



**European Committee
of the Regions**

Network of Regional Hubs for EU Policy Implementation Review

**Implementation Report
First Consultation on Public Procurement**



RegHub



The content of this report has been approved by the European Committee of the Region's Subsidiarity Steering Group on 17 July 2019. More information on the Subsidiarity Steering Group is available on <https://portal.cor.europa.eu/subsidiarity/news/Pages/New-SMN-Coordinator-and-Subsidiarity-Steering-Group.aspx>

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1. Foreword

On 15 March 2019, I had the pleasure of officially launching the network of regional hubs for EU policy implementation review in Bucharest at the 8th Summit of European regions and cities. Back then, I said that we wanted to ensure that this network would not become just another EU talk shop. Today, with this very first implementation report, we can prove that it is not.

The CoR can be proud of having set up this bold project from scratch at the end of last year and being able to present the first results today. This is the first tangible outcome of the Task Force on subsidiarity, proportionality and doing less more efficiently, to which the CoR contributed last year.

At the end of last year, more than 80 regions applied for membership of the network and the 36 hubs selected now participate actively in its work. I would like to take this opportunity to thank all of them for their interest in and commitment to this flagship CoR project. Thanks to them, we finally have a tool to efficiently feed local and regional experience of technical implementation back into the policy making of the EU's institutions. Our goal is for this tool to become an integral part of the next European Commission's strategy on better regulation. This would be a true recognition of the importance of implementation experience of EU policies at all levels of government and of feeding back that implementation experience into the EU policy cycle.

The success of the application process has allowed us to create a solid network of contact points. Only through their hard work was it possible to gather the important feedback on the implementation of the EU's public procurement policy, which you will find in this report. As you can see, our contact points have managed to obtain direct feedback from an impressive number of stakeholders. We are therefore confident that this valuable information can have added value for the European Commission's future policy work on public procurement. A special *thank you* should therefore go to them, for allowing the network to make an important contribution to the EU's Better Regulation Agenda.



Karl-Heinz Lambertz

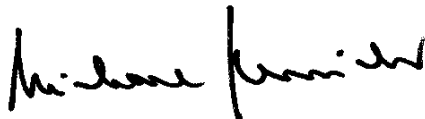
President of the European Committee of the Regions

What can regions and cities do to help make EU policy-making more effective? This was the central question that guided the work of the CoR delegation in the Task Force on subsidiarity, proportionality and doing less more efficiently, chaired by the European Commission's first vice-president, Frans Timmermans, of which I was part as president of the CoR's Subsidiarity Steering Group, together with the CoR president, Karl-Heinz Lambertz and the first vice-chair of the CoR's CIVEX commission, François Decoster.

Crucially, this objective required finding ways to better involve regional and local authorities in the follow-up of how EU policies are implemented. One of the ways that we identified was to set up the network of regional hubs for EU policy implementation review at the end of 2018, under the political guidance of the Subsidiarity Steering Group.

Through this first implementation report of the network, an important step is made towards better application of the principles of subsidiarity and proportionality, which are cornerstones of EU law.

The network of regional hubs is a good example of a practical way to build a common understanding of subsidiarity and proportionality and stronger involvement of local and regional authorities, which often play a specific role in implementing EU law on the ground. This "active subsidiarity" promotes greater ownership and understanding of what the EU does.



Michael Schneider

President of the Subsidiarity Steering Group

2. Executive summary – key findings

The RegHub network and the report setting out the results of the first consultation is proof of the European Committee of the Regions' commitment to contributing to the work of the Task Force on subsidiarity, proportionality and doing less more efficiently¹.

The added value of the consultation is not limited to the report at hand. One significant achievement of the consultation process is that it has created a network of various actors at regional and local level (public authorities, NGOs, business associations and others), who have acted as a channel for conveying key messages on the implementation of EU legislation from the regional and local to the EU level through their exchanges and interactions during the consultation process.

Taking into account the fact that regional and local authorities are a major economic actor in local public contracts, public procurement was chosen as the first topic for consultation of the regional hubs. The main aim of the first consultation was to identify key challenges encountered by regional and local authorities in implementing the new provisions of the 2014 Public Procurement Directives and the most frequent sources of incorrect application or legal uncertainty. This will help all levels of government to focus their efforts on addressing these challenges and improving implementation.

The results of the regional hubs consultation shows that despite the fact that the vast majority of hubs regard every single change brought about by the new Directives as positive, there are some concerns with regard to the practical implementation of the provisions, and some hubs have a more nuanced view of specific changes.

Overall, it transpires that the hubs and stakeholders consulted are aware of the specific resources and overall commitment needed to use public procurement as a strategic policy tool. One key concern, however, is the fact that due to the lack of resources/staff, professional skills and time, many authorities rely heavily on external consultants to provide technical or content expertise. This is likely to make public procurement procedures time-consuming and more expensive.

Moreover, the uncertainty of the legality of using a best price-quality ratio and strategic criteria suggests that any deviation from the traditional procedure to use additional criteria, which may not be easy to identify or to define in legal terms, increases the likelihood of errors and increases the risk of legal action. Thus, the threat of legal challenge may promote risk-averse behaviour. This is one of the main reasons why some procedures (innovation partnership, negotiated procedure without prior publication, etc.) are not much used.

The consideration of quality or strategic criteria adds another layer of complexity to procurement procedures. In line with key principle of the Better Regulation Agenda, some hubs argue, therefore, that the administrative burden, and in some cases the additional cost, have to be proportional to the benefits that the use of those criteria can bring.

These difficulties and concerns suggest that it can be reasonably expected that some kind of match-making and risk-sharing mechanisms would be necessary to help authorities face their challenges and

¹ More information on the network can be found here: <https://cor.europa.eu/fr/our-work/Pages/network-of-regional-hubs.aspx>

support the paradigm shift from risk-averse behaviour towards a more entrepreneurial, results-oriented approach.

Another important issue raised by many hubs is the sometimes problematic interaction between national and European law, since there seems to be a problem of over-regulation at national level, partly due to the need to coordinate procurement law with national legislation in other sectors. The result is an unduly bureaucratic approach to public procurement that runs counter to the aims of European policy.

The consultation also shows that the extensive changes introduced by the 2014 Directives triggered high investments by contracting authorities and businesses in terms of time, training, education and hiring of external staff, in order to align systems and procedures with the new rules. This finding clearly supports the argument that changing the current Directives would not be a good option.

Unsurprisingly, the regional hubs consultation shows that the light-touch regime for social and health services and the provisions intended to facilitate access by SMEs to public procurement are regarded as positive developments. There are, however, some concerns with respect to CPV coding and the scope of the new regime; services that had been altogether exempt from the previous Directives now fall under the new regime. In addition, the division of contracts into lots (e.g. burden transferred to the contracting authorities, problems of coordination among the different lots) creates some difficulties.

From the consultation, it is clear that most respondents also welcome the increased thresholds and would like to see an even greater increase. The few examples of a higher threshold not helping reduce the administrative burden appear to be caused by national rules or practices and not by rules included in the Directives.

With respect to e-procurement and ESPD, a very large majority of respondents welcome the digitalisation of procurement. However, despite the overall positive feedback, some specific problems are also reported such as the lack of interoperability and discrepancies between contracting authorities' platforms which become a barrier to SMEs' access to public procurement. Other challenges concern the differing requirements for certificates and electronic signatures across borders.

Some stakeholders consider that ESPD creates a massive additional burden, particularly for SMEs, compared to the documents previously required to prove qualification, and therefore puts SMEs in particular at a disadvantage. Given these difficulties, there are calls for an in-depth evaluation of the ESPD.

As for cross-border purchasing, even those who see added value in cross-border procurement note that some sectors do not have a cross-border dimension, including social fields such as youth care, care for people with disabilities and social support. Another issue mentioned as problematic is the introduction of different implementation/reference legislation in other policy areas, such as taxation, and the fact that despite costly and time-consuming EU-wide advertising, there are no or only a few cross-border tenders.

The large majority of hubs report that fewer and simpler rules (legislative rules), further training, more continuity and less frequent changes in the Directives will help improve implementation. Others specify that the European Directives should explicitly provide clarification as to under which circumstances local and regional governments are allowed to promote local economic growth, local social structures

and local environmental benefits by using short supply chains in line with the "buy local" principle. A call to revise or replace the remedies regime was expected, given the problems reported by the hubs. This would help reduce vulnerability of award procedures to legal challenges and the litigious culture, and associated costs currently surrounding public sector procurement. There is also a call to increase the interoperability of IT systems, which would also facilitate cross-border procurement. Other hubs stress the need for management to encourage exploring and risk taking with a view to reducing the fear of making mistakes.

The consultation also shows a low level of involvement of local and regional authorities, through their respective Member States, in the implementation report drawn up by the European Commission. This could mean that important information on various aspects of public procurement in practice never reaches the European Commission.

The CoR is committed to passing on the key concerns, as expressed by the hubs, to all the EU institutions. However, since communication must not be one-sided, it is crucial to ensure that the other EU institutions, are responsive to the concerns raised and take the necessary action to address the implementation issues raised. This will be a real test for the Commission's commitment to the Better Regulation Agenda and its willingness to act on what those who implement EU policies on a daily basis have to say.

3. Introduction

3.1 Why does this report matter?

Last year, the Task Force on subsidiarity, proportionality and doing less more efficiently, chaired by the European Commission's first vice-president, Frans Timmermans, issued recommendations on how to find ways to better involve regional and local authorities in EU policy making. One of those recommendations was that "The European Committee of the Regions should implement a new pilot network of regional hubs to support reviews of policy implementation", thereby endorsing the active subsidiarity principle.

This report is the first tangible result of the network's efforts after it was launched earlier this year and it is proof of the fact that the active subsidiarity concept can be put into practice.

In doing so, it gathers feedback from regions and cities, based on the direct and valuable experience of implementing EU policies. This feedback comes from relevant stakeholders such as public authorities, NGOs and business associations. This proximity to those actually dealing with EU legislation is the added value of the network's consultations.

Regions and cities are a major economic actor, not least in public procurement. Through their spending on goods and services, construction and public works, they play a key role in local contracts. They, not the national administrations, are the main public buyers and executors of public procurement policies.

It is therefore of the utmost importance that the voice of Europe's regions and cities is heard on a topic such as the EU's current public procurement policy. Extensive contact with the relevant representatives of the European Commission and the European Parliament have confirmed that these institutions are looking forward to receiving this feedback from the regional hubs in their future reviews of the implementation of current legislation on public procurement.

That is why public procurement was chosen as the first topic for consultation of the regional hubs, in order to implement the EU's Better Regulation Agenda.

This report seizes this opportunity provided by the openness of the European Parliament and Commission, to enable the CoR and its institutional partners to ensure that the EU policy making really takes into account the needs and aspirations of its regional and local stakeholders.

3.2 How did this report come about?

The report builds on the network's three-step approach.

First, public procurement was extensively discussed with the network's 36 hubs² and representatives of the European Commission and the European Parliament, during the network's first workshop in Brussels at the beginning of 2019.

² Map of 36 Regional Hubs Network in Annex 1

Second, the network secretariat submitted a draft questionnaire to the hubs' contact points for review and after integrating their feedback, the final questionnaire was sent to the regional hubs in their respective languages.

The regional hubs' contact points then provided replies to the questionnaire after contacting and interviewing the key stakeholders involved in implementing EU public procurement policy at local and regional level. Based on our assessment of the replies, the contact points consulted over 250 stakeholders in total.

These stakeholders were consulted because of their specific and varied experience in implementing public procurement policy, as buyers or providers. Academics and other experts who have substantial research experience on the subject were also consulted. It is important to note that both private and public stakeholders have been consulted. The report therefore covers a wide variety of stakeholders that includes associations of regional and local authorities, academic researchers, construction federations, libraries, religious institutions, universities, social housing companies, chambers of commerce, agronomists and foresters, public purchasing officers, lawyers, public healthcare agencies and hospitals and others³.

By way of example, the Brandenburg hub has reached out to the following stakeholders involved in public procurement in its territory, namely: the Brandenburg University of Applied Sciences, the regional action group Fläming, the Brandenburg Ministry of Justice, the Brandenburg branch of the German Red Cross (on behalf of the League of Welfare Associations), the Brandenburg Roads Agency, the Elbe-Elster administrative district, the Hennigsdorf municipality, the Brandenburg Regional Environment Office (Central Contracting Authority), the Brandenburg Real Estate and Construction Agency, the Chamber of Craft Trades, Frankfurt (Oder) Region Ostbrandenburg, the Hohen-Neuendorf municipal administration, the German Trade Union Confederation, the Leibniz Centre for Agricultural Landscape Research, the Leibniz Institute for Agricultural Engineering and Bioeconomy and the Evangelical Church in Berlin, Brandenburg and Silesian Upper Lusatia.

Another example of such an extended stakeholder consultation was provided by the hub of the Autonomous Province of Bolzano. In this case, the following entities have been consulted: the Public Procurement Agency of South Tyrol Province, the provincial court offices, the provincial department for structural engineering, land registry and property, the provincial department for infrastructure and mobility, the provincial health authority, the provincial social housing institute, the Bolzano chamber of trade, industry, crafts and agriculture, the South Tyrol economic circle, the interdisciplinary committee for technical professional associations and colleges of the Autonomous Province of Bolzano, the regional college of construction entrepreneurs, the provincial association of irrigation and soil improvement consortia, the Italian Confederation of Workers' Unions – South Tyrol trade union confederation and the South Tyrol municipality association. These entities are all members of the Steering and Coordination Committee of the Public Procurement Agency of the Autonomous Province of Bolzano.

Third, the results of the questionnaire have been compiled by the network secretariat into a draft implementation report and sent to the hubs' contact point for review. The draft was then discussed at the

³ For a full list of all stakeholders consulted, see Annex 2

network's second workshop on 27 June 2019 and finalised as this report. It should be noted that the report does not represent the views of the Committee of the Regions and does not include all responses on all questions from all stakeholders, but rather a selection of relevant and useful replies on specific technical implementation issues that the regional hubs and their stakeholders wish to highlight.

When reading this implementation report, the reader will notice the high number of issues raised as well as examples of obstacles and challenges mentioned by the hubs related to the implementation of certain aspects of the Directives. In that respect, emphasis is placed on the fact that this does not in any way neutralise or even contradict an overall positive evaluation of the implementation of those aspects. Nor does it intend to convey the message that the regional hubs consider the reforms set out in the Directives to be undesirable or a failure. Rather, these comments are meant to point out constructively where there is room for improvement and how the implementation of the Directives can be made more efficient.

This implementation report is enriched by the results of the survey that was conducted from 8 April 2018 to 13 May 2019 by the CoR in cooperation with the Council of European Municipalities and Regions (CEMR) and with the support of ICLEI – Local Governments for Sustainability on the "Implementation of the Public Procurement Directives – challenges and opportunities at local and regional level". Although it has many similarities with the regional hubs consultation, the CoR/CEMR consultation targeted representatives of local and regional authorities, as well as other stakeholders at local and regional level. They spontaneously replied to that survey independently of any framework or structure such as the network of regional hubs.

The CoR/CEMR survey collected valid answers from 219 respondents, but their distribution among countries and levels of government is not fully balanced and the respondents do not form a statistically representative sample. The aim of that survey was to offer a snapshot of the views expressed by diverse local and regional stakeholders.

Although the selection process for the regional hubs network aimed to ensure a geographical balance, its consultations do not comply with statistical requirements⁴, even though it reaches high numbers of stakeholders. Moreover, the profile of these stakeholders does guarantee a qualitatively very relevant result, as many of the local and regional stakeholders consulted could give their views and opinions on highly technical implementation issues that are rarely covered in other surveys.

3.3 Why an implementation report on public procurement?

The 2014 Public Procurement Directives (hereafter the "Directives") introduced a number of changes in the European legal framework for public procurement: new definitions, new thresholds, new procedures (a more flexible competitive negotiated procedure, a new light-touch regime for social and health services, pre-commercial procurement, innovation partnership), less red tape for tenderers with simplified procedures and easier access for SMEs (introduction of turnover cap), more provisions on grounds for exclusion and award (from the "price-only" criterion to the "most economically advantageous tender"/MEAT criterion), stronger provisions on integrity and transparency which target corruption and fraud, extended scope covering the modification/termination of contracts, a new focus

⁴ A statistical overview of all the replies to the regional hubs questionnaire can be found in Annex 3.

on the role of public procurement in achieving policy goals in innovation, the environment and social inclusion (strategic procurement) and electronic procurement.

Furthermore, from the perspective of the CoR it is important to highlight that local and regional authorities are major economic actors through public procurement. Through their spending on goods and services, construction and public works, they play a key role in local contracts. On average, they are responsible for 44.6% of public procurement in the EU, a figure varying from 15.4% in Greece to 76.4% in Italy⁵.

Based on the changes introduced by the Directives, as mentioned above, and through its past and current analytical work on public procurement, the CoR has identified a number of specific policy areas where it would be interesting to gain a better understanding of the views of local and regional authorities. These policy areas were specifically targeted in the consultation and survey and are presented in the following sections.

⁵ Based on OECD data extracted on 5 October 2018, available at <https://stats.oecd.org/Index.aspx?QueryId=72691>

4. Key dimensions of the Directives

4.1 The new light-touch regime for social and health services

Social, health and education services are organised very differently from one Member State to another. To take this as well as the specific characteristics of these services into account, the new public procurement rules provide a list of "social and other specific services" where a light-touch regime with a higher threshold will apply. For other services, the rules of the Directives apply to contracts above EUR 221 000 (above EUR 144 000 for contracts awarded by central government authorities).

The regime for social, health and education services (such as home help services, training and social security services) is based on limited procedural requirements, adherence to the principles of transparency and equal treatment and a higher threshold of EUR 750 000. Those of a lower value will be considered as not being of interest in principle to enterprises from other Member States and therefore will not fall within the scope of the new regime, except in specific cases, such as when European Structural Funds are involved.

Unsurprisingly, the regional hubs consultation show that the light-touch regime for social and health services is regarded as a positive development by all the respondents that do use it. However, almost half of respondents say that, for various reasons, they do not use it.

The **Catalonia** hub has a positive view of the new regime since, as they note, these types of contracts require different principles and procedures because they relate specifically to care services and to the need for geographical and cultural proximity. The focus is thus less on competition and economic prices and more on quality and humane treatment.

The **Community of Valencia** hub sees the new regime as a positive development as it allows for a more rapid response to care needs and better adaptation to the characteristics of the users. They also specify that they are still in the process of adapting to e-procurement and the new procurement legislation, but the idea is to adapt and apply the light-touch regime for social services as regulated in a way that is adapted to the needs and characteristics of procurement procedures in this area.

Stakeholders consulted by the **Mazovia Voivodship** hub have a very positive view of the new regime as, according to them, it increases access to public procurement contracts for businesses, cooperatives, social enterprises and non-profit organisations owned by people from ethnic minorities or employing them or people with disabilities. They also stress that the simplification of procedures for social and health procurement and efforts to make them more flexible have benefited both contracting authorities and contractors, particularly small and medium-sized enterprises. In the case of the library Biblioteka Główna Województwa Mazowieckiego, the value of procedures for social services is below the EUR 750 000 threshold, allowing the use of simplified rules while maintaining the necessary conditions for transparent and non-discriminatory procedures. The introduction of new rules has reduced the time for carrying out procedures, making it possible to cut red tape and avoid unnecessary formalities, without affecting the appropriateness and effectiveness of these procedures.

The **Community of Madrid** hub welcomes the new regime as, in the area of health, simplified and shortened procedures provide more solutions and speed up administrative processing. However, there

have been no major changes in social services leading to a substantial simplification of the procurement process.

The **Friuli Venezia Giulia** hub indicates that 30% of stakeholders consulted feel that the new light-touch regime meets the real needs of the services, and ensures a focus on the quality of the services whilst also ensuring greater flexibility and simplification. However, 70% do not use these procedures. It is also stressed that transposition into national law has made things more complex. At national level, a specific regime is emerging which, while having the advantage of applying the principles of public procurement to the social services sector due to the continuous references and referrals to other rules, suffers from a lack of simplification that ends up weighing down the light-touch regime presented by the Directives. Moreover, the lack of coordination with other specific rules (e.g. the voluntary sector), creates the risk of duplication or even triplication of efforts, partly depending on implementation by the regions which have competence in matters regarding social protection.

Within the **International Lake Constance Conference** hub, Bavaria and Vorarlberg value the increased flexibility (although Vorarlberg has had only limited experience in this domain). The positive objective is offset by the rather unworkable legal basis. The annexes to the Directives relating to the Common Procurement Vocabulary (CPV) codes are not applicable with legal certainty. Baden-Württemberg and Liechtenstein provide no data as they have probably not yet had any experience with this.

The **Thessaly** hub argues that the competent state authorities have not specified which services are covered by this regime.

The **Flanders** hub comments that certain services that were included in Annex II B to the previous Directive 2004/18/EC, such as personnel placement services, are no longer included in Annex XIV to Directive 2014/24/EU. This obviously has an impact on the procurement of these services, which are now subject to a stricter regime. However, for the services listed in Annex XIV (such as events, educational services and postal services), the new light-touch regime is a positive development. It is also stressed that their own authorities make little use of this regime, because the scope of the services is limited and the services covered are either provided by members of staff (and are thus not subject to public procurement rules), or are provided for the benefit of third parties by private entities subsidised by the region. In the very few cases where authorities can make use of the regime, however, they may well not do so, as the Belgian regulator has implemented this flexible system in a very formalistic way, which means that it is often easier to use existing procurement procedures.

The results of the **CoR-CEMR** survey correspond relatively well to the responses from the regional hubs network. In the CoR-CEMR survey, 25% say that they see the new light-touch regime for social and health services as a positive development while 6% regard it as negative (69% responded that it was not applicable or gave no answer). When asked if the new regime was used, 35% (and just 9% of smaller municipalities) responded in the affirmative. The fact that so many responded that the regime was not applicable could indicate a lack of awareness of the new regime or simply that they do not use it.

Among the positive aspects are the increased thresholds, which allow social services to be more targeted and more flexible. It is also noted that the new threshold for light-touch services provides clarity for some procurement managers by clearly excluding lower value social services procurement from many

of the Directive's requirements. Some local authorities also suggest that the light-touch regime should be expanded to other services.

One criticism of the new regime stems from the fact that the new threshold provides a degree of procurement regulation for services that were previously excluded altogether (**for instance, care services for adults and children**). However, the reason for excluding these types of services under the previous rules (limited cross-border interest) remains valid, and it is therefore argued that they **should not be further regulated**. In the previous version of the Directive, these were called "Part B" services and excluded from the Directive entirely; now only those under EUR 750 000 are excluded so it is thought that the Commission has increased its competence in this area and is likely to try to do so again (this is known as "competence creep").

Other respondents also claim that higher thresholds for services subject to the light-touch regime have reduced transparency because requirements in the EUR 220 000 to EUR 750 000 value range no longer have to be advertised in the OJEU (Official Journal of the EU).

Some respondents expressed concerns about the CPV (Common Procurement Vocabulary) codes which specify the services subject to the light-touch regime by reference to a list of CPV codes set out in Annex XIV to the Public Sector Directive and Annex XVII to the Utilities Directive⁶. Some respondents find these Annexes inconclusive or too general and ask for further explanation of each CPV code. Instead of setting out a clear and full list of the services in question as one would expect in a legal act, the Annexes include numerical-only groupings such as "from 85000000-9 to 85323000-9" which requires procurement officials to carry out a cross-reference check against the full CPV code list in order to establish what services are in fact covered by that grouping.

Finally, it is argued that there is also a degree of arbitrariness when it comes to the services included by the light-touch regime. For example, the provision of security services is classified as light-touch and excluded from standard procedures, whereas cleaning services are not and remain subject to the standard rules. Both of these services are increasingly provided and procured jointly as "facilities management" packages and it is not at all clear why such closely-related economic activities should be subject to very different treatment under public procurement law. Thus, it is difficult to see any objective justification for this unequal treatment, especially in legislation that purports to eliminate arbitrary and unequal treatment from the public sector market.

4.2 New provisions intended to reduce red tape for SMEs (turnover cap, "divide or explain" principle)

The Directives aim to encourage contracting authorities to divide large contracts into smaller parts, allowing smaller companies to participate in large tenders (if the contracting authority decides not to divide a large contract, it has to explain why, hence the "divide or explain" principle). To further facilitate access by SMEs to public procurement, the rules which excluded smaller companies from tenders on the basis of their annual turnover figures have also been relaxed. The new rules limit possible annual turnover requirements to just twice the annual contract value, which should remove barriers to

⁶ The recitals to Directives 2014/24/EU and 2014/25/EU set out reasons for excluding certain social, health, educational and other specified services from their full scope and for applying higher thresholds of EUR 750 000 and EUR 1 000 000 respectively before OJEU advertisement of these requirements is mandated.

SME participation. A further measure to simplify participation by SMEs in tenders is the European Single Procurement Document (ESPD), which is a self-declaration of the businesses' financial status, abilities and suitability for a public procurement procedure.

With respect to the new provisions intended to reduce red tape for SMEs, a large majority of regional hubs respondents regard these changes as mainly positive, despite their having a number of shortcomings. It is also worth noting that the private sector has been consulted by the regional hubs as these new provisions were mainly introduced to help SMEs access public procurement and it seems that the new process, in most cases, is easier for SMEs but more complicated for contracting authorities.

The **Community of Valencia** hub has a positive view of the new provisions as they think that this greater flexibility makes it possible to adapt procurement to the local market, improves competition and simplifies and speeds up processing. However, it is noted that the transposing legislation does not facilitate implementation. With respect to the "divide or explain" principle, at regional level, all the responses were positive. However, at local level, the FVMP (Valencia Federation of Municipalities and Provinces) is opposed to it because, for small authorities, one contract is easier to organise than several.

The **Community of Madrid** hub said that the change facilitates the administrative processing of files, reduces time limits and encourages small businesses to take part, although in some cases the non-accreditation of tenderers' claims may lengthen the processing of the files. It also facilitates competition, with fewer administrative burdens for tenderers, although there is no advantage for the authority when it comes to speeding up the procedures, as it involves formalities similar to those for an open procedure with an estimated value of more than EUR 100 000.

The **Friuli Venezia Giulia** hub mentions that 70% of the stakeholders consulted considered this change to be positive: it has enabled procedures to be streamlined and simplified and facilitates increased participation of local SMEs in tender procedures; it stimulates competition between SMEs, which are required to offer ever higher standards of product/service quality; the division into lots benefits SMEs. Unfortunately, the guidelines set out by ANAC (the Italian National Anti-Corruption Authority) have undermined the simplification pursued by the directive. Those that have a negative view (30%) claimed that the transposition of the Directives at national level did not deliver the intended positive effects; while the management of the procedures has been simplified, there are problems relating to checking compliance with eligibility requirements, as a national database is not yet in place; some administrations complain that division into lots makes it more time-consuming and increases the administrative burden and sometimes does not deliver economies of scale. The contracting authorities also regret the fact that there is no electronic platform that would enable foreign businesses in neighbouring countries to take part. From the businesses' point of view, however, division into lots facilitates the participation of SMEs in the procedures, spurring them on to greater competitiveness that fosters higher quality standards for products and services.

The **Thessaly** hub has a positive view of the new measures as they promote competition and a better quality/cost ratio due to the increased participation of SMEs, helping them gain experience and exercise their right to participate in bigger tenders. One disadvantage is the lack of an electronic register of economic operators.

The **Umbria/Veneto** hub's stakeholders raised further issues: despite replying "positive", business stakeholder representatives report the problem of too much red tape (excessive and complicated documentation to be provided) surrounding the division into lots. This means that in reality this procedure is rarely used; on the contrary, public authorities tend to use the Framework Agreement to manage a single contract, which is simpler for contracting authorities. However, in practice, this makes it more difficult for SMEs to access public procurement contracts.

Another specific concern is reported by the Umbria region's Department for Public Works with regard to the turnover cap (as well as the requirement for professional experience): the requirement should be extended as having worked less in the last ten years, perhaps due to market crises, does not necessarily entail a loss of professionalism.

It is also noted that sometimes division into lots is not possible, for example in the case of soil compaction measures; in some cases, it is difficult to divide contracts into operational lots in a way that makes it possible to identify the responsibilities of each company.

The Umbria region's Public Works Department makes it easier for SMEs to access public contracts by means of the regional lists of professionals (the competitive negotiated procedure has been streamlined by establishing regional lists of professionals which the region must use and other regional contracting authorities may use). The lists enable time frames to be shortened as they make it possible to leave out the stage of expressing interest in participating and go straight to the invitation to tender, which makes SME participation in negotiated procedures simpler.

The **Catalonia** hub thinks that these measures are easy to implement, although it has not yet been possible to assess whether they actually increase SME participation in procurement. They also note that they experienced some difficulty in dividing contracts into lots, due to resistance on the part of large businesses and the competition authorities, who feel that competition is being restricted. It is also noted that a specific guide has been approved to promote SMEs' access to public procurement.

The stakeholders consulted by the **Flanders** hub also have a nuanced view of this. It is noted that a single contract is certainly easier to organise, and can result in economies of scale. "Divide or explain" is liable to amount to nothing more than a formality, i.e. just coming up with some "reason" why the contract cannot be divided. Another issue is that each lot could, in turn, be further divided and it is not clear where to stop.

Some of the stakeholders consulted argue that competition can only be achieved by putting public contracts out to tender so as to ensure that SMEs are taken fully into account. Contractors must be able to compete directly for the public contract and not forced into a subcontracting role; this is done by dividing contracts into lots.

