# 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 Directives 2014/23/EU, 2014/24/EU and 2014/25/EU (the 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 in order 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 MS, 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 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 assessments 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 the 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.

**Scope of reporting**

The report should cover the period between 1st January 2018 and 31st December 2020. For quantitative data based on procurement notices, this means that the contract award notice should have been published in this period. For each reply to the questions in this template, please indicate if the reply concerns all directives or only specific ones. The Directive 2009/81/EC on defence and sensitive security procurement should be excluded from the reporting.

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 directives and any other information should be presented separately, so that the same information can be compared between the MS.

## Key quantitative indicators

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| **I.1. The number of procurement procedures** | Information to be provided on a yearly basis:   * the number of notices announcing a call for competition and, * the number of awarded contracts. * the number of contract award notices   The numbers should be reported separately for:   * above EU thresholds procurement (i.e. procurement covered by the directives) and, * below EU thresholds (i.e. procurement, which would have been covered by the directives if its value had exceeded the relevant thresholds). |
| **I.2. The total value of procurement** | Information to be provided on a yearly basis (chose one from below, depending on which one will produce the most reliable estimate):   * the total value of awarded contracts.   Or   * the total value of contract award notices.   The value should be reported separately for:   * above EU thresholds procurement (i.e. procurement covered by the directives) and, * below EU thresholds (i.e. procurement, which would have been covered by the directives if its value had exceeded the relevant thresholds).   If the reported value is an estimate, the methodology used for its computation should be explained in **Annex I**. |
| **Answer** | |  |  |  |  | | --- | --- | --- | --- | |  | **2018** | **2019** | **2020** | | Number of notices announcing a call for competition above thresholds | 2531 | 2627 | 2171 | | Number of notices announcing a call for competition below thresholds(1) | 661 | 627 | 665 | | Number of awarded contracts above thresholds | 1974 | 2079 | 1669 | | Number of awarded contracts below thresholds | Not available | Not available | Not available | | Total value of procurement above EU thresholds (EUR/National currency) | Not available | Not available | Not available | | Total value of procurement below EU thresholds (EUR/National currency) | Not available | Not available | Not available | |

Annex II provides a suggestion on how to present the above general quantitative indicators. The data and methodologies used to compute quantitative indicators should be clearly indicated in the report or by providing the relevant documents, (this is valid for all quantitative indicators of this template). Whenever relevant, the value of national thresholds and the scope of their application should be provided.

(1) When the contract is below threshold, and does not have clear cross-border interest, it is voluntary to public a contract notice.

