



**European Committee
of the Regions**

**Commission for
Economic Policy**

ECON

Assessing the implementation of the 2014 Directives on public procurement: challenges and opportunities at regional and local level



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Catalogue number: QG-03-19-430-EN-N; ISBN: 978-92-895-1016-5; doi:10.2863/242784

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List of abbreviations

BPQR	Best Price Quality Ratio
CA	Contracting Authority
CN	Contract Notice
CoR	European Committee of the Regions
EC	European Commission
ECA	European Court of Auditors
ESIF	European Structural and Investment Funds
ESPD	European Single Procurement Document
EU	European Union
GPP	Green Public Procurement
LRAs	Local and Regional Authorities
MEAT	Most Economically Advantageous Tenders
MePA	Public Administration Electronic Market
OECD	Organisation for Economic Co-operation and Development
PP	Public Procurement
PPI	Public Procurement of Innovation
R&D	Research and Development
RFI	Request for Information
SME	Small and medium-sized enterprise
SRPP	Socially Responsible Public Procurement
SUAM	Stazione Unica Appaltante Marche Region

Executive summary

This study examines how the 2014 Directives on public procurement are being implemented by regional and local authorities. The Directives introduced several changes to the European public procurement framework. These include thresholds, grounds for exclusion and award criteria, new and simplified procedures, stronger provisions on integrity and transparency targeting corruption and fraud, special attention on e-procurement and a focus on strategic procurement to achieve policy goals in innovation, the environment and social inclusion.

Subnational governments are a major economic actor in public procurement, with a key role in local public markets through their spending on goods, services and public works. Indeed, European local and regional authorities make up 50% of total EU public procurement spending according OECD data (see chapter 1.1). However, as already underlined by previous Committee of the Regions (CoR) analytical works in the context of the European Semester¹, public procurement rules are a recurrent territory-related obstacle to investment.

Interviews carried out by this study show that the **LRAs are generally positive towards the 2014 Directives.** They appreciate the gradual roll out of certain provisions as well as the increased opportunities to use qualitative criteria and strategic approaches. E-procurement has been rolled out, though differences remain within individual Member States, while provisions for integrity and transparency are sometimes even more rigid at national level.

Some challenges and difficulties are underlined. The **simplification** pursued by the Directives does not seem to have fully taken place. This is partially due to **gold plating**, especially in Member States where transposition involves both national and sub-national authorities and a number of legislative and administrative acts. In other cases, opportunities to use simplified procedures are dismissed, as contracting authorities prefer to use established procedures to minimise the risk of legal actions being undertaken.

Furthermore, only a limited number of LRAs have so far taken advantage of the options offered by the Directives for innovative procurement, for the most part in metropolitan areas. **LRAs are careful in their approach to the new opportunities,** especially due to their lack of experience in using ‘functional’ instead of ‘technical’ specifications. Different levels of progress in implementing

¹ European Committee of the Regions (2016).

policy measures that can mainstream innovation procurement also helps explain the varied uptake across Member States.

The case studies indicate that LRAs could better exploit potential offered by the 2014 Directives through:

- Approaching public procurement not only as a compulsory requirement but as a component of a wider strategic vision;
- Reinforcing communication and cooperation between procurement specialists and the rest of the administration;
- Keeping an open dialogue with the market not only under the specific procedures but on an ongoing basis, also by raising awareness of their procurement activities.

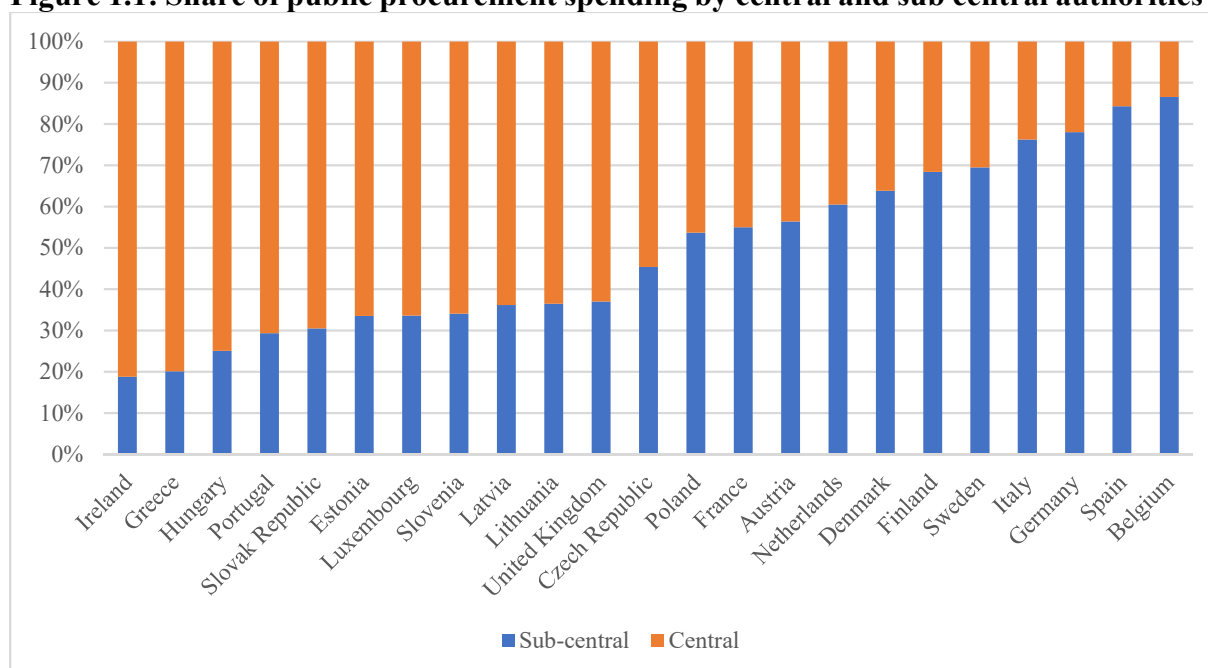
The Directives entail LRAs not only learning and implementing individual provisions, but **a shift from a bureaucratic towards a result-oriented and policy-driven approach** to public procurement. This requires not only increased knowledge but a considerable cultural change. Therefore, implementation of the Directives may need to be accompanied by an EU additional support that can increase opportunities for LRAs as well as their capacity:

- **Law making.** Off-the-shelf solutions such as standardised forms and templates can offer much needed support and a source of inspiration to LRAs, especially for more innovative type of procedures, e.g. pre-commercial procurement.
- **Capacity building.** A capacity building platform should range from offering methodological guidance to dissemination and training as a unique EU portal for public procurement. The platform should be an opportunity for networking, capitalising and sharing experiences. A great deal of material and instruments have already been produced under the EU Action Plan for public procurement. The platform should ‘only’ capitalise and systematise these contents and tools to make them more accessible to LRAs.
- **Incentives to innovate.** In addition to a capacity building platform, financial and reputational incentives are needed to move to innovative forms of public procurement in the form of risk-sharing. Experience under the Horizon 2020 Programme with experimenting to produce new practices could be a reference to develop further incentives, reaching a broader group of LRAs.

Introduction

Public procurement – the purchase of goods, services and works by public bodies – is an essential element of the Single Market and worth approximately EUR 2 trillion every year, some 30% of public spending and 19%² of EU GDP. Local and Regional Authorities (LRAs) have a crucial role Public Procurement (PP). According to Organisation for Economic Co-operation and Development (OECD) - 2016 survey³, public procurement at European Union (EU) sub-central and central government levels is almost perfectly split in half (49.2% / 50.8%). However, the ratio varies significantly across Member States (see Figure 1.1).

Figure 1.1: Share of public procurement spending by central and sub central authorities⁴



Source: i33 elaboration of OECD data⁵.

The EU revised the legal framework to keep public procurement open and competitive by ensuring equal, non-discriminatory treatment of economic operators and all other principles deriving from the Treaty on the Functioning of the European Union (TFEU).

The legislative package revising public procurement in the EU consists of:

- Concessions: Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts;

² European Commission (2015a).

³ OECD (2017).

⁴ Note: Five EU Member States seem to be missing/ not covered: Malta, Romania, Bulgaria, Croatia, Cyprus.

⁵ OECD (2017).

- Utilities: Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC;
- Public Sector: Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

The three revised Directives came into force in April 2014 (from now on 2014 directives) and Member States were given two years to fully transpose them into national law (by April 2016).

Fragmentation of the procurement system

The European Commission (EC) estimates there are approximately 270 000 contracting authorities and entities across the EU⁶.

For the European Commission, the reform should move public procurement beyond being a mere administrative procedure for the purchase of public goods and services to becoming a strategic tool addressing societal challenges by supporting social responsibility, steering innovation and enhancing environmental sustainability. The new rules on public procurement should also promote the single market and boost jobs, growth and investment by introducing more transparent, fair and competitive rules that create increased business opportunities and greater competition.

Given the significant weight of public procurement procedures, the reform impacts on the daily work of more than 270 000 public authorities and more specifically on sub-national authorities. The real innovation in public procurement depends on the way procedures are implemented and, more specifically, on anticipating and preventing possible errors as well as spurring innovation and increasing value for money. In practice, applying the Directives could be more challenging than expected.

This study highlights the challenges for local and regional authorities (LRAs) in implementing the new legislative package, as well as more efficient ways and tools to increase accessibility (especially for SMEs). These include cross border access, strengthening capacity and boosting innovation. The study is part of the European Committee of the Region's Commission for Economic Policy (ECON)

⁶ European Commission (2017a).

analytical review on implementation of the public procurement Directives from a local and regional perspective.

The study investigates:

- how the 2014 public procurement Directives are being implemented by LRAs and whether these make **full use of the opportunities offered by the new rules**;
- the **importance of LRAs in improving implementation of the Directives** (i.e. because of the weight of sub-national authorities in public procurement);
- **key challenges encountered by LRAs** in implementing the new provisions, with a special emphasis on **strategic (social, environmental, innovative) procurement**;
- difficulties when applying public procurement for European Structural and Investment Funds (ESIF), with examples of wrong application or legal uncertainty;
- potential barriers LRAs encounter in facilitating **SME participation in public procurement** along with initiatives aimed at boosting SME/start-up participation;
- stakeholder experiences with **electronic procurement**: ESPD, e-CERTIS;
- ways to overcome challenges and seize opportunities in the **post-2020 period**, including ways to enhance the uptake of strategic procurement.

The study draws conclusions on whether the new rules have simplified or complicated the legal framework in this area, facilitated access to tenders for SMEs, reduced red tape and increased strategic and innovative procurement.

Based on literature research, interviews with stakeholders and LRA representatives, as well as an analysis of six best practices, this report is structured as follows:

- **Chapter 1** offers an overview of public procurement in the European Union, the 2014 Directives and key reforms included in the package. Additionally, it covers the role of public procurement in the implementation of ESI Funds, a comprehensive overview of Member State transposition of the Directives

package as well as common errors and irregularities during different stages of the public procurement process.

- **Chapter 2** is based on stakeholder interviews assessing critical points during implementation. Stakeholders offer a broad picture of the current state of affairs in public procurement. The chapter is structured around six sub-chapters: an overview on the use of the Directives; strategic procurement; facilitating SME involvement; safeguards against corruption; E-procurement and procedure changes.

- **Chapter 3** presents six case studies based on stakeholder interviews. The studies cover good practice for adopting the new rules as well as challenges in adapting to the new framework. Each case study focuses on a specific public procurement issue and different aspects of the new Directives. The case studies are: Municipality of Hyvinkää (Finland) on market dialogue, Stockholm County (Sweden) on health sector procurement innovation, Antwerp Province (Belgium) on strategic green procurement, Province of Bozen (Italy) on e-procurement supporting SMEs, South Dublin County (Ireland) on procurement strategy enhancing administrative capacity, Marche region (Italy) on qualitative criteria.

- **Chapter 4** comprises conclusions and recommendations drawn from desk research and interviews, which revolve around transparency and prevention of corruption, innovation and strategic procurement, process simplification and efficiency.

- **Annex A** presents the questionnaire used for the interviews and the list of interviewees.

1 State of play

1.1 Objectives and key features of the reformed procurement framework relevant for LRAs

Public authorities that spend public money are confronted with different incentives compared to the managers of a private business who bear the risk of financial loss, or even bankruptcy and are directly confronted with market forces.

For these reasons, rules for specific contract award procedures enable public purchases to be made in a rational, transparent and fair manner. Safeguards compensate for a potential lack of commercial discipline in public purchasing, as well guard against costly preferential treatment for national or local economic operators⁷.

In this way, and as also underlined by the Annual Growth Survey 2019, improved governance of public procurement contributes to **more efficient public spending** in the EU and thus to the long-term sustainability of public finances⁸.

EU public procurement rules apply to public contracts of potential interest to operators within the Internal Market, ensuring equal access and fair competition. EU legislation sets out minimum harmonised rules for such contracts. These are transposed into national legislation and apply to tenders worth more than a certain amount, implying a cross-border relevance (to be open to potential bidders from abroad). For lower value tenders, national rules apply, though these also need to comply with the general principles of EU law.

The 2014 reforms new aspects can be grouped in the following:

- 1) qualitative criteria and strategic use of public procurement;
 - 2) involving SMEs;
 - 3) exclusion criteria and safeguards against corruption;
 - 4) e-procurement;
 - 5) simplified and innovative selection procedures.
-
- 1) The new rules introduced by the 2014 Directives simplify public procurement procedures and enhance transparency. They also support the introduction of a more sophisticated approach to tendering that aims to minimise costs, generate greater social and environmental impact and to

⁷ European Commission (2011a).

⁸ European Commission, (2019a).

spur innovation. Indeed, the rationale of the reform is based on approaching public procurement not only as a legal instrument to efficiently purchase products and services, but also as **a policy delivery tool to steer market behaviour towards strategic objectives**. Contracting authorities are encouraged to move from ‘price-only’ criteria to most economically advantageous tenders i.e. **‘MEAT’ qualitative criteria**. These allow public buyers to get the best value for money. Therefore, in addition to pricing, criteria can include qualitative aspects related to implementation, the timeframe and the experience and qualification of staff. The aim is for the ‘best price quality ratio’ (BPQR). New provisions on **grounds for exclusion** reinforce the quality of procurement. Contracting authorities can now reject economic operators for poor performance or significant shortcomings in a previous public contract.

2) Furthermore, the new Directives support the **strategic use of public procurement**, i.e. public procurement used to drive EU horizontal policies such as creating a more innovative, greener, and more socially-inclusive economy. Strategic public procurement focuses on additional (environmental, social, innovation) aspects of procured goods, services or works, and applies them to generate added value. Potentially, it is a powerful tool that provides another channel for action with the possibility of substantial effects. The DG GROW report⁹ on the strategic use of public procurement emphasised the need to use procurement to **pursue strategic policy goals beyond economic advantage**. It recognises three forms of strategic public procurement:

- Green Public Procurement (GPP) - where public authorities seek to procure goods, services and works with less environmental impact throughout their life cycle.
- Socially Responsible Public Procurement (SRPP) – includes social aspects in the purchasing decision.
- Public Procurement of Innovation (PPI) –procuring innovative goods and services, not yet commercially available on a large-scale basis.

3) **SMEs** should be offered more access to public procurement procedures as contracting authorities are now encouraged to divide contracts into lots, while documentation requirements are considerably decreased, as is the turnover required to participate in tenders¹⁰. This would help SMEs unlock their potential for job creation, growth and innovation, while having a

⁹ European Commission (2015b).

¹⁰ European Commission (2015b).

positive impact on the economy. To facilitate the access of SMEs to cross border procurement, the Directives encourage the use of **e-CERTIS**, an electronic repository of administrative documents, and the European Single Procurement Document (**ESPD**), with electronic self-declarations to participate in a public procurement procedure.

- 4) The Directives aim to create a culture of **integrity and fair play** by setting the framework for prior publication of tenders, clear and unbiased technical specifications, equal treatment of bidders in all stages of the process and objective tender evaluations¹¹. One novelty is the definition of ‘**conflict of interest**’, to anticipate and prevent fraud, which usually occurs when someone has multiple interests in a contract, which can result in biased or corrupt decision making.

