from=f">https://www.aeaweb.org/articles?id=10.1257%2Fpol.20150511&amp;&amp;from=f</a>.</p>

### **III. Prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interests and other serious irregularities**

<b>III.1. Qualitative reporting on fraud, corruption, conflict of interests etc.</b>	
Describe the actions undertaken and/or mechanisms put in place to ensure compliance with the new provisions on the prevention, detection and adequate reporting of public procurement irregularities including fraud and corruption	<p>The information should focus on:</p> <ul style="list-style-type: none"> <li>- how these actions/mechanisms have been implemented</li> <li>- the key measures that have been put in place</li> </ul> <p><i>Possible elements for consideration may be as follows:</i></p> <ul style="list-style-type: none"> <li>• <i>The main assumptions and objectives of the underlying actions</i></li> <li>• <i>Institutional arrangements made</i></li> <li>• <i>Existing links between the prevention, detection and remedial actions aspect</i></li> </ul>
Describe the actions undertaken and/or mechanisms put in place to ensure compliance with the new provisions on the prevention, detection and adequate reporting of conflicts of interests	<p>The information should focus on:</p> <ul style="list-style-type: none"> <li>- how these actions/mechanisms have been implemented</li> <li>- the key measures that have been put in place</li> <li>- presenting the definition of Conflict of interest, if it differs from the definition in the Directives</li> <li>- explaining the reasons for choosing the elements that have been added to the definition of Conflict of interest set out in the Directives</li> <li>- how the Directive requirement of effectiveness of the measures is fulfilled in practice</li> </ul> <p><i>Possible elements for consideration may be as follows:</i></p> <ul style="list-style-type: none"> <li>• <i>The main assumptions and objectives of the underlying actions</i></li> <li>• <i>Institutional arrangements made</i></li> <li>• <i>Legislative framework</i></li> <li>• <i>Existing links between the prevention, detection and remedial actions aspect</i></li> </ul>



<b>III.2. Supporting documents</b>	
Please provide any available evidence on the actions/mechanisms and measures described under section III.1. above demonstrating compliance with the new provisions on the prevention, detection and adequate reporting of public procurement irregularities and conflicts of interests	<p><i>Possible relevant (non-exhaustive) documents for consideration may be as follows (please provide a link to the document, and if possible, a summary of the document in English, if the document is in another language):</i></p> <ul style="list-style-type: none"> <li>• <i>Policy or other administrative documents discussing issues in relation to the implementation of the actions/mechanisms</i></li> </ul>
<b>III.3. Quantitative indicators</b>	
Statistical distribution of buyers by frequency of actual competition	<p><i>This section contains examples of quantitative indicators related to section III.1. Other indicators can also be included in the report.</i></p> <p>For each contracting authority or entity:</p> <ol style="list-style-type: none"> <li>1) Calculate the total number of contract awards.</li> <li>2) Calculate the number of contract awards which received only one bid.</li> <li>3) Divide the second number by the first number.</li> </ol> <p>In the report, in a table, please include the number of contracting authorities or entities whose result from 3) above falls within each of the following intervals: &lt;0%, 10%&gt;, (10%, 20%&gt;, (20%, 30%&gt;, ... , (90%,100%&gt;<sup>100</sup>.</p> <p>Please include only buyers with at least three contract awards over the reporting period and exclude all framework agreements as well as contracts based on framework agreements, as their number of bidders may be misleading (e.g. when multiple contract awards are based on the same framework agreement or for framework agreements with reopening of competition).</p> <p>For more information about this indicator please see the following article from the European Journal on Criminal Policy and Research: <a href="http://link.springer.com/article/10.1007%2Fs10610-016-9308-z">http://link.springer.com/article/10.1007%2Fs10610-016-9308-z</a>.</p>

<sup>100</sup> The symbols "<" and "(" indicate whether the endpoint of the interval should be included. For example (40%,50%> approximately means that the interval should contain contracting authorities or entities whose score is larger than 40.001% and smaller than 50.000%. The rest of the intervals are analogous.

