



Public Procurement in the European Union: Prevention of Corruption and Collusion

EU-Brazil Expert Workshop on Good Practice in Public Procurement
Brasilia, 3 April 2019

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Fighting corruption and collusion in public procurement

Transparency is the worst enemy of corruption. If followed in their letter and spirit, public procurement rules can prevent corruption and malpractices.

Rules for public procurement are in place for transparent and non-discriminatory procedures

Contracting entities play a key role in ensuring transparency of the procedure.

Transparency (I)

1. **E-procurement** generalised and mandatory
2. **Separate legal framework for concession contracts** enhances transparency
3. Standard form for self-declaration for bidders:
"European Single Procurement Document"
→ more difficult to exclude tenderers in selection phase
4. **Copies** of >10 Mio EUR works + >1 Mio EUR supplies and services **contracts** must be made available on request; exceptions allowed only in the case of commercially sensitive information

Transparency (II)

5. **Scope of public procurement directives** includes **post-award phase** (particularly vulnerable to corruption); the **modification of contracts** during their term without a new tender procedure is now regulated
6. **Guidance for contracting authorities** by Member States and administrative exchange of information is mandatory; e.g., on exclusion grounds
7. Ensuring a level playing field by **preliminary market consultations**: participation of a previously consulted company must not affect competition; any information must be shared with all bidders

Other provisions

1. Exclusion grounds include situations where bidders:
 - have entered into agreements aimed at distorting competition;
 - have tried to influence or mislead the contracting authority;
 - have tried to obtain confidential information;
 - where a conflict of interest cannot be effectively remedied by other less intrusive measures;
2. Notion of "conflicts of interests" defined at EU level
3. Obligation for Member States and contracting authorities to take appropriate measures to effectively prevent, identify and remedy conflicts of interests
4. Member States must monitor and report on measures to prevent and detect procurement fraud, corruption and conflicts of interest and other serious irregularities

Collusion: the challenge

- Anti-competitive behaviour on the part of economic operators
- Structural deficiency compromising the benefits of an open and transparent procurement market
- Limits choice of public buyers and risks undermining efficient public spending

European Commission action against collusion

Focus on pre-award phase: minimise risk of collusion
and address suspected collusion

- Design transparent, open and truly competitive procedures
- Incite economic operators to participate
- Raise awareness among public buyers
- Professionalise procurement officers
- Provide support and guidance
- Foster exchange between procurement and competition authorities

European Commission guidance

By end of 2019: user-friendly guidance to contracting authorities on how to apply Art.57(4)(d) of Directive 2014/24

"Contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure any economic operator [...] where the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition."

Taking forward integrity policy in public procurement

2015 Single Market Strategy ('SMS'):

*Improve the transparency and quality of national procurement systems through **better data**, by the establishment of **contract registers** covering the whole life cycle of contracts and by supporting the development and deployment of a **data analytics and anomaly-detection tools** to better uncover existing or **prospective procurement irregularities**.*

Single Market Strategy work strands (I)

Foster full **take-up of e-procurement**: promote good governance through enhanced transparency.

Promote establishment of **contract registers**: make available digitalized contracts, structured summaries as well as full wording, including contract performance conditions, terms of delivery, and subsequent modifications.

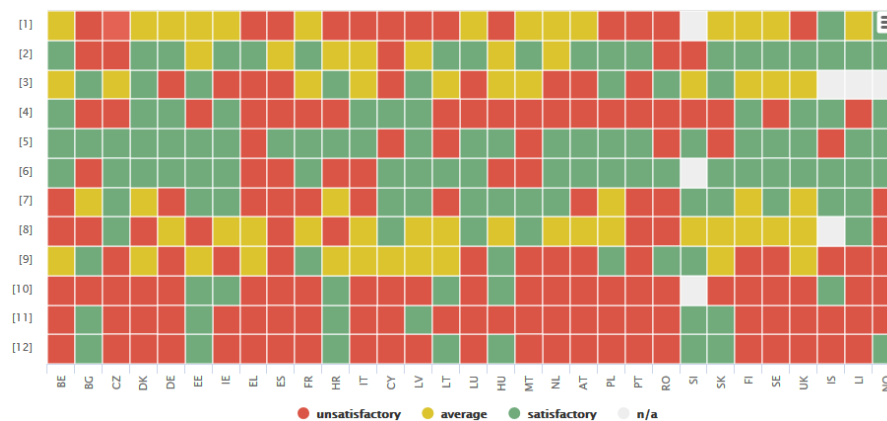
EU database on irregularities:

- Based on available data (for instance audit and remedies).
- Irregularities are major source of data for governance purposes, including detection of corruption.
- Potential to uncover patterns and weaknesses of the procurement systems and to ensure informed policy-making.

Single Market Strategy work strands (II)

Data analytics:

- New version of Single Market Scoreboard: compares features/performance of Member States in specific areas of PP
- Support to data analysis and anomaly detection tools at national and EU level (e.g. set up of a 'red flags' system integrated in IT tools, e.g. ARACHNE)



Single Market Strategy work strands (III)

Other actions envisaged:

- Support and promote any forthcoming legislation aiming at filling the European legislative gaps in the field of protection of whistle-blowers in the Member States
- Reflection on exploring possibilities to develop a leniency tool for corruption in public procurement
- Promote the exchange of best practices identified in the Member States and develop relevant guidance on the interpretation and the practical application of the new integrity provisions in the public procurement directives

Thank you!

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European
Commission

ANNEX



New 'integrity' provisions

1. Notion of "**conflicts of interest**" defined at EU level in the new Directives covering at least:
 - *"any situation where **staff members** of the contracting authority or of a procurement service provider acting on behalf of the contracting authority who are **involved in the conduct** of the procurement procedure **or may influence** the outcome of that procedure have, **directly or indirectly**, a financial, economic or other personal **interest** which **might be perceived** to compromise their impartiality and independence in the context of the procurement procedure". [Art. 24]*



New 'integrity' provisions

- EU MS and contracting authorities are asked to take appropriate measures to effectively prevent, identify and remedy such cases.

2. Ensuring **Level playing field**

Eg: Preliminary market consultations : participation of a previously consulted company must not affect competition; any information must be shared with everyone [Art. 40, 41]



New 'integrity' provisions

3. Under exclusion reasons, on top of the existing reasons (obligatory exclusion for fraud, corruption, money laundering) a **company may also be excluded** in cases:
- where a conflict of interest cannot be effectively remedied by other less intrusive measures;
 - it unduly influenced the decision-making process
 - it provided misleading information
 - it entered into agreements to distort competition

[Art. 57(4)]



New 'integrity' provisions

4. MS required **monitor PP**, to **report violations of rules** to national authorities, **make public** the results of their monitoring activities and

submit a **report to the Commission every 3 years** on the most common sources of misapplication or legal uncertainty, possible structural or recurring problems as well as prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interest and other serious irregularities.

[Art. 83]



New 'integrity' provisions

5. The **modification of contracts** during their term has been made clearer and simpler in order to remove any doubt and shed light on this corruption-prone phase.
[Art. 72]

6. Public procurement award procedures must be covered by a **specific report by the public purchaser** explaining the main decisions and reporting any conflict of interests and steps taken
[Art. 84]



New 'integrity' provisions

7. All **contracts of a large value (EUR 1/10 M) to be kept** at least during the contract period and access must be granted (data protection).
[Art. 83(6)]

8. The **simplification of procedures** and the greater use of electronic tools in public procurement, especially the use of the European Single Procurement Document (ESPD) which will make it harder to eliminate "unwanted" economic operators.
[ESPD: Art. 59]



Taking forward integrity policy in PP: current work strands

- **Reporting obligations** under Art. 83, 85
- **Country strategies** for comprehensive reform of public procurement systems in select MS
- **Professionalization** policy
- Support the development of **whistleblower** legislation



Taking forward integrity policy in PP: current work strands

- Improve data from **procurement notices (eForms)**
- Promote the use of **data analytics tools** and **contract registers.**