Stakeholders consulted by the **Brandenburg** hub gave both positive and negative answers. The representative responding on behalf of a large number of SMEs reports a positive view which is not shared by the public sector. They said that they had not yet seen any reduction in red tape. They also criticised procurement by lots, saying that implementing contracts using several contractors could lead to problems.

The **International Lake Constance Conference** hub claims that the provisions intended to reduce red tape for SMEs have not given SMEs easier access to public contracts. It has been established that the European Single Procurement Document (ESPD) generates a significant additional burden compared to the documents previously used under Austrian law.

In a similar vein, Upper Austria agrees that any administrative simplification in the area of procurement law is to be warmly welcomed, but that the new Directives did not create any rules that would have provided SMEs with sufficiently easier access to public procurement procedures. As regards the ESPD, Upper Austria is as critical as Vorarlberg.

The **Eastern Slovenia** hub claims that in principle, compared to the previous Directive, the administrative burden on tenderers has been reduced, as they do not require as much proof given the different certificates accessible from public records. Consequently, the responsibility for ensuring that this is in order now falls to the contracting authorities, which are obliged to verify in more detail whether tenderers meet the conditions. Furthermore, the requirements for tenderers, in terms of turnover, etc., are often too high and limit competition.

The **West Pomeranian Voivodeship** hub notes that contracts are divided into lots only where this is justified for financial reasons, which is due to the whole public administration being subject to strict rules for managing public resources.

Stakeholders consulted by the **Mazovia Voivodeship** hub claim that the obligation to justify a failure to divide a contract into lots is motivating some contracting authorities to reflect on this issue, which may actually lead to more contracts being divided into lots, so that SMEs may or may not compete more frequently than they have done so far.

The **Harghita/Ialomita** hub argues that dividing contracts into lots is good for safeguarding investments, but creates major organisational and technical problems, as the necessary documents have to be produced several times.

The **Košice Self-Governing Region** hub states that the responses they received were contradictory and do not point in any specific direction.

The **CoR-CEMR** survey also provides a mixed, if slightly positive, view of the new provisions intended to reduce red tape for SMEs. Of those that did have a view of the changes (38% did not), 56% were positive and 44% negative. While the logic of the scheme is viewed as positive, it is clearly not easy for local authorities with an already heavy workload to carry out the envisaged simplifications for SMEs, which is possibly why almost all detailed comments on the changes are negative.

Many respondents suggest that the requirement for the contracting authority to explain in a report why a contract was not divided into lots had probably been envisaged as a reminder or a motivation to divide contracts but that it has only added unnecessary work and legal uncertainty to the process. Others regard this requirement as very cumbersome as the practicality of dividing contracts into lots is usually determined by technical and market assessments. They also argue that the administrative burden has been transferred to the awarding authority, leading to both more work and more checks. Other respondents raised the issue of coordination at implementation level, as the subsequent coordination of

the individual lots and the interfaces require significant technical expertise from the contracting authority.

Some respondents report that the ESPD and other requirements are being applied across the board to sub-threshold contracts where they are not strictly required.

From the perspective of SMEs, the requirement on turnover continues to be contentious mainly because it is merely historic information and not a reliable indicator of ongoing financial capacity. To make matters worse, some contracting authorities are insisting on the maximum turnover cap in all cases, as well as prohibitively high insurance levels. Moreover, the major concern for SMEs is that below thresholds there is no transparency and the current system inherently favours larger organisations with a greater capacity to tender.

4.3 Higher thresholds

The Directives apply to tenders whose monetary value exceeds certain thresholds and which are presumed to be of cross-border interest. The rules aim to ensure that the award of higher value contracts for the provision of public goods and services is fair, equitable, transparent and non-discriminatory. The thresholds are different, depending on what is purchased and who carries out the procurement, and the thresholds range from EUR 144 000 to EUR 5 548 000. The Directives increased the thresholds and in general the thresholds are higher for local and regional authorities than they are for national authorities. It is worth noting that the EU is bound by international agreements (GPA of the WTO) which limit increases in the thresholds and that for tenders below the thresholds, national rules apply which have to comply with the general principles of EU law.

From the regional hubs consultation, it is clear that most respondents welcomed the increased thresholds and would like to see further increases. The few examples of a higher threshold not helping reduce the administrative burden appear to be caused by national rules or practices and not by rules included in the Directives.

Stakeholders consulted by the **Brandenburg** hub argue, for instance, that the thresholds should be even higher, to ensure that only those contracts that are really relevant for EU-wide procurement are subject to the EU Public Procurement Directives. This is in particular due to the high administrative burden created by Europe-wide public procurement and the fact that the burden is greatly disproportionate to the benefit. In the case of EU-funded projects, in many cases the size of the project does not justify a comprehensive procurement procedure (in the opinion of a representative involved in regional aid).

The Brandenburg hub also reports that projects receiving EU funding are often overwhelmed by the complexity of EU procurement law, because they do not have the appropriate resources, particularly qualified staff. This leads to reductions in funding as a result of sanctions that are solely due to technical errors in procurement – i.e., these sanctions are imposed even if the actual objective of the funding, namely successful implementation of the project, is achieved in full.

When it comes to EU funding, the Brandenburg hub reports that infringements of national law on procurement below the threshold sometimes lead to unfavourable interactions with EU law, as sanctions for infringements of national law are based on the EU legal framework, counter to established practice.

Furthermore, stakeholders involved in EU project funding complain that they have to pay for external consultancy services, which makes project implementation more expensive and complicated.

The regional management local working group (EARDF) argues that compliance with the Public Procurement Directives is a major problem for beneficiaries, as they are not otherwise subject to public procurement law. Simplified rules should apply in these cases. In particular, it should be considered whether contracts of EUR 5 000 or above (compulsory from EUR 20 000) are relevant to the single market.

Within the **International Lake Constance Conference** hub, Baden-Württemberg, Liechtenstein and Vorarlberg agree that the small increase in the threshold values is basically positive since it leads to lower administrative costs. They think, however, that a significant further increase in the threshold, particularly in the area of services, is necessary to substantially reduce administrative costs for contracting authorities and businesses.

In a similar vein, Bavaria argues that the EU thresholds are too low. They have not kept pace with price rises, particularly in the construction sector where the threshold values for construction and planning services are not in line with one another. They also argue that the threshold for planning services is unreasonably low.

The **Upper Austria** hub shares the nuanced view taken by the other hubs on this point and points out that the slight increase in the thresholds is generally positive as it facilitates smaller contracts by reducing formalities and speeding up decision making. However, a substantial increase in the thresholds is necessary, particularly in the service sector, in order to significantly reduce the administrative burden on contracting authorities, as well as on the business side.

The **Community of Madrid** hub noted that respondents feel that the new thresholds are better suited to the needs of the contracting authorities and reduce the number of contracts that need to be published in the OJEU, since these are subject to harmonised regulation. However, it is noted that, with the increase in the thresholds, there is also an increase in the amount of supplies and services, for example in the case of social services, which is then reflected in higher consumer prices. As regards social services, in certain cases the thresholds have simplified calls for tenders and the publication of notices. In many cases, however, these thresholds are still being exceeded due to the economic significance of the services provided.

Stakeholders consulted by the **Mazovia Voivodship** hub also highlighted the positive impact of the higher thresholds as, notably in the health service, most equipment purchases are urgent or very urgent.

The **Community of Valencia** hub also has a positive opinion as, in the view of the stakeholders consulted, the higher thresholds have already resulted in improvements in the following areas: i) simplification and streamlining of the administrative procedure (more efficient), ii) clarity and certainty regarding non-harmonised contracts (fewer administrative appeals), iii) advertising, and iv) adaptation to market prices.

Some stakeholders gave mixed responses, such as those in the **Umbria/Veneto** hub. In their case, some stakeholders saw the change as positive, because with higher thresholds it is possible to apply national

sub-threshold rules, which are simpler to use as they come with fewer constraints. However, the region's Tenders and Contracts department points out that raising the thresholds should not have had an impact on operations because, in order to safeguard the requirements relating to transparency and a level playing field for operators, direct award is only used for very small contract amounts. In all other cases, even if the contract amount is below the threshold, the procedures for contracts above the threshold are still used.

The University of Perugia presents a contradictory view as it points out that lower thresholds would allow European standards to be applied more often instead of national rules, which are considered to be more complex.

The representatives of craft businesses point out that businesses in the craft industry mostly used sub-threshold contracts, so raising the EU thresholds has not led to a substantial change.

Overall, the results from the regional hubs consultation are in line with the findings of the **CoR-CEMR** survey where 69% of respondents had a positive view and only 6% a negative view of the new higher thresholds. However, respondents to the CoR-CEMR survey were critical as well, as they argued that higher thresholds for services subject to the light-touch regime have reduced transparency because requirements in the EUR 220 000 to EUR 750 000 value range no longer have to be advertised in the OJEU. They also claim that where light-touch requirements have been advertised, there is evidence of inappropriate or inaccurate use of CPV (Common Procurement Vocabulary) coding in some cases.

4.4 The most economically advantageous tender approach (MEAT)

The concept of the most economically advantageous tender (MEAT) criterion was present in the previous Public Procurement Directives but its use has now been made compulsory - although it can still be based on a cost-only criterion - and the concept has been developed to further enable the contracting authority to take account of criteria that reflect qualitative, technical and sustainable aspects of the tenders submitted as well as price when reaching an award decision. The relative weighting of each criterion used to assess the tenders must be made public or, where this is not possible for objective reasons, they should be stated in descending order of importance.

When asked for their views of the most economically advantageous tender approach, a large majority of regional hub members found it a positive change, but again, many of them had some reservations.

The stakeholders consulted by the **Autonomous Province of Bolzano** hub value the combination of price and quality because they consider this to be the best instrument for selecting the most appropriate economic operator. However, the provincial health authority criticised the excessive bureaucracy involved in managing the technical commission which evaluates the "quality" criterion. As regards engineering and architectural services, it was pointed out that there is a need to raise awareness of the added value of quality, particularly in the case of small contracting authorities, as well as sets of rules for drawing up evaluation criteria and quality control procedures.

The **Brandenburg** hub reports that most of the responses from its stakeholders were positive, but came with caveats. These related in particular to the definition of the term "economically advantageous", which respondents said often equated to the lowest price in practice, instead of qualitative criteria being

developed. Cost-effectiveness should not be equated with cheapness; additional criteria should be established. Factors such as maintenance and repair costs and the regional availability of maintenance firms, which are not directly linked to the purchase price, are crucial in determining cost-effectiveness. It is seen as a good thing that the reference to cost-effectiveness could have the effect of reducing tenders at dumping prices. The only negative response they received also referred to the problem of the vagueness of the legal concept, i.e. largely echoed the reservations expressed in the positive responses.

The **International Lake Constance Conference** hub views this point mostly positively, but Vorarlberg specifies at the same time that Austria's transposition of these EU rules disproportionately restricts contracting authorities' room for manoeuvre.

The **Upper Austria** hub notes that this question revealed considerable differences in opinion. Despite the predominantly positive assessment, several negative views were also expressed. One reason for this can be seen in the practical implementation of these EU requirements in Austria by the Federal Government, which in the Federal Administrative Court disproportionately restricts the scope of the contracting authority's freedom of manoeuvre by according primacy to the "best tender" principle and the emphasis on the "best price-quality ratio". The basic rules in the Public Procurement Directives concerning the application of the best tender principle are in themselves viewed positively, as they give the contracting authority greater flexibility and enable important criteria such as quality or reliability to be factored in to a greater extent than in the past. However, it was also highlighted that this principle is difficult to implement in the case of works contracts.

The **Catalonia** hub notes that assessing price and quality together in order to determine the most economically advantageous tender is certain to ensure better provision of public services, facilitate the performance of contracts and avoid non-compliance. It is noted however that some resistance has been detected on the part of courts and financial monitoring bodies.

The **Community of Valencia** hub underlines that the most economically advantageous tender criterion allows for better adaptation of procurement to the quality criteria regarding the subject of the invitation to tender, which are sometimes essential, whereas the price is not as crucial in certain services. However, it is not easy to apply a formula which links quality and price, with the result that, especially in the case of municipalities, it can lead to lower quality services.

The **Community of Madrid** hub's stakeholders are of the opinion that the change allows for more balanced proposals for award and contributes to better value for money in the performance of the contract. Implementation is particularly relevant for certain contracts. The obligation to establish a range of criteria for determining the most economically advantageous tender was very important for certain services, particularly services that have been identified as special (social, educational, health, etc.).

Stakeholders consulted by the **Mazovia Voivodship** hub share the view of other hubs with respect to the positive aspects of the most economically advantageous tender criterion, as the consideration of criteria other than price makes the procedure more accessible to a greater number of contractors who are able to offer better quality products and better meet the requirements of the contracting authority. However, there is concern about the negative financial consequences resulting from the limitation of the importance of the price criterion in the case of hospitals. In addition, it is argued that it is difficult and

time-consuming to define non price-related criteria in an objective way and it does not always have the intended impact on the choice of tender other than the cheapest.

The stakeholders consulted by the **North Rhine-Westphalia** hub (mainly trade associations) have a critical view of this and claim that in order to ensure quality standards, price in relation to quality should be the main award criterion.

The **Harghita/Ialomita** hub specifies that their stakeholders' experience has largely been positive, but it does create difficulties due by and large to the method of defining the allocation criterion and quantifying the specific requirements.

The **Eastern Slovenia** hub claims that unfortunately in many cases this criterion does not ultimately lead to the best solution for the contracting authority, since it can give rise to poor quality products, very expensive after-sales service and a large number of annexes if the contract is not defined in detail, which may be costly for the contracting authority and push the total price up, to a level that is higher than would have been the case for direct purchases by researching the market.

The **Brod-Posavina County** hub argues that the most economically advantageous tender criterion did not change much. When choosing tenders, contracting authorities still tend to place 90% of the emphasis on the price and 10% on other factors, because they still need to obtain goods, work or services for as little money as possible.

The **Umbria/Veneto** hub stresses that most stakeholders, both public and business representatives, give a negative response, although there are positive opinions as well, especially among public authorities.

Umbria specifies that stakeholders with a positive view stress that the criterion of the most economically advantageous tender is positive, especially during the performance of the contract: it ensures better quality of work and respect for prices. In addition, this criterion is considered to be positive in the case of contracts for engineering and architecture services exceeding EUR 40 000. Lastly, small business (including craft business) stakeholder representatives point out that the other criterion, that of the lowest price, is in any event problematic because the mechanism of undercutting ends up causing small businesses awarded the contract serious financial difficulties.

With regard to the negative responses, stakeholders claimed this approach is too burdensome, especially when it comes to small contracts. Particularly during the tender phase, the lowest price criterion is much simpler to manage for public administrations. The main issue reported (particularly by the Umbria region's Department for Tenders and Contracts and Department for Public Works) is the difficulty of including unambiguous and objective criteria for evaluating the most economically advantageous tender in the tender documents (e.g. the specifications), in order to avoid arbitrary evaluations and appeals. This is particularly true for works contracts with a detailed project plan, where it is in fact difficult to define "objective" evaluation criteria.

The use of the most economically advantageous tender approach increases legal uncertainty for the contracting authority as award criteria other than price must not confer unrestricted freedom of choice on contracting authorities and it must be possible to verify the criteria. Thus, it is often said that award criteria must be "measurable".

In general, in the case of works contracts with detailed project plans, and in any case where there is no margin for introducing elements to enhance the tender, the lowest price criterion is most suitable, although a good system to limit undercutting should be identified.

One suggestion (by Umbria's Department for Tenders and Contracts) is to let the individual contracting authority, not the legislator, establish whether the market can offer elements to enhance tenders and therefore whether or not it would be appropriate to use the criterion of the most economically advantageous tender.

As regards the **CoR-CEMR** survey, 64% of respondents have a positive view of the most economically advantageous tender criterion, with 17% having a negative view. Regarding the advantages of this criterion, respondents note that it makes it easier to construct award criteria, gives quality more value, simplifies the weighting of the award criteria, creates legal certainty and reduces manipulation. Other respondents argue that the new rules have added nothing but a cosmetic change to the awarding of contracts. Besides, in their view, the new rules caused a great deal of confusion by introducing new terminology when nothing has changed materially. They note that they have difficulties in setting evaluation criteria on the basis of adequate qualification requirements and they fear that more differentiated criteria could lead to litigation instigated by unsuccessful tenderers.

It was also stressed that public authorities tend to confine themselves to super-objective criteria with a view to limiting appeals, as tenders are easier to evaluate when only measurable/objective criteria are used and this enhances legal certainty for the contracting authority.

It has also been noted that the focus on the most economically advantageous tender criterion has meant that there is now uncertainty about if/when the lowest price option can still be used. There is a range of products where the lowest price option makes the procurement process less complex for both the buyer and supplier, so it makes sense to use it. Some local and regional authorities would therefore welcome a greater focus on lowest prices rather than the most economically advantageous tender criterion for certain procurement procedures.

4.5 Criterion used most often for the award of contracts

Stakeholders consulted by the hubs were also asked to indicate which of the following criteria they use most often to award contracts: price only, cost only (using a cost-effectiveness approach, such as life-cycle costing), the best price-quality ratio.

Overall, stakeholders appreciate being able to use quality criteria other than price and to make quality a competition parameter in the tender process alongside price/costs. The notion of quality includes different aspects, such as performance capacity, user-friendliness, design, compatibility with other brands/systems, availability of after-sales service, ease of operation or technical support. A large majority of respondents said that they use the best price-quality ratio as a criterion for awarding contracts, while only one fifth of them replied that they use the price-only criterion. Those who said that they use the price-only criterion said that they generally did so because of the difficulty in stipulating complex conditions and additional specifications when using cost-effectiveness or the best price-quality ratio approach.

It transpires from the comments received that despite the fact that most of the hubs welcome the best price-quality ratio criterion, there are some concerns regarding the difficulty in objectively describing or defining the specific quality aspects which should be made subject to competition and which thus have to be "measurable". When award criteria are too general or too vague, they provide no basis for measuring specific qualities in a consistent manner and this might be problematic for both the contracting authority and the tenderers, especially when the differences in quality might be marginal but substantial in terms of price.

The **Brandenburg** hub reports that price-only and price-quality ratio were used equally often. From the hub's point of view, the reasons for using the price-only criterion were of particular interest, which is why it selected only that option. It was noted that it was easier to answer enquiries during checks and monitoring of procurement procedures when the price-only criterion was used.

In Baden-Württemberg and Vorarlberg in particular, those consulted went predominantly for the best price-quality ratio. In Bavaria, those consulted favoured price as the only criterion. The reasons given for this were: environmental, social and other such criteria at as early a stage as the minimum requirements; difficulties in devising complicated conditions, difficulties in proving the sustainability criterion, high risk of complaints, faster procedures.

The **Upper Austria** hub reports that a majority of 56% of respondents cited "best price-quality ratio" as the most frequent criterion. However, a significant number (44%) answered "price only"; those participants justified this on the basis of the faster procedure, compliance with environmental, social and labour law obligations when verifying compliance with minimum requirements, difficulties in drawing up complex conditions and additional specifications when applying a cost-effectiveness approach or the best price-quality ratio, and the difficulty in demonstrating that the sustainability criteria are linked to the subject matter of the contract. Awarding contracts chiefly via directly awarded contracts was also cited as a reason.

The **Dubrovnik-Neretva County** hub says that most stakeholders selected the "price only" criterion because they mostly perform the procedures for simple procurement, which is faster, and therefore do not encounter problems with possible complaints regarding the complexity of the process, while others opted for the "best price/quality ratio" option.

The **Thessaly** hub notes that clear, objective assessment criteria are needed to avoid complaints and legislation should be used where there are abnormally high tenders.

The **Košice Self-Governing Region** hub specifies that three hubs agreed that the most important criterion was price. The only organisation where the price/quality ratio was taken into account was a museum consulted by the hub. Two hubs indicated that only the price criterion was decisive, because of difficulties in developing comprehensive conditions and additional specifications when using the cost-effectiveness approach or the best price-quality ratio, and that this was a quicker method.

The hubs of **Brod-Posavina County**, **Catalonia** and the **Community of Valencia** report that the majority of stakeholders replied that the price-quality ratio was the most commonly used criterion for awarding contracts.

The **West Pomerania Voivodeship** hub argues that the most frequent criterion is price because the contracting authority considers it to be the simplest and the one that causes the least controversy among potential tenderers, and thus the fewest possible problems in the event that the outcome of the proceedings is challenged.

The **Eastern Slovenia** hub notes that there is a negative perception in Slovenia regarding public procurement, namely that contracting authorities tend to favour certain operators by setting specific conditions for public procurement; therefore, in order to avoid this and speed up procedures, the most economically advantageous price criterion is used, which in the end is not necessarily the most advantageous for the contracting authority. Another problem can be the limited pool of potential tenderers and collusion/distribution of territory.

The **Alentejo** hub reports that the combined feedback from the stakeholders and ADRAL (the Alentejo development agency) resulted in acknowledgement that price is still prioritised when awarding contracts. There is some openness to new approaches, but it is still perceived as a difficult procedure and more difficult to explain as a more efficient one. The price-only criterion results in a quicker procedure, which is easier to assess and to conclude. Therefore, they recommend continuing to raise awareness about the need to change these procedures and effective implementation in the entities of different approaches and criteria in what relates to the award of contracts.

The **Harghita/Ialomita** hub notes that most of the stakeholders consulted selected "the best price-quality ratio", but a small number selected the "price-only" criterion. The latter included comments to the effect that these provide poor quality products and services; quicker procedures; difficulty proving that the sustainability-based criteria are linked to the subject matter of the contract; difficulty drafting complex conditions and additional specifications when using cost-effectiveness or the best price-quality ratio approach; and a higher risk of complaints than the cost-effectiveness or the best price-quality ratio.

The **Region of Emilia Romagna** hub said that the most economically advantageous tender is the criterion most widely used by the stakeholders consulted. This does not mean that the price-only criterion is not used in some cases; in particular, the smaller municipalities highlight that this makes administrative action effective and efficient. The operators clearly state that, in several cases, the nature of the contract and the existence of a predefined tender-based implementation plan mean that it is not necessary to use the most economically advantageous tender, since it is possible to use the price-only criterion.

The **Friuli Venezia Giulia** hub notes that in most cases, the best price-quality ratio and the price-only criteria are used, depending on the type of contract and the amount involved. Generally, for contracts below EUR 40 000 for the purchase of standard goods and/or purchasing from lists, the lowest price criterion is used, for the purposes of a speedy procedure.

The **Umbria/Veneto** hub specifies that there are various answers to this question. In fact, the majority of the stakeholders report that the criterion applied is that provided for in the national legislation transposing the European Directives which, in most cases, is the best price-quality ratio.

However, where the choice is left to the discretion of the public authorities, the criterion of the lowest price is usually chosen. Business stakeholder representatives consulted by the hub reply that in their

experience, the price-only criterion is the most frequently used for the following reasons: difficulty in describing complex conditions and additional specifications when using cost-effectiveness or the best price-quality ratio approach; higher risk of complaints when cost-effectiveness or the best price-quality ratio approach is used as companies regard it as an effort on the part of the contracting authority to decrease participation in public procurement by setting unjustified additional requirements or to limit access to the tender by cross-border suppliers; quicker procedure; easier to implement for public authorities.

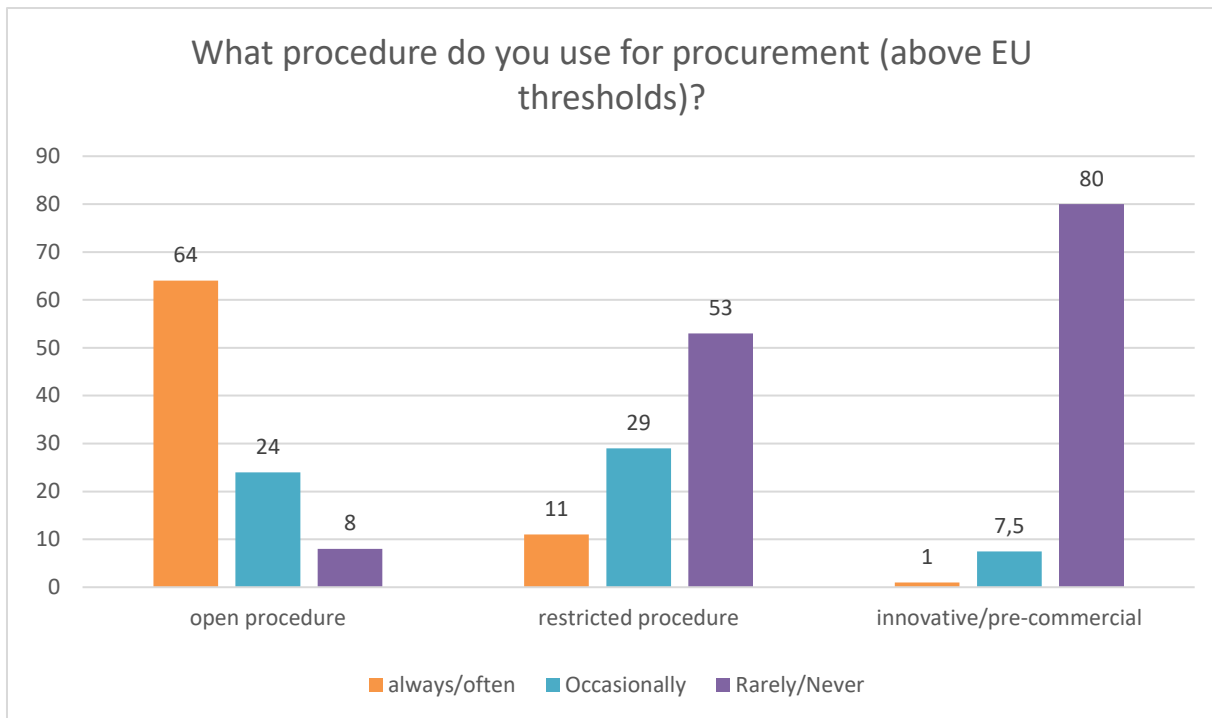
The stakeholders representing public authorities generally consider that the best price/quality ratio is an appropriate criterion in procurement procedures for engineering services. On the other hand, in the case of standardised supplies or works with detailed project plans, the lowest price criterion is more appropriate.

4.6 Procedures used

Half of the regional hubs indicated "not applicable" when asked about their experience of the innovation partnership, which shows that either they are not familiar with this procedure or they do not use it. 42% however responded that they had a positive experience.

The **Umbria/Veneto** hub specifies with respect to the innovation partnership that the hubs are of the opinion that it was intended to address a real need, but they highlight significant implementation difficulties that result in a very low level of actual use of this procedure on the ground. It is viewed by stakeholders as cumbersome and unsuited to small projects. One of the reasons for the low level of use identified by the **Umbria/Veneto** hub's business stakeholder representatives is that public administrations are reluctant to use procedures which leave room for discretion, fearing the potential liability. Moreover, too much room for discretion makes businesses suspicious too, as they are afraid of arbitrary choices by public authorities.

It transpires from the **CoR-CEMR** survey that the open procedure is by far the most used, with 90% of respondents to the CoR-CEMR survey using it always/often or occasionally. For pre-commercial procurement and the innovation partnership, the figure is 10%. The main reason for not applying some procedures, such as the innovation partnership, pre-commercial procurement or negotiated procedures without prior publication, is either legal uncertainty (and the resulting high risk) or the lack of time and resources.



Source: CoR-CEMR survey

4.7 A more flexible competitive negotiated procedure

The Directives aim to give contracting authorities more flexibility, greater options and new routes to procurement. One example of this is the revamped competitive negotiated procedure. It focuses on improving the tenders and aims to provide contracting authorities with effective instruments to obtain the best possible procurement outcome in the negotiations. Contracting authorities can only use this procedure when negotiations are necessary due to the specific or complicated nature of the purchase. One advantage of the competitive negotiated procedure is that it allows a client to award the contract to a supplier once the proposals have all been evaluated, but offers the flexibility to enter into negotiations if necessary. The grounds for using the competitive negotiated procedure have been widened and are now broadly the same as those for the competitive dialogue, with the difference that with this procedure the contracting authority has to define its project objectives and requirements from the outset. A competitive dialogue procedure on the other hand is ideal for complex relationships where specifications or outcomes of a solution have not yet been clearly defined as it allows the contracting authority to work up the requirements during dialogue and to carry on until it has identified one or more solutions capable of meeting its needs⁷.

When consulted on their views about the more flexible competitive negotiated procedure, all the respondents gave either a positive response (74%) or indicated that it is not applicable (26%). It should be noted, however, that there were some critical remarks from the business sector in Italy.

The **Flanders** hub sees the greater flexibility of the competitive negotiated procedure and the extension of its applicability as a positive development; for many public contracts, this is the right choice in terms

⁷ Further info: <http://www.bestpracticegroup.com/concise-overview-eu-procurement-procedures/>

of the best possible procurement procedure. Flanders would like to see the possibility of doing it in a single step. Furthermore, they argued that such procedures should allow for the possibility of holding the final negotiations with just one preferred tenderer.

This hub also recommends making the competitive negotiated procedure a standard procurement procedure that is not subject to specific conditions for application. The construction sector, in contrast, sees price-based tendering as the standard procurement procedure. Flanders hub sees the competitive negotiated procedure as time-consuming and as requiring more effort on the part of businesses.

The **Ialomita/Harghita** hub stresses the advantages of this procedure: limiting the number of economic operators taking part in the tendering procedure, the costs incurred by the contracting authority can be much lower and the time spent evaluating the tenders much shorter than for an open procedure. Limiting the number of tenderers can help avoid unnecessary costs incurred by unsuitable economic operators. The standard of tenders is higher, thus promoting more effective competition.