- 5) The new rules support **e-procurement** to reduce administrative burden, increase efficiency and transparency by simplifying and shortening processes and result in significant savings for all parties. E-procurement will be gradually introduced, and by the end of 2019 all LRA contracting authorities should be able to electronically manage the entire procurement process (from notification to invoicing, see Figure 1.2).

Figure 1.2: Timetable for the rollout of e-procurement

2014		2016			2018	2019
PP Directives entry into force	eInvoicing Directive	ESPD	e-CERTIS	eNotification/ eAccess	eSubmission	eInvoicing
						<i>(all contracting authorities)</i>

Source: t33 elaboration.

- 6) Furthermore, the Directives introduced a new set of procedures. Even if open and restricted procedures remain the main types of public procurement, there are new **simplified rules** and more flexible procedures. In terms of simplification, the new **thresholds** (see Table 1.1) above which EU legislation for public procurement fully applies are very positive for LRAs. Now there is a differentiation between central and sub-central authorities. For the latter, the threshold is higher for supply contracts and most service contracts. They will be updated on a regular basis, but generally every 2 years.

¹¹ European Commission (2015a).

Table 1.1: Thresholds of sub-local authorities

WORKS	SUPPLIES	SERVICES		
		Social and specific services	Subsidised Services	Other services
EUR 5 548 000	EUR 221 000	EUR 750 000	EUR 221 000	EUR 221 000

Source: Commission Delegated Regulation (EU) 2017/2365 of 18 December 2017 amending Directive 2014/24/EU in respect of the application thresholds for the procedures for the award of contracts. See also European Commission (2018a), p.12.

Procedures are more flexible as the **competitive procedure with negotiation** is now more elastic, allowing contracting authorities to negotiate with a small number of economic operators.

Simplification includes a **new light-touch regime for social and health services** provided directly to individuals or groups of people.

Light-touch regime for social and health services

There is a higher threshold (EUR 750 000) but also some obligations, including an advertising requirement in the Official Journal of the European Union (OJEU). This regime replaces the former system in Annex II B of Directive 2004/18/EC.

In addition, to modernise public administrations, the 2014 Directives introduces **innovation partnerships**. This allows development and purchase to be combined, so contracting authorities can select partners and jointly develop new solutions. This procedure supports up-dating and tailoring public services.

Innovation Partnership

The innovation partnership is articulated in three phases:

1. Based on criteria of the best price-quality ratio, the most suitable partner or partners are selected.
2. The new solution is developed by the partner(s) and the contracting authority into several stages. Whether they meet predetermined criteria the number of partners may be gradually reduced.
3. In the commercial phase, the partner(s) provide the final results.

Innovation partnership can be used only if:

- the goods, works and services are new to the market;
- development and purchase elements are included in the procedure.

Also, **pre-commercial public procurement drives innovation without hindering competition or transparency**. Unlike the innovation partnership, it covers only new R&D services and not the delivery of commercial volumes of end-products. The contracting authority shares the risks and benefits with the R&D provider.

Pre-Commercial Procurement (PCP)

Public procurers can drive innovation by acting as technologically demanding customers that support the development and testing of new solutions (products and services) that have not yet been launched on the market.

The public administration purchases R&D products from several suppliers at the same time, then evaluates and compares the solutions, reducing the number of competing suppliers each time.

1.2 Public procurement in the implementation of ESIF

Public procurement plays a key role in the implementation of the European Structural and Investment Funds (ESIF), as it is the process used by many public authorities, such as government departments or local authorities, to purchase goods, services or construction using ESIF. Indeed, around 48% of ESIF are spent through public procurement.

However, historically public procurement has been problematic. For instance, the European Court of Auditors (ECA) examined 1400 transactions in the 2009-2013 period, as part of its annual Statement of Assurance work. For 40% of these projects, errors relating to public procurement were detected¹², of which 50% were considered ‘serious’¹³. The situation seems to be improving, according to the Annual Report of the ECA on the implementation of the budget for financial year 2017, where errors concerning Public Procurement were 30% of the estimated errors¹⁴. Furthermore, in the last ECA Annual report, which was the first covering the 2014-2020 programming period, 24% of the detected errors concerned procurement. The errors and irregularities relate to the whole process (see Figure 1.3) but are more often found during planning (e.g. insufficient definition of the subject matter of the contract) and selection (e.g. conflict of interest).

¹² ECA (2015).

¹³ The ECA defines a serious error as ‘*A serious breach of the rules, with the result that competition was impeded and/or contracts were deemed to have been awarded to those who were not the best bidders*’.

¹⁴ ECA (2016).

Part of the public procurement irregularities are due to frauds. According ECA¹⁵ in the period 2007-2013, on 12 00 irregularities reported by Member States to the European Anti-Fraud Office (OLAF), 2% were related to frauds. The European Commission has adopted an Anti-Fraud Strategy ('the 2019 CAFS') aiming to enhance the internal analytical capability and the centralised system of oversight. However, in ESIF some level of fraud is expected to persist by the Commission: *'public procurement in shared management is likely to remain a fraud-prone field of activities for many years'*¹⁶.

For ESIF, all errors must be corrected independently if they are procedural or judgemental, even if done in good faith. When a programme detects an error in expenditure that has already been paid, the amount must be reclaimed from the final beneficiary, i.e. the final beneficiary is asked to repay. Eventually a financial correction will be necessary and irregularities on procurement could result in ex-post financial corrections. Financial corrections could be a serious burden for LRAs and have a big impact on their finances as a beneficiary or as a Programme Authority.

According to the Commission¹⁷, the main challenges in complying with Procurement rules when implementing ESI funds are the lack of administrative capacity, adequate systems, and effective governance structures. The Commission notes that *'weaknesses in administrative capacity to manage public procurement processes vary between Member States and can occur at all levels but are frequently weakest at the level of local authorities'*¹⁸.

For National Contracting Authorities¹⁹, the main difficulties are identified in:

- Complexity of procedures
- Excessive workload
- Time constraints
- Legal changes
- Lack of technical expertise
- Lack of clarity
- Lack of trained staff.

¹⁵ ECA (2015).

¹⁶ European Commission (2019b).

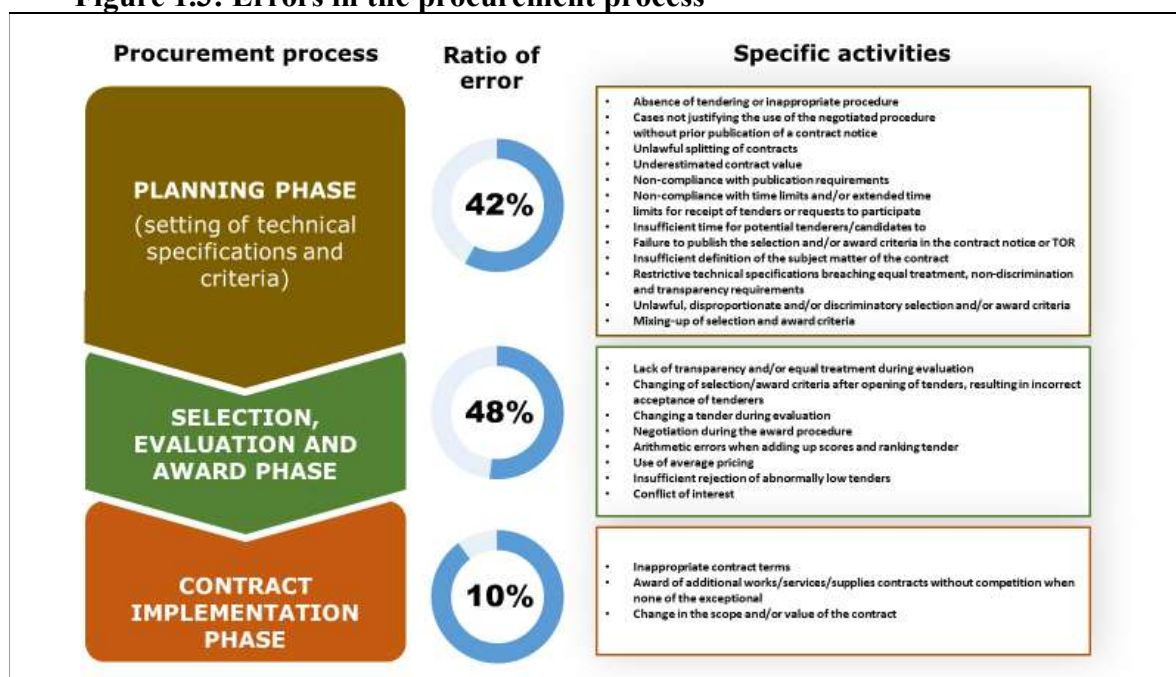
¹⁷ European Commission (2018b).

¹⁸ European Commission (2018b).

¹⁹ European Commission (2016a).

A more detailed analysis of the errors is presented in Chapter 1.5.

Figure 1.3: Errors in the procurement process



Source: t33 elaboration of ECA Data²⁰.

Given the instrumental role of public procurement in implementing ESIF, the Commission put in place several actions to enhance skills and capacities as well as the overall governance and available support tools. The two the most relevant have been:

- The introduction of **ex ante conditionalities** linked to ESIF implementation in the 2014-2020 period;
- The development of a specific **Action Plan on public procurement**.

Ex ante conditionalities were set by the Regulation (EU) No 1303/2013 laying down common provisions on ESI Funds (CPR). A key reform for ESI Funds in 2014-2020 is sector-specific and horizontal conditions to be met at an early stage of implementation and by the end of 2016 at the latest. For public procurement, the regulation (ANNEX XI) demands ‘*The existence of arrangements for the effective application of Union public procurement law in the field of the ESI Funds*’. This is further defined in four specific requirements supporting both human resources and the legal/institutional framework (see Table 1.2).

²⁰ ECA (2016)

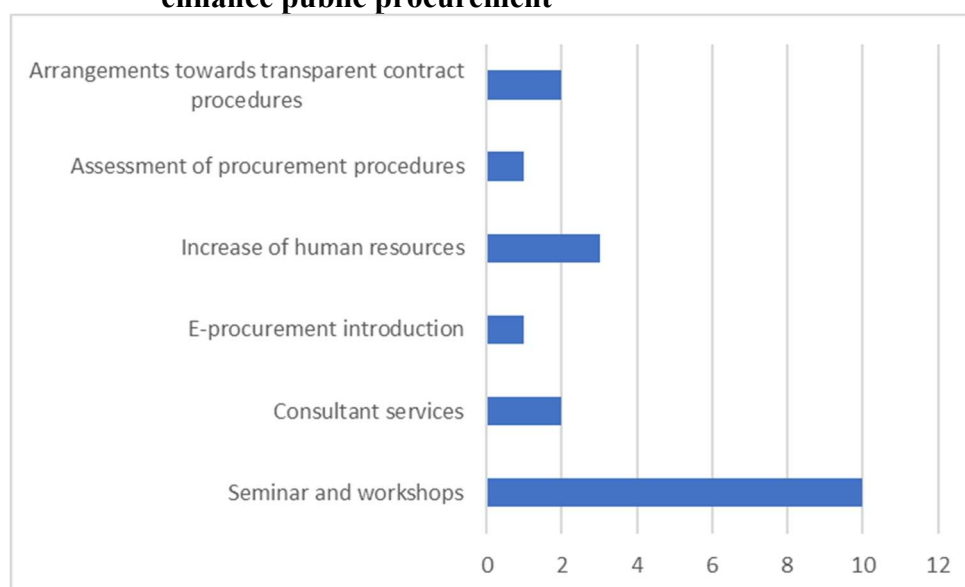
Table 1.2: Ex ante conditionalities for public procurement

INSTITUTIONAL AND LEGISLATIVE FRAMEWORK	Arrangements for the effective application of Union public procurement rules through appropriate mechanisms.	Arrangements which ensure transparent contract award procedures.
SKILLS AND CAPACITIES	Arrangements for training and dissemination of information for staff involved in the implementation of the ESI funds.	Arrangements to ensure administrative capacity for implementation and application.

Source: t33 elaboration of CPR ANNEX XI.

In general, the ex-ante conditionalities seem to positively impact ESI Funds implementation effectiveness²¹. Even if fulfilment of the specific procurement conditionalities has been less successful than the others²², overall the conditionalities accelerated the transposition of EU Directives and adaptation (e.g. Italy)²³ or re-organisation of legislation ensuring the legal and institutional set-up (e.g. Romania)²⁴. Figure 1.4 illustrates the number of activities implemented by the Member states (horizontal axis). More generally, Member States have built capacity, especially through specific training for regional public servants, in Greece, Italy and Romania²⁵.

Figure 1.4 Number of actions related to ex-ante conditionalities to enhance public procurement



Source: t33 elaboration of data from the EC study on ExAC implementation²⁶.

²¹ European Commission (2016b)

²² European Commission (2016b)

²³ European Commission (2017c)

²⁴ European Commission (2017c)

²⁵ European Commission (2017c)

²⁶ European Commission (2016b)

The Aims of the **Commission's Action Plan on Public Procurement** are:

- improving the performance of contracting authorities and beneficiaries in applying public procurement for EU funded investments during 2014-2020.
- promoting the quality and transparency of public procurement across the EU.

All relevant Commission services are involved (DG Regional and Urban Policy, DG Internal Market, Industry, Entrepreneurship and SMEs, DG Employment, Social Affairs and Inclusion, DG Agriculture and Rural Development, DG Maritime Affairs and Fisheries).

Governance of the action plan is:

- **strategic guidance** from regular high-level meetings of the Commissioners who provide political leadership and plan future development;
- **operational coordination** through regular meetings between DG REGIO E AND DG GROW G at Director level;
- **implementation** is through the Public Procurement Working Group.

A complete description of the 26 Action Plan actions is available at: https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/public-procurement/.

Table 1.3 Actions of direct interest for LRAs

	Actions	Status	Additional information available at:
1	Stocktaking/analysis of current Member State performance in capacity building, including assessment of what has worked, good examples	Completed	https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/public-procurement/study/
2	Preparation and dissemination of practical guidance on "How to avoid common errors".	Completed	https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/public-procurement/guide/
3	Piloting Integrity Pacts (Contract between a contracting authority and economic operators where both commit to abstain from corruption practices and act transparently) .	On-going, 17 projects implemented in 11 MSs	https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/integrity-pacts/
5	Training courses for Managing Authorities of the EU funds or seminars on error rates	On-going, Six modules have been developed so far	https://ec.europa.eu/regional_policy/en/information/legislation/guidance/training/#6
6	TAIEX-REGIO PEER 2 PEER supporting study visits, expert missions and workshops	On-going, more than 50 workshops/ missions/ visits implemented	https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/taix-regio-peer-2-peer/
7	e-library of good practices in public procurement in the context of European Structural and Investment (ESI) Funds	On-going, 30 good practices are available online	https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/public-procurement/e-library/

Source: *t33 elaboration based on EC data and information*²⁷.

²⁷ From the DG REGIO website of the different actions and the Action Plan annex available at: https://ec.europa.eu/regional_policy/sources/docgener/informat/2014/action_plan_pp_annex.pdf

These actions may provide immediate and concrete support to LRAs, especially in relation to difficulties originating from any lack of technical expertise and trained staff. It is worth emphasising support for LRA capacity building through:

- **Training courses for managing authorities** organised by the Commission since 2014 with a ‘hands on’ approach. Until now six modules have taken place in Brussels, with two days training. In 2019, the module is on ‘*Identifying and preventing fraud and corruption in ESI funds 2014-2020*’.
- **TAIEX-REGIO PEER 2 PEER** is a platform to exchange knowledge, good practice and practical solutions between managing authorities, intermediate bodies, coordinating authorities, audit authorities, certifying authorities and joint secretariats for European territorial cooperation programmes. TAIEX supports study visits, expert missions and workshops focusing on concrete problems.

