Public Procurement – Study on administrative capacity in the EU*

*The study has been prepared for the European Commission.

Presentation delivered by PWC during the workshop in Brussels on 25 February 2016
Agenda

1. Introduction
2. Case studies
3. Survey
4. Good practices
5. Conclusions & recommendations
Introduction
Context and objectives

Context

• Procurement is a crucial tool to achieving EU and national policy goals as the means by which most public expenditure is implemented. It is also a risk area for waste, fraud and abuse. Challenges in procurement, notably in administrative capacity, are limiting the effectiveness of ESI Funds.

• Thus, both the EC and the MS have an interest in strengthening the procurement process and improving outcomes.

Objectives of the study

• Assemble a comprehensive picture of procurement across the EU, including the capacities, experiences, practices, organisational and governance structures, human resources and systems and tools used by the MS;

• Identify lessons learnt from past capacity building initiatives and reforms in order to make recommendations and provide examples of best practices to strengthen public procurement systems and processes.
Our methodological approach

In order to assemble as complete a picture of procurement in the EU as possible, the study relied on the following data sources:

1. Desk Research
2. Field visits
3. Case studies
4. Online survey
5. Good practices and recommendations
Section 1 – Introduction

Country profiles desk research

- Laws and Regulations
- Official decrees
- Ministry circulars

- EU Directives
- DG HOME Anti-Corruption Reports
- DG REGIO Annual Activity Reports
- EC SWD Country Report
- DG GROW E-procurement uptake study

- MS self-assessment and action plan
- Public procurement strategies
- Central purchasing body annual reports

- Review body annual reports
- Competition authority annual reports
- Audit findings
- Anti-corruption reports

- Transparency reports
- NGO policy papers

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Section 1 – Introduction

Field visits countries

**Member States**

- Bulgaria
- Croatia
- Czech Republic
- France
- Germany
- Greece
- Hungary
- Italy
- Latvia
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain

Field visit country
No field visit
### Types of field visit stakeholders

<table>
<thead>
<tr>
<th>ESI Funds</th>
<th>Main public procurement policy bodies</th>
<th>Oversight bodies</th>
<th>Third sector</th>
<th>Regional contracting authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Ministry</td>
<td>Relevant Ministries</td>
<td>National Audit Authorities</td>
<td>NGOs</td>
<td>ESI-Fund beneficiaries</td>
</tr>
<tr>
<td>Managing Authorities</td>
<td>Public Procurement Agency</td>
<td>Competition Authority</td>
<td>Chamber of Commerce</td>
<td></td>
</tr>
<tr>
<td>Audit Authorities</td>
<td>Central purchasing body</td>
<td>Anti-corruption bodies</td>
<td>Academia</td>
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<tr>
<td></td>
<td></td>
<td>Review bodies</td>
<td>Business organisations</td>
<td></td>
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</tbody>
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Case studies
Case study: Portugal

Key dates in the reform process:

- **2005-2008**: Reform incubation process involving wide range of stakeholders
- **2008**: Introduction of comprehensive Public Contracts Code (PCC)
- **Since 2008**: Eight minor amendments to the PCC on both technical and substantive issues

Lessons learned:

- **1) You cannot rush the policymaking process**
- **2) Robust reform requires input from all major stakeholders**
- **3) An inclusive process also builds buy-in crucial to successful implementation**
- **4) Sufficient delay between enactment and implementation allows time to prepare and distribute essential guidance materials**
Case study: Czech Republic

Key dates in the reform process:

- **2012**: MoRD pushes through an amendment to the PPA to fight corruption and abuse
- **2013**: Second PPA amendment repealing or altering elements of the 2012 law
- **2015**: Third PPA amendment making further changes to 2012 reforms, plus new provisions

Lessons learned:

- **1)** Centralised policymaking process can produce quick results, but cannot adequately predict implementation challenges
- **2)** Practitioners need timely and comprehensive guidance materials to properly implement new policies
Survey
Key survey results

Background

Context and objectives of the study

Objective: Gather comparative information on day-to-day practices across all 28 MS from as many procurement practitioners as possible

Targeted respondents: procurement professionals within ESI Funds beneficiaries, Managing Authorities and Audit Authorities

Topics covered: main difficulties and needs for support, human resources, capacity building and training, supporting documents and on-demand support, data collection and monitoring, e-procurement