Baden-Württemberg hub feels that the changes in the negotiated procedure create more room for manoeuvre when shaping procedures and thus offer flexibility, allowing contracts to be awarded efficiently and yet transparently. The procedure is particularly useful if specifications cannot be established definitively at the time that the procurement documents are being drawn up.

The **Community of Madrid** hub notes that there has been a noticeable increase in the speed and effectiveness of the procedures, although more flexibility and better training are still needed. As a result of the more flexible procedure, better value for money has been achieved in the awarding of tenders.

Vorarlberg and **Upper Austria** share the view that the 2014 amendment did not make the negotiated procedure more flexible; it merely extended its scope. This is viewed positively in principle, but brings only minor reductions in the administrative burden.

In the region of Umbria, in the area of public works, where the competitive negotiated procedure is applied, the procedure has been streamlined by establishing regional lists of professionals which the region must use and other regional contracting authorities may use, and in fact they make extensive use of them. The lists make for a shorter procedure as they make it possible to leave out the stage of expressing interest in participating and go straight to the invitation to tender.

SME representatives in Umbria are much less positive and argue that while in theory, the greater flexibility and streamlining should simplify access to public procurement for SMEs, in practice contracting authorities often mistrust negotiated procedures and are reluctant to use them. Furthermore, the limited use of negotiated procedures is explained by the public stakeholders as being partly due to the fact that ANAC (the Italian National Anti-Corruption Authority) is not in favour of them. Finally, ANCE Umbria (Umbria division of the National Builders' Association) dislikes the competitive negotiated procedure due to its complexity and the fact that it leaves too much to the discretion of public authorities.

The **CoR-CEMR** survey reflects the views expressed in the regional hubs consultation relatively well, although the regional hubs respondents were generally more positive. Of those respondents who did have a view of the competitive negotiated procedure, 78% find the changes positive and only 22%

negative. One of the positive aspects mentioned by the respondents is the fact that the negotiated procedure has worked well for complex procurement procedures since it makes it possible to better meet the expectations of the contracting authority, improve the tenders received, adapt them to real needs and improve performance, being it in qualitative, financial or other (sustainable development, implementation, relationship, etc.).

With regard to the difficulties raised by some respondents regarding this procedure, it is claimed that flexibility has not become apparent, and the procedure has become more formalistic, time-consuming and complex. It also deters candidates from participating. It is also noted that some contracting authorities have been too quick to use this procedure, mainly due to their inability or unwillingness to develop a proper specification of requirements at the outset. In some cases, they have sought to use the negotiation phase as a shortcut to developing specifications. However, this has not worked well because they have surrendered the bargaining power inherent in the open procedure and instead have empowered suppliers to dictate terms and conditions. The reality is that few staff in contracting authorities have the capacity to undertake commercial and legal negotiations with suppliers (who are usually supported by lawyers and other professionals), which nearly always makes the "negotiation" something of an unequal contest.

The high number of respondents that had a view of the competitive negotiated procedure (50%) in the CoR-CEMR survey should also be highlighted, as it may indicate that many are not familiar with this procedure or that they do not use it. This might also explain the difference with the regional hubs consultation, which was generally more positive. It has also been noted that there may be a culture of not using this procedure unless absolutely necessary as some local authorities report that staff are cautious about using it. Some suggest that it goes against what public sector officers are trained to do in other procurement procedures. More guidance on this procedure is needed to ensure it is used more effectively.

4.8 Electronic procurement

E-procurement is at the heart of the public procurement reform brought about by the new Directives. The European Commission stresses that digitalisation of public procurement will reduce the administrative burden and also result in higher traceability of procurement procedures. Overall, the use of digital tools will contribute to greater transparency in public spending, improved access to market opportunities and better value for money⁸.

A key part of the digitalisation process is the European Single Procurement Document (ESPD), an electronic self-declaration for bidders replacing the various forms used in the past by EU Member States to prove that a tenderer fulfils the exclusion and selection criteria (e.g. they have paid taxes and have sufficient financial standing). Only the winning company needs to submit all the documentation proving that it qualifies for a contract. This will drastically reduce the volume of documents needed.

Contracting authorities had until 18 October 2018 to implement exclusive electronic public procurement via dedicated e-procurement platforms. This means that the entire procurement procedure, from

⁸ For further info:

https://ec.europa.eu/growth/content/electronic-public-procurement-will-reduce-administrative-burden-and-stop-unfair-bidding-0_en

publishing notices to submitting tenders, must be performed electronically by that date. Since 18 April 2018, the European Single Procurement Document (ESPD) can only be provided in electronic form. Moreover, within the Internal Market Information System (IMI), the Commission has established the online service e-CERTIS, a free source of information which is meant to help economic operators and contracting authorities to identify the administrative documents frequently requested during procurement procedures across the 28 Member States, one candidate country (Turkey) and three EEA/EFTA countries.

As regards the introduction of new rules on electronic procurement, a very large majority of respondents to the regional hubs consultation welcome the changes.

The **Umbria/Veneto** hub particularly welcomes the use of platforms to submit documentation in electronic form.

The positive report on platforms is based on the following benefits:

- a) dematerialisation, i.e. less use of paper;
- b) traceability of all stages of the procedure, thus increasing transparency;
- c) improved useability and better storage of data in digital archives;
- d) more rapid procedures;
- e) less recourse to an official acting as notary, who, in the absence of a platform, has, for example, to attest to the existence of an act, etc.

However, despite the positive feedback, some specific problems are also reported by the Umbria/Veneto hub:

- a) technical difficulties and the need for staff to be kept updated;
- b) discrepancies between the contracting authority platforms, as every public authority has its own; this increases costs for businesses, which have to be equipped to use systems which are different every time, and public authorities which, where systems are not the same, cannot work together and, for instance, share costs.

It is also stressed that due to the lack of uniformity among platforms, electronic procedures can become a barrier to access by SMEs to public procurement.

As regards online auctions, business stakeholders have a poor view of current electronic procurement. In fact, the mechanism by which tender procedures remain open for a certain period of time and all the participants are aware of the others' price decreases leads businesses to undercut each other, which is economically damaging for the businesses awarded the contract.

Stakeholders consulted by the **Friuli Venezia Giulia** hub argue that although electronic procurement makes the procedure more transparent and has therefore proven to be extremely useful within the state, the electronic platforms cannot be used for cross-border procurement, since they constitute a barrier to the participation of businesses and organisations from neighbouring countries. Indeed, the platforms, which were designed and developed at national level, do not make provision for the use of different languages or the inclusion of administrative formalities required by countries other than that in which

the contracting authority is based (e.g. VAT number, tax code). They therefore clearly hinder participation and competition. The European Commission should lay down uniform protocols for IT systems across all Member States, facilitating access to all European operators.

The **International Lake Constance Conference** hub argues that for the contracting authority, electronic procurement entails fewer costs, ensures media break-free procurement documentation and simplifies the process. From the tenderer's point of view, there is some scepticism. For SMEs, in particular small firms, this makes access to procurement procedures more difficult (higher entry threshold).

The acceleration of the procedure for contracting authorities achieved via the electronic procurement procedure and the related further standardisation for contracting authorities were welcomed by the stakeholders consulted by the **Upper Austria** hub. However, it was also pointed out that e-procurement can be overly complicated in the case of smaller contracts. This has made accessing procurement procedures more difficult for SMEs, especially micro-enterprises ("higher entry threshold").

90% of stakeholders consulted by the **Dubrovnik-Neretva County** hub responded "positive", citing advantages such as less paperwork, a simpler application process, less potential for abuse and more transparency, which makes the process as a whole much easier; this change was judged to be the best.

The **Catalonia** and **Crete** hubs express concerns with regard to interoperability and system integration.

The **Community of Valencia** hub welcomes the positive aspects of e-procurement, i.e. more transparency, advertising, greater scrutiny, shorter time frames and legal certainty. It notes, however, that the transposing legislation is somewhat confusing, and in some cases makes implementation difficult. All communication with tenderers is conducted via the procurement platform, which makes it possible to check reception with time stamps. However, local authorities in Valencia, particularly municipal councils, are not yet ready for e-procurement procedures.

It is pointed out that progress needs to be made on the electronic processing of procedures and on the uniformity of rules for participation and processing. Standard specifications should really be adopted for the whole of the EU.

The **Community of Madrid** hub welcomes e-procurement as it reduces red tape, speeds up procedures and the administrative processing of files, promotes transparency, facilitates participation in calls for tenders, increases competition and simplifies the submission of tenders and their assessment by the public authorities.

The **Mazovia Voivodship** hub shares the view of the other hubs regarding the positive aspects of electronic procurement and specifies that due to the relatively short period during which it has been in effect, it is not possible to determine the impact of digitalisation on the quantity and quality of the tenders submitted. In the current legal situation, tenders below the EU thresholds are submitted in paper form and cannot be assessed at this stage, as the introduction of a fully electronic system will affect the public procurement market.

The **CoR-CEMR survey** reflects the same positive view of respondents on e-procurement. 64% of respondents and 47% of small municipalities find it positive. The change is generally welcomed, for the following reasons: it is quicker, less prone to errors, offers greater legal certainty, reduces the administrative burden, makes documentation easier and improves transparency - questions from tenderers are handled via the procurement platform.

The predominant view is that e-procurement as a principle is the best way forward and brings benefits to both buyers and suppliers. However, it remains to be seen whether one-size-fits-all EU-wide mandatory measures, such as a common EU eInvoicing standard, will bring new costs and/or burdens. In general, the EU framework should remain light in this area.

Respondents note that e-procurement makes work processes more streamlined and more consistent, reduces the administrative burden and makes the process faster and more transparent. In terms of room for improvement, it is noted that there are still significant challenges across Member States, specifically i) ensuring better understanding regarding the use of data security tools, and ii) enhancing integration and interoperability.

Others, however, stress that the lack of or insufficient technical skills cannot be remedied by these systems. Moreover, it is thought that, on the tenderer side, the introduction of e-procurement has advantages for large firms but that small craft enterprises in particular still have weak computer literacy and the portals on offer are not always optimal. It should continue to be possible to submit written tenders in order to allow for the highest possible number of tenderers. Others see these problems as merely transitional, as with any new system.

➤ **Specific concerns about the European Single Procurement Document (ESPD)**

The **Upper Austria** hub notes that any administrative simplification through a law on e-procurement is to be warmly welcomed. However, it should also be noted that the Public Procurement Directives issued in 2014 did not establish any rules that would have provided SMEs with sufficiently easier access to public procurement procedures. It should be noted that the European Single Procurement Document (ESPD) creates a massive additional burden, particularly for SMEs, compared to the documents previously required for proof of qualification, and therefore puts SMEs in particular at a disadvantage.

The **Flanders** hub also has some specific issues with the ESPD.

The Flemish government is in favour of the objective of administrative simplification, but that simplification needs to be implemented effectively. In addition, the Flemish government believes that administrative simplification must not target only participants in public procurement, but should also apply to contracting authorities. Specifically with regard to the ESPD, the question arises of whether the intended objective can be achieved by the means chosen.

First of all, it is noted that the re-use of an ESPD, as provided for in the Directive, is rarely possible in practice. Contracting authorities set the qualitative selection criteria for each procurement procedure, depending on the subject matter of the contract. Given that the subject matter always varies widely, the qualitative selection criteria required are also very varied. In addition, the qualitative selection criteria evolve over time (references can only be used for a certain period of time, staff members and numbers

change, the equipment a business has access to changes, etc.). It is therefore not easy – and often not even possible – to re-use an ESPD from a previous procurement procedure for a new one.

In addition, the use of the ESPD itself presents a number of problems in practice. Participants in public procurement procedures often do not know how to complete an ESPD correctly. The administrative burden is further exacerbated if a tender is submitted by a temporary association and/or with the support of other entities. Even with all the tools available to them (the ESPD tool, public procurement manual), errors are still often made. This is particularly true of (small) businesses that participate in public procurement only sporadically, such as SMEs and sole proprietors, even though one of the aims of the Directive is to give SMEs more access to public procurement.

Finally, the ESPD is an additional formality that participants in public procurement need to comply with, and that contracting authorities need to check. This leads to additional legal problems and complex discussions. It therefore constitutes an additional factor that could lead to a participant being excluded from a procedure, which is detrimental to competition and the free market.

The Flemish government therefore calls for an in-depth evaluation of the ESPD in the light of its objectives.

The **Catalonia, Community of Valencia** and **Helsinki-Uusima** hubs also raised concerns about the ESPD, arguing that it is cumbersome and complex and thus unworkable for both tenderers and procurement departments.

In their comments in the open responses to the CoR-CEMR survey, stakeholders raise the same concerns about the ESPD.

4.9 Stronger provisions on integrity and transparency targeting corruption and fraud

Improving the openness and transparency of public procurement is one of the main aims of the 2014 Public Procurement Directives. The Directives provide Member States with tools to fight corruption and malpractice, such as stronger provisions on the detection, prevention and tackling of conflicts of interest. Additionally, new record keeping and reporting obligations require key decisions and steps to be recorded throughout the procurement procedure, including documentation on internal deliberations which equates to increased obligations for contracting authorities.

The grounds for mandatory and discretionary exclusion have been expanded. New mandatory exclusion grounds include terrorist offences, child labour, human trafficking and failure to pay taxes and social security contributions. These new offences are in addition to the mandatory grounds listed by the current Directive: participation in a criminal organisation, corruption, fraud and money laundering. New grounds for discretionary exclusion include failure to comply with environmental/social/labour laws, grave professional misconduct, undue influence on the authority's decision-making process, tender rigging and poor prior performance of a public contract by the economic operator. These are in addition to the discretionary grounds already in place, including bankruptcy, insolvency and misrepresentation.

While the extended grounds for exclusion give contracting authorities considerable discretion, economic operators are permitted to "self-clean", i.e. a contracting authority cannot exclude an economic operator

where the economic operator can show that it has taken steps to remedy the wrong, and those steps are sufficient to demonstrate reliability.

A very large majority of the regional hubs welcome these provisions as a positive development.

The **Community of Madrid** hub values the changes as greater transparency is seen as essential. This also facilitates competition between businesses, increases the quality of such services, improves financial tenders, and ensures equal treatment between tenderers and free competition.

The resulting legislation includes new provisions on incompatibilities and fraud risks, as well as increased transparency in award procedures, although the department responsible for coordinating procurement has stated that the Directives do not stipulate measures that can be taken to fight corruption and prevent conflicts of interest. All measures to combat crime should be appreciated. Aside from the obligation to publish administrative procedures on the procurement portal, all citizens now have easier access to information and can find out more easily how public funds are spent.

Stakeholders consulted by the **Mazovia Voivodship** hub agree that strengthening these provisions helps eliminate pathological phenomena, obliges the parties to behave with integrity and tackles fraud. It also obliges contracting authorities to maintain fair competition and equal treatment and to use public funds efficiently and fairly.

The **Thessaly** hub notes that the changes appear positive as, in conjunction with the application of electronic procedures, it enhances transparency. The measures on conflicts of interest also have a positive impact on transparency.

The **North Rhine-Westphalia** hub, which received feedback mainly from the trade associations (e.g. IHK) in North Rhine-Westphalia, points out that the stricter provisions on integrity and transparency designed to prevent corruption and fraud are predominantly perceived as important and useful.

The Irish **Northern and Western Regional Assembly** hub points out that it is difficult and time-consuming to eliminate or exclude some suppliers due to non-performance.

The **Community of Valencia** hub welcomes the changes because thanks to e-procurement and conflicts of interest, there are greater guarantees and certainty for public officials managing contracts; transparency in the management of public resources is ensured; the consequence has been greater preparation and organisation of procedures; advertising them has allowed for more stringent procedures; scrutiny of members of panels and the people issuing the relevant technical reports promotes integrity in these areas. However, it is noted that the sluggish nature of the Spanish judicial system means that the exclusion of tenderers on these grounds takes longer.

The **Autonomous Province of Bolzano** hub pointed out that its stakeholders criticised the excessive bureaucracy and the administrative burden relating to the prevention of corruption. In this context, it was pointed out that more stringent provisions are not sufficient to prevent the participation of companies investigated for corruption and suspended from engaging in business.

The **Umbria/Veneto** hub mentions that most of its stakeholders had a positive view of the principle. However, they note that in practice, integrity and transparency in combating corruption and fraud are in danger of remaining purely theoretical.

The transparency provisions are essential to make people aware of how public money is spent. However, they are not always useful for effectively combating corruption as they merely act on the risk of corruption. There is, for example, nothing to prevent a corrupt official from continuing to invite the same enterprise to tender as long as they provide reasons for doing so.

Very strict and restrictive regulations (such as those in Italy) may also prove to be of questionable effectiveness when it comes to fighting corruption: for example, at national level, under the rules governing professional misconduct, the company is required to declare non-definitive measures taken against it; this could lead to an exclusion from tender procedures which could later prove to be unjustified. In order to fight corruption effectively, rather than dealing with regulatory aspects, a culture of legality must be created and timely and effective checks carried out, following which strong sanctions such as dismissal for public officials and exclusion from procedures for companies in breach of the law should be rigorously applied.

The **International Lake Constance Conference** hub notes that the majority of those consulted see these provisions as positive. Prevention of corruption is a key issue. The increase in legal certainty through greater legal clarity is highlighted, along with uncertainty in practical application. Individual points of negative feedback refer to the increased time required, increasing red tape and the fact that the rules are detrimental to SMEs in particular (fewer possibilities for dealing with the different types of barriers are open to them than to large companies).

The **Upper Austria** hub argues that the provisions are in principle positive, but there are uncertainties and therefore practical difficulties. The rules also have a negative impact on SMEs in particular, as fewer possibilities for removing possible barriers are open to them than to large companies. Some respondents also criticised the significant administrative burden these provisions generate.

The **Catalonia** hub is concerned that there are insufficient electronic means available to minimise the workload involved in ensuring public availability.

The **Helsinki-Uusima** hub claims that the transparency rules do not correspond to, or effectively prevent, the new trends in corruption. It also notes that the criminal record requested does not reflect the relevant information.

The **Eastern Slovenia** hub says that the safeguards against corruption are not applied, either because these safeguards cannot be verified or because they are simply not checked appropriately. Eastern Slovenia, furthermore, argues that public procurement is viewed askance in Slovenia as it is believed to be used to favour specific businesses. For this reason, many LRAs favour the MEAT criterion (possibly they mean the price-only criterion) as this option is seen as being less vulnerable to corruption. However, this does not lead to the best use of taxpayers' money.

The **Flanders** hub notes that the obligation to check grounds for exclusion with respect to directors, board members, etc. is seen as difficult to implement in practice and the obligation to exclude tenders

for breaches of social, labour and environmental law appears difficult to apply, as the contracting authorities often do not have the power to carry out such checks.

The stronger provisions on integrity and transparency are welcomed by almost half of the respondents to the **CoR-CEMR survey**, with only 17% having a negative view of them. Here again, a high number of respondents chose "not applicable" (34%), which could mean that they are not aware of this change or they do not use it. If we look only at those who replied positive/negative, 72% see the change as positive and 28% see the change as negative.

Negative aspects of the new provisions include the fact that they are hugely complicated and rendered worthless by loopholes such as "self-cleansing" declarations. They are also undermined by the fact that tenders can be submitted in the name of a separate corporate entity, making it very difficult for a contracting authority to reject a tender even if it knows that the group structure to which it belongs has been guilty of serious wrongdoing.

Moreover, it is claimed that the proof of current economic situation required for tenderers to compete for public contracts has become burdensome and that provisions lead to increased costs and additional costs for businesses. There is no longer any competition or severely restricted competition.

Other stress that although it might seem paradoxical to answer this question with a negative when in principle the change is positive, in practice it is almost untenable: in practical terms, this means asking for supporting documents (e.g. for an extract from the judicial record) for all members of the management boards (and other decision-making bodies) of all tenderers, in addition to the evidence supplied by the economic operators (companies). If it is a contract with several lots of interest to different economic operators, hundreds of supporting documents can be requested for a single contract.

4.10 Scope extended to cover the modification/termination of contracts

The new Directives set out a number of scenarios whereby modifications to contracts are permitted, including:

- a higher *de minimis* threshold of 10% (for services and supply contracts and concessions) and 15% (for works contracts), below which modifications will not be considered substantial enough to be prohibited, provided that the general nature of the contract remains the same and the value of the modification does not in itself exceed the thresholds for application of the new Directives;
- where the modifications have been provided for in clear, precise and unequivocal clauses in the initial procurement documents (irrespective of their monetary value);
- changes in the contractor, as a result of (a) an unequivocal review clause; or (b) a complete or partial succession of a contractor following a corporate restructuring (e.g. take-over, merger, insolvency) and the new operator fulfils the original qualitative selection criteria;
- additional necessary work, or a change brought about by unforeseeable circumstances, not altering the overall nature of the contract (but any increase in price must not exceed 50% of the original contract value); and

- where the modification is not "substantial", when tested against certain tests which reflect current case law on prohibited modifications⁹.

A very large majority of respondents regard the extension of the scope to cover the modification/termination of contracts as a positive development.

The **Umbria/Veneto** hub's stakeholders saw the subject quite differently. In fact, although all stakeholders representing public authorities replied "positive", business representatives replied "negative".

The positive view held by the public stakeholders is based on the following grounds: more flexibility, giving the contracting authority greater self-determination (e.g. changes can be made to the contract in many cases). More efficiency and quality: it was important to take the implementation phase into account (previously not covered by European standards) as it is even more important than the tender stage; in fact, in the implementation phase, what is "implemented" has to correspond to the specifications.

The business representatives replied "negative" because of the national rules transposing the European Directives, which are unclear as they deal with very varied situations. For example, price revisions, variants, anything that could lead to a modification in a contract, or termination of a contract on grounds of non-performance or breach of anti-Mafia regulations or because of the loss of the attestation issued by the attestation bodies (SOA), which certify that the businesses carrying out public works satisfy the requirements laid down by European and national legislation on qualification. This diversity would require greater differentiation between individual cases in legislation.

The **International Lake Constance Conference** and **Upper Austria** hubs argued that the codification of European Court of Justice case law on this subject in the Directives is to be welcomed in principle, as in principle it boosts legal certainty. However, in practice the provisions still involve a degree of legal uncertainty and should be fleshed out.

The **Dubrovnik-Neretva County** hub reports that 80% of stakeholders chose "positive" as they had experienced modifications and extensions to deadlines due to the need to regulate various situations in the course of the procedure.

The **Brod-Posavina County** hub stresses that the biggest modifications to contracts have occurred in the construction sector, where contractors ask for the contract deadline to be extended, mainly because of bad weather. It is good that the law allows this and that it sets out the precise circumstances under which the contract may be changed.

The **Catalonia** hub welcomes the change as making modifications public strengthens transparency and reduces opportunities for fraud. It is noted, however, that Spain's internal legislation is more restrictive than EU legislation when it comes to modifications.

⁹ Further info:

<https://www.mccannfitzgerald.com/knowledge/construction-and-engineering/new-procurement-directives-transposition-deadline-passes>

The **Community of Valencia** hub also welcomes the changes but at the same time claims that the transposing legislation is somewhat confusing, which in some cases makes implementation difficult.

The **Community of Madrid** hub values the changes as any possible modifications to contracts are estimated and determined in advance, which clarifies the procedures for awarding tenders.

It is also stressed that the principles of transparency and equal treatment should be ensured not only during the tendering procedure but also during the performance of the contract. The measures to facilitate the monitoring and transparency of the modifications are viewed positively. However, the new regulatory approach seems to be more optimistic, which is not viewed in such positive terms. One consequence of the introduction of this criterion is that national legislation extends regulation of certain actions resulting from its implementation and finalisation to private contracts, when this was previously only applicable to administrative contracts. This is an additional measure to ensure that procedures are transparent and strengthen public trust in the administration.

Stakeholders consulted by the **Mazovia Voivodship** hub welcome the change as, particularly in the case of construction (renovation) works, it is not possible to anticipate every event that may arise during the works (this mainly concerns renovation of historical buildings). It is also noted that the changes also allow any given contract to be implemented even in situations which may previously have resulted in its being declared void and additional (new) tender procedures necessary. It certainly allows contracting authorities with less experience of applying public procurement legislation to analyse the admissibility of modifications more easily and thus reduces scope for errors.

The **Ialomita/Harghita** hub stresses that the opinion of the contracting authorities is that regulating the content of the contract (modification or termination) does to some extent solve problems which may crop up during the contract procedure. Lack of experience creates difficulties as regards interpreting the applicable legal provisions and implementation.

40% of respondents to the **CoR-CEMR survey** see the extension of the scope to cover the modification/termination of contracts as a positive development as it is a long overdue change which reflects what was happening anyway. 46% replied "not applicable", which could mean that respondents are not aware of the change or they do not use it. If we look only at those who responded positive/negative, we see that 75% see the change as positive and 25% as negative.

There are, however, some concerns. There continue to be a number of issues in this area and public authorities face legal challenges on contract modifications and contract extensions, etc. The provisions in the Directives do not appear to have helped reduce the legal issues and uncertainties in this area.

More needs to be done, for example to protect some contracting authorities from constantly having to restart tender procedures purely because of minor technicalities - a costly exercise. Some contracting authorities report that they need to start budgeting for more legal costs - either within the procurement teams or working alongside them. This is an inefficient use of tax-payers' money.

The new rules create legal clarity and provide a relatively generous set of instruments to respond more flexibly to changes in the legal framework or other requirements, particularly in the area of longer-term contracts with highly regulated services (e.g. waste management).

It is also claimed that the two conditions listed under Article 72(1)(b) of EU 2014/24 should be alternative and not cumulative because this renders the modification of the original contract impracticable. Article 72(1)(b) of EU 2014/24 allows for modifications of up to 50% of the value of the original contract (per modification) where the following two cumulative conditions are met: "*a change of contractor (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; and (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority*".

5. Strategic procurement

The 2014 Public Procurement Directives provide a toolbox for Member States to make more efficient and strategic use of public procurement, so as to make a strategic contribution to horizontal policy objectives such as innovation, social inclusion and economic and environmental sustainability.

The public procurement package adopted in October 2017 made the wider uptake of strategic procurement a key priority, as it is argued that the most economically advantageous tenders on the basis of a cost effectiveness approach which may include social, environmental, innovative, accessibility or other qualitative criteria are still underused¹⁰. This means that public authorities can differentiate between what they buy on the basis of the process and production methods that are not visible in the final product. Public authorities can use their public procurement as a means to prevent undeclared work, increase employment of vulnerable individuals or address social exclusion.

When strategic criteria are used, the contracting authorities need to prove the link with the subject matter of the contract, the criteria must be objective and objectively quantifiable, must aim to identify the most economically advantageous tender and cannot seek to achieve any other purpose.

The majority of respondents regard the focus on strategic procurement as a positive change as it has the potential to lead to greater efficiency in the use of public funds and to ensure that the authority is involved in achieving objectives related to improvements in environment and social inclusion. However, some stakeholders have a negative view and some that, while being positive, have concerns notably with regard to the practical implementation of strategic criteria.

The **Umbria/Veneto** hub indicates that there are several possible answers to this question. There is a substantial positive response to strategic procurement, but this response is only theoretical as most stakeholders note that this method is seldom applied. This is partly due to the lack of technical expertise and over-complexity, particularly in the national rules transposing the European Directives; this complexity means that strategic procurement is rarely used.

The **Region of Emilia Romagna** hub specifies that large operators support innovation and the environment: this is thus a step forwards in the development of public procurement. At the same time, small and medium-sized businesses note that the implementation of and demand for relevant requirements may sometimes be an obstacle.

The **Brandenburg** hub reports that these aspects are considered desirable and necessary, and are particularly supported by stakeholders involved in worker representation and the environment. Another stakeholder consulted by the Brandenburg hub said that the criteria were rarely used in practice; this was indirectly confirmed by the number of stakeholders who responded "not applicable".

The **International Lake Constance Conference** hub underlines that the feedback received from contracting authorities in both Baden-Württemberg and Vorarlberg was essentially positive: climate goals and the responsibility to future generations were highlighted in a positive fashion. From the point of view of Vorarlberg and some contracting authorities in Baden-Württemberg, the involvement of

¹⁰ European Commission, The public procurement package, October 2017, available: https://ec.europa.eu/growth/single-market/public-procurement/strategy_en

political goals was seen as a negative factor: these criteria do not have anything to do with procurement and complicate procedures (partly competing goals) and/or make them more expensive; they also increase the risk of irregularities.

The **Upper Austria** hub specifies that the majority of respondents did not provide any information on this issue and those who are critical of the situation noted that in recent years, procurement had become an extremely complex legal matter, with both contracting authorities and tenderers (especially SMEs) being increasingly overwhelmed. Pursuing policy objectives by means of procurement rules makes these procedures even more difficult. Public procurement law should be limited to the primary purpose of this area of law, namely to ensure free and non-discriminatory competition. The consideration given to secondary objectives should therefore be more limited. However, there were others who, from the point of view of regional and local contracting authorities, were in favour of giving greater priority to strategic policy objectives. Upper Austria also notes that those who responded "reluctantly" (22%) to the question "how is organisation disposed towards strategic procurement" cited the following reasons: no need due to the low number of contracts; complex legal framework; lack of technical expertise; legal uncertainty.

The **Flanders** hub claims that, in the context of social and green public procurement, it would be worthwhile clarifying whether the provisions on subcontracting also apply to suppliers. While the Directive does allow for the possibility of extending certain obligations concerning subcontractors to supply contracts, suppliers are often not strictly speaking subcontractors (as they are not specifically contracted to fulfil some of the obligations under a specific contract).

The **Dubrovnik-Neretva County** and **Thessaly** hubs note that they have no experience in strategic public procurement.