1.3 Public procurement performance – the Single Market Scoreboard

The effectiveness of public procurement not only depends on making procedures more error-proof, but also on the way they are applied, including arrangements to ensure the best value for money. The EU Single Market Scoreboard refers to this as the performance of public procurement²⁸ and attempts to analyse it using common indicators for all EU Member States. Even if these are a simplified reality and many other country-specific factors are not taken into consideration, they can be useful in gaining insight into public procurement procedures across Member States, as well as helping to detect weaknesses and areas requiring improvement.

The twelve indicators on the platform are:

- [1] Single bidder
- [2] No calls for bids
- [3] Publication rate
- [4] Cooperative procurement
- [5] Award criteria
- [6] Decision speed
- [7] SME contractors
- [8] SME bids

²⁸ European Commission (2018c).

- [9] Procedures divided into lots
- [10] Missing calls for bids
- [11] Missing seller registration numbers
- [12] Missing buyer registration numbers

The overall performance is the sum of all 12 indicators. The first three are triple-weighted (Single bidder, No calls for bids and Publication rate). This is because they are linked with competition, transparency and market access – the core principles of good public procurement. Indicators 7-12 receive a one-third weighting. This is because they measure the same concepts from different perspectives: participation by small firms (indicators 7-9) and data quality (indicators 10-12).

According to the most recent data available²⁹, the only EU Member States to obtain a satisfactory overall score are Belgium, Denmark, Estonia, Finland, Poland and Slovakia.

Even with significant room for improvement in the near future, the platform is a promising attempt to use quantitative data to grade the performance of public procurement.

1.4 Overview of national transposition and implementation of the Directives

Growth opportunities opened by the 2014 Directives will never materialise without proper transposition and implementation of the Directives. All EU Member States, therefore, had a key role in ensuring proper transposition of the Directives into national law and then their effective implementation.

Member States had to transpose the three EU Directives on public procurement and concessions **by 18 April 2016**.

However, most countries failed to meet the deadline, except for Denmark, France, Germany, Hungary, Italy, Slovakia and the UK.

²⁹ Last update: 11.07.2018.

The Eversheds guide on EU procurement reform identifies the main reason for this delay being the complexity of national public procurement systems. *‘In many countries public procurement law takes a form of many different acts of law that are issued by various bodies. Moreover, given the value of public tenders and their significance for the national economies, the Member States carefully introduce such significant changes into the law and the practice.’*³⁰

As of **June 2016**, only 13 Member States had transposed or were soon to transpose the public procurement Directives into national laws. This meant that many Member States were running late and had not yet fulfilled the conditions laid down for the use of ESIF for public procurement in the 2014-2020 programming period (ex-ante conditionality).

In December 2017, the EC referred four Member States (Austria, Luxembourg, Slovenia and Spain) to the Court of Justice of the EU over the failure to notify complete transposition of EU rules on public procurement and concessions.

Luxembourg national law on public procurement, transposing Directives 2014/24/EU on public procurement and 2014/25 on procurement by entities operating in the water, energy, transport and postal services sector entered into force in April 2018.

As of **July 2018** (the date of the latest EC Single Market Scoreboard³¹), **the 2014 Directives had been transposed into law in 26 EU countries.**

Subsequently, **Austria** adopted the Federal Procurement Act (Bundesvergabegesetz 2018) in August 2018 which transposed the entire package of EU directives into Austrian law.

Spain appears to have failed to fully transpose the Directives, as it lacks an equivalent of Directive 25/2014. Spain made the decision to create a completely new Public Procurement Act which takes longer and could entail legal issues, such non-transposed directives being recognised by courts³².

³⁰ Eversheds (2016), p.3.

³¹ European Commission (2018c).

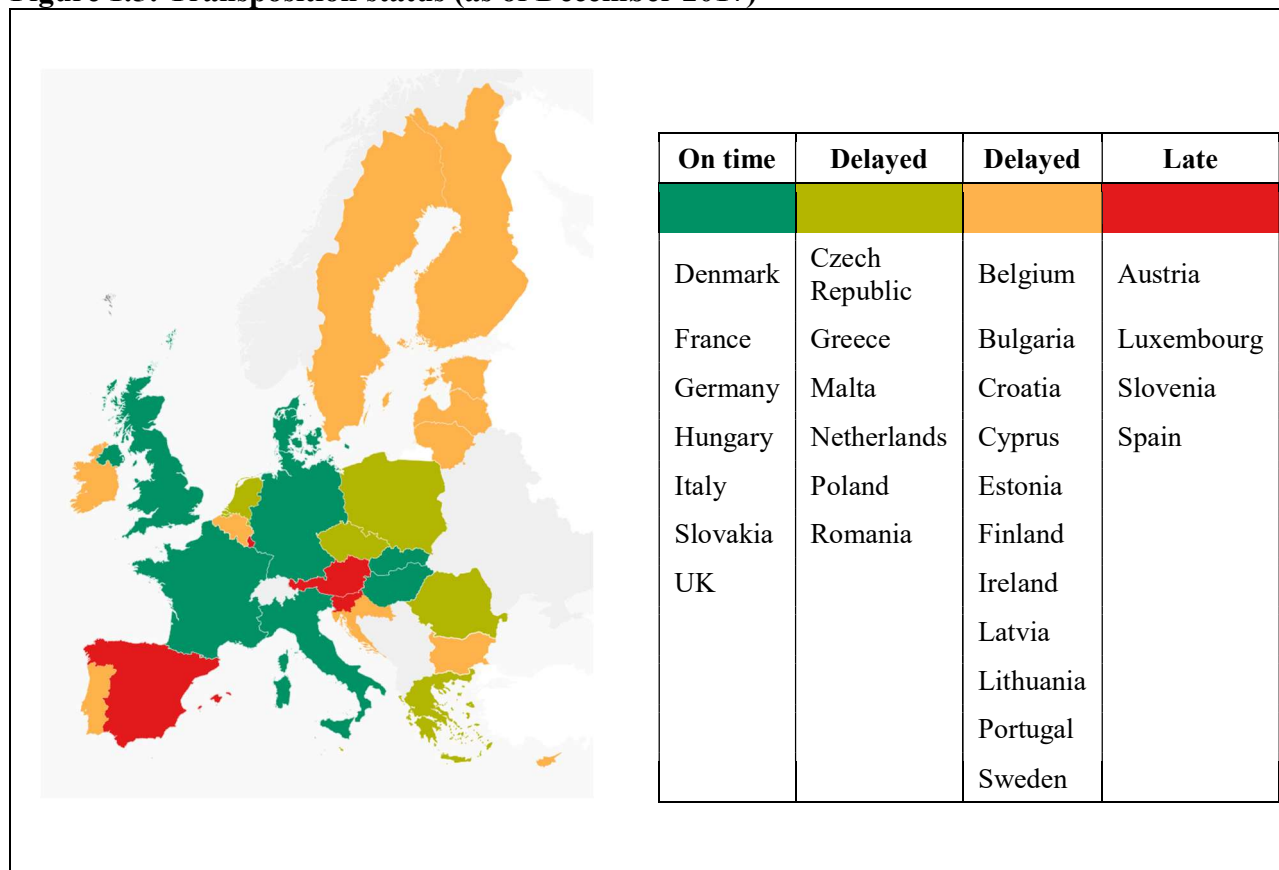
³² Eversheds (2016).

Table 1.4: Timeline of transposition

Date	Measures
2011 December	The EC published proposals to revise and update Public Procurement Directives 2004/18/EC and 2004/17/EC, together with a proposed new directive on the award of concession contracts.
2014 April	The new legislative package (Directives 2014/23/EU, 2014/25/EU and 2014/24/EU) came into force. Member States had until April 2016 to transpose them into national law. The 2004 Directives were repealed the same day.
2016 April	Deadline for transposition of the Directives
2016 May	The EC requests 21 Member States to transpose in full one or more of the three Directives on public procurement and concessions into national law.
2016 December	The EC sent a final warning to 15 Member States , requesting them to fully transpose one or more of the three new Directives on public procurement and concessions into national law. The countries were Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, Ireland, Latvia, Lithuania, Luxembourg, Portugal, Slovenia, Spain and Sweden.
2017 November	The Spanish State approved Law 9/2017, of November 8, on Contracts of the Public Sector, by which the European Parliament and Council Directives 2014/23 / EU and 2014/24 / EU are transposed into Spanish law. <i>However, the Directive 25/2014 has not yet been transposed.</i>
2017 December	The EC referred four Member States (Austria, Luxembourg, Slovenia and Spain) to the Court of Justice and opened a new case over the failure to notify complete transposition of EU rules on public procurement and concessions into national law ³³ .
2018 April	Transposition in Luxembourg of EU Directive 2014/24/EU.
2018 July	Directives transposed in 26 Member States .
2018 August	The EU Directives fully transposed into national procurement law in Austria.

³³ http://europa.eu/rapid/press-release_IP-17-4771_en.htm

Figure 1.5: Transposition status (as of December 2017)



Source: t33 elaboration.

The next section gives an overview of common errors during implementation while the following chapters look into challenges faced by regional and local public authorities.

1.5 Errors and irregularities in public procurement procedures

In any procurement, serious errors can result in a lack of fair competition and contracts not being awarded to the most advantageous bidders.

Public procurement is a complex and usually complicated process with different stages:

1. *Preparation and planning.* This includes designing a robust process to deliver the required goods, services or works.
2. *Publication.* This is to attract competitively priced tenders to deliver a contract with outcomes meeting the needs of the contracting authority.

3. Submission of tenders and selection of tenderers. This is to ensure that tenders are compliant and selected according to the rules and criteria in the tender dossier (or specifications/notice).
4. Evaluation of tenders and award. This is to determine the winning tenderer by strictly applying the published award criteria. Awarding the contract should respect formal requirements of the process, i.e. inform tenderers about the result of the tender, provide a period for complaints, sign the contract and send award notice to the OJEU for publication.
5. Contract implementation. This includes ensuring that the contract is satisfactorily implemented in accordance with the tender specifications.

Table 1.5 offers an overview of errors and mistakes that could arise in each stage of the process and lead to financial corrections. These are based on Commission guidance for avoiding common errors in ESIF projects³⁴. This document should be used by any contracting authority developing public procurement procedures.

All stages of public procurement are prone to errors, but **good preparation and planning seem to be crucial in preventing future mistakes** as many errors can be traced back to this initial stage.

Table 1.5: Common errors

STAGES	COMMON ERRORS		
Preparation and planning	<ul style="list-style-type: none"> • Direct award of a contract with inadequate justification for non-publication of a contract notice (CN) • Artificial splitting of works/services/supplies contracts 	<ul style="list-style-type: none"> • Cases not justifying use of the exceptional negotiated procedure with or without prior publication of a CN • Errors/mistakes in ordering on a framework agreement 	<ul style="list-style-type: none"> • (i) Disproportionate and discriminatory selection criteria and (ii) award criteria not related to the contract
Publication and transparency	<ul style="list-style-type: none"> • Insufficient definition of the contract leading to irregular modifications of the contract • No publication of a contract notice 	<ul style="list-style-type: none"> • Failure to state selection criteria and/or award criteria (and weighting) in the CN or in the tender specification • Unlawful and/or discriminatory 	<ul style="list-style-type: none"> • Negotiated procedure without justification (with or without prior publication of a CN) • Discriminatory selection (e.g. national standards/qualifications specified without recognising ‘equivalent’)

³⁴ European Commission (2018a).

	<ul style="list-style-type: none"> • Non-compliance with time limits for receipt of tenders and requests to participate • No publication of extended time limits for receipt of tenders or for requests to participate 	<ul style="list-style-type: none"> • selection criteria in either CN or tender documents • Discriminatory technical specifications • Disproportionate selection criteria 	<ul style="list-style-type: none"> • standards/qualifications) • Mixing selection and award criteria
Submission, selection and evaluation of tenders	<ul style="list-style-type: none"> • Elimination of candidates/tenderers using unlawful selection criteria in violation of Articles 2 and 44 of Directive 2004/18/EC 	<ul style="list-style-type: none"> • Acceptance of tenderers who should have been eliminated at selection stage • Modification of selection criteria after opening tenders, resulting in incorrect rejection of tenderers 	<ul style="list-style-type: none"> • Lack of objective selection criteria used in reducing the number of applicants • Unequal treatment of tenderers
	<ul style="list-style-type: none"> • Modification of award criteria after opening the tenders resulting in the incorrect acceptance of tenders • Lack of transparency/equal treatment during evaluation 	<ul style="list-style-type: none"> • Undisclosed conflict of interest • Modification of a tender during evaluation 	<ul style="list-style-type: none"> • Negotiation during the award procedure • Rejection of abnormally low tenders without justification
Awarding the contract	<ul style="list-style-type: none"> • Subsequent negotiation on the contract 		
Contract implementation	<ul style="list-style-type: none"> • Reduction in the scope of the contract 	<ul style="list-style-type: none"> • Award of contracts for additional works or services without competition in the absence of justified urgency brought about by unforeseeable events 	<ul style="list-style-type: none"> • Additional Works / Supplies / Services awarded exceeding the limits laid down in the provisions

Source: 133 elaboration based on EC (2018a).

The causes of most common public procurement errors were outlined by the European Court of Auditors (ECA) in their Special Report on ‘Efforts to address problems with public procurement in EU cohesion expenditure should be

intensified'³⁵. These underline that failure to comply with public procurement rules has been a perennial and significant source of error in EU cohesion expenditure:

Complexity and high volume of legislation. According to 90% of 69 audit authorities who responded to the survey carried out for the ECA audit, the legal framework for public procurement in their country is more complex than it needs to be. Survey respondents noted that errors are mainly caused by a high volume of legislation and/or guidelines, the difficulty of applying them in practice and a lack of expertise in carrying out public procurement.

Challenges regarding administrative capacity. Lack of administrative capacity relates to a lack of both knowledge of the rules and technical expertise concerning the specific works or services being procured. The lack of administrative capacity further complicates the use of already complex legislative procedures.

Incorrect transposition of the Directives into national law. Incorrect transposition creates legal uncertainty that can lead to errors. In the 2009-2013 period, the European Commission opened 74 infringement procedures regarding incorrect transposition, of which eight were referred to the Court of Justice of the European Union by the end of 2014. In Spain, inadequate adaptation of the 2004 Directives into national legislation caused frequent errors with regard to contract amendments.

Inconsistent interpretation of the legislation. Sometimes there are different interpretations of the same legal provisions between different bodies (e.g. managing authorities, audit authorities, public procurement offices, the European Commission) which can lead to differing audit results and legal uncertainty.

Gold plating. Sometimes national laws impose additional administrative burden on public buyers by going beyond the requirements of the EU Directives. The reduced capacity of some contracting authorities to deal with the additional complexity can lead to errors.

Fraud as a cause of error. According to the OECD, '*public procurement is the government activity most vulnerable to waste, fraud and corruption due to its complexity, the size of the financial flows it generates and the close interaction between the public and the private sectors*'³⁶.

³⁵ European Court of Auditors (2015).

³⁶ OECD (2007).

2 Challenges for regional and local stakeholders

Public servants directly involved in managing municipal, provincial and regional public procurement procedures were interviewed in Austria, Belgium, Bulgaria, Italy, Romania and Spain.

Interviews with sector experts complement the desk research and expand on technical aspects such as innovative procedures or anti-corruption. Some of the experts are legal or economic advisers to LRAs, others defend LRAs at the European Court of Justice, so they have a good understanding of the most problematic issues related to public procurement.

The interviews cover application of the 2014 Directives, especially:

- qualitative criteria and strategic use of public procurement;
- involving SMEs;
- exclusion criteria and safeguards against corruption;
- e-procurement;
- simplified and innovative selection procedures.

Interviewees were also asked for a general assessment on applying the Directives.

The following pages report interview findings and highlight the views of LRAs on the challenges and opportunities of EU legislation on public procurement.

2.1 An overview of using the Directives

LRAs generally see the Directives as an improvement and an ‘evolution’ rather than a ‘revolution’. Their approach appears to be pragmatic. They welcome the new opportunities but also note that some aspects are difficult to exploit given their specific institutional frameworks and current skill set.