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

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| **II.1.** **Qualitative reporting on application of public procurement rules** |  |
| Main sources of wrong application or of legal uncertainty | The information should focus on:  - the most frequent cases of wrong application of the rules and of legal uncertainty   * *in what phase of the process do the contracting authorities make the most mistakes, in what procedures, what type of contracting authority, what subject matter type etc.*   - 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   * *for example: lack of knowledge/skill, lack of staff, staff retention issues, internal organisation, planning issues etc.*   - what are the persistent patterns, what are the lessons learned? |
| **Answer** | An indication for the main sources of wrong application or of legal uncertainty, is the annual report regarding complaints submitted to the Danish Complaints Board for Public Procurement. In 2020, the Complaints Board received complaints that counts about 3% of the procurements (complete with a contract). The Board made decisions regarding the following issues,  i) Competitive tendering obligation, direct award and modification of contracts  ii) Requirements for specifications, including minimum requirements, and organisation of procurement procedures  iii) Admissibility and reservations of tenders  iv) Abnormally low tenders  v) Evaluation, including choice of evaluation model  vi) Obtaining further information  vii) Framework agreements  viii) The Complaints Board Act, including suspensive effect and the Complaints Board’s sanctions  Link to the annual report in 2020 from the compliant Board: https://naevneneshus.dk/media/9943/annual-report-2020.pdf)  In addition, a survey report among contracting authorities on cancellation of procurements by the Competition and Consumer Authority might sheet some light over problems in the procurement process. The report released in 2019 showed that the main reason for cancellation was errors in published procurement documents or the need to make changes in an already published procurement documents (expressed by 24% of the respondents). In the report, the contracting authorities also mentioned that the desire to avoid a complaint as an important reason for cancellation stated by 16% of contracting authorities. The report indicated that the process of formulating the procurement documents is a critical phase in procurement process. However, there is no knowledge on whether cancelations is a result of organizational problems like for example lack of knowledge/skill in the staff, lack of staff, staff retention issues, internal organisation, planning issues etc.  The report showed that municipal contracting authorities had the highest cancellations rate (26.6%), the state authorities has the lowest cancellation rate with 18.8%. The cancellation rate was highest in procurement of purchase of goods (26.1%), whereas cancellation rates for services and construction and building were 18.1% and 20.2% respectively. The cancellations rates were lowest for tenders with negotiation (12.3%), and tenders with competitive-dialogue (19.2), whereas the cancellations rate was 22-23% for limited tenders, public tenders and tenders with concession awards and innovation partnerships. In the report, 14.8% of contracting authorities stated that cancellation might have been avoided by a more thorough drafting of the published procurement, 11.6% pointed on using another procurement procedure, whereas 9.8% indicated that a better knowledge of the market could have helped to avoid the cancellation.  Link to the report on cancellations: <https://www.kfst.dk/analyser/kfst/publikationer/dansk/2019/20190122-annullationer-af-danske-eu-udbud/> |
| Specific legal provisions (from EU or national law) which appear to raise significant problems of application | The information should focus on:  - the specific legal provisions in question and how often then occur in practice   * *for instance: is it badly worded, is it too strict/vague, is it difficult to interpret, are different interpretations possible, is constant guidance required/given etc.*   - a description of the type of difficulties identified, if any   * *i.e. what specific issues arise from such problems? Are certain procedures avoided, are there many appeals, many cancellations of procedure by decision of the contracting authority etc.?* |
| Answer | In 2021, the Danish Competition and Consumer Authority (DCCA) released an evaluation of the Danish procurement act. The evaluation was founded on the following steps.  First, the stakeholders were asked about which challenges they saw with respect to public procurement. Secondly, the DCCA assessed the challenges presented by the stakeholders, and DCCA found that many of the challenges could not legally be meet within EU law. Thirdly, the DCCA evaluated which of the challenges could be handled within EU-law, and finally the government has announced their proposal to handle the challenges.  Some of the challenges raises, will require change of EU-law, especially  :  1) A need for an EU-threshold regarding the obligation to assess cross-boarder interest.  2) Challenges with documentation requirements and e-certis.  Link to evaluation report: https://www.kfst.dk/media/2j1jv1o1/20210507-evaluering-af-udbudsloven.pdf  In Denmark, the DCCA answers general questions on public procurement. The received questions have a broad span regarding content. The authority seeks to meet possible questions to application of the Danish Public Procurement Act by drawing up guidance-reports about the act in general, dialogue in the tender process, models of evaluations, ESPD – documentation and e-certis etc. Additionally, the authority carries out dialogue meetings about these different subjects for tendering entities and bidders in different places in the country to further understanding of the possibilities in the Public Procurement Act.  The cancellation rate of public EU procurements in Denmark is about 25%. (Source: Danish Cancelation of public EU procurements, 2019 (in Danish). 50% of the cancellations appear after after the tenderers' deadline for submitting tenders. Late cancellations entail, all other things being equal, greater costs than cancellations that are very early in a tendering process. (Source: Evaluation of public procurement Act. The Competition and Consumer Authority, 2021 (In Danish)). |
| An assessment of patterns and behaviours that are not illegal or non-compliant, but still indicate possible problems | The information should focus on:  - the specific type of problems identified   * *for instance: preference for lowest price as award criteria irrespective of the context, overly frequent use of derogatory procedures or shortest possible deadlines, recurrent, particularly low number of bidders or of non-domestic bidders*   - any possible assessment of the impact of these difficulties on the efficiency of the public procurement process   * *for instance: is it difficult to achieve environmental protection policy goals because of low use of green PP criteria? Is there low competition, always the same bidders, market lock-in?* |
| **Answer** | In Denmark, there was not found any particular preferences for using lowest price as award criteria irrespective of the context. Instead, the most used award criteria is "best price-quality ratio". Between 2017 and 2020, 65% of all tenders used the best price-quality ratio, 33% used lowest price criteria, and 0.8% used the cost criteria. The cost criteria implies that the procurement criteria is based solely on basis of the total costs or total life cycle costs (TCO) for production, execution, operation, service life, etc. on a task. Although the contracting authority only relatively rarely uses “cost” as an award criterion, TCO is more often used in other ways in tenders. The Competition and Consumer Authority examined in 2020 how many tenders used life cycle costs and TCO in the assignment of a task. It was found that in about 10 pct. of all tenders used at least one word that relates to life cycle and total cost. In about 50% of the tenders TCO was mentioned, TCO was also used as a criterion in the award of the assignment. About 5% of all tenders in 2020 included TCO. (Source: Status on Public Competition. The Competition and Consumer Authority, 2021 (In Danish))  With respect to problems with deadlines of tenders, stakeholders have expressed a wish that the length of the minimum deadlines should be increased so to ensure that tenderers have sufficient time to prepare applications or tenders. Stakeholders have pointed out that it would be appropriate for contracting authorities to extend the deadlines if the period for submitting tenders extends over the summer holidays. (Source: Evaluation of public procurement Act. The Competition and Consumer Authority, 2021 (In Danish).  Between 2019 and 2020, about 40% of public tenders only had one or two bidders. Few bidders might indicate weak competition, but this is not necessary the case. Although, there are few bidders, what is important for competition is whether the tenderers expect there to be competitive bids at the time of the bidding, if this the case the tenderers have an incentive to submit the best possible price. (Source: Status on Public Competition, 2021. The Competition and Consumer Authority, 2021 (In Danish))  In 2020, the Competition and Consumer Authority assessed that about 44% of all tenders in Denmark contained a green element. (Status for public competition, 2020. The Competition and Consumer Authority). In Denmark, there are not found any signs of low competition, or always the same bidders or any signs of market lock-in. |
| **II.2 Supporting documents** |  |
| Please provide any available evidence of the issues identified under section II.1. | *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):*   * *Audit reports on identified irregularities related to public procurement, including auditors specialising in ESIF irregularities* * *Existing typologies of the most frequent errors in public procurement* * *Reports on the most frequent requests for guidance* * *Additional interpretative guidance documents published in order to clarify legal issues* * *Policy or other administrative documents discussing issues in relation to the implementation of the rules* |
| **Answer** | The Competition and Consumer Authority has not identified a pattern of wrong application of the rules.  Nonetheless, the authority seeks to meet possible wrong application and further understanding by guiding tendering authorities in elements of tendering such as ESPD, procuring counselling, using different evaluation models, consortiums etc. Guidance is mostly available through reports, but the authority has also released videos to further understanding.  Source:  - All reports on guidance are found on The Competition and Consumer Authority’s website - *KFST.dk*.  - The Danish Complaints Board for Public Procurement gives a yearly statement of their legal cases and the wrong application of the procurement use: <https://naevneneshus.dk/media/9943/annual-report-2020.pdf> |
| II.3. Quantitative indicators | *This section contains quantitative indicators related to section II.1. Other indicators can also be included in the report.* |
| Indicators about the national review system | The following three indicators have been defined based on the findings of a study commissioned by DG GROW in 2017 and further discussed with the Member States in the framework of the Network of first instance public procurement review bodies.   1. **Number of first instance review decisions** - It shall include all the first instance review decisions. 2. **Median length of first instance reviews** - It shall be the median length of all the first instance reviews. Length is defined as the number of calendar days between a starting date and an end date. The starting date is when the complaint is registered or an *ex officio* proceeding initiated. The end date is when the review decision is issued. 3. **Number of first instance review decisions that were appealed to the (next) judicial level and its results** - It shall include all the first instance review decisions that were appealed to the (next) judicial level, both on merit or procedural reasons. For first instance judicial review bodies, “next judicial level” refers to the second judicial level; for first instance administrative review bodies, “next judicial level” refers to the first judicial review. Furthermore, it shall include the number of first instance review decisions that were a) (primarily) upheld; b) (primarily) rejected; or c) neither upheld nor rejected by the (next) judicial level (e.g. because they were not yet decided, retracted).   The following definitions will help with the understanding of the key elements for the above indicators:   * *Public procurement procedures falling under the EU public procurement directives (i.e. above EU thresholds, including exemptions and exceptions). For those Member States that cannot disaggregate the data based on the EU thresholds or have only a part of the data available (e.g. no information on post-contractual review, regional information not shared), if possible, please give your “best guess” estimate of the additional/missing information in the relevant comments section.* * *Reviews made both before and after contract signature.* * *Review of all relevant bodies, regardless of whether they are administrative or judicial; regardless of whether they are national, regional or local. In case of multiple level administrative review, it shall only include the data from the first instance.* * *The data on reviews started following a complaint and ex officio*[[1]](#footnote-2) *shall be collected separately.* * *Figures are requested per year. Decisions should be included in the calculation for the calendar year in which they were issued (i.e. dates relating to years where the complaint was submitted, or where decisions were appealed to a higher instance should be excluded/ignored).* * *“Decision” means a binding outcome of the review (be it started following a complaint or ex officio). It includes decisions to reject a complaint decision on interim measures containing an assessment of the case and not followed by any other decision, and decisions regardless of whether multiple decisions are linked to the same procedure. Decisions not on the merits, i.e. “procedural” or “technical” decisions should not be included (e.g. decisions on nomination of experts to provide expert view).*   Annex III provides a suggestion on how to present the indicators about the national review system. |
| Answers | The indicators of the national review system are presented in table 1. In Denmark, complaints on procurement can be submitted to the Danish Complaints Board for Public Procurement, which is the first review instance. In general, the Danish Complaints Board is able to act faster than the courts. In 2020, the Danish Complaints Board had an average case processing time for complaints of 5 months, for which i.a. a very large part - approx. 63% - of the cases are completed during the first 3 months after the complaint has been received (these figure includes settled and rejected cases). Between 2018 and 2020, 316 complaints were send to first instance review in the Board, this is about 3 percent of total published tenders. 134 of the complaints where resolved by the Danish Complaints Board for Public Procurement. The remaining complaints where initially rejected or retracted by the complainant. In Table 1 presents the annual figures on decisions made, ex officio, median length of first review in month/days etc.by the compliant Board. Between 2018 and 2020, 44 complaints (33%) at the first instance review were sustained or partially sustained. Decisions with compensation were set in 13 cases. Between 2018 and 2020, there were 13 cases of the cases that were appealed to the the (next) judicial level.  Table 1. Indicators about the national review system   |  |  |  |  | | --- | --- | --- | --- | |  | 2018 | 2019 | 2020 | | Number of first instance complaints to the Compliants Board | 106 | 93 | 117 | | Number of first instance review decisions by the Compliants Board | 44 | 46 | 44 | | ex officio (not possible) | 0 | 0 | 0 | | Median length of first instance reviews in month/days | 5 months  150 days | 4.5 moths  135 days | 5 months 150 days | | Finding against complainant in the first instance decision number (percentage on number of decisions taken at the first level) | 29(66%) | 28(61%) | 33(75%) | | Full/partial finding for complainant in the first instance decision number (percentage on number of decisions taken at the first level) | 15(34%) | 18(39%) | 11(25%) | | Decision with compensation in the first instance decision number (percentage on number of decisions taken at the first level) | 5(11%) | 3(7%) | 5(11%) | | Number of first instance review decisions that were appealed to the (next) judicial level number (percentage on number of decisions taken at the first level) | 2(7%) | 4(9%) | 7(16%) | | Finding against complainant in the next judicial level | Not available | Not available | Not available | | Full/partial finding for complainant in the next judicial level | Not available | Not available | Not available |   Source:  - Annual report 2020. The Compliants Board for Public Procurement. <https://naevneneshus.dk/start-din-klage/klagenaevnet-for-udbud/aarsberetninger/> |

