

# 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

Fields marked with \* are mandatory.

### I. Information about reporting authority

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By clicking in this box you indicate that you have read the privacy statement and provide your consent for the processing of your personal data

[EUSurvey Privacy Statement-2020.pdf](#)

\* Country

Denmark

\* Name of National Authority

Competition and Consumer Authority

\* Name of Unit/Department

Center for Public Competition

\* E-mail address

kfst@kfst.dk

Name of contact person (not published)

E-mail address of contact person (not published)

## II. The public procurement framework

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### 1. Legal framework

- \* Please indicate links to the main legal instrument implementing the public procurement Directives and its main amendments that occurred during the current reporting period.

*5000 character(s) maximum*

Please list the links in the text box below. You can link multiple links.

The Danish Public Procurement Act implements the Public Procurement Directive 2014/24/EU: <https://www.retsinformation.dk/eli/lta/2023/10>

The Utilities Directive has been implemented into Danish law by Executive Order No. 1078 of June 29, 2022, the Utilities Executive Order: <https://www.retsinformation.dk/eli/lta/2022/1078>

Directive 2014/23/EU on the award of concession contracts has been implemented in the Executive Order on the award of concession contracts by Executive Order No. 1080 of June 29, 2022: <https://www.retsinformation.dk/eli/lta/2022/1080>

The Defence and Security Directive (Directive 2009/81/EC) has been implemented by Executive Order No. 1077 of June 29, 2022: <https://www.retsinformation.dk/eli/lta/2022/1077>

### 2. Procurement institutional framework

Please provide key bodies and institutions regarding public procurement matters, in charge of:

	Relevant bodies <i>(multiple entries possible)</i>
Body of normative regulatory function (including transposition) and policy development	The Danish Competition and Consumer Authority. The Authority is part of the Ministry of Business, Industry, and Financial Affairs. <a href="https://www.kfst.dk/udbud/">https://www.kfst.dk/udbud/</a>
Bodies responsible for monitoring and reporting	The Danish Competition and Consumer Authority. The Authority is part of the Ministry of Business, Industry, and Financial Affairs. <a href="https://www.kfst.dk/udbud/">https://www.kfst.dk/udbud/</a>
Review bodies	The Complaints Board for Public Procurement. The Complaints Board is part of the Ministry of Business, Industry, and Financial Affairs. <a href="https://naevneneshus.dk/start-din-klage/klagenaevnet-for-udbud/">https://naevneneshus.dk/start-din-klage/klagenaevnet-for-udbud/</a>
Bodies responsible for the e-procurement and the functioning of the public procurement web portal	The Danish Competition and Consumer Authority. The Authority is part of the Ministry of Business, Industry, and Financial Affairs. <a href="https://www.kfst.dk/udbud/">https://www.kfst.dk/udbud/</a>
Centralised procurement bodies	<p><a href="https://www.ski.dk/">https://www.ski.dk/</a> SKI - The State and Municipalities' Procurement Service</p> <p><a href="https://amgros.dk/">https://amgros.dk/</a> Amgros - The Danish regions' centralized purchasing body (mainly for medicine)</p>

<p>Competence centres</p>	<p>The Danish Competition and Consumer Authority issues general guidance on public procurement. <a href="https://www.kfst.dk/udbud/vejledninger/">https://www.kfst.dk/udbud/vejledninger/</a></p> <p>The Danish Competition Authority and the Danish Agency for Public Finance and Management have a joint Advisory Unit, which assist purchasers and procurement consultants in the government in creating new procurement agreements, issuing tasks for tender, and subsequent contract management. The goal is to strengthen legal expertise and build specialized knowledge within the government. The Advisory Unit also offers a range of courses and competency development programs targeted towards those working with procurement and tendering in the government. <a href="https://statensindkob.dk/">https://statensindkob.dk/</a></p> <p>The Responsible Purchaser is a shared portal developed by the Danish Agency for Public Finance and Management, The Danish Environmental Protection Agency and the Local Government Denmark (KL), which is the association and interest organization of the 98 Danish municipalities. The Responsible Purchaser is a comprehensive digital gateway providing an overview of the latest knowledge about opportunities, requirements, and tools to support green public procurement.</p>
<p>Other bodies</p>	

### III. Key quantitative indicators on public procurement

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#### 1. The total number of awarded contracts

Total number of contracts awarded **above** EU thresholds (in a yearly breakdown)

	2021	2022	2023
Number	2.469	2.599	Unknown

\* Please describe the methodology on collection of data and/on the source (in case of a database(s)) of data collected:

*5000 character(s) maximum*

Please note that the numbers account for contracts published within the given year and not contracts awarded within the given year.

We collect data from Contract Award Notices on TED and perform manual quality assurance on the information. Quality assurance includes contacting contracting authorities in order to retrieve missing information or correct obvious mistakes. Contracts published in TED but below the EU thresholds are included.

The 2023-number is unknown, because we have only performed quality assurance up to May 2023. For this reason, the number for 2022 also includes an estimate of the number of contracts published in 2022 and not yet awarded with a Contract Award Notice by May 2023. Given that we usually find a significant margin of error in the quality assurance-process, we are not comfortable reporting direct numbers from TED for 2023.

