

EXPP of 6 June 2016

QUESTIONNAIRES ON OPTIONS

- Thank the members who have replied already; additional replies received since last meeting (10 Member States: BG, LU, UK, EE, ES, SI, CY, IE, FR, IT) .
- Invite the ones who have not done so yet to reply.
- Conscious that some replies are based on draft implementing measures and that the replies given could change
- In addition in some cases: "not decided yet", including for Member States who by now have implemented (HU, RO, CZ) ...
- Therefore, Members are invited to send us updated versions of the questionnaires BUT in SUCH CASE we would be grateful if you would send us TRACK CHANGES versions!
- On the basis of the replies received, we have prepared a compilation: it is still a draft, and as concerns the additional information elements have or have not been integrated in the table. Difficult to draw conclusions at this stage except some general ones on the trends.

2014/23: Replies from 19 MS: BE, BG, LU, UK, EE, CY, HR, CZ, FR, HU, IT, LT, MT, NL, PL, RO, SK, ES, SE:

Some of the trends so far seem to be:

- using up the exclusions laid down in the Concessions Directive (14 MS);
- applying the Directive to under-the-threshold procurement (14 MS);
- the trend towards introduction of general e-procurement obligations has been reversed by a small margin (8 MS have introduced

obligations going beyond the obligations of the Directive, 10 MS have decided not to do so);

- use of environmental, social or innovation-related award criteria.
- The answers also show a clear trend to use up the new rules on modifications (17 MS) and to using the possibility to reserve concessions in full (15 MS)

2014/24 Replies from 20 MS: BE, BG, CY, HR, CZ, FR, HU, IT, LT, MT, NL, PL, RO, SK, ES, SE, UK, SI, IE and EE:

2014/25: Replies from 20 MS: BE, BG, HR, CZ, FR, HU, IT, LT, MT, NL, PL, RO, SK, ES, SE, CY, UK, SI, EE and IE

<u>Trends for Directive 2014/24/EU:</u>
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Broadening the scope:

- Exclusions are transposed to their fullest extent : services (17 MS) and public-public (19 MS)
- Application of the Dir. Rules under the thresholds : yes but with some simplification (14 MS)

Additional flexibility for CAs:

- Negotiated procedure without publication is made available to CAs (20 MS)
- Possibility to examine bids before checking absence of exclusion grounds (15 MS)
- Possibility to request EOs to submit, supplement, clarify or complete info and doc (20 MS)

CPBs:

- (nearly) all MS provide for the possibility to acquire supplies, services from a CPB offering wholesale services and intermediary services (RO not decided)
- Some MS (8 MS) provide for the obligation to have recourse to specific CPBs offering wholesale services, but more don't do so (11 MS)

- Concerning the obligation to have recourse to specific CPBs offering intermediate services, the picture is less clear: 9 MS have the obligation and 10 MS don't

Division into lots:

- 7 MS provide for the obligation to divide into lots but 13 MS don't

e-procurement:

- No obligation to use e-catalogues
- Not all MS will use the possibility to postpone deadlines concerning e-procurement (and a number of those who do don't postpone to the latest possible moment)

Exclusion grounds:

- 16 MS make it mandatory to exclude EO in breach of its obligations relating to the payment of taxes or social security obligations
- As for the other options, the situation varies

Reserved contracts:

- All MS (19 MS) use this possibility except one: SK

Award criteria:

- No obligation for CAs to use specific award criteria (17 MS) (but SI and IT have obligations on GPP criteria)
- Very few (2 MS) will adopt national method for calculating life-cycle cost

Subcontracting:

- Mixed use of possibilities/obligations

Abnormally low tenders:

- Majority of MS do not adopt set of criteria to define ALT (12 MS)

Modification of contracts:

- Provisions transposed to their full extent by 14 MS

Simplified regime for social services:

- No general trend to oblige to use BPQR: no obligation in 15 MS

Trends for Directive 2014/25/EU:

Broadening the scope: (as 2014/24/EU)

- *Exclusions are transposed to their fullest extent : services (20 MS) and public-public (19 MS)*
- *+ exemption of contracts awarded to an affiliated undertaking and joint venture (20 MS)*
- *+ Exploration for oil and natural gas (20 MS)*
- *+ Postal services (19 MS)*
- *Application of the Dir. Rules under the thresholds : yes but with some simplification (11 MS)*

Activities exposed to competition:

- *Possibility for CEs to submit request to the COM (19 MS; PL does not provide for this option)*

Additional flexibility for CAs:

- *Negotiated procedure without publication is made available to CAs (19 MS)*
- *Possibility to examine bids before checking absence of exclusion grounds (16 MS)*
- *Possibility to request EOs to submit, supplement, clarify or complete info and doc (20 MS)*

CPBs:

- *All MS provide for the possibility to acquire supplies, services from a CPB offering wholesale services and intermediary services (19 MS) (RO "not decided yet")*
- *Very few MS provide for the obligation to have recourse to specific CPBs (3 MS and 4 MS for, respectively, wholesale and intermediary).*
- *+ in general no limitation to use services of CPBs located in another MS (17 MS)*

Division into lots:

- *5 MS provide for the obligation to divide into lots*

e-procurement:

- *No obligation to use e-catalogues*

- *Not all MS will use the possibility to postpone deadlines concerning e-procurement (and a number of those who do don't postpone to the latest possible moment)*

Exclusion grounds:

- As for the other options, the situation varies

Reserved contracts:

- *All MS (19 MS) use this possibility except one: SK*

Award criteria:

- No obligation for CEs to use specific award criteria (but IT has obligations on GPP criteria)
- Very few (2 MS) will adopt national method for calculating life-cycle cost

Subcontracting:

- *Mixed use of possibilities/obligations*

Abnormally low tenders:

- *Majority of MS (12 MS) do not adopt set of criteria to define ALT*

Modification of contracts:

- *Provisions transposed to their full extent by **16 MS***

Simplified regime for social services:

- *No general trend to oblige to use BPQR (15 MS)*