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

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| III.1. Qualitative reporting on fraud, corruption, conflict of interests 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 and conflicts of interests. | The information should focus on:  - how these actions/mechanisms have been implemented including key measures that have been put in place   * *what are the relevant sources of law (i.e. legal provisions in PP law, general anti-corruption rules, whistle-blower protection, criminal law, guidance, codes, declarations etc.)* * *Institutional arrangements made* * *Soft-law and soft measures (for example Guidance documents, Codes of conduct, Declarations of absence of conflict of interest, training , awareness raising etc.)* * *Use of data analysis to perform control such as red-flag systems.* * *Any specificities of the regime for conflict of interest, such as a broader definition or additional institutions or other measures.* |
| **Answer** | There are a number of actions undertaken to ensure detection of fraud and corruption.  1. Corruption is legally covered in The Executive Order of the Criminal Code.  The two primary corruption paragraphs are §122, which relates to active bribery of persons in public service or employment, and §299 No. 2, concerning bribery in the private sector and covers both active and passive bribery. Offences lead to fines and/or imprisoning. Consequences of fraud and corruption can have a preventive effect.  Additional legislation in the field of corruption in The Executive Order of the Criminal Code:  §280: Mandate fraud  §278: Investigation  §279: Fraud  §281: Extortion  §289 a: EU fraud  §290: Money laundering  2. All personnel in public administration must follow the Executive Order of the Public Administration Act, in which it is dictated, how public administrators must conduct, including penalty when there can be doubt of an administrator’s interests.  3. Denmark has a civil complaints system. The Competition and Consumer Authority is an authority in which civilians can call to report on competition irregularities. Moreover, the authority investigates cartels and rigged bidding in public procurement and in markets in general.  4. Companies that have a legal interest in lodging a complaint may appeal to the Danish Complaints Board for Public Procurement. Furthermore, The Competition and Consumer Authority and few other organisations and authorities may set forth a complaint to the Board.  5. With The Danish Public Procurement Act that came into force on 1 January 2016, the contracting authority must use the Common European Procurement Document (ESPD) as preliminary evidence that the companies meet the requirements for exclusion, suitability and selection.  The contracting authority is then obliged to obtain documentation from the winning bidder before the contract is concluded to determine whether the information in the ESPD is correct. Obligatory as well as voluntary grounds of exclusion will be detected through documentation.  With the purpose of not overburdening companies with claims of documentation, companies may obtain and submit a “service certificate” as evidence that the company fulfils exclusion requirements. A service certificate contains relevant information about pension, taxes and tax-assumption, documents that state that the company is not going through bankruptcy, liquidation, reconstruction or similar situation, and that the company (as well as executives and persons who have the power to represent, control or make decisions in the company's management) are not convicted of criminal offenses.  The purpose and consideration of the service certificate is that companies must only address one inquiry to the public to obtain information for public procurement. The Danish Business Agency then contacts the relevant authorities. |
| III.2. Supporting documents |  |
| 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. | *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):*   * *Policy or other administrative documents discussing issues in relation to the implementation of the actions/mechanisms* |
| Answer | Source:  - The Danish Public Procurement Act:  https://www.kfst.dk/media/54435/the-public-procurement-act.pdf |
| III.3. Quantitative indicators | *This section contains examples of quantitative indicators related to section III.1. Other indicators can also be included in the report.* |
| Quantitative assessment of collusion risks | Please elaborate on the methods or tools put in place at national level enabling central procurement authorities or contracting authorities to detect and assess the collusion risks, and on the relevant data on which they are based upon. Please mention the impact of the above measures, especially as regards how many cases were detected and pursued further by the competent national authorities (central procurement authority, competition authority or individual contracting authorities). |
| Answer | The Competition and Consumer Authority is preparing to use procurement data more systematically to monitor collusion risks.  The Competition and Consumer Authority also has an investigation team, whose purpose is to identify cartels in the Danish market. In collaboration with competition authorities in other countries, The Danish Competition and Consumer Authority has developed the tool Bid Viewer that can identify unusual bidding behaviour in public procurement tender data. The tool uses statistical indicators, machine learning, and other screening methods to help investigators to detect cartels in bidding data. Furthermore, The Competition and Consumer Authority is an authority in which civilians can call to report on competition irregularities. |
| Risk of undiscovered conflict of interest | Please elaborate on the methods or tools used to detect undiscovered conflict of interest, and on the relevant data on which they are based upon. Discuss the results of the above analysis or provide links to studies or other documents related to the quantitative analysis of undiscovered conflict of interest.  Information for this indicator should be available in central registers of beneficial ownership, which are to be established by all Member States under the 4th Anti-Money Laundering Directive (2015/849 Art. 30) by June 2017.  For more context for this indicator, please see the Commission's Anticorruption Report available at <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm>. |
| **Answer** | There can be conflict of interests, when two companies are related in some way, for example through cross ownership. The Competition and Consumer Authority has recently got access to ownership data of Danish companies through the register of concealed ownership at the Danish Business Authority. The challenge is to combine these data with bidding data, because the Danish Competition and Consumer Authority does not have access to information on all the bidding companies in a tender, but only information of the winner companies. In order for the Danish Competition and Consumer Authority to be able to investigative such conflicts of interests in tenders in general, TED (Tenders Electronic Daily) data need to contain information (CVR/name) of the bidding companies. The register of concealed ownership is situated at The Danish Business Authority. It has not been assessed how many registered companies have been awarded contracts. |