Direct quote

‘We actively use the opportunities that the Directive gives to the Public Authority to set criteria connected to environmental protection requirements. But we don’t use the full potential of the opportunities provided in the Directive, as we don’t put or set social and labour criteria or requirements. We haven’t enough practice and experience of using functional instead of

technical specifications and also of using market engagement and two-phase procedures.’

Significant issues for LRAs can arise from transposition of the EU public procurement legal framework by the Member State authorities, as this may lead to ‘gold plating’³⁷. This is especially the case in Member States that transposed the Directives through an elaborate legislative process.

Direct quote

‘The national transposition has been particularly rigid with the emphasis on transparency. Indeed, the need to ensure a transparent procedure and to fight corruption are dominant issues implying on the one hand ‘gold plating’ by the national legislator and on the other LRAs’ hesitation in adopting simplified and new procedures.’

The complexity of the legal framework sometimes leads to excessive fragmentation of the regulation.

Direct quote

‘In the meantime, the internal regulator pulverises the regulation into numerous secondary sources (ministerial decrees, independent agency guidelines, standard calls, etc.), which in turn require high specialisation and continuous training of personnel (even in micro-entities where there is perhaps a single official with multiple administrative sectors to follow).’

In addition, some LRAs have legislative competence which can make the framework even more complex.

Direct quote

‘One of the main difficulties is that LRAs work in a multi-level framework. Therefore, even if a Member State has transposed the directive into national legislation, regional – local ‘declination’ is also needed for both administrative and regulatory aspects. For instance, Italy has transposed the directive, but the autonomous regions and provinces have their own competence in public procurement. So, to have full operability of the directive it is necessary that also the local and regional ‘step’ is accomplished. In our case, the difficulties arise because of incomplete transposition of the directive at local level. Now we need to use part of the national legislation and part of provincial one to implement procurement, and this is burdensome.’

³⁷ European Parliament (2017).

2.2 Selection criteria and use of strategic procurement

In general, the LRAs welcome the use of qualitative criteria (MEAT), which they often consider more appropriate than lowest cost criteria. This is not completely new and most LRAs were adopting qualitative criteria even before 2014.

Furthermore, social and environmental criteria are used strategically to support secondary objectives beyond the purchase of goods and services. Several LRAs already include such award criteria when purchasing vehicles, IT equipment and supplies with environmental aspects, including reduced CO₂ emissions, low electricity consumption and recycled materials. For instance, by using environmental criteria, the Province of Antwerp (see Section 3.3) did not have to pay for investing in the improvement and long-term maintenance of a local sports facility since the contractor covered the initial investment and is being repaid over time from the gains generated by the modernisation process (the energy and water savings).

Direct quote

‘In Austria, the National law (Bundesvergabegesetz 2018) forms the legal basis to apply social, environmental or innovation aspects in procurement. This can be done by defining these issues when specifying services, as award criteria or as conditions in the contract that is concluded with the successful bidder.

Salzburg region developed a so called ‘fairness catalogue’ in collaboration with the Salzburg Chamber of Commerce, already some years ago. With this document Salzburg region commits to consider social or environmental aspects in procurement (e.g. employment of women, long-term unemployed people, etc).’

The consideration of social and environmental criteria when awarding public contracts is compulsory in Spain.

Direct quote

‘Spain is doing especially well in implementing this criterion. It is mostly because Article 1.3 of Law 9/2017 is more advanced than the EU Directive 24/2014, as it makes social and environmental criteria mandatory for all public procurement. However, this is not true for ‘innovation’, which is only optional.’

The Belgium case is of special interest because social criteria were adopted even before the 2014 Directives, with certain tenders exclusively reserved for social enterprises. To solve the trade-off between social objectives and efficiency, social enterprises are encouraged to team up with standard companies and compete as ‘joint ventures’. This should benefit all parties as the social enterprise shares its ‘community’ understanding while the standard company brings its ‘business orientation’.

In Italy, social criteria to safeguard workers are used for social services.

Direct quote

‘In Italy there is the so-called ‘clause safeguarding the employee’. This applies to social and health sectors when the delivery of a specific service has to be renewed through a new tender procedure.

It consists of a criterion for the bidder to commit to absorbing the personnel employed by the former provider, in case of success. This criterion clearly aims to protect the employees.’

Exclusion criteria include ‘poor performance’ under the Italian procurement code. In the past, this had to be determined by a court though now an administration can exclude a supplier on the basis of poor performance even without being ‘res judicata’. However, this provision appears to be risky and is rarely applied.

In Romania, if a bidder has a ‘negative rating’ issued by other contracting authorities and cannot prove its credibility, the bid is rejected in the preliminary evaluation stage.

In Austria procurement law does not allow such exclusion, though the LRA reports cases when such a severe measure could be appropriate. In Belgium, it has not been used yet, as a solid legal case against the bidder is needed. Where companies have not performed as well as promised, it is considered too difficult (from a legal perspective) to exclude the company from competing. Even when a company announced it was impossible to complete a contract, LRAs normally try to reach a deal and find a suitable exit, instead of litigation.

Finally, some LRAs from Bulgaria and Italy agree that even if they find this criterion useful, there are no lists or mechanisms to put it into practice as there is no national digital dataset. Therefore, the criterion seems to be difficult to apply when the poor performance concerns a contract with a different public administration.

Direct quote

‘The ‘poor performer’ is an effective way to avoid misbehaviour from the bidders. It is especially effective when the poor performance has taken place with the tendering administration. When it has been observed by another public authority, the case is more problematic. Here the issue is to collect the information. The following question should be answered: How can I become aware of the fact that this specific bidding company performed poorly?’

Not strictly related to ‘criteria’ but to pursuing strategic social and environmental objectives, LRAs report using **full life cycle cost** for vehicles or equipment. An especially interesting example is in Stockholm County (see Section 3.2), where under the new procurement strategy a health care contract was awarded to the bidder who provided evidence that its products entailed the lowest total cost of care. This goes beyond purchase price to consider costs on a more holistic level. There are also national rules on full life cycle cost for vehicles (in Bulgaria), though elsewhere it is used less often and there are no standard tools.

LRAs report that certifications for environmental impact are also usually requested, including during performance of the contract. Other criteria were declarations of conformity, test reports, technical specifications for energy performance and emissions, EC certificates and reports. Whenever certifications or brands are referred to in any tender document there is equal treatment and similar solutions are expressly accepted. **Self-declaration** is common and widespread among the respondents.

However, using criteria that is not strictly quantifiable or objectively verifiable poses two problems for interviewees:

- 1) They could be discretionary and therefore risky for the public administration, with intense questions from audit authorities.
- 2) Criteria can refer to new environmentally friendly products, which can hinder competition if very few companies can deliver such products.

According to some respondents, using qualitative criteria with the most economically advantageous tender (instead of just the price) might hamper transparency and not necessarily assure minimum cost or the best quality. To solve these challenges, Marche Region (see Section 3.6) translated qualitative criteria into objective elements which could then be quantified using a score.

Several LRAs have difficulties in assessing documents submitted by bidders to prove compliance with environmental criteria (harmful effects to the environment and other technical indicators). This issue extends into the implementation phase, for control and monitoring.

Direct quote

‘The main difficulties lie in a proper, transparent and precise definition of these criteria that allows for an adequate assessment of bids.

In this respect some guidance, exchange of best practice and capacity building measures for staff might prove an advantage, be it at European, national or regional level.’

2.3 Involve SMEs

Most LRAs are aware of the difficulties SMEs have in participating in tenders, especially big tenders. This seems to be even more challenging for micro-enterprises.

Direct quote

‘Start-ups are specifically discriminated against since specific turnover or professional experiences are often used as eligibility criteria. Furthermore, bidding for a microenterprise is sometimes not feasible because of the intrinsic complexity; i.e. for a company with three people, it is almost impossible to have one public procurement specialist.’

Contracting authorities are encouraged by the directive to **divide contracts into lots** to make it easier for SMEs to participate in public procurement (see the South Dublin County case in Section 3.3). This is recognised by LRAs as one way to improve access for SMEs. Breaking the tender into lots was used before, but after the new Directives, LRAs are considering it more, though still with moderation. The EU legal framework does not provide specific criteria to positively encourage SME access, which is perceived as an obstacle.

In Salzburg, one of the main objectives of the Fairness Catalogue³⁸ was to enable SMEs to take part in procurement. It is based on experience showing that smaller lots and encouraging consortia facilitates SME participation.

³⁸ The Land of Salzburg developed a ‘fairness catalogue’ with the Salzburg chamber of commerce some years ago. With this the Land of Salzburg commits itself to consider social or environmental aspects in procurement (e.g. employment of women, long-term unemployed people, etc).

According to the Directive, **turnover requirements** of more than double the contract are not allowed without specific justification. This is another way to avoid discriminating against SMEs. The majority of responding LRAs state that they respect this principle, however some do not consider it relevant as there can be thresholds for turnover provided for by national law.

There are no reports of **e-CERTIS** being used when bidders are exclusively national entities. In Austria, references and qualifications of bidders are checked using data provided by companies in an Austrian-wide and commonly used system that is featured on e-CERTIS.

In general, LRAs say the European Single Procurement Document (**ESPD**) is easy to use and, if submitted by a bidder, will certainly be accepted. However, some national authorities use it to add additional information or to require less. But ESPD does not always allow full electronic management and re-use, though the format is online³⁹. Although the online form can be filled in, if one contracting authority does not run the full digital procedure, the ESPD cannot be submitted so each tender needs the format to be filled in again. However, it is important as a reference ‘template’.

Direct quote

‘According to National law, the ESPD is a binding document that a contracting authority must request in a procurement procedure, supporting documents relating to the ESPD being requested only from the successful tenderer. Thus, as a contracting authority, we ask bidders for the ESPD presentation as the first document certifying fulfilment of the qualification/selection requirements.’

LRAs adopt **additional strategies to involve SMEs** (see next chapters) by **restricting the procedure**. For example, in Belgium one LRA, for tenders under a threshold, invites six companies to bid and SMEs are prioritised (if possible). This is intended to give them a chance and facilitate their participation in tenders.

Pre-commercial procurement and innovative partnership are also considered to be a good opportunity for SMEs to be involved in the process and to innovate. Other LRAs are considering ways to involve SMEs during design of the action plan for certain Green Public Procurement projects.

Subcontracting is also seen as a practical way to involve SMEs although national legislation can be much stricter and demanding on this aspect. In Italy, the

³⁹ <https://ec.europa.eu/tools/espd>

national law maker opted for a more rigid approach, since subcontracting is a typical way for the mafia to infiltrate public procurement.

Direct quote

‘Subcontracting is an effective way to increase the participation of SMEs in calls for tenders, which has been part of the internal legal system for a long time (albeit with application uncertainties). As subcontractors, SMEs can enter into the execution of relevant contracts together with medium and large enterprises, and consequently qualify for the future. However, in Italy the subcontract is seen mainly as the main door for the *mafia* to access public tenders (see lastly Law 190/12, Article 1, paragraphs 52 et seq. and the new anti-mafia code⁴⁰).’

In general, LRAs agree that SMEs still find difficulties in being involved. Some respondents do not really see the public procurement as a way to support SMEs, but feel other forms of support (grants, financial instruments or business services) are more appropriate. One interesting opinion is that contracting authority commitment is necessary but not sufficient. Also, SMEs need to enhance their tendering capacities with the support of a local business association.

Direct quote

‘SME involvement could be fostered if contracting authorities commit themselves to that and define their procurement strategies accordingly. For companies, the chambers of commerce and other multipliers could and should maybe make efforts to raise knowledge and capacities of SMEs to better position themselves to submit bids in various tender processes.’

External observers (the experts and lawyers interviewed) note that, despite the possibility of breaking down tenders into lots, public authorities often prefer **large tender procedures which are less demanding in terms of workload**. This is particularly relevant in the service sector where large tenders favour large companies.

⁴⁰ <https://www.gazzettaufficiale.it/eli/id/2012/11/13/012G0213/sg>

2.4 Safeguards against corruption

LRAs are aware of risks related to a lack of transparency and conflicts of interest. Often the national response goes far beyond the EU Directives.

In Italy, for instance, the national government adopted a strategy based on four elements:

- Establishment of national agency advising, supervising and auditing all central, regional and local contracting authorities (ANAC).
- Limiting the fragmentation of contracting authorities and setting up a professional procurement service (in Italian *Stazioni uniche appaltanti*) at central and regional levels (e.g. CONSIP S.p.A. for the Ministry of Economy and SUAM – Stazione unica in Marche Region).
- A centralised digital platform for public procurement.
- Professionalising public servants through a national register of evaluators.

This system has its own weaknesses (see the direct quote below).

Direct quote

‘It should be noted that these instruments are difficult to adopt:

- centralisation requires enormous effort and, as we have already seen, it cannot be integral;

- with the exception of large public organisations, diffusion and catching up of the telematic trading instruments differs widely across the contracting authorities (...);

- due to a lack of applications, the national register of tenderers has not taken off.’

In Romania, in line with the requirement of the 2014 public procurement Directive for a framework against conflicts of interest, there is a codified procedure for all public servants taking part in the selection and awarding process.

Direct quote

‘In the Acquisition Data Sheet, all decision makers in the contracting authority are identified and linked to the respective procurement procedure, so the bidder can determine whether or not there is a conflict of interest.

A self-declaration is requested from the bidder about the lack of conflict of interest.

Members of the evaluation committee make a declaration on their own responsibility regarding any conflict of interest vis-à-vis bidders (when opening bids).

The Contracting Authority completes the Integrity Form (<https://integritate.elicitatie.ro>) with information on the decision-makers, the members of the evaluation committee, including reserve members, bidders and their legal representatives. This form is reviewed by the National Integrity Agency that can issue warnings for which the contracting authority needs to take remedial or avoidance measures.

In the evaluation of the offers, any conflict of interest is verified on the basis of the information in the ESPD, the bidder's statement and the certificate of the tenderer.’

Also, in Austria, procedures to ensure transparency and fair play have been put in place, such as screening for any potential conflict of interest and a mixed selection committee for large tenders.

Direct quote

‘The internal provisions of Salzburg region foresee that staff shall report any potential conflict of interest so counter-actions can be taken. Another measure is that procurement above certain contract values is carried out not by single persons but rather by committees of three persons, or that above contract value thresholds comparative offers have to be collected even though direct contracting would be possible (this is the strategy applied by the department for economy, tourism and municipalities).’

In general, LRAs agree that fighting corruption requires a comprehensive approach and they agree that several provisions in the Directives are also direct or indirect tools supporting fair and transparent procurement. The OECD supports this view calling for a ‘holistic’ approach⁴¹ to prevent corruption, for instance:

- *‘The exclusion of certain economic operators from public procurement procedures aims to protect the integrity of the process by preventing the participation of companies that are deemed to be undesirable partners of public administration’⁴².*
- *‘E-procurement, which is the use of information and communication technologies in public procurement, can increase transparency, facilitate access to public tenders, reduce direct interaction between procurement officials and companies, increasing outreach and competition, and allow for easier detection of irregularities and corruption, such as bid rigging schemes.’⁴³*

2.5 Simplified procedures

The procedural changes introduced by the Directives have two main goals, simplifying public procurement and ensuring greater inclusion of common societal goals in the procurement process, such as environmental protection, social responsibility, innovation, combating climate change, employment, public health and other social and environmental considerations. In terms of simplification, the **threshold** for applying EU public procurement legislation seems to be the most relevant factor. Most LRAs already had to differentiate the applicable procedure depending on the tender value even before the Directives. However, in some countries with both national gold plating and an attitude to ‘play it safe’, procedure differences between above and below the thresholds are marginal.

⁴¹ OECD (2016).

⁴² OECD - SIGMA (2018), p.6.

⁴³ OECD (2016), p.23.

