

Advisory unit of public procurement experts

Summary

Public procurement advisory units are stand-alone bodies that provide an internal independent consulting service to contracting authorities and policy-makers on topics concerning public procurement legislation, policy definition and implementation. Some may also focus on specific areas of public procurement such as central purchasing, e-procurement or corruption monitoring. Senior stakeholders from the public administration, public-private organisations such as chambers of industry and commerce, and the private sector are represented on public procurement advisory boards of this kind.¹

In contrast to helpdesks, public procurement advisory units are high level bodies that focus on issues of public procurement policy and law, rather than on operational aspects. Different MS take different approaches to advisory units of procurement experts, establishing them as formal or informal structures, with more focused or broader responsibilities and compositions, asked to respond on demand or carry out pre-defined, regular tasks and with permanent staff or not.

However, the overarching purpose and benefits of advisory units are the same, namely, to ensure public procurement rules are created and implemented taking into account independent, multidisciplinary expert feedback and to strengthen the overall functioning of the public procurement system and legislation from the top down.

Input

Cost – €€

- Medium set-up costs
- Low maintenance costs (based on voluntary institutional cooperation)



Time – Less than 6 months (to set-up)



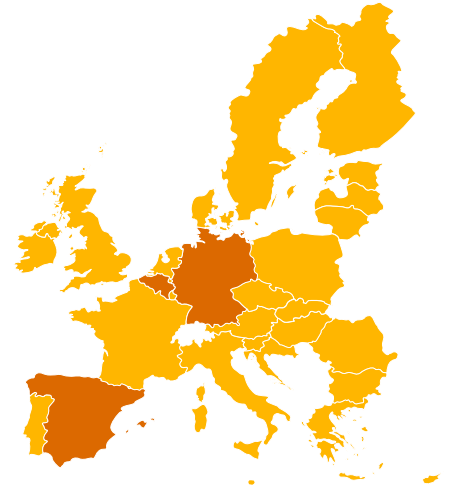
Complexity – Medium

- The required organisational set-up, which involves non-public sector stakeholders, generates additional complexity
- May require that dedicated legislation may need to be passed to formally establish the advisory board and its tasks



Good Practice Examples

- ✓ Belgium
- ✓ Germany
- ✓ Spain



Impact

Improve accountability



EU regulations require MS to monitor the application of public procurement rules and advisory units are often in charge of coordinating these activities, which gives them a key role in strengthening accountability.

Promote professionalisation



Advisory boards improve the competencies of public procurement professionals in many aspects of public procurement by offering insight and knowledge for better public procurement policy.

Ensure better compliance



The advisory unit makes sure that rules are well-designed and, as a result, contracting authorities are better positioned to comply.

Key success factors and potential pitfalls (1)

Retain independence

Even though the advisory unit function may be hosted by a branch of the public administration, it needs to maintain a neutral, independent expert statute to avoid constraints or perceived bias in its service delivery.

Have balanced representation and adequate size

The advisory board should have enough members to respond to new challenges and carry out new tasks. This should include members from outside the public administration to stimulate innovation and bring valuable sectoral insight, as well as practical experience to inform public procurement policy. In many cases, specific expertise and technical skills are only available from outside the public administration.

Key success factors and potential pitfalls (2)

Operate in a transparent manner following a clear mandate

The activities of advisory units are often disclosed in dedicated reports referring to their founding mandate and tasks, which is a good practice that further increases their legitimacy and authority.

Secure institutional back-up

Support from the central administration is a prerequisite for the smooth set-up and effective functioning of an advisory unit of public procurement experts. Such coordination and liaising activity can be achieved with the help of a well-functioning secretariat function.

Put in place a strong coordination mechanism

MS that have both national and regional advisory units must manage coordination-related risks. This includes the risk of opinions and reports from two bodies issuing contradictory advice, for instance, because regional public procurement legislation may differ than that at national level. The same can happen in relation to approving economic operators where a national advisory board issues a positive decision for a given economic operator while a regional board has decided otherwise, or vice versa.