The Irish **Northern and Western Regional Assembly** hub welcomes the focus on strategic procurement and at the same time stresses that more training and guidance would be helpful.

The **Catalonia** hub values the focus on strategic procurement but notes that the interpretation by the administrative tribunals and the courts is very restrictive, with the result that contracting authorities find it very difficult to incorporate it. Given the estimated high number of appeals from certain business sectors, the decision is therefore taken not to incorporate strategic procurement measures, particularly social ones.

The reluctance to use strategic procurement is due to the fact that administrative tribunals for procurement and ordinary courts usually uphold appeals against the inclusion of strategic procurement measures. The Province of Barcelona (stakeholder consulted) feels that its hub has a largely positive view.

The **Community of Valencia** hub praises the positive aspects of strategic procurement and notes that the obligation to establish a special requirement on the implementation of environmental or social content was positive, as it makes it possible to monitor compliance with these matters and, where they are not implemented, to succeed in terminating the contract. For example, in service contracts, which cover the people carrying out the services, the obligation to pay workers' salaries on time is usually included.

However, it is also stressed that it is difficult to establish award criteria, conditions of performance or solvency criteria that are eligible (linked to the subject matter of the contract and not reducing competition). The transposition rules sometimes cause confusion, particularly in relation to the link with the subject matter of the contract.

The **Community of Madrid** hub welcomes the shift towards strategic procurement as this makes it easier and more effective for businesses to commit to, support and promote policy objectives relating to innovation, the environment and social integration, and therefore their inclusion in procurement documents is considered to be positive. This can lead to greater efficiency in the use of public funds. It also ensures that the authority is involved in achieving objectives related to improvements to the environment and social inclusion.

On the other hand, it should be noted that the practical implementation is generating considerable uncertainty as it is not clear how it may affect criteria such as solvency, the award of contracts and special conditions.

Moreover, in many cases, there is a risk that the running of the companies may be viewed as more important than the tenders themselves. Difficulties have also been identified in establishing the link between social award criteria or implementation conditions, on the one hand, and the purpose of the contract on the other.

The **Zasavje Regional Development Agency** hub says that there is a risk that strategic procurement may be used to limit competition.

Here too, the sometimes problematic interaction between national and European law is flagged up. The **Friuli Venezia Giulia** hub says that firstly, there is the problem of over-regulation at national level, partly due to the need to coordinate with legislation in other sectors, which makes applying the rules extremely complicated. Furthermore, there is a lack of clarity in national legislation, a failure to use clear language that is unambiguous and consistent with the entire national legal system, and a lack of clarity in individual articles, which are sometimes overly long and often refer to other provisions. Another problem is continuous amendments to the national public contracts code, which prevents public authorities from maintaining standardised practices, creates legal uncertainty and requires continuous updates and highly professional input from operators.

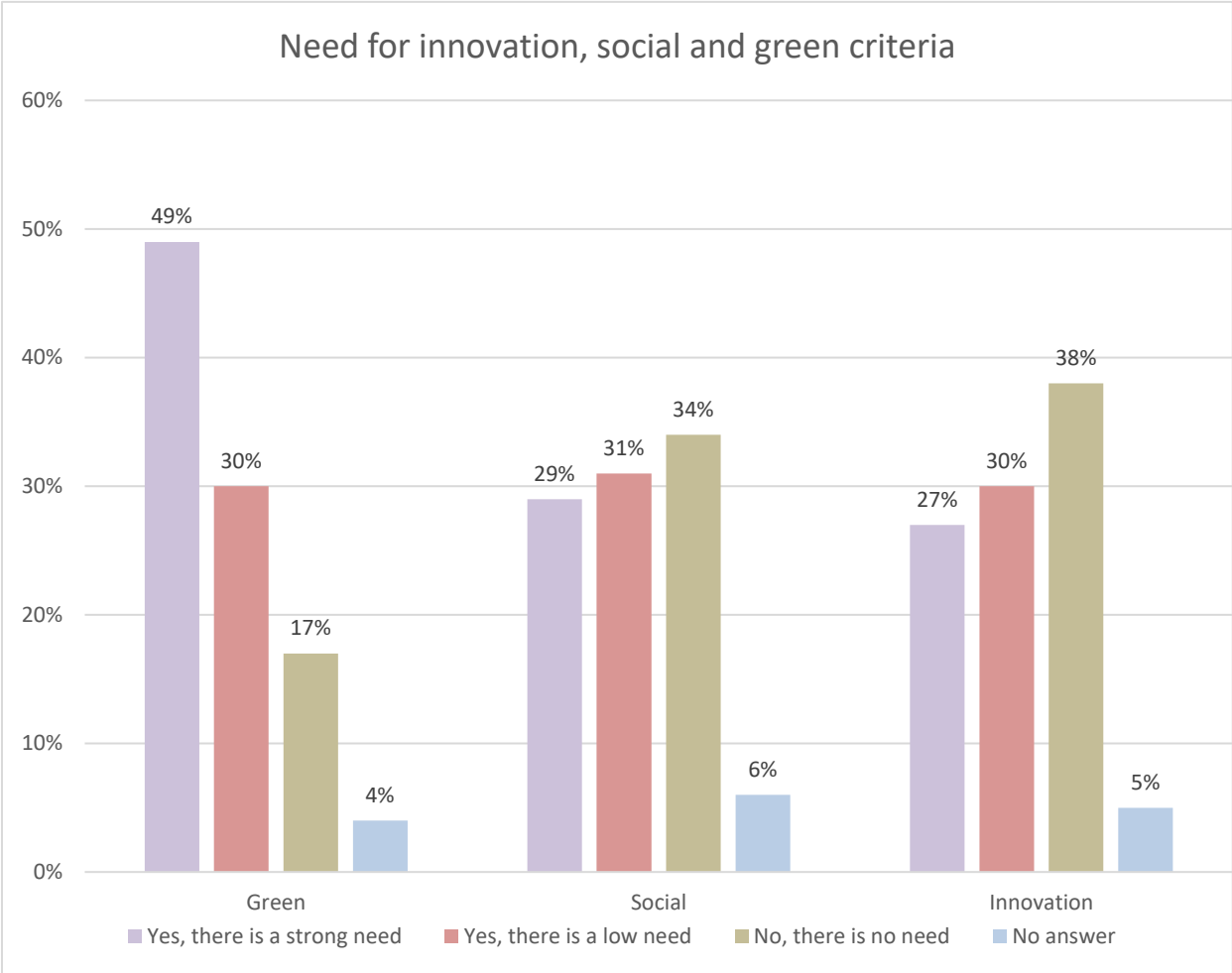
The **Alentejo** hub reports that the combined feedback from the stakeholders and ADRAL is that strategic procurement requires specific resources and overall commitment not usually available. Considering the complex framework, the authorities feel that the results would be more costly and time consuming than useful. The hub has also acknowledged that some of the stakeholders were not familiar with this type of procurement, demonstrating a lack of knowledge of this topic and the need to look into it in more detail.

The **Ialomita/Harghita** hub argues that the legislative framework is the main problem reported by the contracting authorities, linked to the lack of expert staff and the considerable number of procedures.

In a similar vein, respondents to the **CoR-CEMR survey** claim that political/strategic objectives are not anchored in public procurement law, the guiding principles of which are transparency, equal treatment and value for money, and so the mandatory inclusion of policy objectives in the provisions of public

procurement law should be rejected. In addition, the obligation to introduce non-procurement-related criteria would entail significant additional financial burdens for the local authorities and contractors, which are disproportionate for both parties. Respondents claim that the integration of policy objectives into public procurement procedures has to be left to the discretion of local authorities.

When asked about the need to integrate innovation, green and social criteria into public procurement procedures, it transpires that respondents to the CoR-CEMR survey see green procurement criteria as most necessary, followed by social ones, with innovation procurement criteria very much in last place. Respondents from smaller municipalities were systematically less enthusiastic about strategic procurement criteria than other respondents. The differences, however, were not significant.



Source: CoR-CEMR survey

38% of respondents to the **CoR-CEMR** survey see no need to use innovation criteria (the rate is even higher among small authorities: 45%), with 30% saying that there is a low need and 27% that there is a strong need.

34% of respondents to the **CoR-CEMR** survey see no need to use social criteria (the rate is even higher among small authorities: 41%), with 32% saying that there is a low need and 29% that there is a strong need.

The picture changes for green criteria, as only 17% of respondents to the survey see no need to use them (this is also the case for smaller authorities: 19%), with 30% saying that there is a low need and 49% that there is a strong need.

With respect to the challenges of promoting strategic procurement, regarding **innovation**, the "lack of expertise (relevant knowledge and skills of the staff) to carry out innovation procurement" is listed as the most important challenge by the regional hubs with the "difficulty in defining specific requirements as award criteria when using the best price-quality ratio" as the second most important challenge, and the "difficulty in conducting a preliminary market analysis to assess whether the desired product exists on the market and/or establish the number of potentially interested suppliers on the market" as the third most important challenge.

Regarding **social** criteria, the "difficulty in defining the conditions related to the way the contract is carried out while ensuring that those conditions are non-discriminatory and compatible with EU law" is listed as the most important challenge by the regional hubs. The "lack of technical expertise (relevant knowledge and skills of the staff) to carry out Socially Responsible Public Procurement" is the second most important challenge, in the view of the regional hubs, with the "complex legal framework" being the third.

With respect to **green** criteria, the "lack of technical expertise (relevant knowledge and skills of the staff) to carry out green procurement" is listed as the most important challenge by the regional hubs, with the "difficulty in defining the conditions related to the way the contract is carried out while ensuring that those conditions are non-discriminatory and compatible with EU law" listed as the second most important challenge. The "difficulty in assessing the full life-cycle cost when awarding contracts" is perceived as the third most important challenge by the regional hubs.

With regard to the measures being taken to overcome the challenges of promoting innovation, social and green criteria, a large majority of the regional hubs think that national guidance and helpdesks/training courses organised at central and regional level help the relevant parties deal with challenges relating to the three dimensions of strategic procurement.

More specifically:

5.1 Innovation procurement

Innovation procurement refers to any procurement procedure that has one or both of the following aspects:

- buying the process of innovation – research and development services – with (partial) outcomes. In this case, the public buyer buys the research and development services of products, services or processes, which do not yet exist. The public buyer describes its need, prompting businesses and researchers to develop innovative products, services or processes to meet that need.

- buying the outcomes of innovation created by others. In this case, rather than buying off-the-shelf, the public buyer acts as an early adopter and buys a product, service or process that is new to the market and contains substantially novel characteristics¹¹.

With respect to the challenges involved in taking up this type of procurement, several **Hauts-de-France and Autonomous Province of Bolzano** stakeholders cited the difficulty involved in conducting a preliminary market analysis to assess whether the desired product exists on the market and/or establish the number of potentially interested suppliers on the market.

The **Helsinki-Uusima** hub claims that local or regional management sometimes adds further red tape, making the implementation of the innovative measures less effective.

The **Eastern Slovenia** hub argues that there is unfortunately a relatively low level of professional qualifications amongst the staff of contracting authorities, which then outsource projects to external contractors, who in turn may favour a particular tenderer or be costly, making the entire process relatively time-consuming and expensive. In addition, it is difficult to assess in advance the exact value of innovation, which can be remedied by the innovation partnership mechanism which is not being used often enough.

The **West Pomerania region** hub specifies that while the specific nature of public administration (with top-down organisation and operating rules) makes it very difficult to conduct procurement of innovation, this problem does not apply to external entities. It notes that attempts are being made, as far as is organisationally and legally possible, to simplify operations in the relevant area by hiring highly qualified staff (within the limits of the office's financial capacity), raising the professional qualifications of employees and modifying the internal standards governing public contracts in the office.

The **Community of Madrid** hub notes that as regards transport work, a lack of coordination and contradictory criteria were reported with regard to interpretation of the legislation, at regional level and between national and regional levels.

With respect to the measures being taken to overcome the challenges, the Community of Madrid says that service contracts have been concluded with specialised companies with a view to defining a regional strategy for public procurement of innovation in the health and research innovation environments. It also notes that an organisational culture is needed that encourages public procurement of innovation, including organising training courses and providing assistance services in this regard. Legislation has only been issued with regard to the requirement to introduce certain obligations for contractors in the contracts, but there is still work to be done regarding how to ensure that these obligations are fulfilled. In the field of transport, it is felt that additional staff should be made available to carry out these checks.

The **Crete** hub specifies that they focus on cooperation with research institutes to provide innovation.

The **Upper Austria** hub asks for easily understandable guidelines, the **Košice Self-Governing Region** hub for training organised at central and regional level, and the **Thessaly** hub for national guidance from

¹¹ European Commission, Guidance on Innovation Procurement, 15 May 2018, available: <https://ec.europa.eu/docsroom/documents/29261>

the independent public procurement authority, training courses organised at regional level/support desks and recruitment of specialised staff.

The **Community of Valencia** hub reports that some departments mention the need to hire specialised staff, which for the moment is not possible due to rules limiting public expenditure.

The **Alentejo** hub notes that the combined feedback from the stakeholders and ADRAL is that there is still a considerable number of challenges regarding the promotion and implementation of public procurement of innovation. It is also stressed that some knowledge and work on PPI has already been done, namely in Alentejo. Projects funded in this area (such as Prominen MED) have already given some insight, training and pilot project applications in this field. One of the stakeholders consulted (CIMBAL) is a project partner, bringing useful insight to the consultation.

However, there are still challenges to its implementation and promoting an open, flexible and demand-side driven approach should overcome them.

The **Flanders** hub stresses that the Flemish government has set up a programme to encourage the public sector to develop and purchase innovative solutions. This Programme for Innovative Public Procurement (PIO) familiarises, informs, guides and supports (including in terms of financial resources) government bodies with regard to specific innovation pathways.

Comments provided by **CoR-CEMR** survey respondents in the open boxes corroborate these results. Some respondents recognise that innovation procurement encourages the involvement of the private sector and better cooperation with universities, and allows for better products and services by taking into account the knowhow of experts in each sector. It also promotes public and private confidence and increases the level of liability in the contract.

While recognising the importance of using innovation procurement criteria, other respondents also note that the fact that the Directives encourage the use of those criteria is not in itself sufficient to address key challenges in applying innovation procurement. They point out that there are insufficient resources, professional skills and time for this, notably in small municipalities; any deviation from the normal traditional procedure to use additional criteria increases the workload and administrative burden and opens the door to increased risk and more errors, notably when those criteria are not easy to identify, define in legal terms and measure. It is also noted that as all the risks cannot be taken into account at the outset of the procedure, in some cases innovation might be more expensive than existing standard products/services, something that is not easily accepted by politicians and taxpayers as this kind of choice has to be made by politicians.

With respect to the measures that could help overcome the challenges, respondents stress the need for management to encourage exploring with a view to reducing the fear of making mistakes. Others claim that more than training, what is needed is awareness raising among local contracting authorities explaining why using innovation criteria in public procurement would be beneficial for all parties involved.

It is also stressed that there is a need for a common understanding of the definition of innovative market, with examples or more specific elements regarding evaluation, which will enable purchasers to use this kind of procedure more securely.

The study¹² commissioned by the European Committee of the Regions assessing the implementation of the 2014 Directives on public procurement at regional and local levels notes that 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 lack of experience in using 'functional' instead of 'technical' specifications. It is also noted that different levels of progress in implementing policy measures that can mainstream innovation procurement also helps explain the varied uptake across Member States.

5.2 Social procurement criteria

The consideration of social criteria in public procurement covers a wide range of social issues such as social inclusion, equal opportunities, employment opportunities, decent work conditions and compliance with social and labour rights.

In this area, several hubs have mentioned specific difficulties in dealing with the inconsistency between national and EU law.

The stakeholders consulted by the **Friuli Venezia Giulia** hub report that the biggest difficulty is the lack of sufficient clarity regarding the procedures and the complications created when transposing EU legislation to national level, which have made it extremely difficult to carry out the procedure, especially in the contract implementation phase. They feel that clearer guidance should be given on how to implement the contracts.

Italy's national rules have certainly introduced major complications due to coordination with the overall legal system, a process sometimes requiring highly specialised skills which can rarely be found within local and regional authorities. Nevertheless, it would be helpful for the European Commission to disseminate best practices followed by EU countries.

The **Umbria/Veneto** hub specifies that the municipality of Perugia particularly appreciates social public procurement: with regard to the social inclusion goals, the clauses intended to ensure job stability for staff employed by a failing business, and the clauses encouraging social and professional integration of people with disabilities or who are disadvantaged are implemented and effective. The municipality considers that such clauses should be made even more binding than they are now.

The **Flanders** hub raises similar issues regarding discrepancies between the European framework and national/regional legislation, such as European terminology not being in line with Flemish rules. They

¹² VALENZA Alessandro, ALESSANDRINI Michele, NEGRILA Paul and CELOTTI Pietro, *Assessing the implementation of the 2014 Directives on public procurement: challenges and opportunities at regional and local level*, 2 May 2019, available at <https://cor.europa.eu/en/engage/studies/Documents/Public-Procurement.pdf>

also stress the need for intensive monitoring of the performance of contracts when applying social clauses.

The **Brandenburg** hub notes that additional specialised helpdesks should be established and organised at regional level: they are useful in the case of funded projects, to allay applicants' fears of errors and legal uncertainty.

The **Catalonia** hub stresses the lack of a culture conducive to social criteria. The Province of Barcelona felt that the culture in its organisation was not favourable to social clauses in public procurement.

The **Community of Valencia** hub underlines that departments mention the need to hire specialised staff, which is not currently possible due to rules limiting public expenditure. Virtually all of the problems mentioned have been identified by the majority of participants in the surveys. In order to address them at regional level, in addition to regional regulations and guides (Social Responsibility Act, Guide to Social and Environmental Aspects in Procurement), efforts are underway to provide training. In addition, some departments want to recruit specialised staff. At local level, these challenges have not yet been met due to a lack of resources.

The **Community of Madrid** hub argues that the only obligation set out in the legislation was the introduction of certain requirements for contractors in the contracts; however, no mechanisms have been put in place to monitor whether these requirements are fulfilled by contractors. In areas such as transport, it is felt that additional staff members should be hired to carry out these checks. It is also noted that there is specific legislation in this area, i.e. the Procurement Guide for Security Services and the Agreement of the Governing Council of 3 May reserving public contracts for certain bodies working in the social economy, and encouraging the use of social and environmental clauses by the Regional Government of Madrid in public procurement.

The **Eastern Slovenia** hub claims that as social services are not standardised or linked to other legislation, it is difficult to ensure that this kind of procurement complies fully with the rules, and so stakeholders often avoid it when possible.

The **Alentejo** hub notes that the combined feedback from the stakeholders and ADRAL is that social public procurement is not yet an option for the stakeholders and the number of challenges does not make it any easier to use. However, the need to integrate and align procedures with the Sustainable Development Goals and other major policies must be recognised as a matter of urgency. For this to happen, solutions to address and overcome the current challenges must be devised. The combined feedback from the stakeholders and ADRAL is that both regional and local structures should work together to provide guidance and training or helpdesks to promote the implementation of social procurement. Under this approach and with stronger cooperation between the regional development agency, government and managing authorities, it will be possible to reach the target audience and increase knowledge and use of social procurement.

With respect to social criteria and their use in public procurement procedures, respondents to **the CoR-CEMR survey** recognise that this is politically and socially desirable, as by using their purchasing power to choose socially responsible services, authorities can set a positive example and encourage enterprises to make wider use of social standards in the management, production and provision of

goods/services. Nevertheless, it is important to take due account of the impact of such purchases on the price of the goods/services.

It is, however, noted that the use of social criteria increases legal uncertainty for the contracting authorities, as these criteria can easily become traps for less experienced contracting authorities. Other respondents argue that social aspects (such as minimum wage and working hours) are dealt with by the relevant legal framework and that public procurement is not the appropriate instrument for dealing with social considerations that go beyond the social legislation of any given country. They point out that social criteria are already factored into the selection criteria. It is also argued that the uptake of socially responsible public procurement could only be encouraged by identifying specific legislative criteria that public authorities could use while reducing legal uncertainty and the risk of legal proceedings.

5.3 Green procurement criteria (GPP)

The European Commission stresses that Europe's public authorities are major consumers. By using their purchasing power to choose environmentally-friendly goods, services and works, they can make an important contribution to sustainable consumption and production - what is called Green Public Procurement (GPP) or green purchasing. Although GPP is a voluntary instrument, it has a key role to play in the EU's efforts to become a more resource-efficient economy. It can help stimulate a critical mass of demand for more sustainable goods and services which otherwise would be difficult to get onto the market. GPP is therefore a strong stimulus for eco-innovation and requires the inclusion of clear, verifiable environmental criteria for products and services in the public procurement process¹³.

The **Region of Emilia Romagna** hub points out that the introduction of minimum environmental criteria is positive, but some of its stakeholders say that it is difficult for smaller, sometimes less structured economic operators to apply them.

The **Friuli-Venezia Giulia** hub raises important problems: the contracting authorities consulted have had great difficulties in applying the minimum environmental criteria established by national legislation and ANAC guidelines for the purposes of determining the most economically advantageous tender, and have complained about their complexity and the lack of sufficient technical expertise available to them. The authorities therefore find it very difficult to apply them and sometimes bring in external professionals, considerably increasing costs. At regional level, specific courses have been organised on green procurement, limited to public authority staff. These courses form part of a contractual training process for staff. Efforts to provide training and more information should be stepped up, targeting both the public and private sectors.

The **Umbria/Veneto** hub says that the municipality of Perugia has a negative view of green public procurement due to the complexity of the subject and the criteria laid down: in particular, the excessive amount of certification required for companies is seen as a negative factor, as is the economic burden of such certifications. This is becoming a barrier to access by SMEs to public procurement. The MEC (Minimum Environmental Criteria) provided for in national legislation transposing the European

¹³ European Commission, Green Public Procurement, for further info http://ec.europa.eu/environment/gpp/index_en.htm

Directives should be used in a simpler way and only above certain thresholds to avoid disadvantaging SMEs.

The **Helsinki-Uusima** hub says that LRAs need to be better informed about green criteria, as half of them were unaware of them. It is also noted that in Finland, the Ministry of Economic Affairs and the Association of Finnish Local and Regional Authorities have established a central support platform/help desk (<https://www.hankinnat.fi/>) that provides support for public procurement. The service is free of charge and accessible to all organisations in Finland. The contact point also offers training courses when new directives come into force.

The **Eastern Slovenia** hub claims that LRAs are pushed into green procurement and that most decisions are not thought through and have little real environmental impact.

The **Dubrovnik-Neretva County** hub reports that stakeholders feel that green public procurement is not promoted due to higher prices.

The **Catalonia** hub claims that the Directives should set the parameters for calculating the life cycle (cost) of products and services as it is impossible to implement it due to a lack of examples and/or parameters. There is no information about other states that may have implemented it, nor has the EU put in place any standards, parameters, recommendations or guidelines. The EU's guidelines are published and in some cases translated on the relevant government websites. In the case of the Province of Barcelona (stakeholder consulted), it is not used.

The **Brandenburg** hub stresses the need for additional specialised helpdesks, organised at regional level, particularly for procurement related to EU-funded projects. There is a need for clear legal requirements that can be easily understood and implemented.

The **Community of Valencia** hub underlines that in order to address the issues referred to above, the Community of Valencia regional government has published a guide to the social and environmental aspects of procurement. At national level, there is also a Guide to Green Public Procurement. However, additional training is needed for the staff involved.

The **Community of Madrid** hub notes that in order to encourage the implementation of the measures, the Regional Government of Madrid's public procurement department should set out clear and uniform criteria and put in place an improved organisational culture that supports green public procurement, as well as organising training courses and providing assistance in this regard.

The **Eastern Slovenia** hub argues that contracting authorities often carry out such contracts because they have to, but they do not really consider the actual and long-term impact of some products on the environment. It is also noted that the definitions of "green" and "final outcome" are problematic. Furthermore, the use of green criteria requires a considerable degree of initiative on the part of the contracting authority and justification of contract conditions due to increased likelihood of complaints.

The **Alentejo** hub stresses the need for national guidance on this matter and better, more detailed regional plans drawing on scientific advice with specific guidance and reference at national level.

The **Flanders** hub argues that methodologies for life-cycle costs are still too limited ("common methodologies" need to be further developed). For certain product groups (e.g. IT products), it is difficult to establish criteria. In some sectors, the market is not yet ready for enforced sustainability (see transition to the circular economy).

These results are also corroborated by the **CoR-CEMR** survey. Many respondents recognise the need to integrate green criteria into public procurement procedures but they stress the administrative burden, the lack of expertise and the legal uncertainty when these criteria can be perceived as ambiguous by tenderers or open to varying legal interpretations. It is also noted that this legal uncertainty is reflected in the fact that the scope of audit controls is becoming broader.

Some respondents seem to see an inconsistency or clear divide between the expectations of the population and the real potential for action of public buyers. They cite as a blatant example the purchase of food, as they think that European law and key principles (no localism) make it impossible for contracting authorities to try to protect the environment by avoiding carbon emissions linked to transport, for instance, or supporting fair pay for producers without breaching other principles of EU law. They argue that shorter and faster paths would bring about a good deal of climate action if contracting authorities could limit tenders to their region. This concern is also reflected in the fact that when asked what kind of measures would improve the implementation of the Directives and make the framework simpler for local and regional authorities, the majority of respondents list as the most important measure the fact that it must be clearer under which circumstances local and regional governments are allowed to promote local economic growth, local social structures and local environmental benefits.

Moreover, it is noted that there is a need to identify specific standards and methodologies for calculating the life-cycle environmental impact of products and services, since contracting authorities face difficulties in defining not only the conditions for implementation, but also the requirements for products and services. In many cases, an overall assessment is not possible because, for example, the production-based environmental factors are not known.

Another important dimension is the fact that green products and services are often more expensive (more expensive technologies, fewer providers, etc.), highlighting the need for strategic political support to drive the change towards more sustainable forms of procurement.

With regard to the most appropriate measures for dealing with the challenges, some respondents stress the need to inform and train the people responsible for defining the subject of the procurement procedure.

Several guidelines exist but they are not always sufficiently practical and operational. It would be useful to focus on certain aspects and make sure that the majority of buyers follow suit by establishing real synergies between the state and the local authorities around common and shared objectives and tools.

6. Cross-border purchasing

Cross-border purchasing is a procurement contract between a contracting authority and a tendering company with headquarters in different states. This is different from cross-border procurement whereby “[c]ontracting authorities from different Member States can conduct joint procurement” (Article 39(1)II of Directive 2014/24: Several contracting authorities from different Member States may jointly award a public contract, conclude a framework agreement or operate a dynamic purchasing system).

More than half of respondents believe that cross-border purchasing brings added value to their area, whereas only a quarter believe the opposite.

With respect to the overall advantages, stakeholders feel that the participation of companies from neighbouring countries enriches the procurement process for the contracting authorities, because it fosters competition and integration, particularly of neighbouring areas.

Even those who see added value in cross-border procurement note, however, that some sectors do not have a cross-border dimension, e.g. social fields such as youth care, care for people with disabilities and social support. Another issue mentioned is the introduction of different implementation/reference legislation in other policy areas, such as taxation, and the fact that despite costly and time-consuming EU-wide advertising, there are no or only a few cross-border tenders.

The comments in the open responses elaborate on specific issues identified by stakeholders as barriers to cross-border procurement, leading to there being very few instances of it.

The **Umbria/Veneto** hub says that cross-border procurement is very rare. Businesses from other Member States seldom participate in tender procedures because they would be faced with higher costs, such as translation costs or the costs of achieving equivalence of the certification required. As a result, if the amount of the contract is insufficiently high, companies from other European states are not interested in participating. In fact, there are cases of companies from other Member States participating in procedures, but these are undertakings which have subsidiaries in the region of Umbria. One exception is the University of Perugia, which has experience of cross-border procurement for the supply of sophisticated equipment, as certain technologies are not locally available.

The **Hauts-de-France** hub cites language barriers, differences in legislation in other policy areas, difficulty in designing a particular call for tenders in such a way as to encourage cross-border tenderers to participate and the fact that some sectors do not have a cross-border dimension, for instance social areas such as youth care, care for the disabled and social support.

Despite the **Friuli Venezia Giulia** hub's positive opinion of the advantages of cross-border procurement, it stresses that foreign companies do not take part in calls for tenders, despite the advantages, as cross-border authorities are required to apply different sets of rules, specifically Italian and Slovenian. This comes down to the wide range of administrative requirements and the difficulty in accessing standardised procedures, which do not take account of the specific features of the tax, social security and labour laws in the various countries. Stakeholders therefore regret the lack of EU legislation laying down specific common standards that would encourage domestic and foreign companies to take part in procurement. Databases and platforms common to the various countries would make it easier to

harmonise standards and to enter data from businesses, institutions and individuals of different nationalities.

The **Flanders**, **Umbria/Veneto** and **Region of Emilia-Romagna** hubs also raised a rather more "conceptual" issue. They consider that cross-border can also mean that foreign companies take part in tenders through subsidiaries in the region involved. This is not perceived as "cross-border" but does entail an EU dimension in some cases. Thus, even in the case of contracts above the EU threshold, which must be advertised across the EU, cross-border participation is in practice almost non-existent.

More specifically, the Flanders hub argues that in many cases, "foreign" companies have an office in Belgium and are therefore treated as Belgian companies. Foreign companies also often work as subcontractors for Belgian companies. Specifically as regards works contracts, the fact of the matter is that performing the contract in another country entails certain practical/logistical problems (availability of equipment, accommodation for staff, etc.), and requires knowledge of administrative formalities (environmental legislation, insurance law, etc.).