## 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>.

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| **IV.1. Qualitative reporting on SME participation** |  |
| New developments | The information should focus on the new developments regarding the participation of SMEs in public procurement since the previous reporting exercise, and especially on the new measures taken in the respective Member State in order to support the participation of SMEs in public procurement.  These measures could include:   * *policy and legislative initiatives launched to support SMEs participation in public procurement;* * *measures targeting SME participation in different techniques for aggregated procurement (framework agreements, dynamic purchasing systems, and centralised procurement activities);* * *measures targeting the participation of start-ups and scale-ups in public procurement;* * *measures ensuring that payment for public contracts are made on time, especially in the case of SMEs;* * *measures addressing the payments to subcontractors;* * *guidelines or instructions for contracting authorities on how to treat grouping (e.g. consortia) of SMEs;* * *guidelines for contracting authorities on the application of 'divide or explain' principle;* * *targets for SME participation in public procurement.*   The information could also include the difficulties still existing in the Member State, concerning SMEs’ participation in public procurement. |
| **Answer** | The following policies and legislation initiatives has been launched to support SMEs participation in public procurement:  1) The Danish Business Authority (DBA) has for several years hosted the platform challenges.dk, where it is made very easy for business, e.g. start-ups, to suggest new ideas and innovative solutions to societal challenges launched on the platform.  2) The DBA has also initiated several innovative public partnerships, e.g. an *Innovation partnership* that financed development and test of innovative public solutions and at the same was a driver for developing the market for entrepreneurs and SMEs with innovative solutions.  3) In 2019, The Ministry of Industry, Business and Financial Affairs launched the Govtech Programme with the purpose of strengthening the Governments own demand for new technologies and match these challenges with innovative solutions from Danish tech start-ups and SME’s, thereby highlighting the opportunities in the govtech sector and methods of innovative public procurement.  4)) In 2020, the Danish Government launched a Strategy for Green Public Procurement. One of the initiatives is support and guidance for SME’s concerning use of eco-labels and green standards and also digital tools to make green documentation and estimation of TCO easier.  5) The Danish government, municipalities and regions agrees to strengthen public-private innovation and innovation procurement and has from 2022 established a new joint unit, CO-PI, dedicated to support this purpose, which is expected to also benefit SMEs participation in public procurement.  Measures targeting SME participation in aggregated procurement (framework agreements, dynamic purchasing systems, and centralised procurement activities), there has not since the last report been launched any specific measures policy or legislative initiatives to support SMEs in public procurement. Nor has there been launched any measures targeting to improved SME participation procurements contract form as framework agreements, dynamic purchasing systems, and centralised procurement activities.  Measures to target participation of start-ups and scale-ups in public procurement, the Ministry of Industry, Business and Financial Affairs has established a board for Green Entrepreneurship, which will among other things also look into participation of start-ups and scale-ups in public procurement and the possibility of launching a pilotproject with the municipalities.  Since the previous reporting exercise not been installed any additional measures ensuring that payment for public contracts are made on time to SME. In general, there are not irregularities in payment for public contracts. Moreover there has not been installed any additional measures addressing the payments to subcontractors.  With respect to guidelines to improve participation SME of public procurement there has been the following initiatives,  1) The Competition and Consumer Authority has released a guidance report on consortia and the competition rules in April 2018. The Authority also plans on releasing a new guide targeted to both businesses and tendering authorities on how to handle consortiums in public procurement in 2018.  - The publication regarding consortia is available on the Competition and Consumer Authority’s website *kfst.dk* entitled “Konsortiesamarbejde i forhold til konkurrenceloven” (Consortium Cooperation in relative to Competition) (Danish).  2) To enhance SME’s possibility to participate in tenders, the Article 46i has been was implemented in the Danish Public Procurement Act through *the divide or explain-principle*. The principle states that the contracting entity must state the reasons for not dividing a contract into subcontracts in the tender documents. The principle should secure smaller businesses to be able to bid on relevant tenders. It is prohibited to split a task into subcontracts in order to circumvent the thresholds of the Public Procurement Act. Contracts divided into smaller contracts are to be carried out under the rules to which the total contract is subject. A reason not to divide a contract may be the preservation of economic or market considerations. Such considerations may be relevant if the contracting entity considers that there will be no competition for the subcontracts if the task is divided. Financial considerations may be relevant if the contracting entity estimates that, for example, economies of scale can be achieved by offering the assignment together. In addition, there may be circumstances during the performance of the assignment or internal relationship with the contracting entity, which may justify a breakdown of the task, such as contract management costs. Source:  - The Danish Public Procurement Act § 49  - The evaluation of the divide or explain-principle is featured in the publication “Bedre adgang for små og mellemstore virksomheder” from 2017 by The Competition and Consumer Authority (Danish). A resume of the publication is available on the authority’s website *KFST.dk* entitled “Better access for small and medium sized businesses”.  In Denmark, there is a not defined any targets for SME participation in public procurement. The access of SME in public procurement was also a part of evaluation of public procurement in Denmark undertaken by the Competition and Consumer Authority. In the evaluation, the stakeholders gave suggestions to improve participation of SME in procurement. The stakeholders suggested the following. Firstly, they suggested a stronger regulation of the requirement to divide contract into subcontracts in the tender documents. Secondly, they suggested to reduce the possibility that contracting authorities could demand joint liability from several tenderers. Thirdly, the stakeholders suggested a demand for measures that could improve the possibility for start-ups to participate in procurement.  From the legal point of view the suggestions from the stakeholders has been evaluated in light of the principles of transparancy and equal treatment. In general, there is in Denmark a focus on identifying difficulties existing in the Member State, concerning SMEs’ participation in public procurement. Moreover, it is evaluated that Denmark has taken the widest possible legal measures to ensure that small and medium-sized enterprises can participate in public procurement within the framework of EU legislation. |
| IV.2. Quantitative indicators | *This section contains examples of quantitative indicators related to section IV.1. Other related indicators can also be included in the report.* |
| Please provide, when available, any quantitative data (statistics, etc.) regarding SMEs’ participation in public procurement | *The following list includes suggested indicators for the participation of SMEs in public procurement (acting as a unique bidder or in a consortium):*   * *SMEs winning in above EU threshold procurement :* * *the value of contracts awarded to SMEs over the total value of contracts awarded irrespective of bidder’s size class;* * *SMEs winning in below EU threshold procurement[[2]](#footnote-3):* * *the number of contracts awarded to SMEs over the total number of contracts awarded irrespective of bidder’s size class;* * *the value of contracts awarded to SMEs over the total value of contracts awarded irrespective of bidder’s size class.* * *If available, estimates of indirect participation[[3]](#footnote-4) of SMEs in public procurement above threshold;* * *If available, estimates of indirect participation of SMEs in public procurement below threshold;* * *If applicable, current attainment rate of the target set for SMEs participation.*   *This list is not exhaustive. In case your Member State collect other indicators that you may find useful to track and measures the achievements in this area, please include them in the reporting.* |
| **Answer** | The indicators of the participation of SMEs in public procurement are presented in table 2. The Competition and Consumer Authority has assessed the participation of SME in public procurement. The assessment is based on data from TED. However, there is many missing observations in the SME variable in TED. Therefore, an underestimation of the number and values of contracts to SME would result from using the SME-variable in TED. Instead, to get a more correct number of SME participating, the TED data has been merged with the national CVR register that includes the number of employees in each companies.  In TED some of the registrations of procurements are incorrectly created (eg mini-tenders or drafts of framework agreements), and other tenders encumbered with errors. Therefore, the Danish Competition and Consumer Authority's process the TED data to take account of errors and register only the procurements that have been assigned with a contract, this leaves out cancelled procurements and procurements under contract under negotiation. In 2020, there was found 2,171 EU tenders that were concluded with a contract before 1 June 2021. The 2,171 tenders includes both tenders above and below the threshold. In 2020, there was in total for all companies found 1669 tenders with had an assessed value of 12.9 billon Euro (before 1 June 2021). However, there is uncertainty in assessment of contract value due to missing values in certain contracts. In Denmark, the figure for SME covers companies with less than 50 employees. In 2020, the SME won 486 tenders. 23% of value of all contract value where given to SME’s. However, it is emphasised that there in uncertainty in the assessment of the participation of SME due to missing observations. There is no available information on the number of value of procurements to SME below the EU threshold, nor is information on indirect participation of SME available.  Table 2. Indicators for the participation of SMEs in public procurement.   |  |  |  |  | | --- | --- | --- | --- | |  | 2018 | 2019 | 2020 | | Number of awarded contracts above EU threshold procurement to all companies | 1974 | 2079 | 1669 | | Value of awarded contracts above EU threshold procurement for all companies (estimated value in billion Euro) | NA | NA | NA | | Number SMEs winning in above EU threshold procurement | 586 | 579 | 486 | | Value of awarded contracts to SME above EU threshold procurement (estimated value in billion Euro) | 3.1 | 3.3 | 3.0 | | The percentages of contract values awarded to SMEs over the total value of contracts awarded irrespective of bidder’s size class; | 25% | 24% | 23% | | Number of awarded contracts below EU threshold procurement to all companies | 661 | 627 | 665 | | Value of awarded contracts below EU threshold procurement for all companies (estimated value in billion Euro) | NA | NA | NA | | Number SMEs winning in below EU threshold procurement | NA | NA | NA | | Value of awarded contracts to SME below EU threshold procurement (estimated value in billion Euro) | NA | NA | NA |   (Source: Status on Public Competition. The Competition and Consumer Authority, 2021 (In Danish)) |