Total number of contracts awarded **below** EU thresholds (in a yearly breakdown)

	2021	2022	2023
Number	550	561	608



\* Please describe the methodology on collection of data (in case of assessment based on a sample) and/on the source (in case of a database(s)) of data collected:

*5000 character(s) maximum*

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

The Competition and Consumer Authority collects data from the database [www.udbud.dk](http://www.udbud.dk). We do not have access to systematic information on awarded contracts below the EU thresholds that are not published on [www.udbud.dk](http://www.udbud.dk).

## **2. The total value of procurement**

Total value of contracts awarded **above** EU thresholds (in a yearly breakdown)

	2021	2022	2023
Value (in EUR million)	22.819	24.161	Unknown

\* Please describe the methodology on collection of data and/on the source (in case of a database(s)) of data collected:

*5000 character(s) maximum*

Please note that the numbers account for the value of contracts published within the given year and not contracts awarded within the given year. The total value does not entail directly awarded contracts on the basis of a voluntary ex-ante transparency notice or a negotiated procedure without prior call for competition.

We collect data from Contract Award Notices on TED and perform manual quality assurance on the information. Contracts published in TED but below the EU thresholds are included. We estimate a “best guess”-value for contracts with no information on value. This is based on expected value in the Contract Notice and/or characteristics such as sector or type of procuring authority.

The 2023-number is unknown, because we have only performed quality assurance up to May 2023. For this reason, the number for 2022 also includes an estimate of the number of contracts published in 2022 and not yet awarded with a Contract Award Notice by May 2023. Given that we usually find a significant margin of error in the quality assurance-process, we are not comfortable reporting direct numbers from TED for 2023.

Total value of contracts awarded **below** EU thresholds (in a yearly breakdown)

	2021	2022	2023
Value (in EUR million)	Unknown	Unknown	Unknown

\* Please describe the methodology on collection of data (in case of assessment based on a sample) and/on the source (in case of a database(s)) of data collected:

*5000 character(s) maximum*

The Competition and Consumer Authority does not have reliable information on the value of contracts awarded below EU thresholds.

## IV. Sources of wrong application or of legal uncertainty (including possible structural or recurring problems)

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### 1. Preparation and launch of a public procurement procedure:

Which are the main sources of wrong application (or aspects with which legal uncertainty is related)?

In case your answer to question 2, 7, 8 or 9 is yes, additional options will appear.

- 1. Preliminary market consultation
- 2. Estimation of contract value (if yes, please specify below)
- 3. Wrongful setting of deadlines
- 4. Inappropriate selection criteria (too restrictive, tailor made for a particular economic operator, not related to subject matter of contract)
- 5. Discriminatory technical requirements
- 6. Conflict of interest
- 7. Procedures without publication (if yes, please specify below)
- 8. Inappropriate use of specific procedures (if yes, please specify below)
- 9. Other issues (if yes, please specify below)

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with 'enter'.

The Competition and Consumer Authority has not conducted research on the main sources of wrong application.

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. The Board received 100 complaints regarding public procurement in 2022.

The Board made decisions regarding the following issues,

- Obligation to tender, direct award, and modification of contracts
- Requirements in tenders, including minimum requirements, and organization of the tender process
- Evaluation, including choice of evaluation model
- Framework agreements
- Complaints board law, including suspensive effect and the complaints board's sanctions
- Grounds for exclusion
- Tenders with negotiating procedures

Link to the annual report in 2022 from the complaint board: <https://naevneneshus.dk/media/10610/aarsberetning-2022-dansk.pdf>

To mitigate wrong application of the procurement rules and legal uncertainties, the Competition and Consumer Authority answers general questions on public procurement. The received questions are diverse and are received from a wide range of public entities. 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, eForms etc. Lastly, the authority has an advisory unit, that helps central authorities carry out tenders and answer more extensive questions on procurement.

## 2. Evaluation of tenders and contract award:

Which are the main sources of wrong application (or aspects with which legal uncertainty is related)?

In case your answer to question 8 is yes, additional options will appear.

- 1. Unlawful exclusion of tenderers/rejection of offers
- 2. Non compliance with mandatory exclusion grounds
- 3. Unlawful exclusion of third country bidders covered by GPA or by other international agreement
- 4. Incorrect evaluation of award criteria
- 5. Incorrect application of rules related to abnormally low tender
- 6. Lack of publication of contract award notice
- 7. Unlawful modification of the tender conditions before conclusion of the contract
- 8. Other reason (if yes, please specify below)

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with 'enter'.

The Competition and Consumer Authority has not conducted research on the main sources of wrong application.

### 3. Contract implementation:

Which are the main sources of wrong application (or aspects with which legal uncertainty is related)?

In case your answer to question 2, or 3 is yes, additional options will appear at the end of STAGE 3 to provide further details.

- 1. Illegal contract modifications
- 2. Wrong application of procurement instruments (if yes, please specify below)
- 3. Other reasons (if yes, please specify below)

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with enter.

The Competition and Consumer Authority has not conducted research on the main sources of wrong application.

### 4. Problems that may originate at different stages:

Which are the main sources of wrong application (or aspects with which legal uncertainty is related)?

In case your answer to question 4 is yes, additional options will appear.

- 1. Wrong application of centralised or joint procurement
- 2. Failure to comply with legal deadlines (prescribed by EU or national law)
- 3. Biased prior involvement of candidates or tenderers
- 4. Other issues (if yes, please specify below)

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with enter.

The Competition and Consumer Authority has not conducted research on the main sources of wrong application.