Stakeholders consulted by the **Brandenburg** hub note that in some cases it is difficult to undertake cross-border suitability assessments of businesses, in terms of complying with the minimum requirements. For example, some regional or national minimum requirements cannot be required of foreign businesses. This puts national businesses at a disadvantage (Leibniz Institute for Agricultural Landscape Research - ZALF).

Baden-Württemberg argues that cross-border purchasing was deemed to be rather difficult by the majority of those consulted. Reasons given for this: various sectors are not suitable, there are different rules, drawing up calls for tenders is difficult, higher costs and more lengthy procedures, procedures are more complex, there are language barriers, it is difficult to devise quality requirements.

Bavaria deems cross-border purchasing to be particularly difficult in relation to Switzerland. In the absence of bilateral agreements on this matter, contracts for services awarded by EU contracting authorities to Swiss contractors is problematic in terms of taxation.

The **Upper Austria** hub specifies that the survey revealed such varied views that it is not possible to give a clear answer. Those in favour pointed to more competition, more choice (quality and price) and more potential suppliers at national/regional level, while those who replied "no" pointed out that there are no or only a few cross-border tenders, despite costly and time-consuming EU-wide advertising. The fact that some sectors are less suitable for cross-border contracts was mentioned, as was the fact that it is more complicated to favour local tenderers for social, environmental or innovation reasons.

The **Dubrovnik-Neretva County** hub also notes that stakeholders are divided on this issue because the region is surrounded by non-EU countries. Some of them provided a positive response to the question because they have experience of this, while others felt that most of the time, it was not applicable due to issues such as: different legislation; lengthening of the procedure; the fact that some sectors do not have a cross-border dimension; the fact that it is more difficult to give preference to local tenderers, etc.

Virtually all the stakeholders consulted by the **Thessaly** hub believe that the disadvantages of cross-border procurement outweigh the advantages of higher competition and better tenders (quality-price).

For the stakeholders consulted by the **Community of Madrid** hub, the most important benefits are greater competition and better options. However, it is noted that some sectors do not have a cross-border dimension, e.g. social fields such as youth care, care for people with disabilities and social support. Another issue is the introduction of different implementation/reference legislation in other policy areas, such as taxation. Despite costly and time-consuming EU-wide advertising, there are no or few cross-border tenders.

The **Eastern Slovenia** hub underlines the language problem, the environmental cost of transport, and difficulties in gauging the competence of an operator in one area as a reason for the lack of cross-border trade.

The **Community of Valencia** hub notes that in some cases, despite costly and time-consuming EU-wide advertising, there are no or few cross-border tenders.

The **Ialomita/Harghita** hub specifies that all stakeholders that replied to this question justified their point of view by the fact that some sectors do not have a cross-border dimension, or that there is differing legislation in other policy areas, and only a small number selected the answer related to the fact that it is more complicated to give preference to local tenderers for social, environmental and innovative reasons.

Respondents to the **CoR-CEMR survey** are more sceptical than the regional hubs, with 70% of respondents (84% of small authorities) to the CoR-CEMR survey saying that they do not believe that cross-border purchasing brings added value. 14% of smaller municipalities and 30% of other respondents believe it brings added value. As regards the advantages of cross-border procurement, 24% of respondents think that it creates higher competition and leads to better choices (13% of small authorities).

The disadvantages or difficulties that stand out according to the **CoR-CEMR survey** largely reflect the view of the hubs: despite costly and time-consuming EU-wide advertising, there are no, or few, cross-border tenders; some sectors do not have a cross-border dimension (for instance, in social areas such as youth care, care for disabled people and social support); language barriers; differing legislation in other policy areas (such as taxation and labour law).

7. Implementation issues

7.1 The main sources of misapplication or legal uncertainty under the new rules

Members of the regional hubs network report as the three main sources of misapplication: *high workload for procurement officers*, followed by *difficulty in defining specific requirements for award criteria when using the best price-quality ratio* and then the *lack of technical expertise*.

The **Brandenburg** hub reports as one of the main challenges the fact that it is difficult to justify the administrative burden and the heavy workload to employees. This is especially the case when the bureaucratic processes have little effect, particularly at a time when there is not even any guarantee that any market participants will be willing to submit a tender (Leibniz Institute for Agricultural Engineering and Bioeconomy).

The **International Lake Constance Conference** hub highlights that there are many rules and the procedural requirements are very complicated. Essentially, procurement law is hallmarked by a plethora of legal terms requiring interpretation, which is first done when the courts clarify the issues. A great deal of effort has to go into sorting out documentation and acquiring information. It is also argued that EU-wide platforms would be beneficial.

The **Upper Austria** hub is also of the view that the rules on public procurement are sometimes excessive as public procurement law is hallmarked by a plethora of legal concepts that require interpretation and are only clarified through case law. There is also an enormous burden imposed on both contracting authorities and tenderers in terms of documentation required. This is compounded by the legal uncertainties in the area of public procurement rules. The very detailed notice forms generate a considerable amount of red tape. It is also noted that the transposition of the Public Procurement Directives into national law – i.e. into federal law and the legal orders of the nine Länder — was very complicated due to their complexity, which led to a long implementation period. For this reason, longer transposition deadlines would be desirable in the future for such complex directives. The introduction of electronic procurement procedures was also challenging, but this has been successfully carried out. As regards implementing public procurement rules, respondents frequently cite the high level of complexity and the expertise needed, which in practice regularly poses challenges to regional authorities.

For stakeholders consulted by the **Dubrovnik-Neretva County** hub, a key source of errors and legal uncertainty is the chronic lack of expert staff.

For stakeholders consulted by the **Thessaly** hub, the main sources of legal uncertainty are the delay in updating the tender documentation through amendments to the law, the fact that no interpretative documents have been published and the fact that there is no register of undertakings or economic operators. Other issues include: delays in transposing the Directives into Greek legislation, overlapping legal issues, gaps and lack of guidelines resulting in delays in carrying out projects, and difficulties in applying specific provisions of the Directives.

The **Košice Self-Governing Region** hub notes that the problem is the high workload of procurement officers.

The **Brod-Posavina County** hub reports that 66.7% of respondents believe that the heavy burden on civil servants is the main cause of misapplication, while 33.3% of respondents believe that the complexity of the new framework is the main cause.

The **Catalonia** hub argues that the fact that a large number of bodies and individuals are involved in the processing and management of contracts makes specialisation and flexibility difficult.

The **Community of Madrid** stresses that according to some of the departments consulted, there is a need to increase coordination with regard to administrative procurement to ensure that uniform criteria are applied. It is also pointed out that the transposition process has led to legal uncertainty in many respects and is unclear on a procedural level.

One major challenge in the implementation of public procurement rules encountered by most of the city councils is also a major challenge for the **Community of Valencia** hub, as around 75% of the municipalities have fewer than 5 000 inhabitants, and the lack of qualified staff, the diversity of public services to be managed, the lack of funding and the delay in starting up a real eGovernment system prevent this from being managed efficiently. This leads to difficulties in handling procedures and delays in the management of public resources. For these small local authorities, there is a significant administrative burden and excessive documentation involved in processing minor contract files.

The regional government has difficulty drawing up specifications with social, environmental and innovation objectives, which sometimes hinder the attempt to meet the need underpinning the purpose of a contract. In addition to the high level of litigation, there is conflicting case law on many issues, which sometimes prevents the application of these clauses. The European Single Procurement Document (ESPD) is burdensome and complex, both for tenderers and for procurement departments. More progress is needed with regard to the specifications.

The **Ialomita/Harghita** hub claims that there is a plethora of national supplementary clarifying rules that overlap and contradict and actually complicate matters rather than clarifying them. It argues that changes in national legislation following the enactment of the 2014 Directives have created difficulties, with national legislation being implemented on the fly. Many procedures have been completely overhauled, and the opinion of the contracting authorities is that some legal provisions have been transposed at national level without taking account of Romania's overall legislative system and without their being sufficiently regulated and explained, with the result that they are either difficult or impossible to apply. One example is Article 31 of Law No 98/2016 which deals with awarding public procurement contracts directly to companies with majority capital or simply guaranteed by the contracting authority.

Owing to the complex national legislative framework based on the 2014 Public Procurement Directives, there are considerable delays in the procedures resulting in the loss of financing for various investment objectives. There are very few experts and they do not enter the public sector as the pay is very low. All these problems mean that performance, efficiency and effectiveness in this field are all very low.

The **West Pomerania region** hub notes that the framework is not complex and it is not very difficult to obtain the relevant knowledge. The problem, in their view, is the lack of confidence in the non-price criteria and the high workload for the people responsible for the implementation, conduct and verification of public procurement.

The **Eastern Slovenia** hub argues that specific requirements for tenderers may be seen as an attempt to limit competition, making it more difficult, without considerable input from experts, to prepare a public procurement contract correctly. This lays a greater burden on officials preparing the contracts, as more coordination is needed with the expert staff who frame the specialist aspects of the contract. It is also noted that there might not be enough genuine and unconnected tenderers on the market. In the case of many types of services and construction, it is highly likely that tenderers will be limited in number and that there will be connections between them, which may lead to higher prices for the contracting authority. The prices obtained are often not checked against potential private contracting entities or compared with available price data for private contracting entities (the so-called "public procurement premium").

The **Alentejo** hub notes that the combined feedback from the stakeholders and ADRAL is that the main sources of misapplication and legal uncertainty under the new framework are the complexity of the new framework and a lack of flexibility and uncertainty regarding the application of procurement of innovation.

The **Friuli Venezia Giulia** hub argues that the biggest difficulties come down to the shortage of human resources, the considerable workload that weighs on the various departments, and the complexity of the rules, which requires a high level of specialisation not always available at local level. On top of that, there is the lack of operating systems geared to cross-border scenarios.

The **Umbria/Veneto** thinks that the main cause of misapplication or legal uncertainty in relation to the new framework, mentioned by all stakeholders, is the lack of technical expertise (relevant knowledge and skills of staff) and the complexity of the new framework. It should be noted that these two are the only causes of misapplication and legal uncertainty reported by business stakeholder representatives. In particular, the latter report that the complexity of the legal framework makes it difficult for them to carry out their work of providing advice and assistance to businesses. By contrast, public stakeholders add that there are also difficulties in defining specific requirements such as award criteria when using the best price-quality ratio, and a high workload for procurement officers.

The **Hauts-de-France** hub points to the problem of the size of certain public authorities, which means that they lack the necessary expertise and powers, especially as France tends to "over-transpose" the Directives by introducing formal requirements not stipulated by them.

The results from the **CoR-CEMR** survey are quite similar to those from the regional hubs consultation. In the CoR-CEMR survey, most respondents said that the main sources of misapplication or legal uncertainty under the new framework were the lack of technical expertise (66%), the high workload for procurement officers (63%), the complexity of the new framework (62%) and the difficulty in defining specific requirements as award criteria when using the best price-quality ratio (56%).

The respondents also indicated problems stemming from frequent new case law, which is problematic in practice when it comes to implementation; limited expertise, with many authorities relying heavily on external consultants to provide technical or content expertise; legal interpretation by audit bodies is very individual and changes according to current case law; lack of time, as in the case of small municipalities a staff member normally has to cover many issues.

It has also been noted that there might be increasing use of Voluntary Ex Ante Transparency (VEAT) notices to protect direct awards from challenge under the Remedies Directives. In some cases, these have been presented with vague descriptions of the contracts and inaccurate CPV coding so as to make it harder to detect possible inconsistencies or inaccuracies. Other respondents refer to the light-touch regime, the reduced transparency obligations and the possible lack of redress under the Remedies Regulations for light-touch contracts between EUR 140/220 000 and EUR 750 000.

One recurrent problem stressed by the respondents is **the threat of legal challenge**. They claim that there is a need to rebalance or replace the remedies regime (Directive 89/665/EEC as amended) to reduce the risk of legal challenge for contracting authorities. This suggests that beyond the actual number of formal legal challenges, which in some case might be minimal, the threat of legal challenge may lead to risk averse behaviour such as running more expensive procurement procedures than strictly necessary, or even changing a decision to outsource a service in the first place.

Furthermore, it is stressed that the Remedies Directive introduced a "standstill" period of 10 days. This means that once the winning tenderer is announced, contracting authorities must allow ten days for unsuccessful tenderers to make any objections relating to the process. In addition, the Directive allows a further six months for an unsuccessful tenderer to make a "declaration of ineffectiveness". If this happens, then contracting authorities are required to stop the contract immediately and may be liable to pay compensation and legal costs.

Described as a six-month "sword of Damocles" hanging over contracting authorities, the procedure introduces the risk of considerable costs and delays into major contracts and may contribute to a culture of risk aversion. Contracting authorities have to "manage out" the risk of legal challenge, and the underlying assumption in the Remedies Directive is that the public authority has made an error, even when this almost always proves not to be the case. In fact, there is anecdotal evidence of many spurious claims from failed tenderers, and tenderers systematically bringing legal challenges against public sector bodies, perhaps supported by "no-win-no-fee" law firms. Contracting authorities have to spend time and money providing all correspondence with suppliers if a freedom of information request is submitted, but then have no recourse to compensation from the supplier for their failed claims.

One of the conclusions of the CoR-CEMR survey is that the remedies regime should be revised, rebalanced or replaced entirely with a new "softer" independent arbitration process which would be of benefit to both contracting authorities and suppliers, instead of litigation. This may help to address the significant and pressing need to reduce the culture of litigation, and associated costs, currently surrounding public sector procurement.

Respondents to the CoR-CEMR survey also regret the fact that the success of a public procurement procedure is ultimately measured by the lack of judicial remedies or sanctions by the national control authorities, rather than the quality of the ordered works, supplies or services. Applying public procurement rules has become a goal in itself, whereas it should only be a means to place an order for works, supplies or services. **The focus on compliance means that many of the new possibilities and flexibilities in the Directive are not being used.** Others note that despite training, there are still questions about the range of possible procurement procedures and that the transposing legislation has been complex and contradictory (gold plating).

➤ **Other specific concerns raised by the hubs**

The **Region of Emilia Romagna** hub points out that in Italy, legislative powers concerning sport are attributed to the regions, with the state exercising legislative power regarding the fundamental principles of the subject (particularly as relates to cross-cutting issues such as safety and public order during sports events).

When it comes to sports facilities, planning and related equipment are an exclusive competence of the regions.

These powers must be exercised on the basis of the criteria and parameters indicated by the competent government authority, which is also responsible for distributing the funds needed to carry out the works. The construction and management of the facilities are, however, administrative tasks exercised directly by the municipalities on whose territory the facilities are located.

This statement is based on the principle set out in Article 118(1) of the Italian constitution, by virtue of which the administrative functions are attributed to the municipalities unless they are transferred to other levels of government for the sake of consistency.

At supranational level, Article 4 of the European Charter for Sport, signed in Rhodes in 1992, also establishes some fundamental principles on access to sports facilities that must be guaranteed to all citizens without discrimination. It provides for the adoption of appropriate measures to facilitate their use by disadvantaged groups.

With regard to the management of sports facilities, the distinction between services of economic interest and services of no economic interest is particularly important. The local authority decides on this issue and must indicate why it has decided to attribute the service to one of these two categories.

In principle, it must be considered of economic interest: it is part of a sector which is, at least potentially, profitable. A service can be considered not to be of economic interest if by its nature, or by the way in which it is managed, it does not give rise to any competition, appears irrelevant for the purposes of competition and its management must comply only with the principle of good performance and not strike a balance between costs and revenue.

The management of sports facilities capable of generating income falls within the scope of the public service concession and, as such, must be awarded by application of parts I and II of Italian legislative decree 50/2016 (code of public contracts), as far as compatible (as provided for in Article 164(2) of the code). This is how EU competition legislation is applied.

Services of no economic interest are not classified as public service concessions (since there is no operational risk for the concession holder) but rather as public service contracts (since they are services rendered on behalf of the granting authority which, in this way, provides the service indirectly, using a third party and largely bearing the management costs). They are therefore awarded according to the specific provisions of the code for the procurement of social services under Title VI, Section IV.

This situation covers the majority of sports facilities: in many cases, in fact, local sports facilities consist of school gyms or monofunctional facilities that are not suitable for generating income. In these cases,

there is no market to protect and operating the facility is a public service.

In other words, it is a service of no economic interest to which only the fundamental and general principles relating to public contracts apply and, in particular, the principles of transparency, adequate advertising, non-discrimination and the relevant regulations.

From the perspective of the Region of Emilia Romagna hub, it would therefore be particularly useful to be able to clarify and verify how these aspects are combined, and how the procedures for classifying the management of sports facilities as services of no economic interest could actually be constructed. This is also the case for possible award criteria for territorial sports associations, which are very widespread and of great importance, particularly in small towns.

The **Hauts-de-France** hub requests clarification of the extension of the "in-house" principle, in particular the criterion regarding the presence of private capital without a similar control capacity. The lack of a legal definition of "private capital" in particular, as well as other economic terms in the Directives is seen as an issue.

This hub also mentioned a lack of clarity regarding the application of Article 13 of Directive EU 2014/24 (Article 21 of France's decree No 2015-899). Should a contract be understood as a signed contract or as a works operation?

In addition, it asks whether contracts awarded by works concession holders should be included if the concession provides for direct remuneration from the contracting authority to the concession holder amounting to more than 50% of other sources of remuneration (in particular, operating revenue). Are these contracts considered to be subsidised?

The **Umbria/Veneto** hub stresses that the Public Works Department and the Tenders and Contracts Department of the Umbria region respectively reported the following:

- concerns about the principle of centralised purchasing being applied across the board, when it should be assessed in relation to individual areas. While reducing the number of contracting authorities certainly works in some cases of supply contracts, such as in the area of health, in the case of works contracts it is not always possible to draw up a single agreement in principle - for example, soil compaction varies between sites. Moreover, centralising increases the risks of corruption because the procurement procedure is larger;
- the possibility of supplementing the tender documentation in order to extend the range of operators participating actually causes these operators to be less careful in drawing up the tenders submitted; this makes the time frames for the procedures longer.

Business stakeholder representatives state that:

- they agree with the favourable approach taken by the European Directives concerning subcontracting;
- they are in favour of direct payments by public authorities to subcontractors and suppliers. Of course, the Italian problem of late payments by public authorities should be resolved upstream by these authorities.

Business stakeholder representatives consider that one obstacle to the possibility of allowing direct payments may be the attitude of public authorities, which, for the sake of simplicity and speed, usually prefer to deal with a single partner.

The following problems were identified by the business stakeholder representatives:

- late payments by public authorities;
- complexity of tender procedures: the documentation is excessive, complex and differs from one contracting authority to another; it needs to be reduced, simplified and standardised;
- discrepancies between the electronic platforms used by the various contracting authorities;
- lack of clarity in contract exclusion clauses, which need to be made clearer;
- principle of rotation in negotiated procedures: this is a key issue because, particularly in the case of small areas, the relationship with the business, especially craft firms, is based on trust;
- expressions of interest in negotiated procedures: where these are submitted by many companies, it is difficult and burdensome to make a selection; therefore, in general (but not in Umbria), contracting authorities decide who to invite by drawing lots and then apply a rotation system to future contracts, but drawing lots does not reward businesses' professionalism;
- introducing the "0 kilometre" principle: mechanisms enabling contracting authorities to use local SMEs; a EUR 200 000 threshold could be introduced, below which this would be left to the discretion of the public authorities.

Another issue raised by respondents to the **CoR-CEMR** survey is that there seems to be little appreciation at EU level of the burden that changes to these Directives impose on suppliers. Several operators invested considerably pre-2014 in upskilling their staff on the EU procurement regime, only to find that investment rendered redundant by the extensive changes introduced in 2014. The Commission's current procurement strategy explicitly prioritises the professionalisation of public buyers but seemingly makes no mention of any support or guidance measures for suppliers. Procurement is a complex two-way communication process which requires that both sides understand the rules and methodology involved, and more of an effort should be made to develop and provide guidance and training materials for suppliers.

The apparent de-prioritisation of enforcement in the Commission's procurement strategy is also a matter of concern for smaller operators who do not have the resources to bring legal action and have hitherto relied on the Commission to ensure that the rules are observed.

Moreover, some respondents seem to think that there is continuing legal uncertainty surrounding public sector cooperation i.e. public-public cooperation. Despite the inclusion of a new approach to public-public cooperation in Directive 2014/24 (Article 12.4), many contracting authorities are reluctant to rely on the exemption. This is because it is fundamentally different from the more understood "in-house" exemption, and some of the EU terms involved ("cooperation" and "considerations relating to the public interest") are not easy to define or understand. What is more, to qualify for the exemption, the EU stipulates that both parties must contribute to service delivery together: it cannot just be a directly awarded contract with one authority paying the other to act as provider with no procurement procedure. This raises a number of questions and the scope of the exemption has not been properly tested in the courts.

Any clarification of the Directive on this point should send a green light to the public sector to make it clear that **agreements exclusively between public sector bodies** ("pure" public-public cooperation activities) do not necessarily require contact with the market and thus do not fall under the scope of the Directives– they can be internal reorganisations of public functions, or collaborations to deliver a common task. Greater use of shared services arrangements would help to achieve significant cost savings, not only in terms of the procurement process itself, but also in terms of economies of scale when two (or more) authorities join together to deliver a common service. A very specific example of this is the latest shared services map¹⁴ from the Local Government Association (LGA) in the UK, which shows that there are 626 individual shared services arrangements across the country resulting in 1.34 billion pounds of efficiency savings¹⁵.

7.2 LRAs adjusting systems and procedures to the new rules

Taking into account the extensive changes introduced by the 2014 Directives, the regional hubs consultation also looked at how contracting authorities and businesses dealt with the change in practical terms, i.e. whether they had to recruit new staff or train their staff or whether they had to take other initiatives in order to align their systems and procedures to the new rules.

Half of the respondents to the regional hubs consultation said that they needed to recruit new staff, a vast majority (94%) said that training courses were needed and very few (15%) responded that neither was needed.

Respondents to the CoR-CEMR survey also reported that both training and new recruits had been needed to adjust to the new legislation. 75% reported that training was needed and 25% that new staff had to be hired, with only 15% reporting that neither was needed (more than one answer could be given, which is why it adds up to more than 100%).

This, if anything, supports the argument that changing the current Directives would not be a good option.

The **Brandenburg** hub reports that other activities were also needed, such as centralising procurement tasks or bringing in external expert consultancy/legal advice. Some respondents could make use of an existing advisory service ("Brandenburg Contract Consultancy Office" for businesses belonging to one of the Brandenburg Chambers of Commerce and EAFRD-funded projects).

Other activities comprise the following: creation of procurement platforms (Vorarlberg environmental association), the switch to electronic awarding of contracts (state of Vorarlberg, Vorarlberg environmental association), grouping of procurement procedures (Baden-Württemberg), relationships with external advisers, especially for local contracting authorities (Bavaria - due to the complexity of procurement law).

The **Upper Austria** hub says that it was necessary to establish an e-tendering platform and to switch to concluding and implementing contracts electronically as far as possible.

¹⁴ Available at: <https://www.local.gov.uk/our-support/efficiency-and-income-generation/shared-services/shared-services-map>

¹⁵ Further info: <https://www.local.gov.uk/about/news/councils-sharing-services-save-taxpayers-more-ps1-billion>

The **Dubrovnik-Neretva County** hub reports that 90% of stakeholders feel that their organisations do not have a sufficient number of experts for the purposes of conducting public procurement procedures, the problem being that such organisations usually have insufficient resources to hire or train experts.

The **Thessaly** hub says that training courses were held across the board for the stakeholders consulted. New, specialised staff need to be recruited but this has still not been done.

The **Brod-Posavina County hub** notes that 33.3 % of the participants in the survey needed to recruit a new member of staff and to increase professional training, while one institution was ready without the need for additional recruitment or training.

Both the **Catalonia and the Community of Valencia** hubs say that it was necessary to provide training courses for adaptation, and in some cases even to increase the number of specialist staff.

The **Community of Madrid** hub notes that both the incorporation of new competences and the training of specialised staff should be borne in mind when implementing the Directives. In addition, it may be necessary to envisage additional measures, such as adapting the corporate information systems used for public procurement.

In some cases, given the difficulties involved, it has been necessary to provide specific material resources for the processing of the electronic tender. Requests have also been received for IT technicians to be present and to provide assistance to procurement committees, as well as to act as observers during other public calls for tenders.

The **Helsinki-Uusima** hub says that tenderers, as well as other stakeholders, need better training. Helsinki-Uusima also says that there is a free of charge government-run support platform helping LRAs with answers to specific questions and staff training.

The **Harghita/Ialomita** hub claims that everything is needed, but would also like to have support in hiring specialists. It argues that the high workload meant that additional staff has had to be recruited. The staff recruited generally have no experience in the field of public procurement, meaning that training courses have had to be organised. Moreover, national legislation has been amended several times, requiring further training courses.

The **Mazovia Voivodship** hub says that they had to pay to get access to an electronic purchasing platform and they also trained staff on how to use the platform and on the revised rules.

The **Alentejo** hub stresses that combined feedback from the stakeholders and ADRAL resulted in a specific need being identified, but not yet in place or anticipated, relating to professionalisation and specific skills, and in specific training courses on the new legislation on public procurement being required. Some training courses were already planned in some cases, but insufficiently in depth to comply with all changes and to apply the legislation on a daily basis. They therefore recommend promoting the development of training courses, particularly courses on digital services and digitalisation of public contracts.

The **Umbria/Veneto** hub said that all of Umbria's consulted stakeholders representing public authorities reported that training courses were needed. The municipality of Perugia added that activities were

needed at organisational level as well, particularly when it came to implementing the electronic platforms. On the other hand, business stakeholder representatives report that none of the options indicated had become necessary.

Stakeholders representing public authorities also say that, given the complexity of the overall European and national regulatory frameworks, it is necessary to recruit trained staff or to train staff to work solely on public procurement procedures, but this was not possible due to financial constraints. Moreover, it would be necessary to employ people with new career profiles, such as environmental experts/engineers. More financial resources are needed overall to accompany the implementation of the European Directives.

The **Friuli Venezia Giulia** hub noted that in most cases it was necessary to hire new staff, although some authorities still complain of having insufficient staff dedicated to this area; training courses have been necessary, developed at regional and national level on public procurement rules; organisational restructuring has been necessary to adapt to the new administrative requirements.

The **Flanders** hub specifies that when new rules are introduced, all staff involved in public procurement need to be retrained. It also has a significant impact – in terms of both time and financial investment – on IT applications developed to support public procurement. It also entails adjustments to a variety of tools (manuals, templates, websites, etc.).

7.3 Measures to improve the implementation of the Directives and make the rules simpler for local and regional authorities

The Directives state that they should have been transposed into national legislation by April 2016. Many Member States struggled to meet this deadline and even more seem to have failed to fully transpose all the simplification pursued by the Directives. 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 some contracting authorities prefer to use established procedures to minimise the risk of legal action.

For tenders below the thresholds national rules apply, but these rules too have to ensure that the award of contracts is fair, equitable, transparent and non-discriminatory and comply with other general principles of EU law. In principle, it should be possible for Member States to uphold these principles and at the same time create a somewhat simpler set of rules than those that apply to tenders above the thresholds. In practice unfortunately, this is not always the case, according to the findings of the regional hubs consultation.

Several hubs point to the difficulties created by the national legal framework. The **Hauts-de-France** hub for instance quotes a stakeholder which suggests tackling this by making sure that the trend towards over-transposition into national law in countries such as France is kept under control. Otherwise, this results in an unduly bureaucratic approach to public procurement, which can run counter to the aims of European policy (better satisfaction of user needs and/or requirements, optimal use of public funds, etc.).

This issue is echoed by the Italian hubs, such as the **Umbria/Veneto** hub which raises the issue of incomplete implementation at national level. They also report that the crafts association, made up of micro-, small- and medium-sized enterprises (MSME), stressed the need for a more complete framework covering division into lots and to make the most of MSMEs in the region where the contract is carried out.

The **Umbria/Veneto** hub's stakeholders highlight the same problem: public stakeholders report that national transposition rules are basically being applied, but that they are excessively complex compared to what is required by the European Directives. The business stakeholder representatives report that parts of the Directives are not implemented as they are not suited to the Italian administrative situation.

Umbria specifies that public stakeholders stress that the European Directives should explicitly provide for the possibility of promoting the deployment in public contracts of local businesses/economic operators present in the area. For instance, it would be a good idea, for low amounts where there is no cross-border interest, for it to be possible to select 50% of operators from local operators.

In addition, it should be possible to make greater use of the lowest price criterion where appropriate, with an appropriate system for eliminating excessive undercutting. Excessive undercutting should be prevented by applying the criterion of irregular tender. The problem is that it is technically difficult to demonstrate the irregularity. The stakeholders consider that one of the main measures to improve the implementation of the Directives and to simplify the framework for local and regional authorities is the option of making greater use of local operators.

The **Brandenburg** hub stresses the need to simplify procedures and to reduce the administrative and monitoring burden. The German Trade Union Confederation argues that advisory and training capacities need to be made more widely available; FAQs should be drawn up; there needs to be a central Land-level authority that provides information and guidance for all authorities. Charities consulted by Brandenburg hold the view that specific concerns regarding for example the procurement of social services are often not taken into account by contracting authorities and that this could be avoided if procurement were carried out by specific policy departments in the authorities, rather than by central contracting authorities.

The **International Lake Constance Conference** hub argues that public contracting authorities should be able to cooperate more broadly without applying procurement law, the obligation to include all the selection criteria in the contract notice should be removed and it should be made clear to what extent regional foodstuffs could be given preferential treatment.

The **Košice Self-Governing Region** hub specifies that half of the stakeholders would like to have clarified under which circumstances local and regional authorities can support local economic growth, local social structures and local environmental benefits and that national authorities should provide additional technical training opportunities for employees.