Respondents

2,385 - total respondents

Average of 85 responses per MS
Key survey results

Number of respondents by MS
Key survey results

Main difficulties for practitioners
Key survey results

Human resources

- Average level of experience
- Average time with the organisation
Section 3 – Survey

**Key survey results**

*Barriers to participating in trainings*

[Bar chart showing the distribution of responses to barriers to participating in trainings, with 'Too costly' being the most common barrier.]
**Key survey results**

**Support material**

**Topics covered by support materials**

- **General information:** 59%
- **Legal information:** 47%
- **E-Procurement:** 40%
- **Green Procurement:** 30%
- **ESI Funds rules:** 20%
- **None of the above:** 10%

**Use of available support materials**

- **Every procedure:** 47%
- **Only complex procedures:** 42%
- **Better guidance needed:** 11%
- **Never/almost never:** 0%
Key survey results

Standardised template documents

Topics covered by standardised template documents

Use of standardised template documents

- Every procedure: 69%
- Only complex procedures: 21%
- Never/almost never: 10%

Specifications: 30%
Contract notices: 20%
Contracts: 10%
Legal clauses: 10%
Criteria: 10%
Works contracts: 10%
Other: 0%
None of the above: 0%
Key survey results
Use of on-demand support

Those who use ad hoc support for every procedure by experience level and annual number of tenders

- Average experience level in years (<1, 1-2, 2-5, 5+)
- Tenders launched per year (1, 2-5, 5-10, 10+)

Use of ad hoc support channels:
- For every tender procedure: 58%
- Only in case of complex procedures: 17%
- Almost never or never: 10%
- This is not available: 16%
Good practices
Good practices

Ad hoc support

Good practice

Ad hoc assistance can be provided to contracting authorities either in the form of a telephone hotline or help desk, which allows immediate assistance to them.

Examples

• France: The call centre on public procurement for contracting authorities (CIJAP) answers more than 30,000 questions per year, mainly from local authorities. 86% of questions are answered on the spot.
• Netherlands: The public procurement expertise centre PIANOo operates a discussion platform (called PIANOo-desk) that allows public procurement professionals and contracting authorities to exchange experience, ask questions, discuss, share files, collaborate on documents, and plan projects.
Good practices

Guidance documents

Good practice

Guidance documents take the form either of manuals or guidelines to assist practitioners, or standardised tender specifications, which are ready-to-use templates of the main procurement documentation for contracting authorities.

Examples

• **France**: The Directorate for Legal Affairs of the Ministry of Economy and Finance publishes an extensive manual (*Vade-mecum*) on public procurement for contracting authorities.

• **Luxembourg**: Standardised tender specifications, which aim to ensure the application of high-level technical requirements and management standards in the conduction of public works, are available for contracting authorities.
Good practices

Professionalisation

Good practice

Few MS have developed specific curricula of competencies that define the set of skills and knowledge that procurers should master to carry out their work.

Example

- **United Kingdom**: The Commercial Skills and Competency Framework details an exhaustive set of competencies that procurement practitioners should acquire during their professional career.
- **Croatia**: Every procedure must be signed off on by a certified procurement professional. Certificates are granted after a 104 hour training programme and a written exam, and must be renewed every three years.
Good practices

Quality execution of public procurement

Good practices

Promoting more strategic thinking among contracting authorities through the definition of annual procurement planning or guaranteeing the objective evaluation of tenders to ensure equal treatment of bidders are two main practices that help improving the quality of public procurement.

Examples

- **Latvia:** Authorities under the supervision of the Central Finance and Contracting Agency (CFLA) have to publish an annual public procurement plan indicating their needs and intentions to spend allocated funding.
- **Spain:** According to the Spanish Public Procurement Law, bidders have to submit their technical and financial offers in two different envelopes so that they can be evaluated separately and that biases towards lowest price are minimised.
Good practices

Review

Good practices

The review of public procurement processes can be improved thanks to specific feedback-channels between economic operators and contracting authorities, by developing mediation to solve disputes without engaging judicial procedures, and by using specialised courts dedicated to public procurement.

Examples

• **United Kingdom**: The Mystery Shopper Service allows public sector suppliers to anonymously report on their experiences with the government.
• **France**: So-called “mediators”, which form part of the Public Procurement Mediation of the Minefi, help economic operators access public contracts.
• **Spain**: Specialised administrative courts on public procurement at national and regional levels help shorten the timeframe of procedures and improve the review system’s performance.
**Good practices**

*Simplification and efficiency*

**Good practices**

Simplification of public procurement processes can be achieved by fostering interoperability between administrations’ data systems, applying LEAN management approaches, aggregating procurement to a reduced number of contracting authorities, simplify the provision of administrative documentation from bidders either via pre-qualification or winner-only habilitation.