<p>Statistical distribution of buyers by frequency of using a negotiated procedure without the prior publication of a call of competition</p>	<p>For each contracting authority or entity:</p> <ol style="list-style-type: none"> <li>1) Calculate the total number of procedures.</li> <li>2) Calculate the number of negotiated procedures without the prior publication of a call for competition.</li> <li>3) Divide the second number by the first number.</li> </ol> <p>In the report, in a table, please include the number of contracting authorities or entities whose result from 3) above falls within each of the following intervals: &lt;0%,10%&gt;, (10%, 20%&gt;, (20%, 30%&gt;, ... , (90%,100%&gt;.</p> <p>Please include only procurement procedures which resulted in at least one contract award and include only buyers who ran at least three procurement procedures over the reporting period.</p> <p>For more information about this indicator please see the following article from the European Journal on Criminal Policy and Research: <a href="http://link.springer.com/article/10.1007%2Fs10610-016-9308-z">http://link.springer.com/article/10.1007%2Fs10610-016-9308-z</a>.</p>
<p>Quantitative assessment of collusion risks</p>	<p>This analysis should be based on a country-specific methodology reflecting the business environment, data available from e-procurement and other platforms, etc. National competition authorities may have information relevant for this analysis.</p> <p>For an example of a collusion analysis methodology, see the following toolkit from the Government Transparency Institute: <a href="http://www.govtransparency.eu/index.php/2015/11/13/toolkit-for-detecting-collusive-bidding-in-public-procurement/">http://www.govtransparency.eu/index.php/2015/11/13/toolkit-for-detecting-collusive-bidding-in-public-procurement/</a>.</p>
<p>Risk of undiscovered conflict of interest</p>	<p>Percent of contracts awarded to companies with concealed ownership structure (i.e. whose ultimate beneficiary owner cannot be verified).</p> <p>Information for this indicator should be available in central registers of beneficial ownership, which are to be established by all Member States under the 4<sup>th</sup> Anti-Money Laundering Directive (2015/849 Art. 30) by June 2017.</p> <p>For more context for this indicator, please see the Commission's Anticorruption Report available at <a href="http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm">http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm</a></p>

**IV. Level of SMEs' participation in public procurement**

SMEs are defined in the Commission Recommendation (2003/361/EC) as having less than 250 persons employed and an annual turnover of up to EUR 50 million or a balance sheet total of no more than EUR 43 million. Further information is available at [http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition\\_en](http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en).

<b>IV.1. Qualitative reporting on SME participation</b>	
Key challenges encountered	The information should focus on: <ul style="list-style-type: none"><li>- key challenges encountered in facilitating the participation of SMEs in public procurement, if any</li><li>- measures taken to overcome them</li><li>- difficulties still existing in the Member State</li></ul>

<b>IV.2. Supporting documents</b>	
Please report any available evidence or supporting document for point IV.1, illustrating the measures, achievements or challenges faced, relating to the facilitation of the participation of SMEs in public procurement	<p><i>Possible relevant (non-exhaustive) documents for consideration may be as follows (please provide a link to the document, and if possible, a summary of the document in English, if the document is in another language):</i></p> <ul style="list-style-type: none"> <li>• <i>List and provide a brief description of the policy and legislative initiatives launched to support SMEs participation in public procurement, including the results of their evaluations, where available</i></li> <li>• <i>Specific measures targeting SME participation in different techniques for aggregated procurement (framework agreements, dynamic purchasing systems, and centralised procurement activities)</i></li> <li>• <i>Specific measures targeting the participation of start-ups and scale-ups in public procurement</i></li> <li>• <i>Specific measures ensuring that payment for public contracts are made on time, especially in the case of SMEs</i></li> <li>• <i>Specific measures addressing the payments to subcontractors</i></li> <li>• <i>Existing guidelines or instructions for contracting authorities on how to treat grouping (e.g. consortia) of SMEs</i></li> <li>• <i>Existing guidelines for contracting authorities on the application of 'divide or explain' principle</i></li> <li>• <i>Existing targets for SME participation in public procurement</i></li> </ul>
<b>IV.3. Quantitative indicators</b>	
Please provide, when available, any quantitative data (statistics, etc.) illustrating the achievements and challenges identified under section IV.1. above	<p><i>This section contains examples of quantitative indicators related to section IV.1. Other indicators can also be included in the report.</i></p> <p><i>Possible relevant (non-exhaustive) documents for consideration may be as follows:</i></p> <ul style="list-style-type: none"> <li>• <i>Participation of SMEs in call for tenders above threshold</i></li> <li>• <i>Number of above-threshold contracts awarded to SMEs and</i></li> <li>• <i>Total value of contracts above threshold won by SMEs</i></li> <li>• <i>If additional data is collected in your MS, please report it in order to deepen our understanding about SME participation in public procurement. This might include the number and value of public procurement below threshold won by SMEs</i></li> <li>• <i>If applicable, current attainment rate of the target set for SMEs participation</i></li> </ul>