The **Brod-Posavina County** hub reports that 66.7% of respondents think that it should be made clearer under which circumstances local and regional governments are allowed to promote local economic growth, local social structures and local environmental benefits, while 33.3% think that national authorities should provide further training opportunities for staff.

The **Crete** hub raised the need to enhance interoperability of the existing databases and if possible create common databases.

The **Catalonia** hub argued in favour of greater flexibility in the regulation of procedures, and in particular in the solvency accreditation schemes, which should be replaced with a system that gives a clearer definition of the principles of public procurement and its application to individual contracts. The procedures are too rigid and closed, with local and regional authorities not allowed to set up separate procurement procedures which can be adapted to the specific features of the contracting authority or business sector in question; nor is it possible, for instance, to require/assess corporate social responsibility or good business practices. Certain procedures should also be adapted to the specific features of small towns.

The **Community of Valencia** hub notes that it is necessary to implement provisions for certain procedures which, owing to their complexity, are hardly used: innovation partnership, competitive dialogue, dynamic purchasing systems, etc. It is also stressed that despite the complexity of the regulatory framework, the Directives are correctly applied, although more human resources and tools are needed, such as uniform standard documents (as has been done with the ESPD) to speed up processing.

The **Community of Madrid** hub holds the view that the procurement departments must be equipped to verify compliance with the provisions laid down in the regulations by establishing a platform for national, regional and local coordination. A common and coordinated framework is needed to prevent the contracting authorities from acting in an uncoordinated and differentiated manner within a single organisation.

The **West Pomerania** hub stresses that tangible, present and specific benefits underpin the choice of specific procedures and sometimes even decisions on purchasing. The more clearly the possibilities for local and regional authorities to be actively involved in relationships with external (economic and social) stakeholders are outlined, the more willingly and actively the authorities will be involved in these relationships.

The **Alentejo** hub claims that transparent and flexible rules for public procurement of innovation are needed, along with demand-driven co-generation of solutions. This would allow for a more diversified approach responding to different challenges. In order to improve the implementation of the Directives and to make the framework simpler for local and regional authorities, it needs to be clear under which circumstances it is possible to act and promote local economic growth, local social structures and local environmental benefits.

The **Friuli Venezia Giulia** hub argues that the implementation of the Directives should be pursued through common rules, adapted to the varying national situations. Harmonising and simplifying the procedures is an objective that would be better pursued at EU level. Secondly, there is a need for ongoing training for staff working in the field of procurement. The role of contracting authorities is still undervalued within organisations, which often do not allocate sufficient resources to carrying out the procedures. Likewise, the IT systems should be improved with a view to simplification and geared to the needs of local authorities operating on a cross-border basis.

The results of the **CoR-CEMR survey** correspond neatly to the gist of the regional hubs consultation. The majority of respondents to the survey state that it must be clearer under which circumstances local and regional governments are allowed to promote local economic growth, local social structures and local environmental benefits. Other measures comprise the need for national authorities to provide further training opportunities for staff and the fact that it must be further emphasised that fair competition and transparent tendering are the only means to achieve the overarching objectives of best value for public money.

Some respondents ask for further simplification of the rules, while others ask for fewer and less detailed rules, more continuity and less frequent changes in the Directives. Others mention issues such as the (political) trade-off between broad competition versus regional economic development, which they see as particularly problematic in practice. They ask for further guidance on issues such as how to assess "additional costs" (e.g. higher numbers of non-employed persons should the contract be awarded to a company outside the region) so that they can be better integrated into "cost offset" (price differences) and lead to more comprehensive decisions.

Another point raised through the **CoR-CEMR survey** relates to audit controls and the fact that public sector auditors might not always have a standard or consistent approach to auditing compliance with public procurement rules. It appears too that many auditors have little or no training on public procurement. In addition, there is heavy reliance on self-declarations of compliance by contracting authorities, which are subject to minimal testing only. It is claimed that audit standards for public procurement compliance should be considered and developed at EU level.

Lastly, respondents to the survey highlighted that the Directives do not properly address fundamental issues regarding "commercial sensitivity" and legitimate access by suppliers to public sector spending data. Failure by public authorities to properly disclose historic spending data should be explicitly called out on an EU-wide basis as a fundamental breach of the transparency obligation.

The study¹⁶ commissioned by the European Committee of the Regions assessing the implementation of the 2014 Directives on public procurement at regional and local level underlines the need for public authorities to approach public procurement as a component of a wider strategic vision, to reinforce communication and cooperation between procurement specialists and the rest of the administration, and to keep an open dialogue with the market not only under specific procedures but on an ongoing basis, also by raising awareness of their procurement activities. A particular emphasis is placed on the need to create a capacity building platform which would offer methodological guidance and training as a unique EU portal for public procurement. The platform would be a channel for networking, capitalising and sharing experiences. As a great deal of material and instruments have already been developed under the EU Action Plan for public procurement, the platform should only capitalise on this material and tools to make them more accessible to LRAs.

With respect to public procurement of innovation, it is argued that financial and reputational incentives are needed with a view to encouraging public authorities to experiment with new practices. Horizon 2020 is mentioned as a successful example that provided a financial incentive (risk-sharing) and

¹⁶ VALENZA Alessandro, *op. cit.*

supported the sharing of experiences among partners. Awarding excellence is also regarded as a useful tool to promote innovation and experimenting as is the case for instance with the CoR European Entrepreneurial Region (EER) award which rewards EU regional entrepreneurial policy strategy, or the DG REGIO ERDF award for the most innovative projects REGIO-STARS.

8. Multilevel governance issues

8.1 Involvement of LRAs in the Member States' reporting to the Commission

The Directives require the Commission to closely monitor the transposition of EU public procurement legislation into national law, and also to help public authorities understand and take full advantage of the possibilities of public procurement. One tool to achieve this is a monitoring report that the Member States have to submit to the European Commission every third year. From the regional hubs consultation and the CoR-CEMR survey, it is clear that the vast majority of those consulted have not been part of this monitoring exercise, which is surprising as well as problematic as around 50% of all public procurement (in terms of value) is carried out by subnational entities.

In Germany, for instance, it is noted that such reports are drawn up at federal and state level. In Bavaria, for example, this is done by the State Ministry for the Economy, Regional Development and Energy. In Liechtenstein, the report is compiled by the Unit for Public Procurement. In Austria, the report is drawn up at federal level; Vorarlberg replied that it is not involved.

The **Community of Valencia** hub contributed to the first "Governance Report" and the **Catalonia hub** says that the Government of Catalonia participated by sending its data to the State General Administration. The Province of Barcelona did not take part.

The **West Pomeranian region** hub specifies that like other public administrations, the Marshals' Offices and other entities subordinate to the regional authorities monitor and report on detected infringements, irregularities and difficulties in carrying out public procurement procedures. In practice, this is essentially a matter of raising awareness of clear infringements of the rules in force.

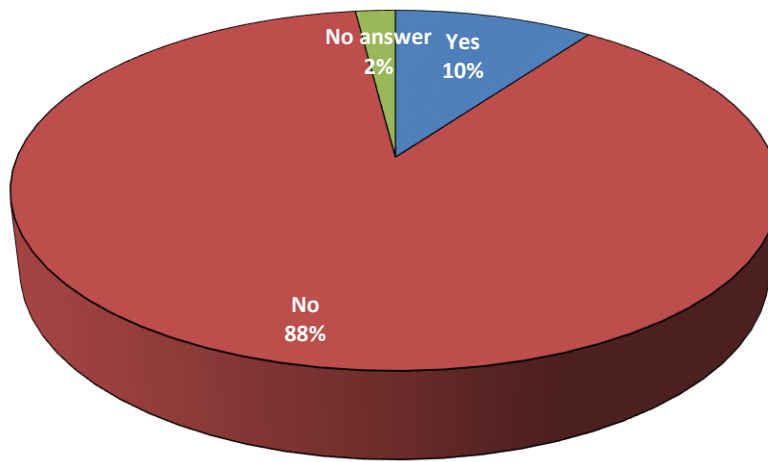
The **Alentejo** hub indicates that the combined feedback from the stakeholders and ADRAL is that it is currently not involved in the reporting on the most frequent sources of misapplication or legal uncertainty, prevention measures, or the detection and adequate reporting of procurement fraud, corruption, conflict of interest and other serious irregularities.

The results from the **CoR-CEMR** survey are even more alarming as only 10% of respondents said that they had been involved. It should, however, be noted that of the respondents which said that they had been involved, almost all come from Member States with a federal structure (Spain, Germany, Belgium and Austria, the exceptions being Finland and Greece). The difference between small and large entities was surprisingly small: 6% and 10% respectively.

The low level of involvement is of course worrying, as local and regional authorities are responsible for a large share of public procurement and the purpose of the implementation report is to communicate possible bottlenecks or other problems to the European Commission in order for it to be able to properly assess the situation and suggest measures to improve it.

The low level of involvement of local and regional authorities could, therefore, mean that important information on aspects of public procurement in practice never reach the European Commission and that key objectives of the legislation are not achieved.

Every three years, Member States have to submit a report to the Commission on the implementation of public procurement rules. Have you been involved in this?



Source: CoR-CEMR survey

8.2 National and European framework for public procurement

The hubs were also asked whether there is a separate legal framework at national level for procurement below the EU thresholds and, if so, how they assess this framework in comparison with the framework for procurement above the EU thresholds. A very large majority responded that there is indeed a separate legal framework at national level for public procurement below EU thresholds and one third of the hubs regard this framework as simpler than the EU one, while a quarter of them regard the national framework as more complex than the European one.

The same large majority of respondents to the CoR-CEMR survey also said that there is a separate legal framework for procurement below the EU threshold. Around 75% of respondents say that in terms of value, the national framework, and not the EU one, is used most. This figure is 94% of respondents representing smaller municipalities. A slightly higher percentage of respondents than in the regional hubs consultation regard the national framework as simpler than the EU one, while a quarter think they are the same and one tenth regard the national framework as more complex than the European one.

The **Catalonia** hub notes that there is a separate legal framework at national level for procurement below the EU threshold, which is considered to be more complex. Spanish state legislation on public sector procurement is very complex and contradictory; moreover, the European Directives were not transposed until after the deadline.

The **International Lake Constance Conference** hub reports that most of those consulted by Baden-Württemberg, Bavaria and Liechtenstein deemed the national legislative frameworks for procurement below the threshold to be simpler. Those consulted in Vorarlberg considered them to be equally complex (the same).

The **West Pomeranian Voivodeship** hub argues that the information received shows that the level of difficulty of procurement procedures at national and EU level is considered to be similar, with knowledge of rules gained through professional experience being of great (and immeasurable) significance.

The **Friuli Venezia Giulia** hub's stakeholders said that, overall, the participation procedures envisaged for contracts below the threshold are simpler, as the regulatory requirements are less complex. This is encouraging SME participation, especially when the works/services/supplies, being on a small scale, take on a local dimension. However, there is still a risk of over-regulation of negotiated procedures by the public administrations.

Umbria stresses that the responses to the following question were varied, although the view that the "below threshold" legal framework is equally complex prevails.

For business stakeholder representatives in particular, the national legal framework for procurement below the threshold is simpler/less complex than the EU Directives for "above threshold" contracts. However, this only applies to contracts below EUR 40 000. On the other hand, for public procurement above EUR 40 000, the "below threshold" situation is considered to be as complex as the "above threshold" one.

Stakeholders representing public authorities consider, however, that the national "below threshold" rules are generally just as complex as the European "above threshold" rules. This is because sub-threshold public contracts are subject to too many standards: e.g. the European Single Procurement Document (ESPD) is also required for very low amounts.

9. Conclusions

For the European Committee of the Regions, the RegHub network and the report setting out the results of this first consultation is a tangible evidence of its commitment to contribute to put into practice the recommendations of the work of the Task Force on Subsidiarity, Proportionality and "Doing less more efficiently"—by i.e. setting up a pilot network of regional hubs to support reviews of policy implementation.

Public procurement was chosen as the first topic for consultation of the regional hubs as local and regional authorities are a major economic actor in the public procurement markets.

The 2014 Directives marked an important shift from traditional patterns of procurement towards an approach that regards public procurement as a strategic tool for delivering public policy objectives by encouraging contracting authorities to take into account environmental and social considerations, as well as innovation aspects, when awarding public contracts. Moreover, the 2014 Directives include provisions aimed at helping public buyers in the EU to capitalise on the benefits of the digital revolution and making access by SMEs to public procurement markets easier, as this would help them unlock their potential for job creation, growth and innovation, while having a positive impact on the wider economy. The extended provisions on grounds for exclusion and award criteria and the stronger provisions on integrity and transparency that target corruption and fraud, are also expected to facilitate high quality investment and increase openness and transparency regarding the way public money is spent. These changes were aimed at making public procurement a key building block in the EU's policies to stimulate growth and remove barriers to investment within the EU single market.

Thus, proper implementation of the Directives is crucial to ensure this potential is not watered down. The main aim of the regional hubs consultation was to identify key challenges encountered by LRAs and their stakeholders in implementing the new provisions of the Directives, as well as the most frequent sources of misapplication or legal uncertainty. The findings of this report should therefore help all levels of government to focus on addressing these challenges and improving implementation.

From the responses received, it transpires that despite the fact that a vast majority of the hubs regard every single change brought about by the 2014 Directives as positive, there are always some concerns with regard to the practical implementation of the provisions or some hubs that have a more nuanced view of specific provisions.

To a considerable extent, the results of the consultation confirmed the CoR's analysis, through its past and ongoing consultative work, but they also **highlight some new points** such as problems with the ESPD form, the divide or explain principle, the Common Procurement Vocabulary (CPV) coding and many specific examples of "gold-plating" of EU rules by the Member States.

Unsurprisingly, the regional hubs consultation shows that the **light-touch regime for social and health services** is regarded as a positive development by all the respondents who use it. There are however, some hubs that expressed concerns about the CPV codes which identify the services subject to the new regime. It is argued that these Annexes are inconclusive or too general and that there is a need for further explanation of each CPV code. Another difficulty caused by the new regime stems from the fact that the new threshold provides a degree of procurement regulation of services that were previously excluded

altogether (for instance, care services for adults and children). However, the reason for excluding these types of services under the previous rules (limited cross-border interest) remains valid, and it is therefore argued that they should not be further regulated.

With respect to the new provisions aimed at reducing red tape for SMEs, notably **the divide or explain principle**, a very large majority of respondents regard this change as mainly positive, despite it having a number of shortcomings. While the logic of the scheme is viewed as positive, it is argued that it is not easy for local authorities already labouring under a heavy workload to carry out the envisaged simplifications for SMEs, which is possibly the reason why a large majority of the comments are negative. Many respondents suggest that the requirement for the contracting authority to explain in a report why a contract was not divided into lots was probably envisaged as a motivation to divide contracts, but that it has only added unnecessary workload and legal uncertainty to the process. It is also stressed that the administrative burden has been transferred to the contracting authority and the coordination at implementation level is very challenging, as the subsequent coordination of the individual lots requires significant technical expertise on the part of the contracting authority.

From the consultation, it is also clear that most respondents welcomed the **increased thresholds** and would like to see them increased still further. The few examples of a higher threshold not helping reduce the administrative burden appear to be caused by national rules or practices and not by rules included in the Directives.

In relation to **strategic procurement**, the majority of respondents value the option to use strategic criteria other than price and to make quality a parameter in the tender process. From the comments, it transpires that despite the fact that the majority of the hubs welcome strategic criteria, there are concerns due to the lack of resources, technical expertise and overall commitment; the over-complexity of the legal framework, particularly in the national rules transposing the Directives; and the difficulty in objectively describing or defining the specific quality aspects which could be made subject to competition and thus have to be objectively quantifiable. Due to these difficulties, some hubs argued that the pursuit of policy objectives by means of procurement rules makes these procedures even more difficult and that public procurement law should be limited to its primary objectives, namely to ensure free and non-discriminatory competition.

Taking into account the fact that some authorities see no need or only a limited need to use strategic criteria, along with the fact that it is very challenging to consider strategic criteria in public procurement and requires expertise not available to all authorities, the onus to enhance administrative capacity (or professionalisation) with a view to enhancing the uptake of strategic procurement should be placed on larger authorities **where the financial and administrative burden of factoring in strategic criteria is more likely to be proportional to the benefits** any given authority may reap from using strategic criteria. This approach would be in line with one key dimension of the Better Regulation Agenda.

Regarding **e-procurement**, overall, the hubs agree that the use of digital tools will contribute to greater transparency in public spending, improved access to market opportunities and better value for money. Quite a few hubs argue that the European Single Procurement Document creates a massive additional burden, particularly on SMEs, compared to the documents previously required for proof of qualification, and therefore puts SMEs in particular at a disadvantage. Given these difficulties, there are calls for an in-depth evaluation of the ESPD in the light of its objectives. It is also stressed that the lack of uniformity

among platforms leads to increased costs for both businesses and public authorities. Therefore, electronic procedures can become a barrier to access by SMEs to public procurement.

More than half of respondents believe that **cross-border purchasing** brings added value to their area, whereas only a quarter believe the opposite. With respect to the overall advantages, stakeholders feel that the participation of companies from neighbouring countries enriches the procurement process for contracting authorities, because it fosters competition and integration, particularly of neighbouring areas. Even those who see added value in cross-border procurement note, however, that some sectors do not have a cross-border dimension, e.g. social fields such as youth care, care for people with disabilities and social support. Another issue mentioned is the introduction of different implementation/reference legislation in other policy areas such as taxation, or the language barrier and the fact that despite costly and time-consuming EU-wide advertising, there are no or only a few cross-border tenders.

With respect to the **new provisions on integrity and transparency**, it is noted that the provisions as finally enacted are considered by many to be excessively complicated and ineffective by loopholes such as "self-cleansing" declarations. It is also argued that the provisions lead to increased costs for businesses, especially for SMEs, and that the transparency rules do not correspond to or effectively prevent the new forms of corruption.

With regard to the **main sources of misapplication or legal uncertainty**, one important issue raised by many hubs is the sometimes problematic interaction between national and European law since there seems to be a problem of over-regulation at national level, partly due to the need to coordinate with legislation in other sectors, which makes applying the rules extremely complicated. Another problem stressed is continuous amendments to national public procurement law, which prevents public authorities from maintaining uniform practices, creates legal uncertainty and requires continuous updates and highly professional input from operators. Similar concerns are raised with respect to the plethora of national legislative and implementing acts. The result is an unduly bureaucratic approach to public procurement that undermines the aims of European policy. Other challenges concern the differing requirements for certificates and electronic signatures across borders and the lack of compatible IT systems.

Moreover, the uncertainty of the legality of using best price-quality ratio and strategic criteria, as seen in strategic procurement, is also considered to be a key source of misapplication. Due to this legal uncertainty, many respondents feel that any deviation from the traditional procedure to use additional criteria increases the likelihood of errors and opens the door to increased risk of legal action, notably when those criteria are not easy to identify, define in legal terms and measure. This suggests that beyond the actual number of formal legal challenges, which in some cases might be minimal, the mere threat of legal challenge may lead to **risk averse behaviour**, such as running more expensive procurement procedures than strictly necessary, or even changing a decision to outsource a service in the first place.

It is also stressed that making quality or strategic criteria a competition parameter in the tender process demands specific resources and overall commitment that are not usually available and this limited expertise makes many authorities rely heavily on external consultants to provide technical or content expertise. Given the fact that strategic procurement adds another layer of complexity to procurement procedures, some hubs argue that the **administrative burden has to be proportional to the benefits** that strategic procurement can bring.

These difficulties and concerns suggest that it can be reasonably expected that only a kind of **match-making and risk-sharing mechanism** would do much to help authorities tackle the challenges and support the paradigm shift from risk-averse behaviour towards a more entrepreneurial and results-oriented approach by public authorities.

Moreover, some respondents seem to think that there is continuing uncertainty surrounding **public-public cooperation**. It is argued that despite the inclusion of a new approach to public-public cooperation in Directive 2014/24 (Article 12.4), many contracting authorities are reluctant to rely on the exemption as some of the EU terms involved ("cooperation" and "considerations relating to the public interest") are not easy to define or understand. It therefore needs to be made clear that agreements exclusively between public sector bodies do not necessarily entail contact with the market – they can be internal reorganisations of public functions, or collaborations to deliver a common task. Greater use of shared services arrangements would help to achieve significant cost savings, not only in terms of the procurement procedure itself, but also in terms of economies of scale when two (or more) authorities join forces to deliver a common service.

When asked about the **measures that could improve implementation**, a large majority of the hubs think that fewer and simpler rules, further training, more continuity and less frequent changes to the Directives will help improve implementation. Others say that the European Directives should explicitly stipulate under which circumstances local and regional governments are allowed to promote local economic growth, local social structures and local environmental benefits (this is linked to the "buy-national" principle). It is even proposed by some to introduce the "0 kilometre" principle in the form of mechanisms enabling contracting authorities to use local SMEs such as, for instance, a EUR 200 000 threshold below which this would be left to the discretion of the public authorities.

Some stakeholders consulted by the hubs stressed the need to also take into account **the burden** that changes to the Directives impose **on suppliers** as several operators invested considerably pre-2014 in upskilling their staff on the EU procurement regime only to find those investments made redundant by the extensive changes introduced in 2014. A call to revise or replace **the remedies regime** was expected, given the problems reported by the hubs. In the hubs' view, this would help address the significant and pressing need to reduce the culture of litigation, and associated costs, currently surrounding public sector procurement. There is also a call to increase the **interoperability of IT systems** as it is thought that this will also facilitate cross-border procurement. Other hubs stress the need for management to **encourage exploring and risk taking** with a view to reducing the fear of making mistakes.

Taking into account the extensive changes brought about by the 2014 Directives, the regional hubs consultation also looked at **how contracting authorities and businesses dealt with the changes in practical terms**, i.e. whether they had to recruit new staff or retrain their staff or whether they had to take other initiatives in order to align their systems and procedures with the new rules. Half of the respondents said that new recruitments were needed, a vast majority reported that training courses were needed and very few responded that neither was needed. The findings are similar to those of the CoR-CEMR survey. This, if anything, supports the argument that changing the current Directives would not be a good option.

With regard to **the involvement of local and regional authorities**, through their respective Member States, **in the implementation report drawn up by the European Commission**, only 17% of

respondents said that they had been involved. Similar findings are observed in the CoR-CEMR survey, with only 10% of respondents saying that they had been involved. It should, however, be noted that of the respondents that said they had been involved, almost all come from Member States with a federal structure (Spain, Germany, Belgium and Austria, the exceptions being Finland and Greece). The difference between consulted small and large entities was surprisingly small: 6% and 10% respectively.

The low level of involvement is of course worrying as local and regional authorities are responsible for a large share of public procurement and the purpose of the implementation report is to communicate possible bottlenecks or other problems to the European Commission in order for it to be able to properly assess the situation and suggest measures to improve it. The low level of involvement of local and regional authorities could, therefore, mean that important information on various aspects of public procurement in practice never reach the European Commission and that key objectives of the legislation are not achieved.

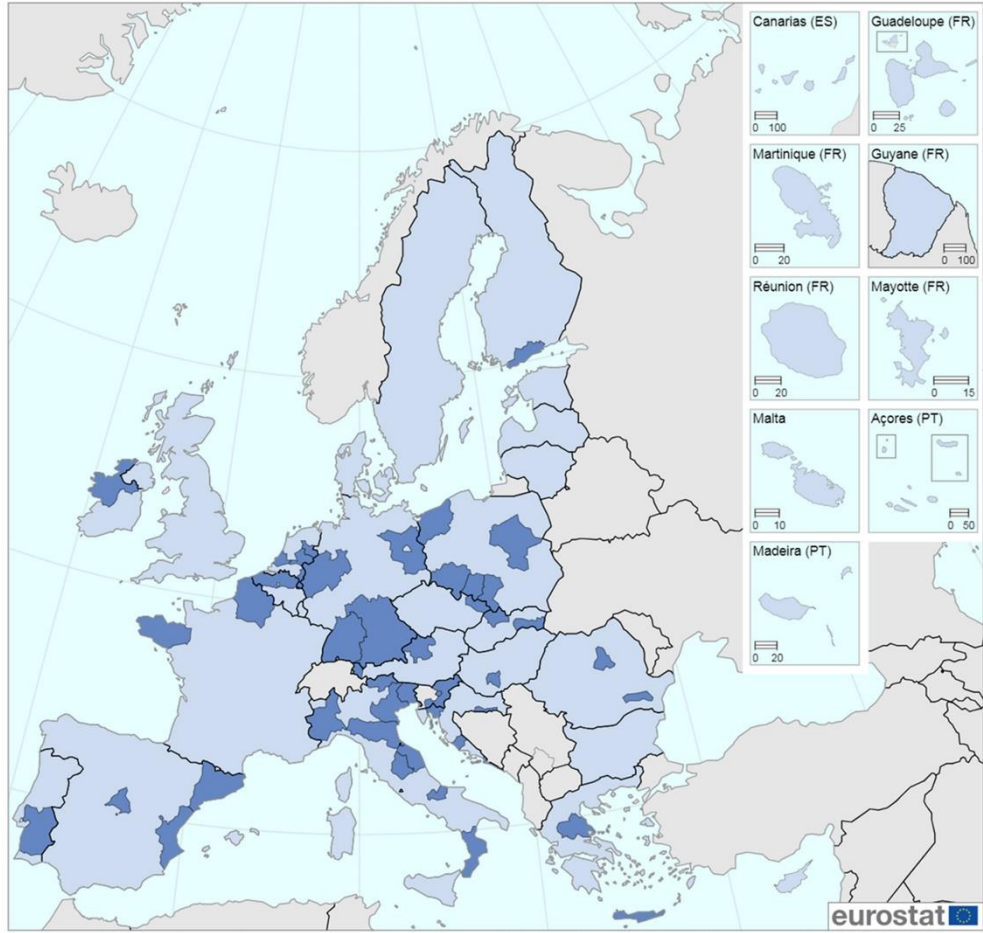
The added value of the CoR's consultation of its RegHub network is clearly not limited to the report at hand. One significant achievement of the consultation process is expected to be the creation of a network of relevant players at regional and local level that will continue to last after the report has been finalised. Their exchanges and interactions throughout the consultation form the basis to convey key messages to the EU institutions also in the future on the implementation of the Directives.

It will be crucial to ensure that the key messages of the consultation reach the other EU institutions, and convince them to address the implementation issues raised. It will therefore be a real test for the Commission's commitment to the Better Regulation Agenda and its willingness to act on what those who implement EU policies on a daily basis have to say.

10. Annexes

Annex 1: Map of the regional hubs

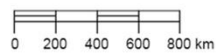
Network of Regional Hubs for EU Policy Implementation Review Members of RegHub



Measurement unit not yet entered.