## Information on the practical implementation of national strategic procurement

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| --- | --- |
| V.1 Green procurement ('GPP') | 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."[[4]](#footnote-5) 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. |
| V.1.1 Qualitative reporting |  |
| Key challenges encountered | The information should focus on:  - key challenges encountered in using green public procurement  - measures taken to overcome them |
| **Answer** | The government has launched a strategy for green public procurement October 29th 2020. In the the government decided that the public sector must procure greener, and the government signals that public procurement must also be involved in achieving the target of reducing Denmark's green­house gas emissions by 70 percent in 2030. The strategy for green public procurement contains three dimensions: 1) Green Action Now, 2) Long-Term Green Development and 3) Green Knowledge Tools.  The measures to achieve these goals e.g. is to give guidance on green public procurement has been accomplished by:  1) Establishing the Forum on Sustainable Procurement with the aim of promoting environmentally conscious and sustainable procurement by professional buyers of goods and services – both in public and private organizations.  2) Establishing the Partnership for Public Green Shopping, which is a community of municipalities, regions and public organizations that will promote sustainable solutions and buy green deposits. The partnership became currently counting 16 members. The partnership is also a forum for exchanging experiences. However, improved guidance of how to use green criteria in public procurement still exists.  3) As a part of the third dimension of the green strategy the Danish Competition and Consumer Authority is producing an instructional guide on how to use green public procurement. |
| V.1.2. Supporting documents |  |
| Please report any available evidence or supporting document for point V.1, illustrating the measures, achievements or challenges faced, relating to the use of green public procurement. | *Possible relevant (non-exhaustive) documents 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):*   * *National definition of 'green public procurement';* * *Targets for the uptake of GPP and the way they are defined i.e. for overall procurement, for specific product groups, by value, by number of contracts;* * *Any legal obligation to include green or circular requirements in tenders;* * *Any recommendations to use the GPP 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;* * *Activities in the area of capacity-building for procuring ‘green’ (institutionalised or ad-hoc training, helpdesks, etc.).* |
| Answer | *National green public procurement*'isdefined intheGovernment’s strategy report (*Green procurement for a green future*, 2020) as realization of the UN's global goals (UN goal 3, health and well-being, UM goal 6 clean water and sanitation, UN goal 12 responsible production and consumption, UN goal 13 climate action, UN goal 14 life in the sea, UN goal 15 life on land). This covers means use of eco-labels, which set requirements for sustainable production, and serving less meat in public canteens. In future, the public sector will also focus on energy efficiency by using total cost tools.  Source: <https://oes.dk/media/39012/strategi-for-groenne-indkoeb-engelsk.pdf>  *Targets for GPP uptake* is to reduce Denmark's greenhouse gas emissions by 70 percent in 2030 compared to the level in 1990 and for climate neutrality by 2050. Specifically defined by the state's purchases of some of agricultural products must be deforestation-free by 2025. In 2030 the public vehicle fleet must be emission-free.  The green strategy includes several legal obligations, for example, it will become obligatory to use labels under certain conditions, use TCO as an economic price and only procure LED light sources from top energy classes.  Source: <https://oes.dk/media/39012/strategi-for-groenne-indkoeb-engelsk.pdf>  *The recommendations from the* strategy for green public procurement includes several long-term initiatives, which in the long run will ensure significant reductions in the climate footprint of public procurement. However, the recommendations based on these long-term initiatives are not yet final. Some of these initiatives might use the developed GPP criteria directly or indirectly, for example to ensure that the public sector procures storage and the processing of data as climate- and environmentally friendly as possible.  Source: <https://oes.dk/media/39012/strategi-for-groenne-indkoeb-engelsk.pdf>  *Activities in the area of capacity-building for procuring ‘green’ is includes the following initiatives:*  a) Make annual calculation and projection of the climate footprint to meet the overall targets.  b) Develop digital solution for finding the right tools. The Procurement Officer online knowledge portal will be transformed into an automated solution, so that users are presented with relevant tools by answering questions.  c) Develop digital solution for calculating the total costs of procurement. To support the spread of procurement based on total cost principles, the government is initiating work to further digitise total cost of ownership tools so that procurement officers can calculate costs in a user-friendly way throughout the life of the product.  d) Make guidelines in the green possibilities of the Public Procurement Act. The government will ensure that legal guidelines are prepared to help public procurement officers use the possibilities of the Public Procurement Act in order to safeguard green considerations in connection with the procurement of both goods and services.  e) Make guidelines on the requirements for life extension. The guidelines will be prepared for public procurement officers as to how they can set requirements for extended warranty and repair options in order to ensure a longer life for products, e.g. electronics, appliances, furniture and means of transport. The guidelines will contain specific proposals for requirements that can be used in the tender material.  Source: <https://oes.dk/media/39012/strategi-for-groenne-indkoeb-engelsk.pdf>  Moreover, ecolabelling Denmark has made a guide for tendering authorities on using eco-labels in procurement.  Source:  - Website of Forum on Sustainable Procurement - <http://eng.mst.dk/sustainability/sustainable-consumption-and-production/sustainable-procurement/forum-on-sustainable-procurement/>  - Website of Partnership for Green Public Procurement - <http://www.gronneindkob.dk/>  - Ecolabelling Denmark’s guide to using eco-labels in procurement  - <https://www.ecolabel.dk/da/virksomheder/indkoebere-privat-og-offentlig/vaerktoejskasse-til-offentlige-indkoebere> |
| V.1.3. Quantitative indicators | *This section contains examples of quantitative indicators related to section V.1. Other indicators can also be included in the report.* |
| 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. | *Possible relevant (non-exhaustive) documents for consideration may be as follows:*   * *Percentage of public procurement procedures incorporating green or circular criteria out of the whole volume of procurement at national level and if available, for the GPP product groups (e.g.* <http://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm>*) for which monitoring is being done, measured by number and value.* |
| **Answer** | The Danish Competition and Consumer Authority has conducted a study accessing the use of green requirements (see In Danish: Status for offentlig konkurrence, 2020). It was found that 44 percent of all tenders was mapped out using green words in the procurement material in the period June 2019 to Marts in 2020. Information on tenders is not available on specified on GPP product groups e.g. defined on the EU homepage: (<http://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm>*).*)  The assessment of green requirement by The Danish Competition and Authority was based on registered tenders in TED (Tenders Electronic Daily). However, it was not directly possible to identify which Tenders contain a green element from TED data. Therefore, the Danish Competition and Consumer Authority developed a method in which a search algorithm has mapped out “green” words in the tender material for a sample of Danish EU tenders. By reviewing the tender material for specific green words, the green tenders was identified through the use green words in the tenders. However, there is no actual definition of when a tender contains a sustainable, green element just as no calculations has been done previously to identify the number of sustainable Danish EU tenders. In the study, tenders with a green element was identified in that the tender material contained one or more words, which was used to identify that the contracting authority used measures aimed at reducing environmental or climate impact through the procurement value chain that included production, acquisition, use or recycling.  Based on input from several relevant actors, a list of 74 green words has been prepared, which could indicate that the tender contained a green element. The glossary varied from containing general words such as "environment" to more specific words such as "microplastic".  Based on the glossary21 of green words in total 1914 tenders were examined. The method identified 844 EU tenders contained at least one green word. Thereby, it estimated that approximately 44 pct. of all tenders potentially contained a green element. The vast majority of the tenders contain several green words, as only just over 4 percent contain only a single green word.  *Source (In Danish): https://www.kfst.dk/analyser/kfst/publikationer/dansk/2021/20210112-status-for-offentlig-konkurrence-2020/* |
| V.2 Socially responsible public procurement ('SRPP') | 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. |
| V.2.1 Qualitative reporting |  |
| 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. |