**V. Information on the practical implementation of national strategic procurement**

<b>V.1 Green procurement ('GPP')</b>	Green Public Procurement ('GPP') is defined as "a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured." <sup>101</sup> A voluntary target of 50 % GPP per Member State in number and value of relevant procedures was proposed by the Commission and welcomed by the Council in 2008.
<b>V.1.1 Qualitative reporting</b>	
Key challenges encountered	The information should focus on: <ul style="list-style-type: none"><li>- key challenges encountered in promoting green public procurement, if any</li><li>- measures taken to overcome them</li><li>- difficulties still existing in the Member State</li></ul>

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<sup>101</sup> Commission Communication (COM (2008) 400) "Public procurement for a better environment"

<b>V.1.2. Supporting documents</b>	
<p>Please report any available evidence or supporting document for point V.1, illustrating the measures, achievements or challenges faced, relating to the promotion of green public procurement.</p>	<p><i>Possible relevant (non-exhaustive) documents for consideration may be as follows (please provide a link to the document, and if possible, a summary of the document in English, if the document is in another language):</i></p> <ul style="list-style-type: none"> <li>• <i>National definition of 'green' and 'green public procurement'</i></li> <li>• <i>Information about National action plans or similar documents on GPP in your Member State and the stage of their implementation. Target for the uptake of GPP and the way it is defined i.e. for overall procurement, for specific product groups, by value, by number of contracts</i></li> <li>• <i>Any obligations to include green requirements in the tender documents and the authorities for which they apply</i></li> <li>• <i>Any recommendations concerning the use of specific selection criteria, technical specifications/award criteria/performance clauses which public authorities or contracting entities wishing to procure green can include in their tender documentation. Categories of products for which these are relevant and the relevant website, if possible</i></li> <li>• <i>Any information on environmental labels, environmental management systems or standards</i></li> <li>• <i>Any recommendations to use the 'green procurement' criteria developed by the European Commission, respectively for which product groups. If different criteria are recommended, please specify whether they are similar to/inspired by the EU criteria</i></li> <li>• <i>Activities in the area of capacity-building for procuring green (institutionalised or ad-hoc training, helpdesks, etc.)</i></li> </ul>
<p><b>V.1.3. Quantitative indicators</b></p>	<p><i>This section contains examples of quantitative indicators related to section V.1. Other indicators can also be included in the report.</i></p>
<p>Please provide, when available, any quantitative data (statistics, etc.) illustrating the achievements and challenges identified under section V.1.1 above. To the extent possible, these indicators should be further grouped by type of legal problem.</p>	<p><i>Possible relevant (non-exhaustive) documents for consideration may be as follows:</i></p> <ul style="list-style-type: none"> <li>• <i>Percentage of public procurement procedures incorporating green criteria out of the whole volume of procurement at national level and if available, for the GPP product groups (e.g. <a href="http://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm">http://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm</a>) for which monitoring is being done, measured by number and value</i></li> </ul>

<b>V.2 Socially responsible public procurement ('SRPP')</b>	Socially Responsible Public Procurement ('SRPP') is defined as procurement that takes into account one or several social considerations for advancing social objectives. SRPP covers a wide spectrum of social considerations, such as for example employment opportunities, decent work conditions, compliance with social and labour rights, social inclusion, equal opportunities and accessibility.
<b>V.2.1 Qualitative reporting</b>	
Key challenges encountered	The information should focus on: - key challenges encountered in promoting socially responsible public procurement, if any - measures taken to overcome them - difficulties still existing in the Member State
<b>V.2.2. Supporting documents</b>	
Please report any available evidence or supporting document for point V.2.1 illustrating the measures, achievements or challenges faced, relating to the promotion of SRPP.	<p><i>Possible relevant (non-exhaustive) documents for consideration may be as follows (please provide a link to the document, and if possible, a summary of the document in English, if the document is in another language):</i></p> <ul style="list-style-type: none"> <li>• <i>National SRPP definition</i></li> <li>• <i>List and brief description of national policy initiatives launched in the area of SRPP</i></li> <li>• <i>Any obligation to include socially responsible criteria or contract performance clauses in the tender documents imposed by your national system, and the contracting authorities or contracting entities which are required to comply</i></li> <li>• <i>Any information on social labels in use</i></li> </ul>