Direct quote

‘There are differences, but they tend to shrink more and more because:

- EU law has long established the principle that the rules on competition contained in the Treaties also apply to sub-threshold assignments.
- This statement has been translated into the internal legal system, from regulations, in terms of increasing procedural guarantees, also through soft law and best practices. However, they are often converted into the same number of mandatory clauses for the single public contracting authority, which must be motivated in reality to be able to deviate from it and is therefore unlikely to conflict with its controllers (judges and national auditors);
- ANAC (Italian national audit authority) constantly reports the (actual) danger of unduly splitting credit lines to apply the sub-threshold rules and, therefore, tends to ‘compensate’ with guidelines, intended to be an application of the general EU and internal principles, for any derogation introduced by the legislator to speed up procurement (for example in the case of major events or disasters, but also in the event of economic stagnation).’

Competitive procedures with negotiation⁴⁴ try to match both objectives by reducing the ‘asymmetric’ information between contracting authorities and economic operators. Most respondents have used it at least once, as in Romania for purchasing fuel on a commodities exchange. Furthermore, in Belgium this is seen as the best way to have an open dialogue with companies to fine tune the tender for better services and products.

Direct quote

‘We prefer this procedure as we want to have a good and stable agreement with the companies, rather than having them writing documents. Therefore, we use it a lot, especially for service contracts where our organisation and the companies have to work together a lot.

In some contracts, it proved to be very useful, because we work to improve the offers as a team.

The procedure is that we invite the tenderers to our headquarters to talk and figure out together what is realistic and what is not. We encourage them not

⁴⁴ ‘The competitive procedure with negotiation, like the competitive dialogue, is a process that can be used in exceptional circumstances. It involves shortlisting at least three candidates who are invited to submit an initial tender and then negotiate.’ (European Commission 2018b)

to write in their offers what we know they cannot realistically do. We found this procedure to be especially useful in sectors where companies have a tendency to ‘exaggerate’.

The dialogue/negotiation is important also for the service provider, as it is very difficult to write down exactly what the public organisation wants. We normally do it in several rounds, always evaluating based on the award criteria.

The three best providers are invited for further talks and, again, try to improve the offers. The negotiation is not necessarily about the financial aspect, but more about the proposal and the service. The improved versions are evaluated, and there is a decision on the winner.

We have a lot of tenders that are below the EU threshold, and it is much easier to conduct the negotiations. Above the threshold it is much more difficult.’

The preliminary market consultation⁴⁵ is also an attempt to open the market and introduce economic rationale to public procurement. It is used to explore specific sectors or markets to acquire experience (for instance in Bulgaria). With the Municipality of Hyvinkää in Finland (see Section 3.1), the market dialogue resulted in better commitment from all parties and helped achieve the goals. It also had a positive effect, as the Municipality wanted a product that was not ‘on the market’ yet, and this enabled the suppliers to extend their range of products.

Direct quote

‘For some more specific contracts we use market consultation from independent experts or from market participants. It depends on who will be the consultant, but in **general** they are useful and contribute to better realisation of the tender.’

However, this procedure is not widely used as it is seen as a time-consuming and complex procedure, applicable only for specific contracts. In addition, some pitfalls have been pointed out by LRAs in terms of efficiency and transparency.

Direct quote

⁴⁵ ‘A preliminary market consultation involves interviewing market stakeholders or contacting knowledgeable people in the relevant field, for example independent experts, specialised bodies, business organisations or economic operators. The purpose of market consultation is to: 1. better prepare the procurement procedure; 2. inform businesses in the relevant market about the planned procurement’ (European Commission 2018b).

‘The preliminary consultation, as already seen, is the obvious corollary of the non-specialisation of the public administration and of the parallel need to put in place qualitative selections on the offer. A better knowledge of the reference market is needed. However:

- it could be risky because it exposes the tendering authority to undue interference with potential bidders;
- and, moreover, inevitably, lengthens the time needed.

Other more innovative procedures, for instance **innovative partnership**⁴⁶ and **pre-commercial procurement**⁴⁷, are seen by external observers as interesting tools and a way to involve SMEs and to tailor products and services.

However, they are often considered as suited to only some policy areas e.g. transport, energy, smart specialisation, while being less applicable where the market already provides standardised solutions.

Direct quote

‘Innovative procurement procedures actually represent a way to facilitate SME participation, particularly the innovative partnership. In this case the SME is also supported in investing in R&D. However, the majority of public contracting authorities do not seem ready or available to experiment with these new options.’

For instance, LRAs note that pre-commercial procurement is used by the department in charge of innovation mainly as a tool to promote regional Smart Specialisation rather than as a purchasing tool.

In general, LRAs find these procedures difficult to apply, as they are not sufficiently detailed. Others cite a lack of knowledge and other deficiencies, caused by the contracting authorities’ failure to build the capacity of the procurement staff. However, in South Dublin County (see Section 3.5), a Procurement Unit was established to provide training and on-going assistance to staff, to improve administrative capabilities as well as the capacity to collaborate with businesses and other institutional stakeholders. The Procurement Unit is also a drive for change in the public administration, testing new procedures and bringing innovation into the administrative routines.

⁴⁶ ‘An innovation partnership is implemented through a three-stage procurement process (prequalification, negotiation, delivery). The contracting authority buys both R&D services to develop an innovative solution and the resulting innovative products, services or works’ (European Commission 2018b).

⁴⁷ See dedicated box in sub Chapter 1.1.

Other respondents do not consider ‘capacity’ the main issue. For them the main issue is to achieve the goal of procurement, to purchase goods and services for a vast variety of needs, and to do it transparently and impartially while also getting value-for-money. Promoting certain sectors of the market or contributing to strategic goals is seen as a secondary ramification.

Direct quote

‘The main difficulty in adopting innovative procurement forms is the risk (political, financial, technical) of an unsuccessful conclusion of the tender; the lack of time because of the rapidly growing needs of society and the narrow timeframe from the provision of the funding until its realisation. We have the administrative capacity, but it is just not enough because of the rapid development of the market. Innovative procurement requires more time.’

2.6 E-procurement

Electronic procurement is becoming more common and digitalisation of the tendering process is advancing from ‘communication’ towards ‘full management’ of the entire procedure. In Bulgaria, for instance, the respondent is satisfied and sees e-procurement ‘becoming better and better’ as in Austria ‘The system in place is working smoothly, without problems’. However, technical problems may affect systems impacting on the overall process.

Direct quote

‘The new application does not work 24 hours a day. Often the contracting authorities and bidders cannot connect to it.’

There are digital platforms at national and regional levels. For example, in Belgium the federal government’s website is used by all public authorities and tenders published on this website are also forwarded to the European website.

In Italy, regional authorities have their own platform (see the Province of Bozen in Section 3.4) where all information related to tendering is available, such as the price list, new tender procedures, statistics and guidelines. In addition, there is also the Public Administration Electronic Market (MePA) where public authorities can purchase goods and services below a threshold.

However, there are **coordination and interoperability problems** and within the same Member State the use of e-procurement is not always homogenous across regions.

Direct quote

‘Public procurement is being used, with one main problem – there is no unified platform, with each administration implementing its own system. Some administrations are far behind, not using it at all.’

An additional issue reported by the LRAs is the risk that e-procurement discriminates against microenterprises and small contracting authorities require additional skills and capacities.

Direct quote

‘In a digital platform, public authorities can purchase goods and services for values below the threshold. However, not all the LRAs are used to it, especially smaller ones. Furthermore, most of the regions use an electronic procurement portal but it is sometimes more burdensome than the traditional procedure which is an obstacle for microenterprises.’

The **dynamic purchasing system**⁴⁸ is not implemented, yet. One possible explanation is linked to legal risks, as shown in the box below.

Direct quote

‘From our point of view this kind of procurement procedure would be more efficient if there was no risk of appealing the final decision of the public authority. The procedure cannot be used for goods or services to be ordered and delivered within a short period. In case of emergency/ urgency, the procedure is not used because the risk of a legal appeal will affect delivery timing. The dynamic purchasing system is operated as a completely electronic process and if the winner is chosen only on the basis of the objective criteria of delivery time, price etc., it would be better if the final decision is not subject to appeal.’

⁴⁸ The dynamic purchasing system (DPS) is a full electronic system used by a Contracting Authority for purchases of commonly used works, services or goods. It is open to any tenderer that satisfies the selection criteria (pre-qualification) and they can apply to join at any time.

For **electronic catalogues**, LRAs are at different stages of implementation:

- Some have already used it (for certain products/services below a threshold);
- Others are to implement it in the near future;
- Others have used only national level ones.

3. Case studies

This chapter analyses six case studies based on stakeholder interviews. The cases cover both good practices for adopting the new rules, but also identify key challenges in adapting to the new framework. Each case study focuses on a specific issue related to public procurement and different aspects concerning the new Directives packages. The case studies are:

- Municipality of Hyvinkää (Finland), on market dialogue;
- Stockholm County (Sweden), on health sector procurement innovation.
- Antwerp Province (Belgium) on strategic green procurement;
- Province of Bozen (Italy), on e-procurement supporting SMEs;
- South Dublin County (Ireland), on procurement strategy enhancing administrative capacity;
- Marche Region (Italy), on qualitative criteria.

3.1 Hyvinkää, Finland: pre-commercial procurement market dialogue

The strategy

In 2015 Hyvinkää, a small municipality of around 46 500 people in the south of Finland, set out to procure a new pre-school for around 200 children under the age of seven. The aim was to build the pre-school facilities with a healthy, comfortable and flexible space for learning and play while reflecting wider environmental and social ambitions.

The project was based on national guidelines in the Early Childhood Education and Care (ECEC) 2015 Act⁴⁹ and municipal guidelines for the period from 2013 to 2020 in terms of sustainability, eco-efficient construction and maintenance, effective energy use, climate protection and public procurement.

⁴⁹ The Act includes the goal to promote every child's growth, development, health and wellbeing in a holistic way, ensuring an environment which is healthy, safe and promotes learning and development. See https://www.oph.fi/english/education_system/early_childhood_education.

Figure 3.1: The preschool building



Source: Presentation 'Procurement of a Nordic Swan Ecolabelled preschool building in Hyvinkää City' by Inkeri Kontiola.

The Municipality wanted this pre-school to be the first in Finland to be awarded the Nordic Swan Ecolabel⁵⁰ for 'small houses, apartment buildings and buildings for schools and pre-schools'. This set of standards was chosen because it supports municipal environmental guidelines, covers health issues, saves costs from long term reductions in energy consumption and building repairs, contributes to Hyvinkää's positive image and provides construction contractors with an opportunity to innovate in their use of energy sources, construction methods and materials.

The market dialogue

To encourage the best solutions in terms of energy, materials and building techniques, the Municipality published a **Request for Information (RFI)** on the Finnish national electronic tender site in July 2015 prior to publication of the tender. Unsure if the market could supply the required product, the RFI allowed the public authority to meet potential contractors, assess the feasibility of the project and include their feedback into the procurement process.

⁵⁰ The Nordic Swan Ecolabel is an ISO 14024 type 1 Ecolabelling system <http://www.nordic-ecolabel.org/>

The RFI set out the Municipality's intentions to build a pre-school to the standards of the Nordic Swan Ecolabel, with the following goals:

- Cost effective energy consumption with less use of water and electricity;
- Alternative sustainable energy sources;
- A building that is safe, emission free and healthy for all.

The Municipality **requested feedback on these goals**, including suggestions on methods for saving energy (particularly with lighting, heating, cooling, as well as water, energy and ventilation efficiency). Information was also requested on new and innovative building materials and techniques. Finally, they consulted the market to find out whether there was any interest in **forming a partnership** to build the first Nordic Swan Ecolabel pre-school building in Finland.

The dialogue was straightforward but time consuming. However, it resulted in better commitment from all parties and helped achieve the goals. It also had a positive effect, as the Municipality wanted a product that was not 'on the market' yet, which enabled the suppliers to extend their range of products.

The first RFI process received four responses with encouraging feedback, including preliminary calculations on overall energy consumption, thoughts on the use of new materials, and suggested solutions to energy issues. However, this information was still fairly general and deemed insufficient. Therefore, a **second round in October 2015** invited all respondents to one-to-one meetings to clarify answers and to raise their specific questions.

To aid this process, respondents were sent a detailed questionnaire and discussion guide in advance. The questionnaire asked about:

- the benefits of a Nordic Swan Ecolabel building;
- potential problems and solutions in meeting the ecolabel requirements;
- their willingness to commit to such a project.

The market dialogue process demonstrated that **the market was able and willing to construct a school building that could be awarded the Ecolabel**. A call for tenders was therefore published in Tenders Electronic Daily in December 2016.

Moreover, **the market dialogue was of central importance** in helping the Municipality **to assess the feasibility of building a pre-school** that meets stringent environmental (and ecolabel) requirements. This instilled confidence that potential obstacles could be overcome. **The expertise of procurement staff was also essential to setting ambitious aims and providing direction**. By

harnessing the knowledge of procurers in combination with the expertise from the market, both could reach new levels of ambition with this project.

Five bidders submitted tenders. **Four had taken part in the pre-procurement market dialogue.** All bids met the compulsory requirements and the specified standards. **The market dialogue process undoubtedly increased the quality of bids.** These were well thought through and demonstrated careful consideration of the sustainability criteria and requirements. Energy consumption calculations and plans for achieving the Nordic Swan Ecolabel standard were convincingly presented. Bidders showed an understanding of the work involved in obtaining an ecolabel and set out realistic processes and management strategies.

Box 3.1: Selection and award criteria

Selection criteria

- **A nominated person to manage approval processes** (procurement for a Nordic Ecolabel kindergarten requires more staff time than a normal construction contract, particularly approval for the ecolabel).
- Bidders also had to detail:
 - how they would **ensure the building complied with Nordic Ecolabel requirements**, including managing subcontractors, by providing an example of ecolabel approval for a material or process;
 - how they would **ensure low energy consumption in accordance with the Nordic Swan Ecolabel**, and how to **ensure building elements and materials are weather-protected during the building process.**

Award criteria – the most economically advantageous tender (MEAT)

- **Price (50%):** the lowest priced offer receiving a maximum 50 points, with other offers being calculated in proportion to this.
- **Qualitative measures (50%)** split between:
 - Layout/functional characteristics (50%);
 - Facade (15%);
 - Traffic arrangement (15%);
 - Personnel allocated to project (10%).

How the materials and construction are kept dry at all times (10%).

Source: Reproduced from European Commission (2017d).

Moreover, bidders saw building the first ecolabel pre-school in Finland as an opportunity to add a prestigious achievement to their portfolio. Thus, the competition resulted in prices below the initial estimate of the public authority of around EUR 7 million. The winning bid was just EUR 4.85 million (and the highest bid was EUR 6.6 million). The **bidders were very competitive due to the attractiveness of the contract**. This is a valuable asset for a company that can demonstrate good practice, perhaps giving an advantage in future contracts. The final price was around EUR 6 million, including all the modifications executed during the building process. Building works began in Autumn 2016 and were completed in August 2017. The pre-school was awarded the Nordic Swan Ecolabel on 7 August 2017. Hyvinkää Municipality was also a finalist in the 2017 Procura+ Awards on sustainable and innovation procurement.

3.2 Stockholm County: beyond price, health sector procurement innovation

Health sector investment strategy in Stockholm County

Public administration in Sweden is based on national, regional and local government. At the regional level, Sweden has 21 counties whose Councils are responsible for matters of common interest which are too expensive for individual municipalities to manage. These include healthcare, which is a County Council's main responsibility, but they are also responsible for, public transport, support for business and industry, as well as regional growth and development⁵¹.

To meet the demand for modern, well-structured and cost-effective healthcare, in Spring 2006, Stockholm County Council (SCC) developed a long-term strategy for investments in the health sector. This included a priority model for investments and a survey of needs for 2006 to 2030 with a calculation of investment needed over that period.

The strategy covered investments with different objectives.

- 1) Strategic investments, to implement structural changes in the healthcare system and greatly improve services for citizens.
- 2) Investments to improve services locally, for example to meet new demands from authorities or the political leadership. Management of medical technologies also includes following up on equipment condition and planning for the replacement of old and out-of-date devices.

⁵¹ <https://international.stockholm.se/governance/city-governance/>

- 3) Reinvestments, to ensure and maintain the current level of services and/or to update operational technical solutions.
- 4) Rationalisation investments, to improve cost efficiency without compromising the service for citizens.