### 5. Which are the specific legal provisions of EU public procurement law that raise problems?

Directive 2014/23/EU ('Concessions Directive')

Directive 2014/24/EU ('Classical Directive')

Directive 2014/25/EU ('Utilities Directive')  
Directive 2007/66/EC ('Remedies Directive')

Please list the articles of the Directives and describe the issue you face (e.g., unclear, too strict/vague, meets contradictory interpretations or practices):

*5000 character(s) maximum*

The Competition and Consumer Authority has not conducted research on directive specific issues that procuring authorities face.

## 6. Which are the patterns and behaviours that do not stem from wrong application or of legal uncertainty, but indicate possible problems in the application of public procurement rules?

In case your answer to any of these questions is yes, additional options will appear below to provide further details.

- 1. Preference for lowest price as award criteria negatively affective quality of the purchase (if yes, please specify below)
- 2. Frequent use of derogatory procedures (if yes, please specify justifications used for derogatory procedures)
- 3. Frequent use of shortest possible deadlines (if yes, please specify below)
- 4. Recurrent award of contracts to the same economic operator
- 5. Recurrent award of contracts to third country economic operators not covered by GPA or by other international agreement (if yes, please specify justification below)
- 6. Contract awarded in suspected situation of unfair competition (if yes, please see below)
- 7. Low use of green requirements or award criteria (if yes, please provide us with further explanation below)
- 8. Low use of social requirements or award criteria (if yes, please provide us with further explanation below)
- 9. Low use of procurement of innovation (if yes, please provide us with further explanation below)
- 10. Lack of monitoring of implementation of contract (if yes, please specify below)
- 11. Other issues (if yes, please specify below)

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with enter.

The Competition and Consumer Authority has conducted an analysis on some of the problems listed, incl. green requirements, the use of lowest price as award criteria and the use of social requirements.

It has not been assessed whether the patterns or behaviors are problematic, where this often is a political view.

Analysis on the different topics can be found here: <https://www.kfst.dk/udbud/analyser-og-artikler/>

## V. Qualitative reporting on application of public procurement review system



**1. Please indicate relevant figures for the national review system in the table below, as described below.**

(A) **Number of first instance review decisions** (all the first instance review decisions),

(B) **Median length of first instance reviews - median length of all the first instance reviews** (the number of calendar days between a starting date and an end date, where the starting date is when the complaint/action is registered and the end date is when the review decision is issued) and

(C) **Number of first instance review decisions that were appealed to the (next) judicial level and its results** - (all the first instance review decisions that were appealed to the (next) judicial level, both on merit or procedural reasons, in addition, 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).

	2021	2022	2023
A. Number of first instance review decisions	49	42	Unknown
B. Median length of first instance reviews	6 months	7 months	Unknown
C. Number of first instance review decisions that were appealed to the (next) judicial level and its results	4	3	Unknown

**2. Indicate best practices** that are aimed at reducing the number of obstructive complaints/actions for review (A)

*5000 character(s) maximum*

The Competition and Consumer Authority has not received intelligence of the number of complaints being obstructive.

**3. Indicate best practices** that are aimed at reducing the length of first instance review decisions as marked in the previous column (B)

*5000 character(s) maximum*

To the Competition and Consumer Authority's knowledge, there are no best practices aimed at reducing the length of first instance reviews.

**4. Indicate best practices** that are aimed at reducing the number of first instance review that were appealed to the next judicial level as marked in the table above (C)

*5000 character(s) maximum*

To the Competition and Consumer Authority's knowledge, there are no best practices aimed to reduce the number of first instance reviews that are appealed to the next judicial level.

## VI. Fraud, corruption, conflict of interests and other serious irregularities

Describe the actions undertaken and/or mechanisms put in place to ensure prevention, detection and adequate reporting of case of public procurement serious irregularities including fraud and corruption and conflicts of interests.

### **1. Regulatory requirements on:**

- Enhanced rules on the application of whistle-blower system
- Enhanced rules on transparency
- Enhanced rules on conflict of interest
- Enhanced rules on anti-corruption
- Enhanced rules on the application of exclusion grounds
- Other rules (if yes, please describe below)

#### **1.1. Best practices.**

If available, indicate best practices aimed at detecting irregularities as marked in the previous column and provide a link to any publicly available document relevant for the issues you indicated.

Please provide quantitative data e.g.: number of cases detected and pursued further by the competent authorities.

*5000 character(s) maximum*

Please provide further information on these elements, if applicable. You can list multiple links separated with enter.

When an exclusion ground applies, allowance should be made for the possibility that the economic operator can adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehavior, also called "self-cleaning". It is stated in the preamble 102 of the Public Procurement Directive, that it should be left to Member States to determine the exact procedural and substantive conditions applicable in such cases. They should, in particular, be free to decide whether to allow the individual contracting authorities to carry out the relevant assessments or to entrust other authorities on a central or decentralized level with that task.

In Denmark, it is still up to the contracting authority to make the final assessment of an economic operator's documentation for their "self-cleaning". As part of the amendment to the Danish Public Procurement Act in 2022, it became obligatory for the contracting authority to get an advisory opinion from the Danish Competition and Consumer Authority on the assessment, this obligation entered into force January 1st 2023.