Administrative boundaries: © EuroGeographics © UN-FAO © Turkstat
Cartography: Eurostat – IMAGE, 03/2019

Members of RegHub



Contact - RegHub@cor.europa.eu
Information provided by European Committee of the Regions

Annex 2: List of regional hubs and consulted stakeholders

1 Alentejo

- CCDR Alentejo
- EDIA – Empresa de Desenvolvimento e Infra-Estruturas Do Alqueva, S.A
- CIMAC
- CIMBAL
- DECSIS – Sistemas de Informação SA
- Turismo do Alentejo, E.R.T.
- ESDIME
- FENACAM – Federação Nacional das Caixas de Crédito Agrícola Mútuo
- Fundação Alentejo
- Instituto Politécnico de Beja
- Marble Project, SA
- MONTE – Desenvolvimento Alentejo Central
- NERE – Associação Empresarial do Alentejo Central-SOMEFE – Sociedade de Metais e Fundição, LDA
- SOMINCOR
- TERRAS DENTRO – Associação para o Desenvolvimento Integrado
- Universidad de Évora
- ACOS – Associação de Agricultores do Sul
- ADEGA Cooperativa de Redondo, CRL
- AMÂNDIO JOSÉ LOBO, LDA
- ASSIMAGRA – Recursos Minerais de Portugal
- Município de Aljustrel
- AREANATEJO – Agência Regional de Energia e Ambiente do Norte Alentejano e Tejo
- Município de Évora

2 Autonomous Province of Bolzano

- Agentur für Öffentliche Verträge des Landes Südtirol (Public Procurement Agency of the South Tyrol province)
- Anwaltschaft des Landes (provincial court offices) - Autonomous Province of Bolzano (South Tyrol)
- Ressort Hochbau, Grundbuch, Kataster und Vermögen (Department for structural engineering, land registry and property) – Autonomous Province of Bolzano (South Tyrol)
- Ressort Infrastruktur und Mobilität (Department for infrastructure and mobility) – Autonomous Province of Bolzano (South Tyrol)
- Südtiroler Sanitätsbetrieb (South Tyrol health authority)
- Institut für den sozialen Wohnbau des Landes Südtirol (WOBI) (social housing institute of the South Tyrol province)
- Handels-, Industrie-, Handwerks- und Landwirtschaftskammer Bozen (Bolzano chamber of trade, industry, crafts and agriculture)
- Südtiroler Wirtschaftsring (South Tyrol economic circle)
- Interdisziplinärer Ausschuss der technischen Berufskammern und Kollegien der Autonomen Provinz Bozen (interdisciplinary committee for technical professional associations and colleges of the Autonomous Province of Bolzano)

- Kollegium der Bauunternehmer (college of construction entrepreneurs)
- Landesverband der Bonifizierungs-, Bewässerungs-, und Bodenverbesserungskonsortien (Provincial association of irrigation and soil improvement consortia)
- Cooperatives
- CISL-SGB (Confederazione Italiana Sindacati Lavoratori - Südtiroler Gewerkschaftsbund) (Italian Confederation of Workers' Unions - South Tyrol trade union confederation)
- Südtiroler Gemeindenverband (South Tyrol municipality association)

3 Autonomous region of Friuli Venezia Giulia

- Autonomous Region of Friuli Venezia Giulia – Central directorate for employment, training, education and family – evaluation of tenders and notices and management of ESF tenders.
- Autonomous Region of Friuli Venezia Giulia – Central directorate for the environment and energy – Department of general and administrative affairs; procurement and contracts.
- Regional agency for the right to higher education, Friuli Venezia Giulia.
- Inter-Municipal Territorial Union – UTI Giuliana-Julijaska MTU – municipalities of Duino-Aurisina, Monrupino, Muggia, San Dorligo della Valle, Sgonico and Trieste: unit for the development of spatial planning.
- Centrale Unica di Committenza [sole central purchasing body] for the municipalities of Sacile, Aviano, Brugnera and Caneva, responsible for procurement, education and culture.
- Inter-Municipal Territorial Union – UTI Canal del Ferro Val Canale – municipalities of Pontebba, Malborghetto - Valbruna, Dogna and Resiutta.
- Municipality of Pradamano (Udine), technical area manager.
- European Grouping of Territorial Cooperation EGTC GO / EZTS GO: municipality of Gorizia (IT); municipality of Nova Gorica (SLO) and municipality of Šempeter Vrtojba (SLO)
- Agency for Development and International Economic Cooperation INFORMEST.
- Chamber of Commerce, Industry, Crafts of Venezia Giulia

4 Brandenburg

- Brandenburg University of Applied Sciences
- Regional working group of LAGs/LAG Fläming-Havel
- Brandenburg Ministry of Justice, European Affairs and Consumer Protection, Unit IV.3 (INTERREG)
- Brandenburg branch of the German Red Cross, responding on behalf of the League of Welfare Associations
- Brandenburg Roads Agency
- Elbe-Elster administrative district / Department of Finance, Human Resources and Services
- Hennigsdorf municipality
- Brandenburg Regional Environment Office – Unit S6 (Central Contracting Authority)
- Brandenburg Real Estate and Construction Agency
- Chamber of Craft Trades, Frankfurt (Oder) Region Ostbrandenburg
- Hohen-Neuendorf municipal administration
- German Trade Union Confederation
- Leibniz Centre for Agricultural Landscape Research (ZALF)
- Leibniz Institute for Agricultural Engineering and Bioeconomy e.V.
- Evangelical Church in Berlin, Brandenburg and Silesian Upper Lusatia

5 Brittany

- The Region
- The four departments
- Three urban agglomerations
- Two cities

6 Brod-Posavina County

- Ivan Marić
- Jelena Lončar
- Maja Gacic Dimic

7 Calabria

No data received

8 Catalonia

- Generalitat of Catalonia, Department of the Vice-Presidency and the Economy and Finance.
- Head of the Public Procurement Service of the Province of Barcelona

9 Community of Madrid

- Technical Secretariat-General of the Vice-Presidency, Ministry for the Presidency and Government Spokesperson's Office, Technical Secretariat-General of the Ministry of the Economy, Employment and Finance
- Technical Secretariat-General of the Ministry of Education
- Technical Secretariat-General of the Ministry of Transport, Infrastructure and Housing; Technical Secretariat-General of the Department of the Environment and Planning, Technical Secretariat-General for Social Policies and Family
- Directorate-General for Open Government (Vice-Presidency, Ministry for the Presidency and Government Spokesperson's Office). Directorate-General for Training (Ministry of the Economy, Employment and Finance)
- Sub-Directorate-General for Contracting (Ministry of the Economy, Employment and Finance), Directorate-General for Planning, Research and Training (Ministry for Health), Madrid Health Service (Department of Health)
- General Audit Office of the Regional Government of Madrid
- Madrid Commercial Chamber
- Madrid Federation of Municipalities

10 Community of Valencia

- Central Procurement Department, Valencia regional government
- Directorate for Economic Affairs, Regional Ministry of Education, Research, Culture and Sport, Valencia regional government
- Department of Procurement and Relations with the European Union, Regional Ministry of Finance and Economic Planning, Valencia regional government
- Department of Education, Infrastructure Procurement, Regional Ministry of Education, Research, Culture and Sport, Valencia regional government
- Directorate-General for Teacher Training, Regional Ministry of Education, Valencia regional government

- Directorate-General for Sport, Ministry of Education, Research, Culture and Sport, Valencia regional government
- Department of Procurement, Ministry of Finance, Valencia regional government
- Department of ICT Administrative Coordination, Directorate General Technology Information and Communications Regional Ministry of Finance and Economic Planning, Valencia regional government
- Valencia Tourism Agency
- Department of Supply and Procurement, Regional Ministry of Universal Healthcare and Public Health, Valencia regional government
- Procurement Department, Regional Ministry of Sustainable Economy, Production Sectors, Trade and Employment, Valencia regional government
- Department of Procurement and General Affairs, Valencia regional government
- Vice-presidency and Regional Ministry of Equality and Inclusive policies, Valencia regional government
- Directorate of Legal and Administrative Procurement Services, Valencia Federation of Municipalities and Provinces (FEVP)
- Procurement Department of Elche City Council

11 Crete

- Heraklion Chamber of Commerce and Industry
- Regional Development Fund
- Municipality of Heraklion
- Heraklion Development Agency
- Akomm-Psiloritis, Development Agency of Local Government
- Region of Crete (Financial department)

12 Dubrovnik-Neretva County

- Dubrovnik-Neretva County
- Sanitat Dubrovnik d.o.o.
- Čistoća Dubrovnik d.o.o.
- Vrtlar d.o.o., Jasminka Giljušić
- Čistoća Metković d.o.o.
- Dubrovnik general hospital
- University of Dubrovnik
- Izvor Ploče - public institution
- Čistoća Opuzen d.o.o.
- Dubrovnik Medical Centre
- Dubrovnik Home for the Elderly
- Korčula Municipality
- Ploče social welfare centre
- Metković Grammar School
- Metkovic Elementary Music School
- Opuzen Elementary School
- Ston Elementary School
- Župa Dubrovačka Nursery
- Konavle Municipality

- Opuzen Senior and Agricultural School-Dubrovnik County Court
- Mokošica Elementary School
- A. Masle Orašac Elementary School

13 Eastern Slovenia Cohesion Region

Tanja Četina

14 Flanders

- Association of Flemish Cities and Municipalities (VVSG)
- Association of Flemish Provinces (VVP)
- Flemish Construction Federation (VCB)
- Bouwunie
- Agoria
- Academia: KU Leuven
- University of Antwerp

15 Harghita / Ialomita

Harghita:

- General Directorate of Public Acquisition of Harghita County Council
- Local Public Authorities (Mayors' offices) of Harghita County
- Specialised public institutions (subordinated institutions of the county council - social assistance and child protection, as well as county hospital)
- SMEs and Associations from Harghita County

Ialomita

- Primăria Adâncata
- Primăria Albești
- Primăria Alexeni
- Primăria Amara
- Primăria Axintele
- Primăria Balaciu
- Primăria Bărbulești
- Primăria Bărcănești
- Primăria Borănești
- Primăria Bordușani
- Primăria Bucu
- Primăria Buești
- Primăria Căzănești
- Primăria Ciochina
- Primăria Ciocârlia
- Primăria Ciulnița
- Primăria Cocora
- Primăria Colelia
- Primăria Coșereni
- Primăria Cosâmbești

- Primăria Drăgoești
- Primăria Dridu
- Primăria Făcăeni
- Primăria Fetești
- Primăria Fierbinți-Târg
- Primăria Gârbovi
- Primăria Gheorghe Doja
- Primăria Gheorghe Lazăr
- Primăria Giurgeni
- Primăria Grindu
- Primăria Grivița
- Primăria Gura Ialomiței
- Primăria Ion Roată
- Primăria Jilavele
- Primăria Maia
- Primăria Manasia
- Primăria Mărculești
- Primăria Mihail Kogălniceanu
- Primăria Miloșești
- Primăria Moldoveni
- Primăria Movila
- Primăria Movilița
- Primăria Munteni Buzău
- Primăria Ograda
- Primăria Perieți
- Primăria Platonești
- Primăria Slobozia
- Primăria Vlădeni dinu.
- Primăria Rădulești
- Primăria Revița
- Primăria Roșiori
- Primăria Sălcioara
- Primăria Sărățeni
- Primăria Săveni
- Primăria Scânteia
- Primăria Sfântu Gheorghe
- Primăria Sinești
- Primăria Stelnica primaria.
- Primăria Sudiți
- Primăria Țândărei
- Primăria Traian
- Primăria Valea Măcrișului
- Biblioteca Județeană Ialomița
- Centrul pentru Conservarea Culturii Tradiționale
- Centrul Cultural Unesco Ionel Perlea
- Centrul Social Fierbinți

- Direcția Județeană de Evidența Persoanei
- Muzeul Național al Agriculturii
- Muzeul Județean Ialomița
- Direcția Județeană de Asistență Socială și Protecția Copilului
- Județean de Urgență Slobozia
- Instituția Prefectului Județul Ialomița

16 Hauts-de-France

- Purchasing Officer, HLM Vilogia
- Legal Officer at Amiens Aménagement (SEM – mixed ownership company)
- Secretariat General for Regional Affairs, Hauts-de-France
- Head of Public Procurement, Lille European Metropolis
- Public Procurement Office, Hauts-de-France Region

17 Helsinki-Uusimaa

- City of Keravan
- City of Helsinki
- City of Vihti
- City of Espoo
- Helsinki-Uusimaa Regional Council
- Aalto University
- Central Uusimaa Social and Health Administration

18 Kosice Self-governing Region

- Stredná odborná škola (Secondary Technical School), Ostrovského 1, 04001, Košice
- Východoslovenské múzeum (Museum of Eastern Slovakia) in Košice
- Via - Lux - DSS aZpS, Domov sociálnych služieb (care homes)
- Košice self-governing region, public procurement officer

19 Limburg (in collaboration with Province of Gelderland, Province of Zuid-Holland, Province of Overijssel, city of Tilburg)

- Provincie Limburg
- Provincie Overijssel
- Provincie Gelderland
- Provincie Zuid-Holland
- Gemeente Tilburg
- Europa Decentraal

20 Marche

No data received

21 Mazovia Voivodeship

- SZPZOZ im. Dzieci Warszawy w Dziekanowie Leśnym ul. Marii Konopnickiej 65, 05-092 Dziekanów Leśny (children's hospital)
- Warszawska Kolej Dojazdowa sp. z o.o. ul. Stefana Batorego 23, 05-827 Grodzisk Mazowiecki (Warsaw commuter railway)

- Muzeum Niepodległości w Warszawie Aleja "Solidarności" 62, 00-240 Warsaw (museum of independence)
- Szpital Dziecięcy im. prof. dr. med. ul. Finlandzka 4/03-924 Warsaw (children's hospital)
- Muzeum Mazowieckie w Płocku ul. Tumska 8, 09-402 Płock (Mazowieckie museum)
- "Koleje Mazowieckie - KM" sp. z o.o., Warsaw, ul. Lubelska 26 (Mazowieckie Railways)
- Mazowiecki Szpital Specjalistyczny im. dr. Józefa Psarskiego in Ostrołęka, Aleja Jana Pawła II 120A, 07- 410 Ostrołęka (Mazowieckie specialist hospital)
- Muzeum Wsi Mazowieckiej w Sierpcu ul. Gabriela Narutowicza 64, 09-200 Sierpc (Mazowieckie rural museum)
- Mazowiecki Szpital Wojewódzki Drewnica sp. z o.o. ul. Rychlińskiego 1, 05-091 Ząbki (Mazowieckie hospital)
- Teatr Polski im. Arnolda Szyfmana w Warszawie ul. Kazimierza Karasia 2, 00-327 Warsaw (theatre);
- Biblioteka Publiczna m.st. Warszawy - Biblioteka Główna Województwa Mazowieckiego ul. Koszykowa 26/28, 00-950 Warsaw (public library)
- Mazowieckie Centrum Leczenia Chorób Płuc i Gruźlicy, Otwock ul. Reymonta 83/91 (Mazowieckie centre for the treatment of lung diseases and tuberculosis)
- Mazowiecki Szpital Bródnowski w Warszawie Sp. z o.o. ul. Ludwika Kondratowicza 8, 03-242 Warsaw (Mazowieckie hospital)
- Mazowieckie Centrum Neuropsychiatrii sp. z o.o. ul. Koszykowa 79A, 02-008 Warsaw (Mazowieckie neuropsychiatry centre)
- Warszawska Kolej Dojazdowa sp. z o.o. ul. Stefana Batorego 23, 05-827 Grodzisk Mazowiecki (Warsaw commuter railway)
- Mazowiecki Szpital Wojewódzki ul. Poniatowskiego 26 Siedlce (Mazowieckie regional hospital)

22 Molise

- Managers of the public procurement and accounting services of the provinces and regions of Molise

23 North Rhine-Westphalia

- IHK Lower Rhine region area Taxes and Law

24 Northern and Western Region

- Regional Procurement Offices and the National Procurement Office

25 Piedmont

No data received

26 Primorje-Gorski Kotar County

- Regional Development Agency of Primorje-Gorski Kotar County
- Regional Energy Agency Kvarner
- County Port Authority of Krk

27 Region of Emilia Romagna

- Intercentr-ER- Agency for the development of the telematic markets of the Emilia Romagna Region; local health trust "large areas" - Emilia Nord, Emilia Centro, Romagna
- Department for supply, heritage and logistics of the Emilia Romagna Region; Legislative Assembly of the Emilia Romagna Region
- Regional Security and Civil Protection Agency of the Region of the Emilia Romagna Region, Province of Reggio Emilia
- Union of municipalities of Bassa Reggiana
- Union of municipalities of Valle dell'Enza
- ANCI - National Association of Italian Municipalities - Emilia Romagna division
- ANCE- National Association of manufacturers - Emilia Romagna division
- Confederation of Italian cooperatives - work and services
- Emilia Romagna Regional Council; Coldiretti Emilia Romagna
- Emilia Romagna division of the Italian National Confederation of Small Farmers
- Emilia Romagna division of the Italian federation of craft trades and SMEs

28 Šibenik-Knin County

No data received

29 EGTC TITRIA

- Silesian Voivodeship, Department of Public Procurement, address: ul. Ligonja 46, 40-037 Katowice, Poland

30 Thessaly

- Civil Engineering Directorate, Larissa Regional Unit
- Finance Directorate, Region of Thessaly
- Municipality of Tempi
- Municipality of Zagora-Mouresi
- Environment Section, Karditsa Regional Unit, Region of Thessaly
- General Services Directorate for the Environmental, Quality of Life and Refuse Collection, Municipality of Larissa
- Head of Supervision and Studies Section/Directorate for Refuse Collection and Recycling, Municipality of Larissa
- Municipality of Farsala
- Civil Engineering Directorate, Magnesia and Sporades Regional Unit, Region of Thessaly
- Environment Section, Civil Engineering Directorate, Karditsa Regional Unit, Region of Thessaly
- Transport Section, Civil Engineering Directorate, Trikala Regional Unit, Region of Thessaly
- Civil Engineering Directorate, Trikala Regional Unit, Region of Thessaly
- Vehicle and Machinery Maintenance and Logistics, Trikala Regional Unit, Region of Thessaly
- Civil Engineering Directorate, Larissa Regional Unit, Region of Thessaly
- Special Maintenance Service, Operational Programme of the Region of Thessaly
- Executive Administration of the Technical Chamber of Greece, Section for Central and Western Thessaly
- Public Procurement Procedures, Projects and Planning, Civil Engineering Directorate, Region of Thessaly

31 Tolna

- The staff of Tolna County Council concerned in public procurement

32 Umbria / Veneto

Umbria

Stakeholders representing public authorities:

- Umbria region, Department for Education, Tenders and Contracts and Investee Company Management
- Umbria region, Department for Public Works: programming, planning and implementation. Monitoring and security
- University of Perugia
- Municipality of Perugia

Business stakeholder representatives:

- ANAEPA (National Association of Craft Builders, Decorators, Painters and Similar Craft Trades)
- ANCE UMBRIA (Italian national building contractors' association), Umbria
- CONFARTIGIANATO (Confederation of craft trade associations)
- CONFIMI IMPRESA UMBRIA (Umbria Association of Small and Medium-Sized Enterprises)

Veneto

- Region of Veneto, Directorate for Infrastructure and Logistics, Public Works Organisation Unit (responsible for public works contracts)
- Region of Veneto, Directorate for Operations (responsible for public works contracts)
- Region of Veneto, Directorate for Land Protection (responsible for public works contracts)
- Region of Veneto, Directorate for Procurement, General Affairs and Heritage
- Veneto Strade SPA
- Azienda Zero, Central Purchasing (responsible for the social and health field)
- Veneto Order of Agronomists and Foresters
- National Association of Italian Municipalities (ANCI)
- Union of Italian Provinces (UPI)
- National Association of Building Constructors (ANCE)
- Veneto Regional Federation of Architects (FOAV)
- Crafts Association
- The Engineers' Federation (FOIV)
- Province of Vicenza (Central Purchasing Veneto)
- Veneto Trade Unions

33 Upper Austria (current presidency of the joint country expert conference "Subsidiarity monitoring")

All Austrian länder

34 Vorarlberg (Leading the project-group of The International Lake Constance Conference, in collaboration with Baden-Württemberg and Bayern)

- State (Land) of Baden-Württemberg: State Ministry
- Ministry of the Interior, Digitisation and Migration
- Ministry of Justice and European Affairs

- Ministry of Education, Youth and Sports
- Ministry of Rural Affairs and Consumer Protection
- Ministry of the Environment, Climate Protection and the Energy Sector
- Ministry of Science, Research and the Arts, State County Association (Landkreistag)
- Chamber of Commerce and Industry
- Free State of Bavaria: State Ministry for the Economy, Regional Development and Energy and the State Ministry for Housing, Construction and Transport
- Principality of Liechtenstein Public Procurement Unit, Office for Construction and Infrastructure
- State (Land) of Vorarlberg: Department IIIb for Administration of assets and VIIb Road construction
- State Government Office
- Vorarlberg Environmental Association
- Vorarlberg Chamber of Commerce

35 West Pomeranian Voivodeship

Departments of the Marshal's Office of West Pomeranian Voivodeship

36 Zasavje Development Region

RDA Zasavje

Annex 3: Statistics of RegHub survey on Public Procurement

Statistics:

CoR RegHub Consultation on

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


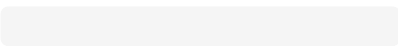
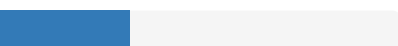
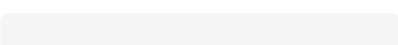
1.1 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: *The new higher thresholds for when the rules apply*

		Answers	Ratio
Positive		31	91.18 %
Negative		0	0 %
Not applicable		3	8.82 %
No Answer		0	0 %

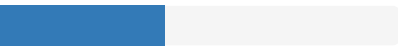
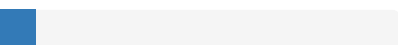

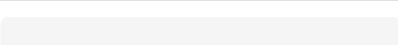
1.2 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: *A more flexible competitive procedure with negotiation*

		Answers	Ratio
Positive		25	73.53 %
Negative		0	0 %
Not applicable		9	26.47 %
No Answer		0	0 %


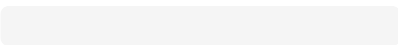
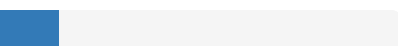
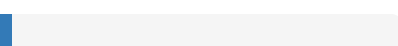
1.3 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: *New light-touch regime for social and health services*

		Answers	Ratio
Positive		23	67.65 %
Negative		0	0 %
Not applicable		11	32.35 %
No Answer		0	0 %


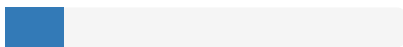
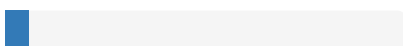
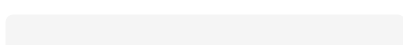
1.4 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: *Innovation partnership*

		Answers	Ratio
Positive		14	41.18 %
Negative		3	8.82 %
Not applicable		17	50 %
No Answer		0	0 %


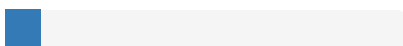
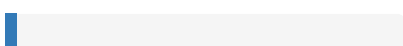
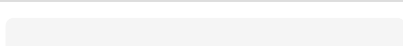
1.5 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: *Less red tape for bidders with simplified procedures and easier access for SMEs (introduction of turnover cap, 'divide or explain' principle)*

		Answers	Ratio
Positive		28	82.35 %
Negative		0	0 %
Not applicable		5	14.71 %
No Answer		1	2.94 %


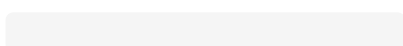
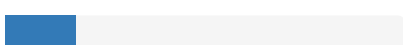
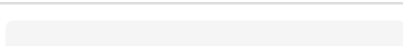
1.6 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: *The 'most economically advantageous tender' criterion (MEAT)*

		Answers	Ratio
Positive		27	79.41 %
Negative		5	14.71 %
Not applicable		2	5.88 %
No Answer		0	0 %





1.7 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: *Stronger provisions on integrity and transparency which target corruption and fraud*

		Answers	Ratio
Positive		30	88.24 %
Negative		3	8.82 %
Not applicable		1	2.94 %
No Answer		0	0 %


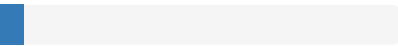
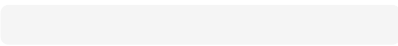
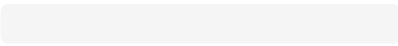
1.8 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: *Extended scope covering also the modification/termination of contracts*

		Answers	Ratio
Positive		28	82.35 %
Negative		0	0 %
Not applicable		6	17.65 %
No Answer		0	0 %

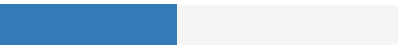

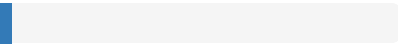
1.9 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: *A new focus on the role of public procurement in achieving policy goals in innovation, the environment and social inclusion (strategic procurement)*

		Answers	Ratio
Positive		20	58.82 %
Negative		4	11.76 %
Not applicable		10	29.41 %
No Answer		0	0 %

1.10 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: *Electronic procurement*




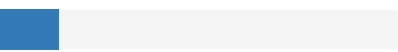

		Answers	Ratio
Positive		32	94.12 %
Negative		2	5.88 %
Not applicable		0	0 %
No Answer		0	0 %

1.11 Does your hub, and/or the consulted stakeholders, wish to provide feedback on any other aspect of the new legal framework?





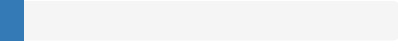
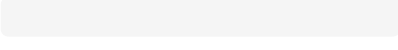
		Answers	Ratio
Yes		15	44.12 %
No		18	52.94 %
No Answer		1	2.94 %

2. Did your hub, and/or the consulted stakeholders, need to hire staff with a high level of professionalization and specific skills, or to undertake specific training courses for staff, due to the new legislation on public procurement?

You may select multiple answers







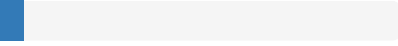

		Answers	Ratio
Yes, new recruitments were needed		17	50 %
Yes, training courses were needed		32	94.12 %
Yes, other activities were needed, which were triggered by the new framework for your organisation		14	41.18 %
Neither were needed		5	14.71 %
No Answer		0	0 %

3. Which criterion is used most often for the award of contracts?


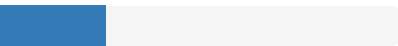
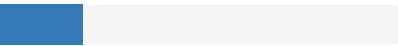
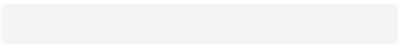
		Answers	Ratio
Price only		7	20.59 %
Cost only - using a cost-effectiveness approach, such as life-cycle costing		1	2.94 %
The best price-quality ratio		24	70.59 %
Don't know		0	0 %
Other		2	5.88 %
No Answer		0	0 %

What is the reason for using the 'price only' criterion?

You may select multiple answers

		Answers	Ratio
Compliance with environmental, social and labour law obligations that are taken into account already at the stage of "verification of compliance with the minimum requirements"		2	5.88 %
Difficulty to draft complex conditions and additional specifications when using cost-effectiveness or best price-quality ratio approach		7	20.59 %
Difficulty to prove that the sustainability-based criteria are linked to the subject matter of the contract		5	14.71 %
Higher risk of complaints when the cost-effectiveness or the best price-quality ratio approach is used as companies regard it as an effort of the contracting authority to decrease participation in public procurement by defining unjustified additional requirements or to limit the access of cross-border suppliers to the tender		5	14.71 %
Quicker procedure		5	14.71 %
Don't know		0	0 %
Other		2	5.88 %
No Answer		27	79.41 %

4. Does your hub, and/or the consulted stakeholders believe that cross-border purchasing would bring an added-value to your/their area?

		Answers	Ratio
Yes		18	52.94 %
No		9	26.47 %
Non applicable		7	20.59 %
No Answer		0	0 %

If yes, what are the advantages of cross-border purchasing?

You may select multiple answers


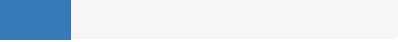
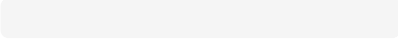
		Answers	Ratio
Higher competition		17	50 %
Better choices (quality and price)		18	52.94 %
Increased availability of suppliers at national/regional level		10	29.41 %
Other		3	8.82 %
No Answer		16	47.06 %

If no, what are the disadvantages of cross-border purchasing?




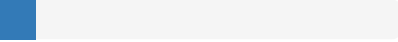
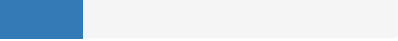
You may select multiple answers

		Answers	Ratio
Some sectors do not have a cross-border dimension, e.g., in areas of the social domain such as youth care, disabled care and social support		7	20.59 %
Differing legislation in other policy areas, e.g., taxation, labour tax		6	17.65 %
Difficulty in designing a particular call of tenders in such a way as to encourage cross-border bidders to participate		5	14.71 %
Despite costly and time-consuming EU-wide advertising, there are no or few cross-border bids		6	17.65 %
It makes it more complicated to give preference to local bidders for social, environmental or innovative reasons		3	8.82 %
Language barriers		3	8.82 %
Other		1	2.94 %
No Answer		25	73.53 %


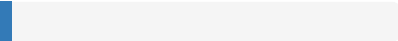

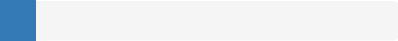

5. Is there, at national level, a separate legal framework for procurement 'below the EU threshold'?

		Answers	Ratio
Yes		28	82.35 %
No		6	17.65 %
No Answer		0	0 %

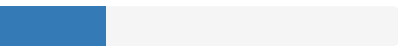
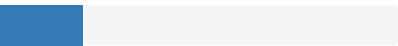
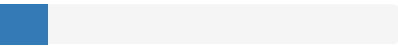


If yes, how would you, and/or the consulted stakeholders, assess this national framework on comparison with the EU Directives, i.e., the legal framework for procurement 'above the EU threshold'?

		Answers	Ratio
Easier/less complex		10	29.41 %
The same		6	17.65 %
More complex		8	23.53 %
Don't know		3	8.82 %
No Answer		7	20.59 %

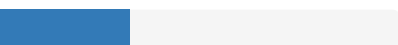

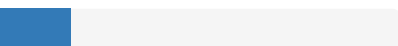
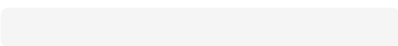
6. Is there any structure or monitoring authority at regional level or within your hub, and/or the consulted stakeholders, that monitors the application of public procurement rules and reports to national authorities on violations of public procurement rules?

		Answers	Ratio
Yes, it is compulsory		22	64.71 %
Yes, it is optional		1	2.94 %
No		8	23.53 %
Don't know		3	8.82 %
No Answer		0	0 %

If yes, are the results of the monitoring made public?






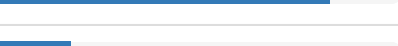
		Answers	Ratio
Yes		9	26.47 %
Yes, in some cases		7	20.59 %
No		4	11.76 %
Don't know		3	8.82 %
No Answer		11	32.35 %

7. Every three years, Member States have to submit a report to the European Commission on the most frequent sources of misapplication or legal uncertainty, on prevention measures, as well as on the detection and adequate reporting of cases of procurement fraud, corruption, conflict of interest and other serious irregularities. Is your hub, and/or the consulted stakeholders, involved in this reporting?

		Answers	Ratio
Yes		11	32.35 %
No		17	50 %
Don't know		6	17.65 %
No Answer		0	0 %




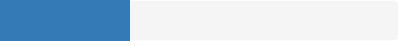
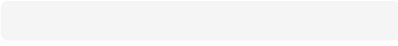
8. In your experience, and/or that of the consulted stakeholders, what are the main sources of wrong application or legal uncertainty with the new framework?

You may select multiple answers


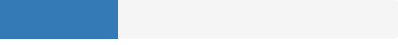
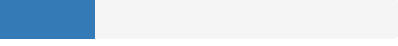
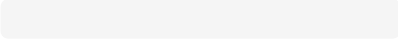
		Answers	Ratio
Complexity of the new framework		21	61.76 %
Lack of technical expertise (relevant knowledge and skills of the staff)		23	67.65 %
Difficulty in defining specific requirements as award criteria when using the best price-quality ratio		25	73.53 %
High workload for procurement officers		28	82.35 %
Other		6	17.65 %
No Answer		0	0 %

9. In your experience, and/or that of the consulted stakeholders, what kind of measures would improve the implementation of the Directives and make framework simpler for local and regional authorities?