| Answer | In 2021, the Competition and Consumer Authority released an evaluation of The public procurement Law. The evaluation addressed – a long with other issues - challenges with socially responsible public procurement.  In the evaluation, the stakeholders expressed three key main challenges with promoting socially responsible procurement.  i) A challenge with insufficient use of social responsibility in announced public procurement.  ii) Secondly, a specific challenge found was to increase the use of applying work and health conditions as well as safety clauses in the socially responsible public procurements.  iii) Thirdly, a challenge mentioned was that contracting authorities be given better opportunities to exclude companies that operate from tax havens countries.  The DCCA evaluated the possibilities of implementing measures that meet the challenges expressed by the stakeholders. The DCCA concludes the following,  i) *Regarding the stakeholders’ challenge with insufficient use of social responsible in procurement mentioned by the stakeholder:* The Danish Public Procurement Act is a close to text implementation of the criteria for societal responsible that follows EU’s Public Procurement Directive. In the Danish Public Procurement Act, it is thus possible to include, for example, environmental and social aspects as sub-criteria, just as other relevant societal responsibilities can be included. However, it is a condition that the criteria is must be linked to the subject matter of the contract. Thus, a concrete assessment of the criteria must be linked with the specific subject of the tender, and no emphasis can be placed on companies' general policy. The sub-criteria must be linked to the subject of the contract stems from EU’s Public Procurement Directive, national rules that deviate from this requirement will, for example, include social considerations as a criterion in the award of all public contracts, even when such does not relate to the subject-matter of the contract, be in breach of the Public Procurement Directive. The Danish Public Procurement Act provides a high degree of flexibility for contracting authorities to decide how societal responsibility is best addressed in the specific tender. Moreover, the societal responsibility in the specific tenders must be balanced in relation to competition, the participation of SMEs and the lowest possible transaction costs.  ii) *Regarding the stakeholders’ challenge for increasing the use of applying work and health conditions as well as safety clauses:* The Danish Public Procurement Act provides a wide opportunity to apply clauses that take into account employment considerations, as well as measures aimed at protecting the personnel participating in the production process, etc., provided that such clauses are linked to the subject of the contract. Precisely, the condition that clauses must be linked to the subject of the contract means that it must necessarily depend on a specific assessment in the individual tender whether it is possible to demand a specific work clause or a clause concerning working environment conditions. Therefore, it is also contrary to the Public Procurement Directive to require a specific work clause or a specific clause concerning working environment conditions to be applied in all public contracts.  iii) *Regarding the stakeholders’ challenges with excluding companies that operate from tax havens in public procurement:* The Danish Public Procurement Act provides certain possibilities for excluding companies which have breached current obligations in relation to the payment of taxes, etc., or which have committed tax evasion. Companies in tax havens countries are possible to exclude if these countries have not acceded to the GPA or are not parties to a free trade agreement with the EU. Thus, it is already possible to exclude companies from a number of countries that are perceived as tax havens countries. In general, the framework for access to exclude companies due to tax issues is set out in the Public Procurement Directive and the principles of EU law. It is therefore not possible to extend this access by national law. Within the framework of the Public Procurement Directive and the principles of EU law, it is possible to make it mandatory to exclude tenderers from the tax havens that are not covered by an international agreement with the EU. In that case, it would limit the contracting authority's ability to award contracts to companies located in these countries, and thus the contracting authority's flexibility. In the event that in a specific tender there are central tenderers located in tax haven countries, such rules will be able to restrict competition in the case in question. They may also lead to countermeasures in the countries concerned. |
| **V.2.2. Supporting documents** |  |
| 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. | *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):*   * *National SRPP definition;* * *List and brief description of national policy initiatives launched in the area of SRPP;* * *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;* * *Any information on social labels in use.* |
| **Answer** | In Denmark, there is not any national SRPP definition. In Denmark, the SRPP follows the EU legislation and covers the use of requirements for working environment, eco-labels, work clauses, apprenticeship clauses, tax clauses and similar considerations in tenders. The national regulation establishes a broad framework for pursuing a number of societal considerations, for example through a general procurement policy, which addresses the conduct of the contracting authorities. The principle in the Public Procurement Act and in EU law is thus that requirements can be made of the tenderers, but they must be directly linked to the specific purchase that is to the subject of the contract.  Source: <https://www.kfst.dk/media/54435/the-public-procurement-act.pdf> (An English translation of the Danish Public Procurement Act).  National policy Initiatives launched in the area of SRPP are  i) A guide for procuring authorities on social clauses, work clauses and ethical requirements, which can be found on the homepage “Den Ansvarlige Indkøber” (The Responsible Procurer).  Source: csr-indkob.dk.  ii) A guide on the use of social clauses in tenders that can be found on the homepage of the Danish Competition and Consumer Authority.  Source: https://www.kfst.dk/nyheder/kfst/ok-nyheder/2018/20181219-ny-udgave-af-vejledning-om-sociale-klausuler-i-udbud/  ii) An e-learning course to public procurement authorities which gives instruction to the use of the light regime  Source: [Sådan bruger du light-regimet (kfst.dk)](https://www.kfst.dk/udbud/vejledninger-og-analyser/sadan-bruger-du-light-regimet/)  In Denmark, there are no obligation to include social responsible requirements in public procurement. However, there is a voluntary agreement on *the “follow or explain-principle”,* which states that procuring authorities is required to include social clauses or else explain why social clauses has not been included in the procurement. Explanations for not using social clauses might be financial considerations, or that the public institution has already entered into so-called partnership agreements to use apprentices.  Source: <https://www.kfst.dk/media/54435/the-public-procurement-act.pdf> (An English translation of the Danish Public Procurement Act).  In Denmark, there is no information available on the use of social labels in public tenders. |
| **V.2.3. Quantitative indicators** | *This section contains examples of quantitative indicators related to section V.2. Other indicators can also be included in the report.* |
| Please provide, when available, any quantitative data (statistics, etc.) illustrating the achievements and challenges identified under Dsection V.2.1 above. | *Possible relevant (non-exhaustive) documents for consideration may be as follows:*   * *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);* * *Number of public procurement procedures reserved to sheltered workshops and economic operators in line with article 20 of the Directive;* * *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.;* * *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).* |
| **Answer** | Tenders under the light-regime are plotted in the Competition and Consumer Authority’s mapping of all tenders in Denmark since 2018. In the years from 2018 to 2020, 325 tenders were announced under the light-regime. This covers 4.4% of the total number of tenders. There is no available information on tenders on sub-groups under article 20 (workshop and economic operators); under article 77.1 (provision of health, social or cultural services), under article 77.2 nor under public procurement procedures incorporating socially responsible contract performance clauses criteria. |
| V.3 Public procurement of innovation | 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. |
| V.3.1 Qualitative reporting |  |
| Key challenges encountered | The information should focus on:  - key challenges encountered in promoting innovation procurement, if any;  - measures taken to overcome them;  - difficulties still existing in the Member State. |