The Danish Competition and Consumer Authority conducts an independent assessment of the economic operator's documentation regarding their reliability. It is up to the contracting authority to then decide, if they base their decision on the assessment from the Danish Competition and Consumer Authority or if they carry out their own assessment.

In 2023 the Danish Competition and Consumer Authority had 18 cases with an average case processing time of 12,3 days. The current cases in 2024 amounts to 6 completed and 2 ongoing.

## 2. Enforcement measures:

- Reporting/monitoring system in place to prevent/detect fraud, corruption, conflict of interest and other serious irregularities
- Reporting/monitoring system in place to measure fraud, corruption, conflict of interest and other serious irregularities
- Systemic audit in place to prevent/detect fraud, corruption, conflict of interest and other serious irregularities
- Sanction system in place to remedy fraud, corruption, conflict of interest and other serious irregularities
- Other rules (if yes, please describe below)

### 2.1. Best practices.

If available, indicate best practices aimed at detecting irregularities as marked in the previous column and provide a link to any publicly available document relevant for the issues you indicated.

Please provide quantitative data e.g.: number of cases detected and pursued further by the competent authorities.

*5000 character(s) maximum*

Please provide further information on these elements, if applicable. You can list multiple links separated with enter.

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. 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 obligated to obtain documentation from the winning bidder before the contract is awarded 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.

6. 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.

### 3. Soft law/Policy measures

- Guidance related to the prevention of fraud, corruption, conflict of interest, serious irregularities
- Recommendations related to the prevention of fraud, corruption, conflict of interest, serious irregularities
- Guidance on ethical conduct for public administration staff
- Guidance on fighting bribery practices
- Guidance on the detection of collusion/bid-rigging practices

- Guidance on compliance with competition rules
- National strategy to prevent fraud, corruption, conflict of interest, serious irregularities
- Action plan for the implementation of practices to prevent fraud, corruption, conflict of interest, serious irregularities
- Training/conference related to the prevention of fraud, corruption, conflict of interest, serious irregularities
- Reinforced cooperation among different state bodies
- Establishment of open-access information system to enhance transparency (public registry, declarations)
- Other measures (if yes, please describe below)

### 3.1. Best practices.

If available, indicate best practices aimed at detecting irregularities as marked in the previous column and provide a link to any publicly available document relevant for the issues you indicated.

Please provide quantitative data e.g.: number of cases detected and pursued further by the competent authorities.

*5000 character(s) maximum*

Please provide further information on these elements, if applicable. You can list multiple links separated with enter.

The Danish Competition and Consumer Authority issues guidance on both the competition and public procurement rules. See <https://www.kfst.dk/konkurrenceforhold/vejledninger/> and <https://www.kfst.dk/udbud/vejledninger/>

Related to public procurement, there are guides on how to have dialog with the market and businesses without distorting competition ([https://www.kfst.dk/media/49852/dialog-foer-og-under-udbudsprocessen\\_februar.pdf](https://www.kfst.dk/media/49852/dialog-foer-og-under-udbudsprocessen_februar.pdf)).

As a central government official there are a set of rules/kodex that regulate ethical conduct. [https://medst.dk/media/9195/kodex\\_vii.pdf](https://medst.dk/media/9195/kodex_vii.pdf)

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

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### SMEs' participation

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)

### 1. Qualitative reporting on SME participation

Policy measures:

- Policy 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 for contracting authorities on the application of 'divide or explain' principle (concerning division into lots);
- Policy measures in place to monitor SME participation in subcontracting
- Other measures (if yes, please describe below)

### **1.1. Best practices.**

Indicate best practices that are aimed at encouraging the participation of SMEs in public procurement as marked in the previous column.

Please provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

The following policies and legislation initiatives has been launched to support SMEs participation in public procurement:

To enhance SME's possibility to participate in tenders there has been added a principle in the Danish Public Procurement Act called 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 derives from Public Procurement Directives Article 46. The principle should secure smaller businesses to be able to bid on relevant tenders. The last evaluation of the principle showed an increase in dividing contracts into smaller contracts. In 2022 there was an amendment to the Danish Public Procurement Act in which it is stated, that a violation of the divide or explain-principle could be punished with economic sanctions if a claim is made in this regard during a complaint case. The contracting authority could be imposed a fine of 1% of the contract value or the framework agreement, however, a maximum fine of 100,000 DKK.

With the amendment of the Danish Public Procurement Act, a new provision was introduced stating that the procuring authority may not set eligibility criteria on revenue exceeding twice the value of the contract being tendered. The principle should secure proportional eligibility criteria and make sure, that smaller businesses are not unnecessarily sorted out in the competition of a tender.

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.

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). The amendment to the Danish Public Procurement Act - Link: <https://www.retsinformation.dk/eli/ta/2022/884>. The publication regarding consortia is available on the Competition and Consumer Authority's website [kfst.dk](http://kfst.dk) entitled "Konsortiesamarbejde i forhold til konkurrenceloven" (Consortium Cooperation in relative to Competition) (Danish).