Procurement for innovation in health

In 2012, the SCC, which runs most of city's hospitals, offered an innovative tender for wound care products. SCC introduced a new kind of tender which looks beyond the product price. The request for bids included three hypothetical patient cases and asked bidders to calculate the total of cost of treatment for each⁵².

As part of the tendering process, suppliers were required to determine the cost of wound care using a method provided by SCC. This included the unit cost of dressings, the number of dressing changes, clinical personnel time to change dressings (and the subsequent labour costs), the likelihood of complications, as well as transportation costs to and from a patients' home. The tender also considered the expected level and frequency of complications caused or avoided by using the wound care dressing. Under the new procurement strategy, the contract was awarded to the bidder with the highest price products, but who could show a lower total cost of care and could document these claims with clinical evidence.

This procedure helped SCC to move beyond purchase price to consider costs on a more holistic level⁵³. This approach to value-based procurement enabled SCC to obtain a more comprehensive estimate of the cost, rather than an estimated unit cost, so it could choose a supplier whose price for the entire care cycle was more reasonable⁵⁴. Moreover, it could easily be used in medication procurement systems, when more than one drug provides an adequate response to a care episode and the variable should be the impact of the medication on the entire care, not just its cost.

This approach was inspired by value-based reimbursement for hip and knee arthroplasty known as OrthoChoice⁵⁵ that the SCC established in 2009. The County provides a fixed payment that covers all activities and procedures, from the initial patient visit and diagnosis through surgery, rehabilitation, and follow-up. Providers are responsible for any additional treatment due to complications, including revision of the replacement procedure. About 3.2% of the payment is paid only if the provider meets agreed outcomes. This new method has several advantages, such as fewer complications and revisions with a consequent

⁵² Gerecke, Clawson and Verboven (2015).

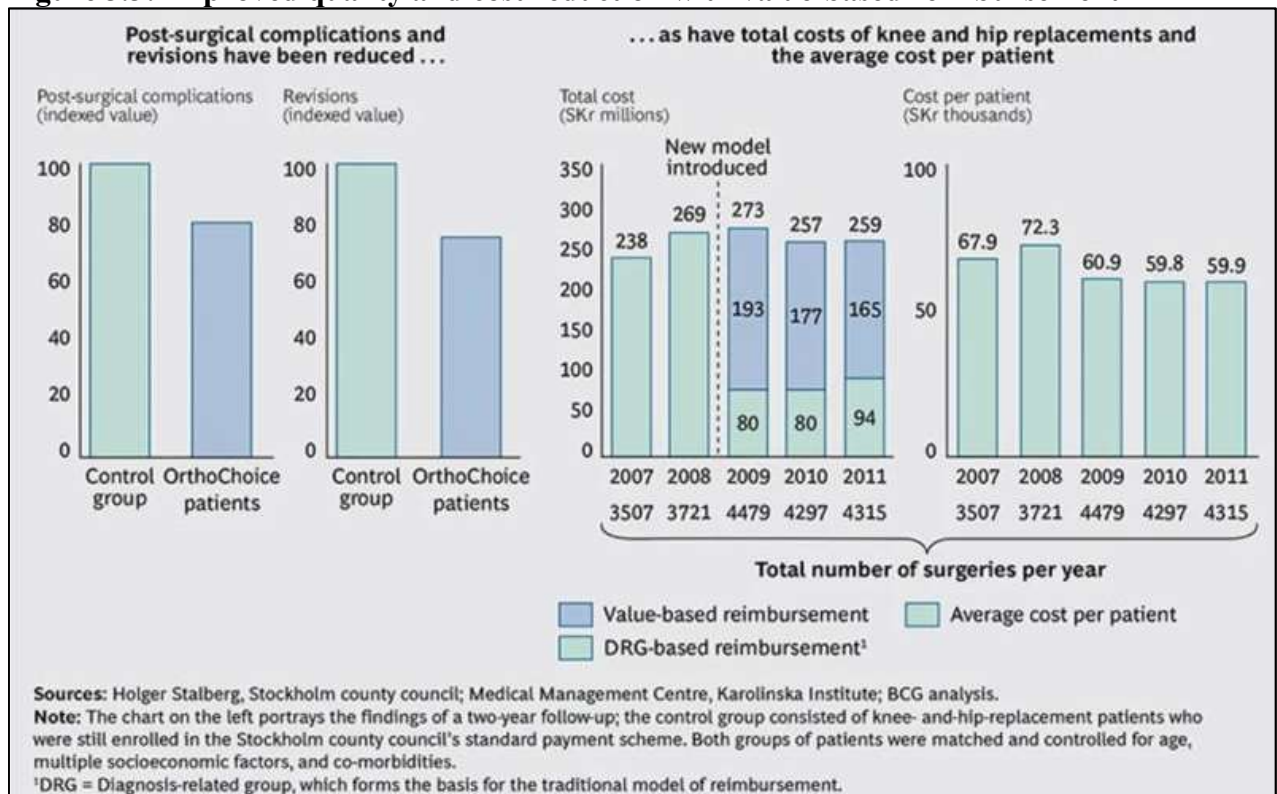
⁵³ Gerecke, Clawson and Verboven (2015).

⁵⁴ Institut du Québec (2017), pp.21-22.

⁵⁵ Clawson, Lawyer, Schweizer, and Larsson (2014), p.8.

reduction in the county's total costs and cost per patient for arthroplasty surgery (see Figure 3.3). This new method brought positive results and inspired other counties. By September 2013, seven counties, covering 65% of the Swedish population, considered rolling out the model across eight clinical areas by 2015.

Figure 3.3: Improved quality and cost reduction with value-based reimbursement



Source: reproduced from J. Clawson, P. Lawyer, C. Schweizer, and S. Larsson (2014), *Competing on Outcomes: Winning Strategies for Value-Based Health Care*, p.8.

The procedure adopted by SCC has a real impact on innovation in the health sector. It encourages clinical improvement which is as important for the health care system as it is for patients⁵⁶. In the same way, it is also a good opportunity for SMEs to be involved in public procurement and to innovate.

The case study shows that excessive **focus on purchase price fails to address the needs of stakeholders such as patients and providers, which are critical for healthcare systems under stress and social challenges**⁵⁷. Procurement is a key enabler of transformation to a value-driven system and goes hand-in-hand with value-based healthcare.

Developing widely-shared, patient-oriented metrics and standards to evaluate an innovation and the effectiveness of innovative procurement approaches is essential for the success of strategic, value-based procurement.

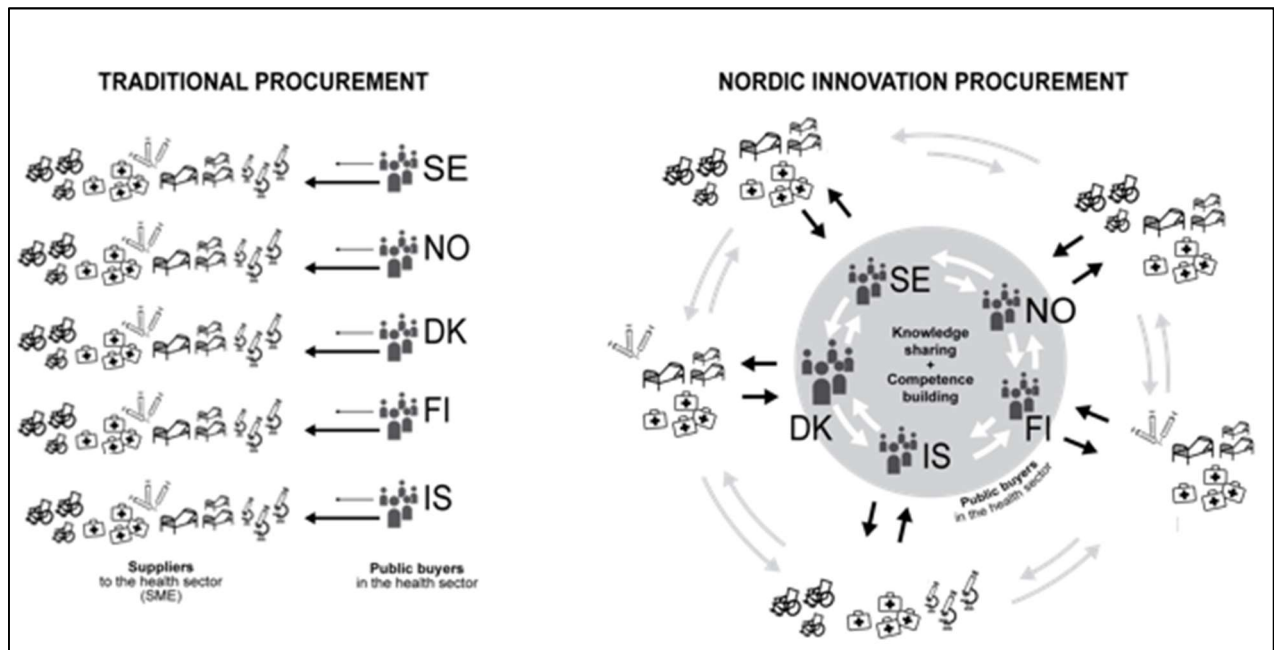
⁵⁶ Institut du Québec (2017), p.18.

⁵⁷ Nordic Medtech Growth 2 (2017).

Facilitating factors

The procedure is not limited to SCC, or Sweden. Indeed, **this new value-based procurement is often used in Nordic countries, also by LRAs to stimulate innovation.**

Figure 3.4: Nordic procurement innovation



Source: Nordon (2012), *The Nordic region as frontrunner in innovation procurement in the health sector, 2012.*

This model includes⁵⁸:

- a long-term view of success and broader definition of value, including patient experience and long-term efficiencies;
- enhanced collaboration and cooperation between public and private stakeholders;
- engagement of clinicians and other opinion leaders in the procurement process to determine value and enable and accelerate adoption;
- ensuring that value-based procurement is broadly adopted, aligned between all funders and buyers, and informed by data.
- According to this view, tender criteria have four dimensions (see Figure 3.5): patient outcome, costs, secondary benefits, and social impact.
- These dimensions highlight⁵⁹:
- criteria that relate to patient outcomes and their cost;
- aspects with more secondary relevance to patient outcome, typically benefits for healthcare personnel, the hospital, etc;

⁵⁸ Nordic Medtech Growth 2 (2017), p.11.

⁵⁹ Nordic Medtech Growth 2 (2017), p.13.

- social impact and the broader impact, which is emphasised in the EU procurement directive.

Figure 3.5: The value-based procurement framework



Source: reproduced from *Nordic Medtech Growth 2 (2017)*, p.14.

This case study shows how **Nordic procurers can be flexible and open to innovation, even adopting new approaches to procurement.**

3.3 Antwerp Province: strategic green procurement for maintenance and energy performance services

Strategic objectives

De Nekker is a sports and recreation complex near the city of Mechelen with facilities for both indoor and outdoor sports, with a large swimming pond and a newly-built indoor swimming pool. The Province of Antwerp in Belgium intends to adopt a long-term maintenance and energy performance contract for the technical installations with guaranteed reduced energy and water consumption.

In addition to energy and water savings and maintaining the technical installations, the contractor is also responsible for comfort requirements, monitoring and reporting energy performance and maintenance, as well as for financing the energy and water-saving investments. The Province of Antwerp is not investing any funds. The energy and water savings will repay the contractor's initial investment.

By improving management and maintenance of the site, the procurement objectives are:

- reducing CO₂ emissions;
- reducing water consumption;
- retaining comfort;

- not investing any public funds⁶⁰.

The contract guarantees an annual **CO₂ reduction of 174 tonnes** (from the electricity and gas savings) through a cogeneration installation, photovoltaic cells and small energy-saving measures. Additionally, an annual 4 825 m³ **reduction in the consumption of drinking water** is expected through a reverse osmosis plant.

Award criteria

The contract was awarded to the most economically advantageous tender (MEAT) based on:

- energy saving and water conservation (25 points);
- maintenance costs (20 points);
- plan of action – energy saving and water conservation (25 points);
- plan of action – maintenance (20 points);
- plan of action – sustainability (10 points).

More specifically, the tenders were rated on price, renewable energy supply, a web-based energy management facility with energy usage history and analysis and the ability to provide electronic billing information compatible with the one already used by the centre. The last two criteria were included to enable improved management of the energy supply.

In the first step of the tender procedure five applications were received, of which one did not meet the criteria. In the second step, each of the remaining candidates submitted a quote.

The contract was awarded in November 2016 and runs for 12 years. The new maintenance contract started on 1 January 2017.

⁶⁰ Energy savings come from a cogeneration installation. Electricity from photovoltaic cells and many additional small energy-saving measures were included in the maintenance programme. The installation should save up to 24% of electricity, reduce gas consumption by 4% through lower greenhouse gas emissions and save up to 30% of water with an osmosis plant which purifies the rinse water of pool filters to be reused. The owner does not invest any funds and the contractor is paid from the energy and water savings.

Difficulties

The main challenges were:

- Preparation for the tender took longer than anticipated.
- The inventory of existing technical facilities was not complete, and not all the information requested by tenderers could be provided.
- Implementing the changes to buildings (renovations, expansion, demolitions) affected energy and water consumption.
- During implementation, the payments related to energy savings require careful monitoring and analysis of indicators.

Key success factors

This experience can be **easily transferred and replicated in other regions**. Many governments could benefit as the needs are common across sectors, organisations, regions and countries. This is low risk when implementing a project with environmental benefits, without investing public funds.

The **legal expertise in applying/integrating environmental criteria into tender procedures, the length of the contract (12 years) and the competence of the public procurement officers all contributed to the success.**

3.4 Province of Bozen: E-procurement SME online support

The portal

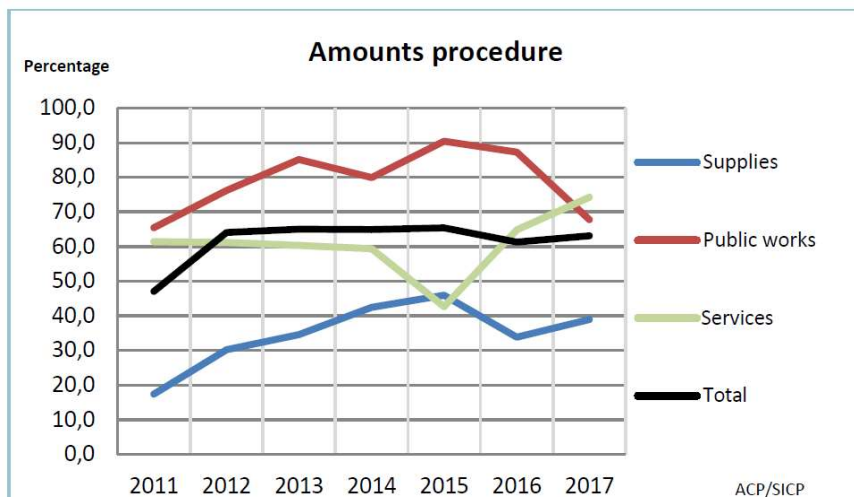
The autonomous Province of Bozen in Italy set up a dedicated web procurement platform on SICP (Sistema Informativo Contratti Pubblici dell'Alto Adige⁶¹). The platform supports procurement for the Province as well as other local authorities, such as municipal authorities, hospitals, and research centres.

In 2017 SICP supported some 65 500 procurement procedures worth EUR 1.45 billion, an increase of 2.6% from 2016⁶². The increase was mainly due to broader use of SICP in procedures below EUR 40 000 related to tourism, sport, culture and research. Almost 50% of procurement procedures are managed electronically end to end. SICP also enables a contracting authority to manage the entire process through the portal, from publication of the tender to the award. SICP now also includes an electronic catalogue.

⁶¹ South Tyrol Autonomous Province public procurement electronic information system.

⁶² South Tyrol Autonomous Province, (2018).

Figure 3.6: Type of procurement procedure under SICP



Source: South Tyrol Autonomous Province, (2018), p.10.