| **Answer** | In 2020, the Danish government identified a key challenge in a need to strengthen cooperation between the public sector and the private sector on development of innovative solutions for the public sector.  A measure to strengthen cooperation in public innovation was achieved by that the Government, KL (Local Government Denmark) and the Danish Regions in 2020 agreed to establish a new unit. The unit was a merged with the current Center for Public Innovation (COI) and became the Center for Public-Private Innovation (COPI). The new unit should make it more attractive for companies to initiate innovative collaborations with the public sector. The unit shall contribute to public-private partnerships on the development of new technological solutions or the use of known technology in a new and innovative way. The innovation projects shall focus on challenges the public sector and but also focus on possible of creating the export for Danish companies. Specifically, the unit must particularly support the solution of challenges in welfare technology, green conversion and sustainable construction. Furthermore, the new unit for public-private cooperation must i.a. contribute with tender professional sparring as well as support knowledge collection and anchoring across existing initiatives, including in the business promotion system.  In addition, the Competition and Consumer Authority in 2021 released an evaluation of public procurement. The innovation procurement was evaluated as part of the so-called flexible procurement procedures.  In the evaluation, the stakeholders addressed three key challenges related to flexible procurement,  i) A challenge in making changes in minimum requirements during the procurement process.  ii) An uncertainty about the conditions for using the flexible tendering procedures.  ii) A challenge of reducing the number of bidders early in the negotiation process ("shortlisting").  The DCCA evaluated the possibilities for imposing measures that meet the challenges expressed by the stakehoders. The DCCA concluded the following,  i) *Regarding the stakeholders’ challenge to make changes in minimum requirements during the negotiation process is achieved through the implementing of the Danish Public Procurement Act.* In the Danish Public Procurement Act it is not allowed to make changes in the minimum requirement during an innovative procurement process, this follows directly from EU’s Public Procurement Directive and can therefore not be changed in Danish law.  *ii) Regarding the stakeholders’ challenge of uncertainty about the conditions for using the flexible tendering procedures.* In general, the Danish Public Procurement Act has significantly expanded the right to use the flexible procurement procedures. However, greater clarity about when negotiated procedures can be used by contracting authorities will allow for a better use of the benefits that this procedure can bring. For example, a number of stakeholders stated that tenders with negotiation contribute to the development of new and innovative solutions. When access to negotiation and dialogue is regulated this is due to considerations of equal treatment and transparency.  iii) *Regarding the stakeholders’ challenge of reducing the number of bidders early in the negotiation process.* The current regulation in the Public Procurement Act does not allow for the number of tenderers to be reduced before the initial tender. There can be a reduction for the after the first round of negotiations at the earliest. |
| V.3.2. Supporting documents |  |
| Please report any available evidence or supporting document illustrating the measures, achievements or challenges faced, relating to the promotion and implementation of innovation procurement. | *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):*   * *National (or Regional) Action Plan and/or targets for innovation procurement and its stage of implementation. Information on how are they defined;* * *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&D, specific provisions on innovation procurement Art 33 of 2014 EU State aid rules on R&D&I);* * *National (or Regional) guidelines on innovation procurement (e.g. on IPR handling, joint procurement to create demand pull for buying innovative solutions, on R&D procurement);* * *National (or Regional) activities on capacity-building on innovation procurement (institutionalised or ad-hoc training, helpdesks, etc.);* * *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&D/innovation and/or IPRs), wider market impacts (number/value of contracts awarded to SMEs, amount of contracts awarded to non-domestic providers);* * *Activity report on the follow-up and the evolution of the measures put in place.* |
| Answer | There is not any recent National (or Regional) Actions Plans for public innovation procurement. Moreover, there is not any additional provisions for innovation procurement in national legislation that go beyond the provisions in the EU public procurement directives.  However, there following initiatives have recently been launched to promote innovation procurement,  1) In 2020, the Government, KL - Local Government Denmark and Danish Regions agreed to establish the National Center for Public-Private Innovation. Among other things, the center is to enhance cross-sectoral collaboration on innovative public procurement to increase scale and level of innovation. Focus areas are green transition, sustainable construction and technology that improves welfare services.  2) Also in 2021, the Innovation Fund Denmark launched a new 685 mio. DKK Innomission program, calling for mission-driven green research and innovation partnerships. Acknowledging public demand as a driving force, the fund strongly encouraged applying partnerships to include activities that can help municipalities, regions, etc. setting up new structures leading to economy-wide de-carbonization by creating market preferences for low-carbon products. (source: <https://innovationsfonden.dk/sites/default/files/2021-08/Call_text_partnerships_Final_CLEAN.pdf>)  National guideline resources to improve innovative procurement are,  *1) OPI guide:* a guide on innovative public procurement. OPI Guide - contains a large number of tools, articles and cases targeted at companies, public organizations and knowledge institutions that are to embark on - or are already in - a process regarding a Public-Private Innovation collaboration. OPIguide is operated by The Danish Life Science Cluster. <https://www.danishlifesciencecluster.dk/>  *2) Guidance on the flexible forms of tendering:* The Danish Competition and Consumer Authority's guidance on the Public Procurement Act also contains guidance on the implementation of tenders according to the various tender procedures, including tenders with negotiation, competitive dialogue and innovation partnerships.  https://www.kfst.dk/udbud/vejledninger-og-analyser/  *3) Process model for innovation partnerships:* The Danish Business Authority has developed a process model that guides the public and private parties through five phases of a successful innovation partnership: start-up, market dialogue, tenders, innovation processes and procurement.  https://bedreudbud.dk/sites/bedreudbud.dk/files/media/documents/cases\_files/opi\_procesmodel.pdf  *4) Process model for cross-public scaling of innovative public procurement:* Process that creates a larger scale by matching several public procurers with overlapping needs for common market dialogue and formulation of requirements prior to the participants' own, separate tenders. It mobilizes more innovation from the market, whereby more difficult requirements, eg for sustainability, can be met. The model has been developed by the former National Center for Public Innovation (now Center for Public-Private Innovation, CO-PI) with inspiration from the Norwegian National Programme for Supplier Development  (LUP). (Source: www.co-pi.dk)  *5) The OPI train:* A tool where you are guided through the phases of different types of processes for innovative procurement and public-private innovation cooperation. Along the way, you gain knowledge about typical activities, pitfalls and points of attention. The tool has been developed for the Health and Care Administration in the City of Copenhagen.  National activities on capacity-building on innovation procurement are,  1) National Center for Public Sector Innovation (COI) offers assistance for sparring on management, evaluation, dissemination of public innovation processes, and innovative public procurement.  https://www.coi.dk/en/  2) The Agency for Public Finance and Management and the Danish Competition and Consumer Authority are behind the Advisory Unit (SIR) that offer legal assistance to purchasers and supply consultants in the state, about innovative public tenders, ie. among other things, with making new procurement agreements, submitting assignments for tender and the subsequent contract management.  [*https://statensindkob.dk/*](https://statensindkob.dk/)  3) The Danish Business Authority has for several years hosted the platform challenges.dk, where it is made very easy for business, e.g. start-ups, to suggest new ideas and innovative solutions to societal challenges launched on the platform.  4) The Danish Business Authority has also initiated several innovative public partnerships, e.g. an Innovation partnership that financed development and test of innovative public solutions and at the same was a driver for developing the market for entrepreneurs and SMEs with innovative solutions.  5) In 2019, The Ministry of Industry, Business and Financial Affairs launched the Govtech Programme with the purpose of strengthening the Governments own demand for new technologies and match these challenges with innovative solutions from Danish tech start-ups and SME’s, thereby highlighting the opportunities in the govtech sector and methods of innovative public procurement.  National initiatives to evaluate outcome on innovation. In 2015 the (then) Danish National Centre for Public Sector Innovation, in association with Statistics Denmark, published the Innovation Barometer - the world’s first official statistics on public sector innovation. It is a nationwide representative survey of innovation in the public sector, including public-private innovation. Using the methodology principles set out in the Copenhagen Manual [(www.innovationbarometer.org/copenhagen-manual](http://(www.innovationbarometer.org/copenhagen-manual)) Norway, Sweden, Iceland, Finland and The Netherlands have all conducted one or more Innovation Barometers, allowing for international comparisons. Share of public sector innovations carried out in collaboration with private companies range from 17 to 41 percent among the Nordics <https://www.innovationbarometer.org/join-forces-with-private-companies/>  Statistical analysis based on the latest Danish data indicates that public-private innovations are associated with a greater chance of creating higher efficiency than non-cooperative public sector innovations (Source: https://www.coi.dk/viden-og-vaerktoejer/materialer/loes-problemet-sammen-offentlig-innovation-i-samarbejde-med-private-virksomheder/  There is no available information on activity report on measures put in place. However, the National Center for Public Sector Innovation (COPI) offers assistance for sparring on evaluation of public innovation processes, and innovative public procurement.  https://www.coi.dk/en/ |
| For purchases made under the EU thresholds, please report any information or document demonstrating that purchase of innovative solutions have been made (e.g.: innovation partnerships or the use of the innovation criterion). | |