A Danish council on public-privat cooperation for the Minister of Business, Forum for Public-Private Cooperation, conducted an SME campaign in 2022 intended to increase the opportunities for small and medium-sized enterprises to participate in the competition for public contracts. The campaign entailed promoting recommendations on better conditions for SMEs on social media and by activating the Forums network to access public procureres and give them information on better SME-procurement. Link: <https://www.kfst.dk/udbud/offentlig-privat-samarbejde/forum-for-offentligt-privat-samarbejde/anbefalinger-fra-fops/bedre-smv-udbud-anbefalinger/>

To better the conditions for companies in Denmark there has been an independent body called the Danish Business EU and Regulatory Forum that advises the government on which regulations unnecessarily complicate being a business. The forum then provides specific recommendations for improvements. The forum has taken particular interest in SME's and start-up businesses, also regarding public procurement. Link: <https://regelforum.dk/>

## 2. Quantitative reporting on SME participation

Please quantify the impact of these best practices in the table below:

**2.1. Value of contracts directly awarded to SMEs over total value of awarded contracts – above threshold**

	2021	2022	2023
Value (in EUR million)			



**2.1.1. Value of contracts directly awarded to SMEs over total value of awarded contracts – below threshold**

	2021	2022	2023
Value (in EUR million)			

Please explain the calculation/assessment method used for collection of data.

Unfortunately, we find the question ambiguous. It is not clear to us whether the measurement asked for is either 1: The total value/number of SME-awarded contracts, 2: The value/number of SME-awarded contracts as a share of the total number/value of contracts or 3: A quantification of the effect of previously described best practices aimed at encouraging the participation of SME's.

The numbers below are share of total contract value awarded SME's. Please note that we define SME's as companies with less than 50 employees. This is not the same threshold used by the European Commission, which is 250 employees. We collect information on number of employees from the Danish database on businesses, website: [www.virk.dk](http://www.virk.dk). For contracts awarded to multiple companies, the company first listed is the decider on whether the contract was awarded an SME or not. Only contracts awarded to companies with information available on number of employees are included.

We collect data from Contract Award Notices on TED and perform manual quality assurance on the information. Quality assurance includes contacting contracting authorities in order to retrieve missing information or correct obvious mistakes. Contracts published in TED but below the EU thresholds are included.

We estimate a "best guess"-value for contracts with no information on value. This is based on expected value in the Contract Notice and/or characteristics such as sector or type of procuring authority.

2021: 18.8 percent

2022: 21.2 percent

2023: Not available

Further analysis on SMEs in Denmark can be found on [kfst.dk](http://kfst.dk) - <https://www.kfst.dk/udbud/analyser-og-artikler/>

**2.2. Number of contracts directly awarded to SMEs over total number of awarded contracts – above threshold**

	2021	2022	2023
Number			

**2.2.1. Number of contracts directly awarded to SMEs over total number of awarded contracts – below threshold**

	2021	2022	2023
Number			

Please explain the calculation/assessment method used for the collection of data.

5000 character(s) maximum

Unfortunately, we find the question ambiguous. It is not clear to us whether the measurement asked for is either 1: The total value/number of SME-awarded contracts, 2: The value/number of SME-awarded contracts as a share of the total number/value of contracts or 3: A quantification of the effect of previously described best practices aimed at encouraging the participation of SME's.

The numbers below are share of total number of contracts awarded SME's. Please note that we define SME's as companies with less than 50 employees. This is not the same threshold used by the European Commission which is 250 employees. We collect information on number of employees from the Danish database on businesses, website: [www.virk.dk](http://www.virk.dk). For contracts awarded to multiple companies, the company first listed is the decider on whether the contract was awarded an SME or not. Only contracts awarded to companies with information available on number of employees are included.

We collect data from Contract Award Notices on TED and perform manual quality assurance on the information. Quality assurance includes contacting contracting authorities in order to retrieve missing information or correct obvious mistakes. Contracts published in TED but below the EU thresholds are included.

Contracts published in TED but below the EU thresholds are included.

2021: 37.5 percent

2022: 44.7 percent

2023: Not available

Analysis on SMEs in Denmark can be found on [kfst.dk](https://www.kfst.dk) - <https://www.kfst.dk/udbud/analyser-og-artikler/>

## VIII. Practical implementation of national strategic procurement

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### 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." [1] 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.

[1] Commission Communication (COM (2008) 400) "Public procurement for a better environment".

#### 1.1. What is the state of play of green procurement in your Member State? (regulatory requirements and policy measures related to GPP)

1.1.1. How do you in general evaluate the degree of the GPP implementation in your country:

Please assess based on:

- Existence of enabling public procurement legal framework,
- Existence of GPP policies/action plans,
- Provisions of practical support to practitioners,

- Results of monitoring of contracts which include sustainability requirements,
  - Results of monitoring of sustainable outcomes.
- Implementation is advanced  
 Implementation is in progress  
 Implementation is low

The broad objectives in GPP policies are met:

- Yes  
 Partially  
 Not yet

1.1.2. Existing GPP regulatory requirements in your Member State:

- General legal obligation imposing GPP goals  
 Sectoral regulations requiring sustainable development including public procurement  
 Sectoral regulations encouraging sustainable development including public procurement  
 Other regulatory requirements (if yes, please describe below)

Indicate best practices that are aimed at encouraging the use of GPP criteria. Please provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

The degree of GPP implementation has not been officially assessed by the Danish government. It is therefore not possible to report on question 1.1.1. There are a broad range of measures implemented to promote and increase green procurement. This is especially through the Danish "Strategy for Green Public Procurement" from 2020 (link to strategy: <https://oes.dk/indkoeb/strategi-for-groenne-offentlige-indkoeb/>). A new strategy on green procurement is under development that will replace the current one.