Key sections of the website

The website includes:

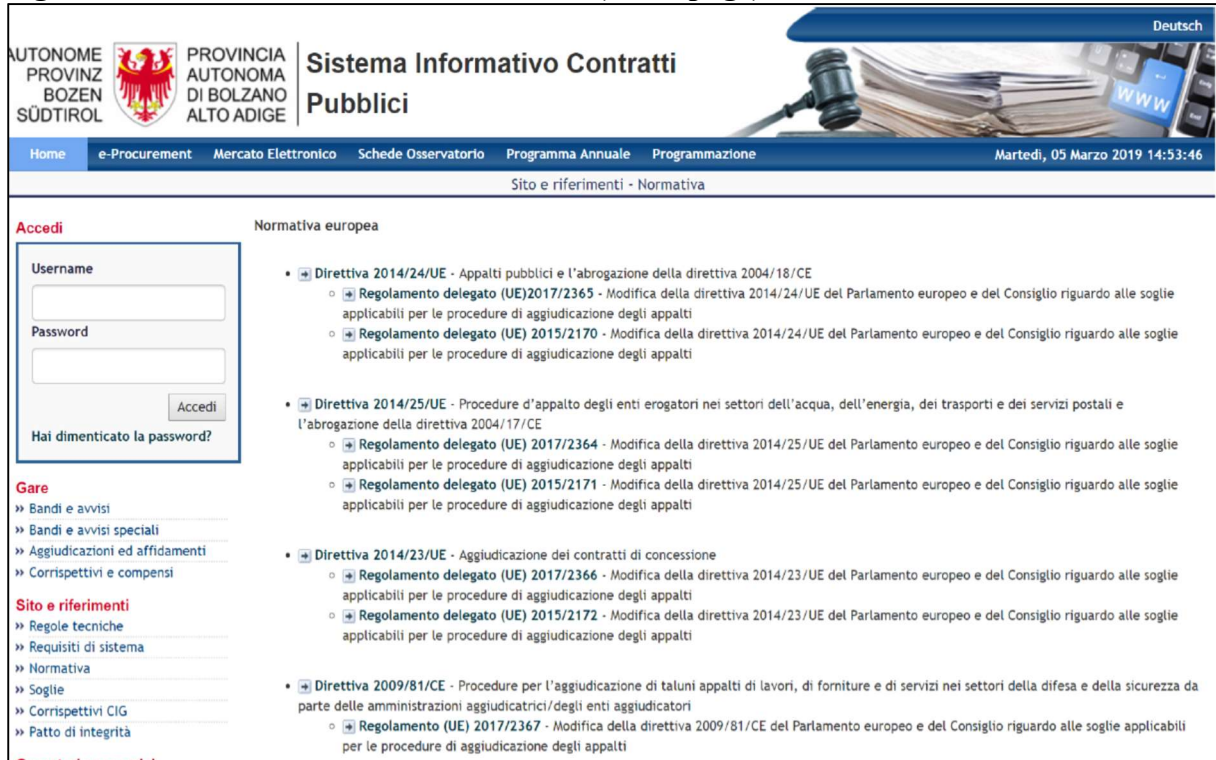
- HOME, which is the gateway to all the information on the site.
- E-PROCUREMENT, to access tender documentation which is restricted to registered businesses. The page has sub-pages which underline the transparency of the web platform. For example, in ‘Applicazioni e affidamenti⁶³’ all the results of procedures can be viewed and downloaded in CSV format. ‘Corrispettivi e compensi⁶⁴’ contains the types of contracts with all the related detail and information, which can be also downloaded.
- MERCATO ELETTRONICO (online trading): is the ‘Mercato Elettronico Pubblica Amministrazione⁶⁵’ (MEPA) page with all notices concerning the purchase of goods and services by public administration.
- SCHEDE OSSERVATORIO (information fiches), covers all the current procurement procedures in the region including other public bodies and municipal authorities.

⁶³ Applications and awardings.

⁶⁴ Payments.

⁶⁵ Public administration electronic market.

Figure 3.7: Screenshot of the SICP website (home page)



The website also includes guidance documents such as various handbooks:

- General, with basic information on the national and EU legal framework;
- Operational, for businesses looking to use the e-procurement tool, from registration to an offer;
- Sector specific, advising potential bidders on contracts (for example, feasibility or engineering studies);
- Topic specific, on aspects of procurement, such as transparency.

The portal also offers online learning and other information (e.g. slides). To support businesses, SICP also provides a helpline for more specific questions. Last but not least, SICP has a specific reporting section with detailed information on the volume and type of procurement procedures, contracting authorities and statistics on awards.

The case study shows **how a local authority can adopt and implement a structured and efficient communication activity promoting high transparency** which promotes cross-border public procurement as it is bilingual and which is actively involved in the Euregio European Grouping of Territorial Cooperation⁶⁶.

⁶⁶ The Euregio Tyrol-Alto Adige-Trentino (Europaregion Tirol-Südtirol-Trentino in German, Europaregion Tirol-Südtirol-Trentin in Ladin, European Region Tyrol-South Tyrol-Trentino in English) is a joint project of cross-border cooperation between the Austrian federal state of Tyrol and the Italian Autonomous Provinces of Bolzano – Alto Adige and Trento.

3.5 South Dublin County: procurement strategy enhancing administrative capacity

The 2015-2017 strategy

South Dublin County Council created a governance structure and developed specific actions to support the Council with public procurement. This should improve administrative capabilities and the capacity to collaborate with businesses and other institutional levels.

Governance was a key aim of the Procurement Plan 2015-2017⁶⁷, which identified five high-level objectives:

1) *Strengthened governance and procurement framework.* The Council underlined that ensuring **strong governance** is critical to procurement and the Plan must give it the highest priority. So, the Council established a Procurement Steering Group, with a Procurement Officer and a Procurement Unit to monitor and coordinate procurement in the organisation.

The **Steering Group** includes the Director of Service with responsibility for procurement and the Procurement Officer together with middle and senior procurement managers representing all Departments and Directorates of the Council. The Group is chaired by the Chief Executive and meets bi-monthly to address both strategic and operational procurement issues. It includes the Director of Service with responsibility for procurement and the Procurement Officer together with middle and senior managers representing each Council department. The Steering Group coordinates and monitors preparation and operation of the procurement pipeline (a timetable of anticipated tendering opportunities) and database of contracts for the organisation. The Group monitors progress of the Corporate Procurement Plan and prepares an annual report, Measurement and Monitoring of the Implementation.

The **Procurement Unit** provides ongoing assistance to staff preparing requests for tenders/quotations. It also develops and coordinates procurement training, centrally manages the publication and receipt of tenders and quotations via the e-tender platform, and coordinates the publication of summary information on contracts awarded in line with EU and national requirements. The Procurement Unit and Steering Group actively promote and monitor shared arrangements and the level of uptake is reported in the annual monitoring and implementation report.

⁶⁷ South Dublin County Council, *South Dublin County Council Procurement Plan 2015 - 2017*.

The Procurement Unit:

- provides ongoing assistance to staff preparing requests for tenders and quotations;
- develops and coordinates procurement training for staff;
- centrally manages the publication and receipt of tenders and quotations via the e-tender platform; and
- publishes summary information on contracts awarded, in line with EU and national requirements.

2) *Collaborative approach to procurement.* **Collaboration** is an important aspect of the strategy and the 2015-2017 Plan. The Procurement Unit and Procurement Steering Group actively promote and monitor the uptake of shared arrangements, and the level of uptake is reported in the annual monitoring and implementation report. Moreover, the **Procurement Officer** participates in the Dublin Regional Procurement Forum to monitor and maximise opportunities for shared procurement with other local authorities in the Dublin region. The Procurement Officer also engages with the Office of Government Procurement (OGP), the Local Government Strategic Procurement Centre and other national networks to keep abreast of developments and best practice. Staff across the organisation participate in sourcing and evaluation teams to assist implementation of the collaborative procurement model.

3) *Value for money, costs and contract performance.* To comply with procurement obligations, **requirements must be clearly communicated to purchasing staff and contract managers.** Multiple channels in the Council enable this, including a dedicated procurement page on the intranet and a Procurement Manual. Moreover, regular information sessions by the Procurement Unit reinforce South Dublin County Council's procurement policies, purchasing thresholds and applicable procedures. The Procurement Unit researched and developed a comprehensive Corporate Procurement Training Programme to upskill staff responsible for preparing tenders and managing contracts, which was rolled out in 2017. The course was researched and developed by the Procurement Unit to advance the organisation's procurement strategy.

A suite of resources enabling managers to comply with procurement standards are available in the procurement section of the intranet. OGP templates are used for open tender competitions, while local templates are used for quotations, frameworks, and restricted tenders for supplies and services. The Capital Works Management Framework documents are used to procure works. **Common procurement documents across the organisation are an advantage for businesses, making participation in tenders easier.** Ongoing expenditure

analyses at both organisational and departmental levels monitor procurement activity, and summary details are published in the annual Measurement and Monitoring of Implementation report.

4) *Business engagement*. A key action in the 2015-2017 Plan related to **improved information resources on procurement** for suppliers on the Council website⁶⁸. These include details of Council procurement methods and how to register for tender opportunities. The page includes the Corporate Procurement Plan, annual Measurement and Monitoring reports and summaries of contracts over EUR 25 000. Moreover, **business information sessions were held annually** by the Local Enterprise Office to support suppliers interested in doing business with the Council and other public bodies.

National circulars and the Council's local policies require that tendering is proportional and reasonable, ensuring there are no unnecessary barriers for suppliers, particularly for SMEs. Therefore, **structures such as lots have been used** to facilitate the participation of SMEs. Tools such as Prior Information Notices to engage with the market prior to tendering are also used.

The Council is also involved in the Smart Dublin project⁶⁹, with the three other Dublin Local Authorities. The project aims to engage with smart technology providers, researchers and citizens to solve challenges and to improve city life by developing innovative solutions to common problems. As part of Smart Dublin three Small Business Innovation Research competitions have been run in partnership with Enterprise Ireland⁷⁰. These tackle illegal dumping, monitor and predict blocked gullies in high risk flooding areas and design wayfinding solutions in the Dublin region.

5) *Sustainable development*. Under the 2015–2017 Plan, the **Council participated in green procurement initiatives**. Adhering to regulatory requirements is key to achieving environmental objectives, and this became a standard element in all contracts. The Council was also engaged with the GPP4Growth⁷¹ project led by the Department of Communications, Climate Action and Environment, which started in 2017. This project brings together nine partners from nine countries to exploit opportunities and to exchange experiences and practices for improving capacities to promote growth through green procurement.

⁶⁸ <http://www.sdcc.ie/business/procurement>

⁶⁹ <http://smardublin.ie/>

⁷⁰ <https://www.enterprise-ireland.com/en/About-Us/Services/Procurement/SBIR-Ireland/>

⁷¹ <https://www.interregeurope.eu/gpp4growth/>

South Dublin County Council also committed to exploring opportunities for **including a social clause** during 2015–2017. Social clauses place obligations on suppliers to perform actions based on broader policy considerations. They can cover environment protection, lower unemployment, support for those with disabilities, reintegration of ex-prisoners, supporting SMEs, etc. For instance, the Kilcarbery Housing Project advertised in April 2017 includes a social employment clause as part of the development agreement.

The 2018-2020 strategy

The new plan for 2018-2020⁷² is built on established structures and processes, and is divided into seven key areas. For governance, the dedicated Procurement Officer and Procurement Unit continue to support purchasing staff in applying good procurement practice in the Council. To continue best practices, all publishing is through the Procurement Unit, all South Dublin County Council tender competitions above national and EU thresholds are published on www.etenders.gov.ie, all mini-competitions from South Dublin County Council, other Local Authorities, or national frameworks available to the Council (e.g. National Transport Authority, Department of Justice) are run via www.etenders.gov.ie and, where feasible, quotations are sought via QuickQuotes.

Moreover:

- objectives from the Corporate Procurement Plan are incorporated into the **Performance Development Management System**, as actions in Team Development and Personal Development Plans;
- the Council intends also to prepare and publish an **annual Public Spending Code Quality Assurance Report** in line with national circulars;
- the Council provides **training for staff** to support compliance with the Public Spending Code;
- project managers carry out **project appraisals throughout the life cycle of the project** in keeping with the requirements of the Code.

Since 18 October 2018, the Council has accepted all OJEU level tender submissions electronically, as per EU Directive 2014/24/EU. The Council will facilitate a smooth transition to electronic submissions, working with the OGP and other national bodies.

Furthermore, a **Policy and Procedure on Health and Safety** in procurement for supplies and services will be prepared. The Policy and Procedure will be

⁷² South Dublin County Council, *South Dublin County Council Procurement Plan 2018 - 2020*.

implemented by the Procurement Steering Group. The Health and Safety Officer will advise on implementation and undertake inspections and audits under this policy and procedure. The Procurement Unit will carry out pre-publication checks on some tenders to ensure compliance with procurement rules.

Training for staff in green public procurement will include using green procurement criteria in tenders. Finally, the Council will also **engage with business support organisations**, such as the Local Enterprise Office, South Dublin Chamber and InterTrade Ireland, on the Council's tender opportunities and will promote improved programmes for businesses interested in tendering for public sector contracts.

3.6 Marche Region: qualitative criteria for a paediatric hospital

The project

Marche Region in Italy has a longstanding tradition of excellence in childcare. Salesi Hospital is a benchmark, not only in Italy but also for the whole Adriatic Basin. Young patients mainly come from Central and Southern Italy, but also from the Balkans. However, the hospital structure (in Ancona) cannot respond to increasing demand. So, the local government decided to build a new regional paediatric hospital, Nuovo Salesi.

The type of patients and the earthquake that hit the region in 2016 mean the hospital must meet the highest standards of accessibility and safety. The new exclusively paediatric structure will have 112 beds and be anti-seismic, with low energy consumption. It is designed to serve the Adriatic and potentially the Adriatic-Ionian macroregional space (with 7 million users).

The Nuovo Salesi will be next to the Emergency Room of the Regional Hospital in Torrette di Ancona. The 21 000m² building will be about 20 metres tall and have four floors of some 5 500m² per floor. The tender price was EUR 46 million.

Figure 3.8: Digital rendering of the future hospital



The procurement procedure

A specialised regional procurement unit (Stazione Unica Appaltante Marche - SUAM) was set up following the national law⁷³ prescribing that single contracting stations should be established at regional level to ensure transparency, regularity and cost-effectiveness. With regional law 14 May 2012, No. 12, SUAM was established as the only Contracting Body of the Marche Region. SUAM prevents the risk of corruption and directly manages procurement. It also provides support and coordination to the regional administration and to local authorities⁷⁴.

SUAM had a double challenge, ensuring several quality criteria for the new hospital, while reducing discretion and a lack of transparency. In addition, the new hospital should be constructed quickly because of the earthquake emergency and the inadequate conditions of the existing hospital.

To solve these challenges, SUAM translated the qualitative criteria into objective elements to be substantiated through documented evidence. SUAM was aware that bidders had enough technical knowledge and did not want to pre-empt possible improvements to the project. Therefore, SUAM set basic as well as incremental requirements, to allow innovation and flexibility.

MEAT criteria are 80% of the tender, price 16% and time 4%. The MEAT criteria cover:

- improvements of the basic (architectural) project,
- environment performance of the building,
- contract management capacity.

⁷³ Article 13 of law 13 August 2010, No.136 - Extraordinary plan against the mafia.

⁷⁴ More information on SUAM is available at: <http://suam.regione.marche.it/Home.asp>

Table 3.1: Example quality criteria⁷⁵

Type of criteria	Criteria
Architecture quality	Increased open space covered by automatic irrigation
Environmental performance	Less heat transfer of external walls (than the original project)
	Improved energy class (from A1)
	Increased reuse of inert material (than the original project)
Contract management capacity	Video surveillance on the state of works for the contracting authority
	Extended warranty on mobile equipment (minimum 2 years)

Where possible the quality criteria were translated into quantitative measures for scoring. Also, the bidder must prove the criteria with documentation. The contracting authority intended **to reduce the asymmetry of information and build its own capacity and knowledge. The translation of qualitative criteria into quantitative and more operational criteria should maximise transparency, reduce discretionary powers and combat corruption.**

Table 3.2: Operational criteria

Type of criteria	Criteria	Scoring	Evidence
Architectonical quality	Increased open space covered by automatic irrigation	+ 33% = 0.5 + 66% = 1 + 100% = 1.5	3 pages with annexes 3 technical drawings
Performance	Increased re-use of inert material	<i>(% proposed reused of inert / % of reused material in the technical offer) -1</i>	Technical relation of 2 pages

The tender was published on 21 September 2018, closed on 31 December 2018 and is expected to be awarded in spring 2019.