## Information on monitoring and reporting bodies

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 (e.g. review bodies, anti-corruption bodies).

## Replicability

This section should provide information allowing anyone to fully replicate the quantitative results presented in the report. The data and methodologies used to compute quantitative indicators should be clearly indicated in the report or by providing the relevant documents, (this is valid for all quantitative indicators of this template).

|  |  |
| --- | --- |
| 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 <http://data.europa.eu/euodp/cs/data/dataset/ted-csv>. |
| Answer | TED data:  TED data has been used in section III.3 about the statistical distribution of buyers by frequency of using a negotiated procedure without the prior publication of a call of competition.  The document type “Voluntary ex ante transparency notice” has 416 contract notices. Voluntary ex ante transparency notices entail the two procedures “contract awards without prior publication” and “negotiated procedures without a call for competition”. Three of the tenders where concession notices and have been removed.  Own data:  The Competition and Consumer Authority continuously maps contract awards in TED manually to gather information on tenders in Denmark.  Four part-time employees monitor and map new contract awards in the TED database. All information is stored in our own database. By doing so information that only can be obtained through reading the contract award notices can be analysed. Furthermore it can be detected when tendering authorities have errors in their registry in TED. In those cases the Competition and Consumer Authority contacts  the tendering authorities to clarify potential errors.  In about 10 percent of contract notices there is not submitted a contract notice. The Competition and Consumer Authority contacts tendering authorities within a year, to clarify what has happened with the tender.  The mapping of TED should therefore contain both more information on tenders and a higher degree of correct information. |
| 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. |
| Answer | The excel file is not submitted. |
| Other complementary data | The submission of any other disaggregated datasets (e.g. flat files containing below EU threshold contracts) is encouraged. |

**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 and for the estimation of the aggregated total value of procurement above EU thresholds**

### Answer: The Competition and Consumer Authority has been able to give this data, but data should be interpreted with care, because there are missing observations and therefore the data are not precisely correct. The data is collected from TED and processed by the data team in Denmark in order correct missing ore clearly wrong input.

### 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:

1. [data available under national notice/contract publication requirements]
2. [sample-based estimates]
3. [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 [✓] | Above EU 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.

**Annex II:**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **2018** | **2019** | **2020** |
| Number of notices announcing a call for competition above thresholds | 2531 | 2627 | 2171 |
| Number of notices announcing a call for competition below thresholds | 661 | 627 | 665 |
| Number of awarded contracts above thresholds | 1974 | 2079 | 1669 |
| Number of awarded contracts below thresholds | Not available | Not available | Not available |
| Total value of procurement above EU thresholds (EUR/National currency) | 13.1 Billion Euro  99.1 Billion DKK | 13.2 Billion Euro  98.6 Billion DKK | 12.9 Billion Euro  96.6 Billion DKK |
| Total value of procurement below EU thresholds (EUR/National currency) | Not available | Not available | Not available |

**Annex III:**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **2018** | **2019** | **2020** |
| **Number of decisions (in first instance review)** | **44** | **46** | **44** |
| **upon a complaint (total number of complaints at first instance review)** | **106** | **93** | **117** |
| ***ex officio*** | **0** | **0** | **0** |
| **Comments** |  |  |  |
| **Median length of the review** |  |  |  |
| **upon a complaint (in first instance review)** | **5 months** | **4.5 months** | **5 months** |
| ***ex officio* (in first instance review)** | **0** | **0** | **0** |
| **Comments** |  |  |  |
| **Number of review decisions challenged (number of cases send to next judicial level)** | **2** | **4** | **7** |
| **Number of decisions (primarily) upheld (at the (next) judicial level)** | **Not Available** | **Not Available** | **Not Available** |
| **Number of decisions (primarily) rejected (at the (next) judicial level)** | **Not Available** | **Not Available** | **Not Available** |
| **Number of decisions – other** | **Not Available** | **Not Available** | **Not Available** |
| **Comments** |  |  |  |

1. A review initiated upon review body’s own motion. [↑](#footnote-ref-2)
2. This request is not mandatory as this type of procurement is not covered by the 2014 Directives. [↑](#footnote-ref-3)
3. Indirect participation is intended to mean participation of an SME as either a subcontractor or a “significant supplier” (supplying for more than 10% of the contract value) to the company/consortium signing the contract. [↑](#footnote-ref-4)
4. Commission Communication (COM (2008) 400) "Public procurement for a better environment". [↑](#footnote-ref-5)