Furthermore, there are positive results in the monitoring of contracts which include sustainability requirements. A study from The Competition and Consumer Authority from 2023 showed an increase of tenders with potential green elements. The study also showed an increase in the use of environmental labels and the use of total cost of ownership in public procurement. (Link to study: <https://www.kfst.dk/analyser/kfst/publikationer/dansk/2023/20230330-status-for-offentlig-konkurrence-2022/>).

The earlier mentioned green strategy includes several legal obligations, for example, it has become obligatory to use labels under certain conditions, use TCO as an economic price and only procure LED light sources from top energy classes. Some initiatives have been realized (requirements for green data warehouses, LED light sources etc.), where others are under development (fx mandatory green labels). All green requirements can be found on the website "Den Ansvarlige Indkøber" (The Responsible Procurer) (Link: [www.denansvarligeindkober.dk](http://www.denansvarligeindkober.dk)).

1.1.3. GPP policy measures applied in your Member State:

- Guidelines to encourage the use of GPP  
 National strategy to encourage the use of GPP  
 National action plan to implement measurable objectives in GPP  
 National target of GPP in certain sectors/in public procurement  
 Monitoring/reporting on the use of GPP criteria  
 Existence of national competence centre/national network of experts to promote the use of GPP

- Existence of specific working groups to promote the use of GPP in specific sectors
- Mandatory regular trainings for the promotion of GPP
- Optional trainings/events/workshops for the promotion of GPP
- Online information tool on the use/on best practices of GPP
- Other policy measures (if yes, please describe below)

Indicate best practices that are aimed at encouraging the use of GPP criteria. Please provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

There are number of practices aimed at encouraging the use of GPP on the local and federal level.

1. The Competition and Consumer Authority has published a guide on green public procurement in 2022 (Link: <https://www.kfst.dk/vejledninger/kfst/dansk/2022/20220906-gennemfoerelse-af-groenne-udbud/>).

2. In 2020 the Danish government released a "Strategy for Green Public Procurement" (link to strategy: <https://oes.dk/indkoeb/strategi-for-groenne-offentlige-indkoeb/>). In the meantime, there has been a shift in government, where a new strategy on green procurement is under development. It is expected that a number of initiatives and measures are to be continued.

3. As an initiative in the strategy, there was put forth a charter for green procurement in 2023 (Charter for godt og grønt indkøb). The charter entails requirements for mostly organizational initiatives, that can promote the use of green procurement (Link: <https://oes.dk/indkoeb/charter-for-godt-og-groent-indkoeb/>).

4. The strategy also entails an action plans regarding measuring green procurement and possibly C02-impact of public procurement.

5. Online information tool is accessible on the website [denansvarligeindkober.dk](https://denansvarligeindkober.dk).

6. There are two national networks for green public procurement in Denmark:  
 - Forum for Sustainable Purchasing (read more here: <https://denansvarligeindkober.dk/forum>)  
 - Partnership for Public Green Procurement (read more here: <https://denansvarligeindkober.dk/pogi>)

7. The Danish regions, which primarily manage Denmark's health care system, has their own green procurement strategy (Link: <https://www.e-pages.dk/regioner/177/>). The Danish municipalities also have their own green strategy (Link: <https://www.kl.dk/media/kv2m4kft/faelleskommunal-indkoebstrategi-2020-2024.pdf>)

## 1.2. What are the key challenges for the uptake of green public procurement?

- Lack of professionalisation of public procurement staff
- Lack of capacity of public procurement staff
- Risk or a perception of a risk amongst public buyers of higher procurement costs
- Risk of no available offer on the market or a perception of some public buyers that such risk exists
- Risk of legal actions for wrong application of GPP criteria or a perception of some public buyers that such risk exists
- Lack of policy guidance and support on GPP
- Lack of policy strategy on GPP
- Lack of guidance on implementation of GPP requirements/criteria in procurement procedures

- Lack of strategic planning by the buyers
- Lack of interest
- Other reasons (if yes, please explain below)

Indicate best practices that are aimed at encouraging the use of GPP criteria. Please provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

The key challenges for uptake of green procurement has not been officially assessed by the Danish government.

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

Socially responsible public procurement 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 employment opportunities, decent work conditions, compliance with social and labour rights, social inclusion, equal opportunities and accessibility.

### 2.1. What is the state of play of SRPP in your Member State?

2.1.1. How do you in general evaluate the degree of the SRPP implementation in your country:

Please assess based on:

- Existence of enabling public procurement legal framework,
  - Existence of SRPP policies/action plans,
  - Provisions of practical support to practitioners,
  - Results of monitoring of contracts which include social requirements,
  - Results of monitoring of social outcomes.
- Implementation is advanced
  - Implementation is in progress
  - Implementation is low

The broad objectives in SRPP policies are met:

- Yes
- Partially
- Not yet

2.1.2. Existing SRPP regulatory requirements in your Member State:

- General legal obligation imposing SRPP goals
- Mandatory requirements regarding employment from vulnerable groups
- Respecting minimum criteria on human- and labour rights in the value chain
- Specific SRPP requirements for the performance of contracts
- Mandatory exclusion grounds related to SRPP
- Sectoral regulations requiring equal treatment and non-discrimination



Indicate best practices that are aimed at encouraging the use of SRPP. Please provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

The degree of SRPP implementation has not been officially assessed by the Danish government. It is therefore not possible to report on question 2.1.1.