<b>V.2.3. Quantitative indicators</b>	<i>This section contains examples of quantitative indicators related to section V.2. Other indicators can also be included in the report.</i>
Please provide, when available, any quantitative data (statistics, etc.) illustrating the achievements and challenges identified under section V.2.1 above.	<p><i>Possible relevant (non-exhaustive) documents for consideration may be as follows:</i></p> <ul style="list-style-type: none"> <li>• <i>Number of public procurement procedures incorporating socially responsible award criteria. Please specify how many of those are regulated under the 'light regime' of Title III Chapter I (Articles 74-77 of Directive 2014/24/EU and Articles 91-94 of Directive 2014/25/EU)</i></li> <li>• <i>Number of public procurement procedures reserved to sheltered workshops and economic operators in line with article 20 of the Directive</i></li> <li>• <i>Number of public procurement procedures for the provision of health, social or cultural services as referred to in article 77.1 reserved to organisations fulfilling the conditions listed in article 77.2.</i></li> <li>• <i>Number of public procurement procedures incorporating socially responsible contract performance clauses criteria. Please specify how many of those are regulated under the 'light regime' of Title III Chapter I (Articles 74-77 of Directive 2014/24/EU and Articles 91-94 of Directive 2014/25/EU)</i></li> </ul>
<b>V.3 Public procurement of innovation</b>	An innovative solution is defined in 2014/24/EU Art.2 (1.22) as "a new or significantly improved product, service or process". This includes not only those solutions resulting from R&D but also those solutions resulting from activities, "including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations." Please report both dimensions of innovation procurement: procurement of R&D and procurement of innovative solutions.
<b>V.3.1 Qualitative reporting</b>	
Key challenges encountered	<p>The information should focus on:</p> <ul style="list-style-type: none"> <li>- key challenges encountered in promoting innovation procurement, if any</li> <li>- measures taken to overcome them</li> <li>- difficulties still existing in the Member State</li> </ul>



<b>V.3.2. Supporting documents</b>	
<p>Please report any available evidence or supporting document illustrating the measures, achievements or challenges faced, relating to the promotion and implementation of innovation procurement.</p>	<p><i>Possible relevant (non-exhaustive) documents for consideration may be as follows (please provide a link to the document, and if possible, a summary of the document in English, if the document is in another language):</i></p> <ul style="list-style-type: none"> <li>• <i>National Action Plan and/or targets for innovation procurement and its stage of implementation. Information on how are they defined.</i></li> <li>• <i>Any additional provisions for innovation procurement in your national legislation that go beyond the provisions in the EU public procurement directives (e.g. more detailed definition of innovative solutions and/or R&amp;D, specific provisions on innovation procurement Art 33 of 2014 EU State aid rules on R&amp;D&amp;I)</i></li> <li>• <i>National guidelines on innovation procurement (e.g. on IPR handling, joint procurement to create demand pull for buying innovative solutions, on R&amp;D procurement)</i></li> <li>• <i>National activities on capacity-building on innovation procurement (institutionalised or ad-hoc training, helpdesks, etc.)</i></li> <li>• <i>Information about outcomes e.g. impact on demand side (increase in quality and/or efficiency of public services), impact on the supply side (increase in sales/company growth, intensified investments in R&amp;D/innovation and/or IPRs), wider market impacts (number/value of contracts awarded to SMEs, amount of contracts awarded to non-domestic providers)</i></li> </ul>

**VI. Replicability**

This section should provide information allowing anyone to fully replicate the quantitative results presented in the report.

Links to datasets used to prepare the report	The Commission recommends publishing the source data as open data, e.g. as is the case for the Tenders Electronic Daily database at <a href="http://data.europa.eu/euodp/cs/data/dataset/ted-csv">http://data.europa.eu/euodp/cs/data/dataset/ted-csv</a> .
Files used to obtain the results from the datasets	This section should include for example the scripts or code for the relevant statistical software or the Excel files used.

## Annex I

Methodology for estimating the value of procurement which would have been covered by the directives if its value had exceeded the relevant thresholds.

### **1. Classification and methodology**

Indicate the basic characteristics of the methodology used by selecting from the options below. Description of the methodology is to be given in the subsequent section.

#### **1.1 General approach**

- a) [data available under national procurement requirements]
- b) [sample based estimate]
- c) [combined]

Please note that in our opinion using existing administrative data is preferable, as it implies both lower administrative burden (no additional data collection is necessary) and higher data quality.

If a sampling approach is taken, both the source of the sample and the sampling methodology, provided in the following subsection, must be able to withstand careful scrutiny. This ensures that the estimate is representative of the whole Member State.

## 1.2 Source of data

Scope \ Source of data	above national publication thresholds [✓]	below national publication thresholds [✓]
[e-notification platforms]		
[e-submission platforms]		
[invoices]		
[budgets]		
[other]		

## 2. Methodology description

Indicate, amongst others, information on the sources of data, approaches taken to deal with possible missing data and erroneous data, and representativeness of the sample used (if a sample-based approach was taken). If methodology is different depending on the thresholds or source of data, please clearly indicate this, including the relevant thresholds.