⁷⁵ For more information see Annex B1 of the tender ‘Procedura aperta per l’affidamento dei lavori di realizzazione della nuova struttura ospedaliera materno–infantile ad alta specializzazione ‘g. salesi’ in comune di ancona, località torrette’.
https://appaltisuam.regione.marche.it/PortaleAppalti/it/ppgare_bandi_scaduti_lista.wp?actionPath=/ExtStr2/do/FrontEnd/Bandi/view.action¤tFrame=7&codice=G03279.

4. Conclusions and recommendations

This study indicates that LRAs see the 2014 Directives on public procurement as an improvement. The incremental approach with new opportunities and options, while providing for the gradual adoption of certain provisions is well understood and appreciated. LRAs **support the overall rationale and the key points** of the Directives, especially:

- the strategic use of public procurement;
- e-procurement and supporting SME participation;
- the promotion of transparency and integrity.

LRAs are well aware that public procurement can help to achieve **multiple strategic objectives**. They also confirmed that the 'Most Economically Advantageous Tender' (MEAT) principle was often used before transposition of the new Directives. Although the case studies confirm that LRAs understand the importance of setting suitable quality criteria, there is no clear increase in the use of MEAT⁷⁶. Even when using MEAT, LRAs in some Member States can be reluctant to choose anything but the lowest bid fearing this would not be seen as proper protection of public funds⁷⁷.

Furthermore, this study confirms that **LRAs use quality criteria to promote social and environmental objectives** through public procurement. This is also shown by many good practices involving LRAs across the EU⁷⁸. Some LRAs are hesitant about accepting the increased discretion of using qualitative criteria. They also perceived that translating qualitative criteria into objective and verifiable assessment can be difficult.

LRAs have embraced **e-procurement** by developing their own ICT systems or adopting national public procurement portals. Whereas e-procurement can even go beyond Directive requirements, there are coordination and interoperability problems and the use of e-procurement is not always homogenous within a Member State.

LRAs agree that **SMEs still find difficulties in being involved** and highlighted obstacles for start-ups and newcomers to meet economic or professional capacity eligibility criteria in specific cases. There is also evidence that some measures in the Directives to stimulate SME participation have not yet resulted in expected

⁷⁶ European Commission (2018c). The data refers to all contracting authorities, so is not specific to LRAs.

⁷⁷ Treumer, S., Comba, M. (2018).

⁷⁸ See for example the good practice experiences of green public procurement gathered by the European Commission at http://ec.europa.eu/environment/gpp/case_group_en.htm

improvement. For instance, there is only a limited increase in the proportion of tenders divided into lots⁷⁹.

Nonetheless, initiatives to boost SME participation in public procurement procedures have been identified in the Member States. These aim to address challenges, including delayed payments to economic operators, a lack of awareness on key aspects of public procurement by SMEs, and the high potential costs of legal action.

Transparency and prevention of corruption is well understood and there were no specific objections or issues. Indeed, national legislation is sometimes more demanding, implying stricter rules for LRAs concerning public procurement.

Other objectives and aspects of the reform are **less shared and implemented** notably:

- simplification;
- advanced innovative procedures.

For **‘simplification’**, there is an issue with **multi-level transposition of the Directives**. Transposition involves national and sub-national authorities and includes multiple legislative and administrative acts. Together with the need to address typical national features, this can greatly increase complexity and the risk of gold plating. So, the new framework does not always simplify the process for LRAs. They sometimes feel the opposite, as their concept of ‘simplification’ is strongly related with ‘stability’, i.e. the rules remaining unchanged for a longer period of time. Moreover, benefits for LRAs from some simplification provisions strictly depend on national rules. For example, there are limited benefits from higher thresholds for sub-central authorities where national laws establish very similar requirements for public procurement above and below the thresholds.

LRAs are also very cautious in implementing new procedures such as the **competitive procedure with negotiation**. Contracting authorities want to minimise any allegations of misconduct, but there is also a need to increase their competences and capacity to interact with the market.

Use of innovation procurement, including **innovation partnership or pre-commercial procurement**, has so far been limited to a few leading LRAs in the metropolitan areas of some Member States. The Directives demand specific know-how which is not always available in LRAs, including on ‘functional’ instead of ‘technical’ specifications. Further extension of existing practices to

⁷⁹ European Commission (2018c). The data refers to all contracting authorities, so is not specific to LRAs.

other contexts needs to consider the progress in each country on implementing policy measures that mainstream innovation procurement⁸⁰.

Case studies under this study **offer two lessons** that can help to overcome some difficulties that LRAs face with public procurement.

- To exploit the potential fully, procurement needs to move from an administrative procedure to being a part of **overall strategy** towards social and economic goals. Indeed, the Stockholm case shows that the starting point was to go beyond the purchase price and focus on the needs of stakeholders and healthcare systems. In this case a more holistic approach not only improves quality and reduces costs but also improves the healthcare system and stimulates innovation. This strategic approach entails strong collaboration between different departments. Efficient public procurement requires professional personnel and **intense internal collaboration**. The South Dublin County case highlights that the procurement unit would not work well in silos but became the driver of innovation and change. Furthermore, successful procurement is based also on **keeping communication open** with potential providers. This enhances transparency as well as capacity ‘on the other side’ and can cover specific procedures or also be continuous as with the Province of Bozen web site.
- More **specific elements** of procurement include:
 - **The market dialogue** that on more than one occasion was fundamental in helping LRAs to assess the feasibility of a project with stringent requirements and undoubtedly increased the quality of the bids. The experience of Hyvinkää municipality shows that a ‘Request for Information’ prior to publication of the tender not only helps test the ‘appetite’ of the market but also collects technical information on the content of the tender.
 - LRAs try to reduce information asymmetry and build their capacity and knowledge by **translating qualitative criteria into quantitative ones**. This maximises transparency, reduces discretion and combats corruption. In Marche Region for instance, all the criteria were defined as measurable parameters. The tender also requested a short explanation (technical note) to underpin qualitative measurements.

The study also shows that the Directives entail not only new legal technicalities,

⁸⁰ See pwc (2019) for a benchmarking of national policy frameworks for innovation procurement.

but a **change from a bureaucratic to a result-oriented and policy-driven approach**. Therefore, the challenge is not only increasing the level of knowledge but, more challengingly, provoking a cultural paradigm shift which entails time and effort. **The approach of the Directives is not in question, but it may need to be accompanied by additional support**, especially to exploit the opportunities of using public procurement as an innovation driver. This support should be provided at both European and national levels.

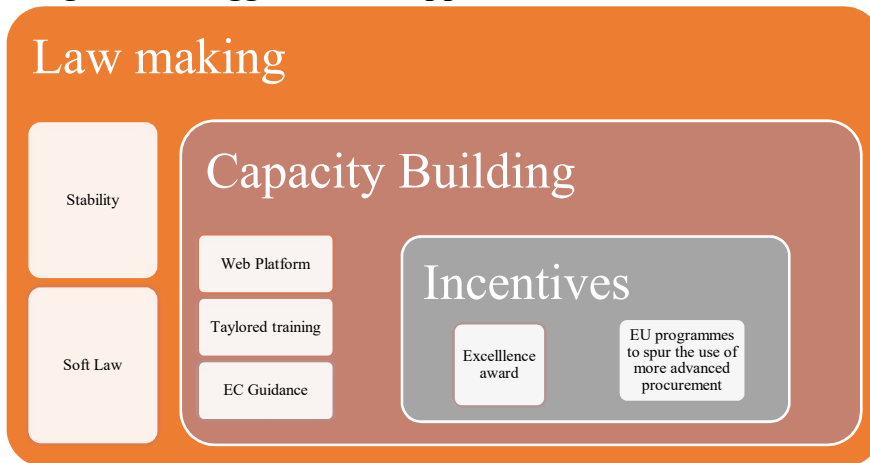
The **Commission recommendation** on professionalisation of public procurement⁸¹ demands that Member States ‘*encourage and support contracting authorities/ entities in rolling out professionalisation activities.*’ The recommendation directly addresses national public administrations to develop a policy infrastructure, improve human resources through training and career management and develop ‘systems’ such as tools and methodologies. However, from our interviews, the **European level** is still a determinant point of reference and pivotal in sharing experiences and could provide:

- a common competence framework for public procurement at European level;
- stocktaking of developments in other Member States and internationally;
- excellence awards to spur innovation, green and socially responsible public procurement;
- exchange of good practices;
- guidance and methodological handbooks.

All these activities have been already partially implemented by the Commission (DG REGIO) as they seem appropriate for the EU level. Therefore, the LRAs see a role for the EU and have specific suggestions for the law-making process, providing specific incentives and capacity building.

⁸¹ European Commission (2017d)

Figure 4.1: Suggestions to support LRAs at EU level



Source: t33 elaboration.

- LRAs request **an enhanced approach to legislation** concerning:
 - **Stability**, as a stable legal framework is important to consolidate the changes (especially for shifts in administrative culture);
 - Optional provisions as ‘soft law’ could include **off-the-shelf solutions** with pre-determined technical elements that public authorities can directly implement or use as inspiration when designing their tailored versions. Moreover, the off-the-shelf solutions could address concrete cases and serve specific sectors.

• **Support capacity building.** Many activities and tools are already available at EU level, so the existing instruments could be used more efficiently and fine-tuned:

- **A web platform.** The existing dedicated Commission web pages already offer a stream of communication from the EC and provide an exhaustive overview of the activity of the Commission Action Plan on public procurement (see Section 1.2). They provide up-dated access to information on training and peer to peer activities as well as to case studies and reports. However, users could be better served by filtering the information and improving access to the material. Rather than new content, a reorganisation / capitalisation of existing material is needed. For example, existing training slides could be flagged based on the level of skill (basic/ medium/ advanced) or theme (e.g. type of procedures).
- **EC guidance.** LRAs appreciate the EC guidance on Green Public Procurement, Innovation and public procurement in ESIF programmes. EC guidance increases the confidence of public authorities to include ‘green criteria’ in tenders and empowers people working in ESIF-related projects who are not procurement experts. For more innovative procedures (e.g. innovative partnership) it also provides models and templates.
- **Tailored training.** Our interviews and other EC studies⁸² highlight that in general LRAs are sufficiently equipped for managing ordinary procurement and, more importantly, national training programmes are generally accessible. Additional training is needed for innovative types of procurement (e.g. innovation partnership) or less common ones (e.g. competitive procedure with negotiation). This type of training can be channelled using the Peer 2 Peer platform (TAIEX – REGIO).

• **Incentives to innovate.** In addition to a capacity building platform, financial and reputational incentives are needed to move to innovative forms of procurement. A useful example is the Horizon 2020 Programme, which allowed public authorities to experiment with new practices. It provided a **financial incentive** (risk-sharing) and supported the sharing of experiences among partners. ‘**Awarding excellence**’ can also be useful to promote innovation and experimenting. Examples are the COR European Entrepreneurial Region (EER) rewarding EU regional entrepreneurial policy strategy⁸³, or the DG REGIO ERDF award for the most innovative projects REGIO- STARS⁸⁴.

82 European Commission (2016a)

83 <https://cor.europa.eu/en/engage/Pages/european-entrepreneurial-region.aspx>

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Annex A – Questionnaire for the interviews

The questionnaire was used to interview:

- **Christina Bauer**, Head of the Interreg Alpine Space programme, Salzburg Land (AT);
- **Martina Campbell**, Administrative Officer, Procurement and Shared Services, South Dublin County Council (IE);
- **Carlos Chiatti**, Professor at Lund University (Sweden), expert of Pre-Commercial Procurement in health, founder and research director of Tech4Care S.r.l. (IT);
- **Inkeri Kontiola**, Procurement specialist, Tuusula municipality (FI);
- **Alessandro Lucchetti**, Professor of Administrative Law in Italy;
- **Luca Mercuri**, Public Procurement Advisor, Marche Region (IT);
- **José Antonio Moreno Molina**, Administración General del Estado de España (ES);
- **Emilia Piselli**, Private lawyer/expert with relevant experience with LRAs (IT);
- **Todor Popov**, Legal Advisor, Municipality of Gabrovo (BG);
- **Arno Schuster**, Deputy Director Office for European Integration, Province of Bozen (IT);
- **Laurens Smaers**, Public Procurement Advisor, Province of Antwerp (BE);
- **Ramona Tanasa**, External Cooperation Head of Office, North-East Regional Development Agency (RO).

1 How is your organisation implementing the new public procurement provisions? - General introductory question

2 Strategic procurement: social, environmental and innovation criteria

2. Did you apply any social/environmental award criteria?

1

2. Did you require specific certifications?

2

2. Did you take into account full life cycle costing?
3
2. Which are the main difficulties in including social/environmental award criteria?
4
2. Beside the social/environmental criteria, do you see any other strategic aspects to be taken into consideration?
5
- 3 Facilitate the involvement of SMEs**
3. Did you break any contract into lots?
1
3. Which cap do you generally adopt in relation to turnover - less than two times the overall value of the bid?
2
3. How do you relate with e-CERTIS?
3
3. To what extent has document simplification been taken into account as the European Single Procurement Document (ESPD)?
4
3. Which are the main challenges in implementing the provisions related to SME facilitation?
5
3. Do you have any specific initiative for SMEs or for start-ups?
6
3. Is there any link between the way you handle procurement and the Small Business Act?
7
3. Do you have any suggestion to improve the involvement of SMEs?
8
- 4 Exclusion criteria and safeguard against corruption**
4. Do you increase the use of self-declaration in relation to the bidder's credentials due to the new provisions? And in which areas?
1
4. Do you use 'poor performance' as a ground of exclusion of supplier?
2
4. Which safeguards do you put in place against potential conflict of interests?
3
4. Do you envisage time limits to exclude suppliers and for which reasons?
4
4. In relation to exclusion, do you have any 'self-clean' procedure in place?
5
4. Which are the main obstacles in put in place procedure complying with those new public procurement provisions? Do you have sufficient administrative capacity on this specific aspect?
6
- 5 Procedure changes**

5. Did you put in place any preliminary market consultation? How do they
1 work?
5. Did you use any competitive procedure with negotiation?
2
5. Did you implement the ‘innovative partnership’?
3
5. To what extent did you use the ‘competitive dialogue procedure’?
4
5. How did you implement ‘light touch’ regime for social and health
5 services?
5. How did you exploit the new flexibility in the supplier's respond time
6 limits?
5. Which are the main difficulties in adopting innovative procurement
7 forms? Do you have sufficient administrative capacity on this specific
aspect?
5. Are any new form of procurement connected with other simplification
8 measures?

6 Electronic procurement

6. How does electronic communication work?
1
6. Did you implement any form of ‘dynamic purchasing system’?
2
6. Did you use any electronic catalogue?
3
6. Did you see any challenge in electronic public procurement? Do you
4 have sufficient administrative capacity on this specific aspect?
6. Are the new forms of electronic procurement linked to a wider
5 digitalisation strategy in your institution?

7 Policy support

7. Do you need specific support for enhancing your administrative
1 capacity?
7. Do you think that having an EU common platform to share experiences
2 could be useful?
7. Do you see any EC guidance useful? In which specific aspects?
3
7. Do you think that training/coaching at regional/local level might be
4 useful?
7. Is there any other specific support you consider useful?
5

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ISBN 978-92-895-1016-5
doi:10.2863/242784

QG-03-19-430-EN-N



**European Committee
of the Regions**

Created in 1994 following the signing of the Maastricht Treaty,
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