Related Good Practices

Helpdesk for contracting authorities

Case Studies (1)

Spain – Public Procurement Consultative Board

The Spanish Public Procurement Consultative Board (PPCB)² traces its origins to the 1960s, with its current regulation dating back to 1991. The Board is housed within the Ministry of Finance and Civil Service and acts as a consultative body to contracting authorities on legal matters related to public procurement. Contracting authorities can launch a consultation after which the Consultative Board assesses and issues a formal opinion or report. This usually takes the form of a legal interpretation, but can also be advice on economic or technical issues. The reports are not binding, but are generally followed. Informal consultations take place as well.

In contrast to a helpdesk, PPCB provides interpretations of national and international law in general terms, and not related to specific procedures. The Board includes senior experts on public procurement from multiple ministries, the legal service and audit service; the private sector is also represented through national associations.

It has grown from a single staff member when it was originally set up to multiple units in a large organisation and is still expected to grow. With time the Board's tasks have evolved as well. One of the main changes has been extending the scope of assessments to other territorial administrations, for instance the over 8,000 local entities in Spain and the autonomous regions, which have less experience and skills in public procurement. PPCB's current tasks also include:

- Approving the list of economic operators that have the right to take part in public procurement procedures without having to present documents;
- Publishing excluded economic operators;
- Responsibility for the national public contract registry;
- Policy-making and policy evaluation powers, including negotiation and transposition of EU directives, relations with OECD, position papers, and the drafting of legislation. Indeed, each draft piece of law or regulation needs the approval of the PPCB.

With the transposition of the new EU Directives on public procurement, the PPCB is expected to broaden its scope further and be responsible for the governance obligations in Directive 2014/24/EU, in particular monitoring public procurement (including possible structural or recurring problems in the application of the rules) and providing related statistical reports (e.g. on wrong application, legal uncertainty, level of SME participation and on the prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interest and other serious irregularities).

One element of complexity in the current system is coordination with regional consultative boards. 15 out of the 17 autonomous regions have their own consultative boards that produce their own reports and recommendations. Despite of lack of institutionalised coordination with the regional PPCBs due to Spain's constitutional set-up, there is strong cooperation between the autonomous regions and central administration in key areas such as an e-procurement platform and approved lists of economic operators. When the transposition of the new EU Directives is complete this cooperation shall be strengthened further.

Case Studies (2)

Belgium – Advisory body for public procurement

ABA (*Aankoopbeleid en Advies* or Procurement Policy and Advice Commission)³ is a specialised advisory body composed of public procurement experts from the federal public administration, public corporations, supervisory bodies, and representatives of business and trade unions. The body is part of the Procurement Unit of the federal government Policy and Support Services. It is divided into two sectors, procurement advice and procurement policy, with the following tasks:

- Providing legal opinions at the request of the federal procurers in the context of the preparation, award and execution of public procurement of supplies and services;
- Providing training and knowledge transfer related to public procurement regulation;
- Developing manuals, dashboards and supporting documents that can be consulted by the federal contracting authorities and used in their procurement of supplies and services.

ABA works closely with the Federal Network of Federal Buyers. It gives no advice to companies or public services outside the federal government.

Contact

Public Procurement Consultative Board, **Spain**

<http://www.minhafp.gob.es/es-ES/Servicios/Contratacion/Junta%20Consultiva%20de%20Contratacion%20Administrativa/Paginas/default.aspx>

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Procurement Policy and Advice Commission, **Belgium**

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¹ DG REGIO, "Stock-taking of administrative capacity, systems and practices across the EU to ensure the compliance and quality of public procurement involving European Structural and Investment (ESI) Funds" (2016)

² See: <http://www.minhafp.gob.es/es-ES/Servicios/Contratacion/Junta%20Consultiva%20de%20Contratacion%20Administrativa/Paginas/default.aspx>

³ See: <http://www.publicprocurement.be/nl/federale-diensten/de-cel-aankoopbeleid-en-advies-aba>