**Examples**

- **Portugal**: Portugal made their procurement platform interoperable with the fiscal authority’s database, allowing automatic filling of some information.
- **Germany**: A system of pre-qualification allows companies to file all their supporting documents with the Procurement Advisory Office.
- **France**: Under the Simplified Tender procedure, economic operators must provide only their ID number and a declaration of honour along with their offers. Only the winning bidder has to submit habilitation documents.
Good practices

Data monitoring and transparency

Good practices

Regular and systematic collection, monitoring and publication of comprehensive public procurement data is necessary for fact-based policy-making, and also allows for greater transparency and prevention of corruption.

Examples

- **Portugal**: All major procurement-related reports are published on-line and are available both in Portuguese and in English (within a reasonable delay).
- **Slovenia**: The Commission for the Prevention of Corruption has developed an online transparency tool called “Supervizor”, which allows tracking transactions of public sector bodies.
Conclusions and recommendations
Conclusions and recommendations

Human resources

Administrations at all levels of govern struggle to attract and retain highly qualified practitioners, and to keep them up to date with the latest information. Frequent and infrequent procurers have divergent training and support needs.

- Harmonise compensation for high skill positions
- Increase specialisation of tasks and trainings
- Authorise outside assistance to infrequent procurers
- Reduce number of contracting authorities by making greater use of joint procurement

• Feedback on the involvement of the Task Force for Greece indicates that the presence of EU advisors on site is a major advantage. Consider making greater use of embedded advisors to support internal capacity
Conclusions and recommendations

Systems & tools

Procurement practitioners, particularly the least experienced, need comprehensive, practical, and up-to-date guidance materials to do their jobs correctly. Frequent and infrequent procurers have divergent training and support needs.

- Develop a two-tier support and training system for experienced and less experienced practitioners
- Set up convenient ad hoc support channels
- Prepare standardised tender documents for frequently used goods, services, works and criteria
- Create clear channels for regular information updates
- Create a single EC online procurement access point, a one-stop-shop for official guidance and tools
- Collect and share examples of successful MS policy initiatives, tools, etc.
**Conclusions and recommendations**

**Governance structures**

The number one challenge facing procurement practitioners is the complexity of the system.

- Guidance documents must be clear and authoritative
- Concentrate policy, executive and oversight functions in a single body
- Appeals should be similarly concentrated, e.g. in either the administrative or judicial court system
- Streamline appeals processes to be less disruptive
- Clarify and harmonise guidance and audit processes so that the EC speak with one voice
- Expand audit guidance to make standards clearer
Conclusions and recommendations
Better policy making

Good procurement policy depends on a good policy making process. Reforms must be made deliberately, inclusively, and with sufficient time and effort given to implementation.

- Reforms process should involve all affected stakeholders
- Legal changes should be bundled to be infrequent
- Implementation must include lead times to prepare and promote guidance materials
Conclusions and recommendations

Law enforcement

Many MS have a well-crafted regulatory framework for procurement in place, but the rules and regulations are not observed in practice. Oversight bodies face technical and legal barriers in accessing procurement files and information.

- Increase sanctions for violations of procurement rules
- Develop more interoperable e-procurement systems
**Conclusions and recommendations**

**Data collection**

Compliance with the EU directives can be achieved by only collecting few key data, but there are great potential benefits in collecting and analysing detailed procurement data.

- Systematise collection and digitisation of procurement-related data for monitoring purposes
- Expand tracking to cover other policy fields or issues
- Remedy bodies should also track case data to identify common issues
- Need to find a balance between collect/monitor data and administrative burden
- Collect data on procurement and irregularities from MS

**Issues**

**MS Actions**

**EC Actions**
Conclusions and recommendations

Transparency

Giving the public easy access to procurement and contract information is essential for transparency, and can enable essential citizen and taxpayer oversight.

• Procurement information must be published online promptly, regularly, in clear and easily searchable formats, and available to download in common, machine-readable formats
• Contracting authorities should also publish info on large, planned purchases
• Increase incentives for MS to publish more contracts on TED, including by facilitating technical links with national databases