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).

With the amendment of the Danish Public Procurement Law in 2022, there was introduced a requirement, whereby contracting authorities in certain types of public contracts are obliged to include special conditions in the contract that require the contracting party to use "individuals undergoing training" during the execution of the contract. "Individuals undergoing training" refers to individuals who operate under the supervision of the contracting party, with the aim of the individual gaining the necessary professional skills to independently handle the tasks upon completion of their training. The use of apprentices will fulfill this requirement.

The amendment also made the previously voluntary exclusion ground regarding the bidder's integrity mandatory under the new provision in § 136, no. 4, of the Danish Procurement Law. This means that the contracting authority is thus obligated to exclude a bidder who has committed serious misconduct that casts doubt on their integrity.

Source: <https://www.retsinformation.dk/eli/lta/2022/884>.

### 2.1.3. SRPP policy measures applied in your Member State:

- Guidelines to encourage SRPP
- National strategy to encourage SRPP
- National action plan to implement measurable objectives in SRPP
- National target of SRPP in certain sectors/in all sectors
- Monitoring/reporting on the use of SRPP criteria
- Existence of national competence centre/ specific working groups to promote the use of SRPP
- Mandatory regular trainings for the promotion of SRPP
- Optional trainings/events/workshops for the promotion of SRPP
- Online information tool on the use/on best practices of SRPP
- Other policy measures (if yes, please describe below)

Indicate best practices that are aimed at encouraging the use of SRPP. Please provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

The website "Den ansvarlige Indkøber" (The Responsible Procurer) has guides and tools for SRPP in procurement, incl. inspiration on social clauses, work clauses and ethical requirements. Den Ansvarlige Indkøber also has inspirational cases on the use of SRPP. Furthermore, the Danish Forum for Sustainable

Procurement (Forum for Bæredygtige Indkøb) has an ongoing network to further SRPP and have a yearly conference on the sustainability in procurement.

Source: <https://denansvarligeindkober.dk/>.

## 2.2. Key challenges – What are the key challenges in the uptake of SRPP?

- Lack of professionalisation of public procurement staff
- Lack of capacity of public procurement staff
- Risk or a perception of risk amongst public buyers of higher procurement costs
- Risk of no available offer on the market or a perception of some public buyers that such risk exists
- Risk of legal actions for wrong application of SRPP or a perception of some public buyers that such a risk exists
- Lack of policy guidance and support on SRPP
- Lack of policy strategy on SRPP
- Lack of guidance on implementation/insufficient implementation of policies on SRPP
- Lack of strategic planning by the buyers
- Lack of interest
- Other reasons (if yes, please explain below)

Indicate best practices that are aimed at encouraging the use of SRPP. Please provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

The key challenges for uptake of SRPP has not been officially assessed by the Danish government.

## 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 on both dimensions.

### 3.1. What is the state of play of procurement of innovation in your Member State?

3.1.1. How do you in general evaluate the degree of the innovation procurement implementation in your country:

Please assess based on:

- Existence of enabling public procurement legal framework,
- Existence of innovation policies/action plans,
- Provisions of practical support to practitioners,
- Results of monitoring of contracts which include innovation aspects,
- Results of monitoring of innovation procurement.

- Implementation is advanced
- Implementation is in progress

Implementation is low

The broad objectives in policies supporting innovation are met:

- Yes
- Partially
- Not yet

3.1.2. Innovation policy measures applied in your Member State:

- Guidelines to describing the procurement of innovation
- National strategy to encourage the procurement of innovation
- National action plan to implement measurable objectives to procure innovation
- National target to procure innovation in certain sectors/in all sectors
- Monitoring/reporting on the procurement of innovation
- Existence of national competence centre/specific working groups develop policies on the procurement of innovation
- Mandatory trainings related to the procurement of innovation
- Optional trainings/events/workshops related to the procurement of innovation
- Online information tool on the use/on best practices related to the procurement of innovation
- Other policy measures (if yes, please describe below)

Indicate best practices that are aimed at encouraging the procurement of innovation. Please provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

The degree of procurement of innovation has not been officially assessed by the Danish government. It is therefore not possible to report on question 3.1.1. However, the Danish Center for Public-Private Innovation (CO-PI) yearly reports the uptake of innovation in the public sector. In 2021-2022 CO-PI found, that four out of five public workplaces have introduced at least one innovation. (Source: <https://www.co-pi.dk/innovationsbarometeret/>)

CO-PI is a joint venture unit between the Danish government, municipalities and regions. Its purpose is to strengthen public-private innovation and innovation procurement and make it more attractive for companies to initiate innovative collaborations with the public sector. The unit contributes 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 focus on challenges the public sector, but also on creating export-opportunities for Danish companies.

CO-PI has different functions, incl.:

- Scaling processes – a new method introduced by CO-PI, which brings together several public actors around a common challenge, making it more attractive for the market to develop the new solutions that are needed.

- Innovative public procurement – specific assistance as well as the development of methods, knowledge, and tools that can support both public and private actors in achieving innovative procurement.

- Building innovation capacity – CO-PI is known and used as a provider of knowledge, tools, and sparring, which enhances the work with innovation in both the public and private sectors.

Source: <https://www.co-pi.dk/>

### 3.2. Key challenges – What are the key challenges for the uptake of Procurement of Innovation?

- Lack of professionalisation of public procurement staff
- Lack of capacity of public procurement staff
- Risk or a perception of a risk amongst public buyers of higher procurement costs
- Risk of no available offer on the market or a perception of some public buyers that such a risk exists
- Risk of legal actions for procedures carried out wrongly
- Lack of policy guidance and support on Innovation
- Lack of policy strategy on procurement of innovation
- Lack of strategic planning by the buyers
- Lack of interest
- Other reasons (if yes, please explain below)

Indicate best practices that are aimed at mitigating indicated issues.

*5000 character(s) maximum*

The key challenges for uptake of procurement of innovation has not been officially assessed by the Danish government.

## IX. The level of competition in public procurement

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### 1. Do you monitor the level of competition in public procurement in your Member State?

To assess please consider in particular: proportion of single bids, proportion of negotiated procedures without prior publication, proportion of cancelled tenders

- Yes, the level of competition is monitored
- Yes, the level of competition is partially monitored (not comprehensive for all the procurement markets)
- No, the level of competition is not monitored

**If the reply to the previous question is yes, please indicate whether the level of competition compared to the previous reporting period:**

- Increased
- Remained unchanged
- Decreased

**If the reply to the above question is yes, please provide best practices** (e.g.: including on the tools used, methodology, indicators, etc.)

*5000 character(s) maximum*

In our yearly publication “Status for offentlig konkurrence” (Status on Public Competition), we monitor a variety of variables regarding the competition in public procurement in Denmark. This includes but is not limited to: Average bids, single bids, flexible procurement, direct awards, cancellations, award criteria, foreign winners, SME-winners and level of outsourcing.

We believe that monitoring the competition in a broad sense is important. Outsourcing accounts for more than 15 percent of Danish GDP and the yearly publication provides an overview of several important factors. The publication contributes to the general debate on best practices with respect to outsourcing and

competitive tendering.

We collect data from Contract Award Notices on TED and perform manual quality assurance on the information. Quality assurance includes contacting contracting authorities in order to retrieve missing information or correct obvious mistakes. Contracts published in TED but below the EU thresholds are included.

## 2. Did you launch/complete a comprehensive analysis of main causes of the lack of competition on the public procurement market during the current reporting period?

- Yes, a comprehensive analysis of main causes of the lack of competition was launched/completed in the current reporting period
- No, a comprehensive analysis of main causes of the lack of competition was not launched/completed in the current reporting period
- No, a comprehensive analysis of the main causes of the lack of competition was not launched/completed in the current reporting period as the level of competition is satisfactory

## 3. What are the sectors mostly concerned by low competition?

Please list the sectors concerned:

*5000 character(s) maximum*

The Competition and Consumer Authority does not have knowledge of analysis, that determine what sectors mostly are concerned by low competition.

That being said, the Authority has previously published analyses on the average numbers of bids split on other characteristics, including type of contracting authority. Our 2018-analysis on the subject finds that municipalities in general receive fewer bids on their tenders than other types of contracting authorities. Contracts on works also receive fewer bids. Link to Danish article: <https://www.kfst.dk/analyser/kfst/publikationer/dansk/2018/20182012-konkurrencen-om-danske-eu-udbud/>

In another publication we find that price reduction from receiving more bids is significant across all tested sectors and that the effect on price from receiving more bids is diminishing with the number of bids. In other words, there would be potential price benefits from more competition in all sectors, but only to a certain level. Link to Danish article: <https://www.kfst.dk/publikationer/kfst/2023/20230517-konkurrenceeffekter-i-udbud/>

Please list other relevant factors (for example regions, areas, level of administrative level, type of public buyer, calendar period):

*5000 character(s) maximum*

## 4. What are the main causes for the decrease in competition?

- 1. Structure of the market (e.g. size of the market)
- 2. Market concentration in the sectors concerned
- 3. Recurrent, particularly low number of bidders due to (if yes, please specify below):
- 4. Low attractiveness of the public procurement market, in particular (if yes, please specify below):
- 5. Anticompetitive market practices (collusions)

6. Other reasons (if yes, please specify below)

Please provide a link to any publicly available document relevant for the issues you indicated:

*5000 character(s) maximum*

As previously stated, the Competition and Consumer Authority do not find that there is significant decrease in the competition as the question otherwise suggests. When comparing this reporting period with the previous reporting period the level of competition is more or less the same. If there is a decrease in competition it is of small size.

With that in mind, we have not conducted an analysis to examine “causes for the decrease in competition.”

## X. Additional information

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Please provide any other information you consider relevant:

*5000 character(s) maximum*

The Danish Competition and Consumer Authority has noted, that several questions in the Commission's questionnaire address:

- a degree type of procurement, fx sustainable procurement
- the most significant reasons for problems in procurement, fx lack of competition
- major challenges or main causes within specific procurement contexts

If these questions are not answered based on actual analysis, the responses from member states will be subjective and anecdotal. According to the authority, there is limited utility in these responses, and it is difficult to compare them, since they will be based on different understandings of the question. Therefore, the authority urges the Commission to be cautious in using the questionnaire as a basis for further action on various procurement-related topics.

In addition, the Commission should be aware of some of the questions that are ambiguous. This is especially the quantitative parts of the section regarding SMEs. The uncertainty of what should be reported will potentially affect the ability to firmly conclude on the results of the survey.

## Contact

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