You may select multiple answers

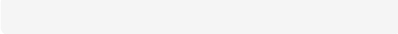
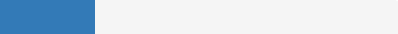
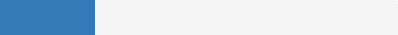
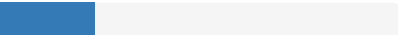
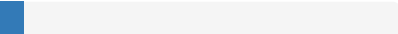
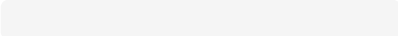
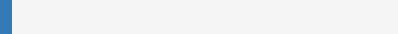

		Answers	Ratio
It must be further emphasized that fair competition and transparent tendering are only means to achieve the overarching objectives of best value for public money		19	55.88 %
It must be made clearer under which circumstances local and regional governments are allowed to specifically promote local economic growth, local social structures, and local environmental benefits		25	73.53 %
National authorities should provide further training opportunities for staff		24	70.59 %
Other		11	32.35 %
No Answer		0	0 %

10. How is your hub, and/or how are the consulted stakeholders, disposed toward strategic procurement?

		Answers	Ratio
Positively		16	47.06 %
Reluctantly		10	29.41 %
Don't know		8	23.53 %
No Answer		0	0 %








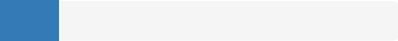
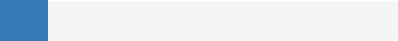

If reluctant, what would be the main reasons?

You may select multiple answers

		Answers	Ratio
There is no need to integrate strategic procurement criteria, notably due to th low amount of contracts		0	0 %
Complex legal framework		8	23.53 %
Lack of technical expertise (relevant knowledge and skills of the staff) to apply strategic procurement		8	23.53 %
Fear of errors, legal uncertainty		8	23.53 %
The benefits of strategic procurement are not necessarily manifested in the procuring region		2	5.88 %
Don't know		0	0 %
Other		1	2.94 %
No Answer		24	70.59 %






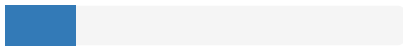
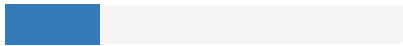

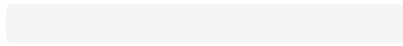
11. In your experience, and/or that of the consulted stakeholders, what are the key challenges, if any, of promoting public procurement of innovation?

You may select multiple answers

		Answers	Ratio
Complex legal framework		18	52.94 %
Lack of technical expertise (relevant knowledge and skills of the staff) to carry out innovation procurement		29	85.29 %
Difficulty in conducting a preliminary market analysis to assess whether the desired product exists on the market and /or establish the number of potentially interested suppliers on the market		21	61.76 %
Difficulty in defining specific requirements as award criteria when using the best price-quality ratio		24	70.59 %
Difficulty in using the procedures that are designed to support innovation in public procurement such as the competitive dialogue and the innovation partnership		17	50 %
High risk of complaints, remedies or irregularities that are linked to the procedures suitable for innovation procurement		17	50 %
Organisational culture not conducive to trying new processes and working with innovative methodologies		13	38.24 %
Not applicable		5	14.71 %
Other		4	11.76 %
No Answer		0	0 %







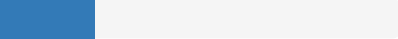
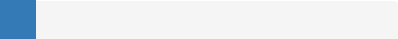
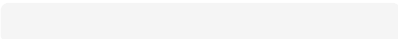
12. What measures are being taken to overcome these challenges?

You may select multiple answers

		Answers	Ratio
National guidance		21	61.76 %
Regional guidance		12	35.29 %
Hiring specialized staff		9	26.47 %
Training courses organized at central level / helpdesks		13	38.24 %
Training courses organized at regional level / helpdesks		15	44.12 %
Nothing is being done		6	17.65 %
Not applicable		8	23.53 %
Other		6	17.65 %
No Answer		0	0 %


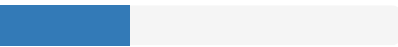


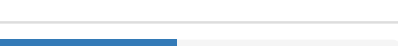

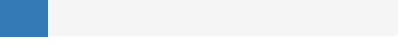
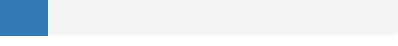
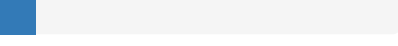
13. In your experience, and/or that of the consulted stakeholders, what are the key challenges, if any, of promoting social public procurement?

You may select multiple answers

		Answers	Ratio
Complex legal framework		17	50 %
Lack of technical expertise (relevant knowledge and skills of the staff) to carry out Socially Responsible procurement		20	58.82 %
High risk of complains, remedies or irregularities		16	47.06 %
High workload for contracting authorities		16	47.06 %
Difficulty in defining the conditions related to the way the contract is carried out while ensuring that those conditions are non-discriminatory and compatible with EU law		25	73.53 %
Difficulty in assessing the equivalence of certification (social labels) from other Member States when public procurement documents refer to national or regional certification of the contracting authority		17	50 %
Not applicable		8	23.53 %
Other		3	8.82 %
No Answer		0	0 %

14. What measures are being taken to overcome these challenges?

You may select multiple answers

		Answers	Ratio
National guidance		19	55.88 %
Regional guidance		11	32.35 %
Hiring specialized staff		9	26.47 %
Training courses organized at central level / helpdesks		11	32.35 %
Training courses organized at regional level / helpdesks		15	44.12 %
Nothing is being done		4	11.76 %
Not applicable		4	11.76 %
Other		3	8.82 %
No Answer		0	0 %






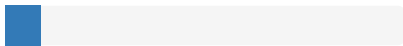
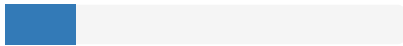

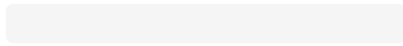
15. In your experience, and/or that of the consulted stakeholders, what are the key challenges, if any, of promoting green public procurement?

You may select multiple answers


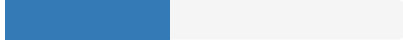
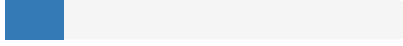
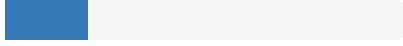
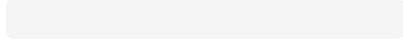
		Answers	Ratio
Complex legal framework		12	35.29 %
Lack of technical expertise (relevant knowledge and skills of the staff) to carry out green public procurement		22	64.71 %
High risk of complains, remedies or irregularities		10	29.41 %
Difficulty in defining the conditions related to the way the contract is carried out while ensuring that those conditions are non-discriminatory and compatible with EU law		20	58.82 %
Difficulty in assessing the full life-cycle cost when awarding contracts		19	55.88 %
Difficulty in assessing the equivalence of certification (social labels) from other Member States when public procurement documents refer to national or regional certification of the contracting authority		15	44.12 %
Long procedure		7	20.59 %
Lack of products in the (local) market		8	23.53 %
Higher cost of products/services		16	47.06 %
Lower quality/performance of products /services		3	8.82 %
Mismatch with electronic market (criteria not included in the electronic procedures)		1	2.94 %
Not applicable		6	17.65 %
Other		4	11.76 %
No Answer		0	0 %

16. What measures are being taken to overcome these challenges?

You may select multiple answers

		Answers	Ratio
National guidance		25	73.53 %
Regional guidance		10	29.41 %
Hiring specialized staff		7	20.59 %
Training courses organized at central level / helpdesks		14	41.18 %
Training courses organized at regional level / helpdesks		15	44.12 %
Nothing is being done		3	8.82 %
Not applicable		6	17.65 %
Other		3	8.82 %
No Answer		0	0 %

17. Is there a national set of criteria on Green public procurement?

		Answers	Ratio
Yes, it is compulsory		8	23.53 %
Yes, it is optional		14	41.18 %
No		5	14.71 %
Don't know		7	20.59 %
No Answer		0	0 %

18. Is there national guidance material on Green public procurement?

		Answers	Ratio
Yes, at national level		23	67.65 %
Yes, it was created within a project/pilot initiative a local level		2	5.88 %
No		4	11.76 %
Don't know		5	14.71 %
No Answer		0	0 %

19. Does your hub, and/or the consulted stakeholders, use the EU guidance material on Green public procurement?

You may select multiple answers

		Answers	Ratio
Yes, often		7	20.59 %
Yes, sometimes		17	50 %
No, it is too difficult		6	17.65 %
No, it is difficult to find		8	23.53 %
No, it is not adapted to my context		11	32.35 %
No, for other reasons		12	35.29 %
No Answer		1	2.94 %

20. The procurement legislation encourages authorities to divide contracts into lots, to facilitate the access for SMEs. This is not obligatory, but authorities must provide the main reasons for their decision not to divide into lots. How is your hub, and/or the consulted stakeholders, disposed towards the 'divide or explain' principle?

		Answers	Ratio
Positively		30	88.24 %
Negatively		1	2.94 %
Don't know		1	2.94 %
No Answer		2	5.88 %

If negative, what is the reason for this?

You may select multiple answers

		Answers	Ratio
Having one contract is easier to organise		1	2.94 %
One contract can lead to economies of scale		0	0 %
Don't know		0	0 %
Other		0	0 %
No Answer		33	97.06 %

21. Is your hub, and/or the consulted stakeholders, aware of any national or regional initiative aimed at facilitating the access of SMEs (including start-ups and scale-ups) to public contracts?

		Answers	Ratio
Yes		19	55.88 %
No		15	44.12 %
No Answer		0	0 %

If yes, what kinds of initiative are they?

You may select multiple answers




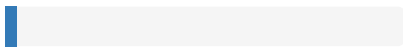

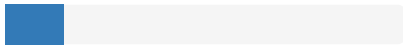
		Answers	Ratio
Centralised procurement activities		8	23.53 %
National policy or legislative initiative		6	17.65 %
Regional policy or legislative initiative		10	29.41 %
National targets set for SME participation		5	14.71 %
Regional targets set for SME participation		7	20.59 %
National guidance		3	8.82 %
Regional guidance		9	26.47 %
Training courses organised at central level / helpdesks		6	17.65 %
Training courses organised at regional level / helpdesks		7	20.59 %
Other		4	11.76 %
No Answer		15	44.12 %

22. Does your hub, and/or the consulted stakeholders, believe that the access of SMEs to public procurement is higher (easier) in public procurement that is below EU thresholds?


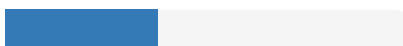
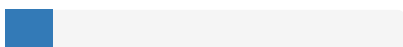
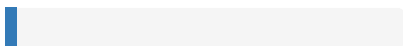
		Answers	Ratio
Yes		29	85.29 %
No		1	2.94 %
Don't know		3	8.82 %
No Answer		1	2.94 %

If yes, what are the main reasons for this?

You may select multiple answers

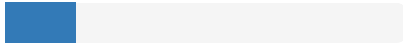



		Answers	Ratio
Less complex legal framework for below EU thresholds public procurement		24	70.59 %
Simpler criteria		19	55.88 %
Publication of the tender confined to a stricter geographic area		18	52.94 %
Don't know		1	2.94 %
Other		5	14.71 %
No Answer		5	14.71 %

23. Is your hub, and/or the consulted stakeholders, using the new light-touch regime for social and health services?


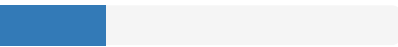
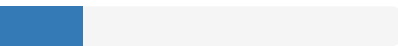
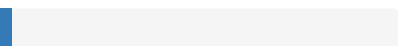
		Answers	Ratio
Yes		16	47.06 %
No		13	38.24 %
Don't know		4	11.76 %
No Answer		1	2.94 %

If no, what is the reason for this?

You may select multiple answers

		Answers	Ratio
Difficulty in applying the new rules		6	17.65 %
Don't know		0	0 %
Other		9	26.47 %
No Answer		21	61.76 %

24. Are there any other challenges that your hub, and/or the consulted stakeholders, is/are facing with the application of the new legislation on public procurement, not covered by the above questions?

		Answers	Ratio
Yes		17	50 %
No		9	26.47 %
Don't know		7	20.59 %
No Answer		1	2.94 %

Annex 4: Regional hubs survey

CoR RegHub Consultation on

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

Fields marked with * are mandatory.



European Committee of the Regions

Background

The 2014 Directives (https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation_en) introduced a number of changes in the European legal framework for public procurement including new procedures, attempts to reduce red tape for bidders with simplified procedures and easier access for SMEs, more provisions on grounds for exclusion and award criteria, stronger provisions on integrity and transparency which target corruption and fraud and a new focus on the role of public procurement in achieving policy goals in innovation, the environment protection and social inclusion.

The questionnaire aims to put together the views of the hubs, on the types of policy support that would be needed in order to overcome the difficulties encountered at regional and local level, with regard to the implementation of the Directives.

Who should respond to the survey?

The questionnaire should be answered and sent back to the RegHub secretariat by the contact points of the

RegHub members. They can consult representatives of local/regional authorities (officials, politicians or other), business sector/SMEs or other stakeholders at local/regional level they deem fit and who consider to be affected by the EU Public Procurement Directives.

IMPORTANT

Whenever answers are based on consultations of stakeholders, this should be explicitly indicated and the consulted stakeholders should be clearly identified.

How will the survey results be used?

The results of this consultation will be compiled in the first RegHub implementation report, on the Directives on public procurement. They will also feed into the CoR opinion on the implementation of the 2014 Directives.

Practical information

The survey will be open until 6 May 2019

For more information, please contact reghub@cor.europa.eu

Details of the Stakeholders

* Please mention here:

- 1/ the **name and contact information** of all of the stakeholders that you have consulted, and
- 2/ **the question(s)** on which they were consulted

Details of the Contact Point

* First name

* Last name

* Email

* Contact point of (name of your hub):

* Function/Position

The 2014 EU Directives on public procurement

1.1 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: ***The new higher thresholds for when the rules apply***

- Positive
- Negative
- Not applicable

Please explain

1.2 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: ***A more flexible competitive procedure with negotiation***

- Positive
- Negative
- Not applicable

Please explain

1.3 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: ***New light-touch regime for social and health services***

- Positive
- Negative
- Not applicable

Please explain

1.4 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: ***Innovation partnership***

- Positive
- Negative
- Not applicable

Please explain

1.5 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: ***Less red tape for bidders with simplified procedures and easier access for SMEs (introduction of turnover cap, 'divide or explain' principle)***

- Positive
- Negative
- Not applicable

Please explain

1.6 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: ***The 'most economically advantageous tender' criterion (MEAT)***

- Positive
- Negative
- Not applicable

Please explain

1.7 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: ***Stronger provisions on integrity and transparency which target corruption and fraud***

- Positive
- Negative
- Not applicable

Please explain

1.8 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: ***Extended scope covering also the modification/termination of contracts***

- Positive
- Negative
- Not applicable

Please explain

1.9 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: ***A new focus on the role of public procurement in achieving policy goals in innovation, the environment and social inclusion (strategic procurement)***

- Positive
- Negative
- Not applicable

Please explain

1.10 How was your experience, and/or that of the consulted stakeholders, of the following change introduced by the 2014 Directives: ***Electronic procurement***

- Positive
- Negative
- Not applicable

Please explain

1.11 Does your hub, and/or the consulted stakeholders, wish to provide feedback on any other aspect of the new legal framework?

- Yes
- No

Please specify

2. Did your hub, and/or the consulted stakeholders, need to hire staff with a high level of professionalization and specific skills, or to undertake specific training courses for staff, due to the new legislation on public procurement?

You may select multiple answers

- Yes, new recruitments were needed
- Yes, training courses were needed
- Yes, other activities were needed, which were triggered by the new framework for your organisation
- Neither were needed

If other activities were needed, please specify which

Synthesis of question 2

Please write here the combined feedback of both your hub and your consulted stakeholders

3. Which criterion is used most often for the award of contracts?

- Price only
- Cost only - using a cost-effectiveness approach, such as life-cycle costing
- The best price-quality ratio

- Don't know
- Other

What is the reason for using the 'price only' criterion?

You may select multiple answers

- Compliance with environmental, social and labour law obligations that are taken into account already at the stage of " *verification of compliance with the minimum requirements*"
- Difficulty to draft complex conditions and additional specifications when using cost-effectiveness or best price-quality ratio approach
- Difficulty to prove that the sustainability-based criteria are linked to the subject matter of the contract
- Higher risk of complaints when the cost-effectiveness or the best price-quality ration approach is used as companies regard it as an effort of the contracting authority to decrease participation in public procurement by defining unjustified additional requirements or to limit the access of cross-border suppliers to the tender
- Quicker procedure
- Don't know
- Other

If other, please specify

If other, please specify

Synthesis of question 3

Please write here the combined feedback of both your hub and your consulted stakeholders

4. Does your hub, and/or the consulted stakeholders believe that cross-border purchasing would bring an added-value to your/their area?

- Yes
- No
- Non applicable

If yes, what are the advantages of cross-border purchasing?

You may select multiple answers

- Higher competition
- Better choices (quality and price)
- Increased availability of suppliers at national/regional level
- Other

If other, please specify

If no, what are the disadvantages of cross-border purchasing?

You may select multiple answers

- Some sectors do not have a cross-border dimension, e.g., in areas of the social domain such as youth care, disabled care and social support
- Differing legislation in other policy areas, e.g., taxation, labour tax
- Difficulty in designing a particular call of tenders in such a way as to encourage cross-border bidders to participate
- Despite costly and time-consuming EU-wide advertising, there are no or few cross-border bids
- It makes it more complicated to give preference to local bidders for social, environmental or innovative reasons
- Language barriers
- Other

If other, please specify

Synthesis of question 4

Please write here the combined feedback of both your hub and your consulted stakeholders

5. Is there, at national level, a separate legal framework for procurement 'below the EU threshold'?

- Yes
- No

If yes, how would you, and/or the consulted stakeholders, assess this national framework on comparison with the EU Directives, i.e., the legal framework for procurement 'above the EU threshold'?

- Easier/less complex
- The same
- More complex
- Don't know

Synthesis of question 5

Please write here the combined feedback of both your hub and your consulted stakeholders

6. Is there any structure or monitoring authority at regional level or within your hub, and/or the consulted stakeholders, that monitors the application of public procurement rules and reports to national authorities on violations of public procurement rules?

- Yes, it is compulsory
- Yes, it is optional
- No
- Don't know

If yes, are the results of the monitoring made public?

- Yes
- Yes, in some cases
- No
- Don't know

If yes, please specify in which cases

Synthesis of question 6

Please write here the combined feedback of both your hub and your consulted stakeholders

7. Every three years, Member States have to submit a report to the European Commission on the most frequent sources of misapplication or legal uncertainty, on prevention measures, as well as on the detection and adequate reporting of cases of procurement fraud, corruption, conflict of interest and other serious irregularities. Is your hub, and/or the consulted stakeholders, involved in this reporting?

- Yes
- No
- Don't know

Synthesis of question 7

Please write here the combined feedback of both your hub and your consulted stakeholders

8. In your experience, and/or that of the consulted stakeholders, what are the main sources of wrong application or legal uncertainty with the new framework?

You may select multiple answers

- Complexity of the new framework
- Lack of technical expertise (relevant knowledge and skills of the staff)
- Difficulty in defining specific requirements as award criteria when using the best price-quality ratio
- High workload for procurement officers
- Other

Please specify

Synthesis of question 8

Please write here the combined feedback of both your hub and your consulted stakeholders

9. In your experience, and/or that of the consulted stakeholders, what kind of measures would improve the implementation of the Directives and make framework simpler for local and regional authorities?

You may select multiple answers

- It must be further emphasized that fair competition and transparent tendering are only means to achieve the overarching objectives of best value for public money
- It must be made clearer under which circumstances local and regional governments are allowed to specifically promote local economic growth, local social structures, and local environmental benefits
- National authorities should provide further training opportunities for staff
- Other

Please specify

What is your view, and/or that of the consulted stakeholders, on how the 2014 Directives are applied in your organization?

Synthesis of question 9

Please write here the combined feedback of both your hub and your consulted stakeholders

Strategic procurement - General questions

10. How is your hub, and/or how are the consulted stakeholders, disposed toward strategic procurement?

- Positively
- Reluctantly
- Don't know

If reluctant, what would be the main reasons?

You may select multiple answers

- There is no need to integrate strategic procurement criteria, notably due to the low amount of contracts
- Complex legal framework
- Lack of technical expertise (relevant knowledge and skills of the staff) to apply strategic procurement
- Fear of errors, legal uncertainty
- The benefits of strategic procurement are not necessarily manifested in the procuring region
- Don't know
- Other

If other, please specify

Synthesis of question 10

Please write here the combined feedback of both your hub and your consulted stakeholders

Strategic procurement - Public procurement of innovation

11. In your experience, and/or that of the consulted stakeholders, what are the key challenges, if any, of promoting public procurement of innovation?

You may select multiple answers

- Complex legal framework
- Lack of technical expertise (relevant knowledge and skills of the staff) to carry out innovation procurement
- Difficulty in conducting a preliminary market analysis to assess whether the desired product exists on the market and/or establish the number of potentially interested suppliers on the market
- Difficulty in defining specific requirements as award criteria when using the best price-quality ratio
- Difficulty in using the procedures that are designed to support innovation in public procurement such as the competitive dialogue and the innovation partnership
- High risk of complaints, remedies or irregularities that are linked to the procedures suitable for innovation procurement
- Organisational culture not conducive to trying new processes and working with innovative methodologies
- Not applicable
- Other

If other, please specify

Synthesis of question 11

Please write here the combined feedback of both your hub and your consulted stakeholders

12. What measures are being taken to overcome these challenges?

You may select multiple answers

- National guidance
- Regional guidance
- Hiring specialized staff
- Training courses organized at central level / helpdesks
- Training courses organized at regional level / helpdesks
- Nothing is being done
- Not applicable
- Other

If other, please specify

Are any of the above-mentioned measures not put in place by your hub, and/or by the consulted stakeholders, but still would be recommended? If yes, which ones and why?

Synthesis of question 12

Please write here the combined feedback of both your hub and your consulted stakeholders

Strategic procurement - Social public procurement

13. In your experience, and/or that of the consulted stakeholders, what are the key challenges, if any, of promoting social public procurement?

You may select multiple answers

- Complex legal framework
- Lack of technical expertise (relevant knowledge and skills of the staff) to carry out Socially Responsible procurement
- High risk of complains, remedies or irregularities
- High workload for contracting authorities
- Difficulty in defining the conditions related to the way the contract is carried out while ensuring that those conditions are non-discriminatory and compatible with EU law
- Difficulty in assessing the equivalence of certification (social labels) from other Member States when public procurement documents refer to national or regional certification of the contracting authority
- Not applicable
- Other

If other, please specify

Synthesis of question 13

Please write here the combined feedback of both your hub and your consulted stakeholders

14. What measures are being taken to overcome these challenges?

You may select multiple answers

- National guidance
- Regional guidance
- Hiring specialized staff
- Training courses organized at central level / helpdesks
- Training courses organized at regional level / helpdesks
- Nothing is being done
- Not applicable

Other

Please specify

Are any of the above-mentioned measures not put in place by your hub, and/or the consulted stakeholders, but still would be recommended? If yes, which ones and why?

Synthesis of question 14

Please write here the combined feedback of both your hub and your consulted stakeholders

Strategic procurement - Green public procurement

15. In your experience, and/or that of the consulted stakeholders, what are the key challenges, if any, of promoting green public procurement?

You may select multiple answers

- Complex legal framework
- Lack of technical expertise (relevant knowledge and skills of the staff) to carry out green public procurement
- High risk of complains, remedies or irregularities
- Difficulty in defining the conditions related to the way the contract is carried out while ensuring that those conditions are non-discriminatory and compatible with EU law
- Difficulty in assessing the full life-cycle cost when awarding contracts
- Difficulty in assessing the equivalence of certification (social labels) from other Member States when public procurement documents refer to national or regional certification of the contracting authority
- Long procedure
- Lack of products in the (local) market
- Higher cost of products/services
- Lower quality/performance of products/services
- Mismatch with electronic market (criteria not included in the electronic procedures)
- Not applicable
- Other

If other, please specify

Synthesis of question 15

Please write here the combined feedback of both your hub and your consulted stakeholders

16. What measures are being taken to overcome these challenges?

You may select multiple answers

- National guidance
- Regional guidance
- Hiring specialized staff
- Training courses organized at central level / helpdesks
- Training courses organized at regional level / helpdesks
- Nothing is being done
- Not applicable
- Other

Please specify

Are any of the above-mentioned measures not put in place by your hub, and/or the consulted stakeholders, but still would be recommended? If yes, which ones and why?

Synthesis of question 16

Please write here the combined feedback of both your hub and your consulted stakeholders

17. Is there a national set of criteria on Green public procurement?

- Yes, it is compulsory
- Yes, it is optional
- No
- Don't know

Synthesis of question 17

Please write here the combined feedback of both your hub and your consulted stakeholders

18. Is there national guidance material on Green public procurement?

- Yes, at national level
- Yes, it was created within a project/pilot initiative a local level
- No
- Don't know

Synthesis of question 18

Please write here the combined feedback of both your hub and your consulted stakeholders

19. Does your hub, and/or the consulted stakeholders, use the EU guidance material on Green public procurement?

You may select multiple answers

- Yes, often
- Yes, sometimes
- No, it is too difficult
- No, it is difficult to find
- No, it is not adapted to my context
- No, for other reasons

Synthesis of question 19

Please write here the combined feedback of both your hub and your consulted stakeholders

Small and Medium-size Enterprises (SMEs)

The EU definition of an SME is a company with fewer than 250 employees and a turnover of less than € 50 million

20. The procurement legislation encourages authorities to divide contracts into lots, to facilitate the access for SMEs. This is not obligatory, but authorities must provide the main reasons for their decision not to divide into lots. How is your hub, and/or the consulted stakeholders, disposed towards the 'divide or explain' principle?

- Positively
- Negatively
- Don't know

If negative, what is the reason for this?

You may select multiple answers

- Having one contract is easier to organise
- One contract can lead to economies of scale
- Don't know
- Other

If other, please specify

Synthesis of question 20

Please write here the combined feedback of both your hub and your consulted stakeholders

21. Is your hub, and/or the consulted stakeholders, aware of any national or regional initiative aimed at facilitating the access of SMEs (including start-ups and scale-ups) to public contracts?

- Yes
- No

If yes, what kinds of initiative are they?

You may select multiple answers

- Centralised procurement activities
- National policy or legislative initiative
- Regional policy or legislative initiative
- National targets set for SME participation
- Regional targets set for SME participation
- National guidance
- Regional guidance
- Training courses organised at central level / helpdesks
- Training courses organised at regional level / helpdesks
- Other

If other, please specify

Synthesis of question 21

Please write here the combined feedback of both your hub and your consulted stakeholders

22. Does your hub, and/or the consulted stakeholders, believe that the access of SMEs to public procurement is higher (easier) in public procurement that is **below** EU thresholds?

- Yes
- No
- Don't know

If yes, what are the main reasons for this?

You may select multiple answers

- Less complex legal framework for below EU thresholds public procurement
- Simpler criteria
- Publication of the tender confined to a stricter geographic area
- Don't know
- Other

If other, please specify

Synthesis of question 22

Please write here the combined feedback of both your hub and your consulted stakeholders

Social and health services

23. Is your hub, and/or the consulted stakeholders, using the new light-touch regime for social and health services?

- Yes
- No
- Don't know

If no, what is the reason for this?

You may select multiple answers

- Difficulty in applying the new rules
- Don't know
- Other

If other, please specify

Synthesis of question 23

Please write here the combined feedback of both your hub and your consulted stakeholders

Other challenges

24. Are there any other challenges that your hub, and/or the consulted stakeholders, is/are facing with the application of the new legislation on public procurement, not covered by the above questions?

- Yes
- No
- Don't know

If yes, what are these challenges, and how does your hub, and/or the consulted stakeholders, has/have dealt with, or are currently dealing, with these challenges?

Synthesis of question 24

Please write here the combined feedback of both your hub and your consulted stakeholders

Privacy statement

By filling out and submitting your answers to this survey, you consent to the Committee of the Regions of the EU processing and collecting the data for the purpose of informing an opinion on the implementation of the 2014 Directives on public procurement.

This data is collected and processed according to Regulation (EU) 2018/1725. This data will not be made public or transferred to any third parties without your prior written consent. The follow-up to this survey application requires that your personal data and answers be processed in a file, which will be kept for a period of 5 years. You have the right to access your personal data, and the right to correct any inaccurate or incomplete personal data or to request its deletion by sending an email to econ-survey-cor@cor.europa.eu.

The requests will be processed without undue delay and in any event within one month of receipt of the request. Any queries concerning the processing of the personal data can be addressed to the same email, which is the first level contact for complaints and irregularities. The Data Protection Officer of the Committee of the Regions can be contacted at data.protection@cor.europa.eu. You have the right to have recourse at any time to the European Data Protection Supervisor: edps@edps.europa.eu.

* I have read the privacy statement.

Annex 5: CEMR survey

CEMR-CoR survey on

Assessing the implementation of the 2014 Directives on public procurement:

challenges and opportunities at regional and local level

Fields marked with * are mandatory.



Why respond to this survey?

This consultation is being conducted by the Council of European Municipalities and Regions (CEMR) and the European Committee of the Regions (CoR).

The 2014 Directives introduced a number of changes in the European legal framework for public procurement. These changes include new procedures to reduce red tape and provide easier access for SMEs, as well as stronger provisions on integrity and transparency, which target corruption and fraud, and a new focus on the role of public procurement in achieving policy goals in innovation, environmental protection and social inclusion. Considering the key role of subnational governments in local public markets, through their spending on goods and services, construction and public works, the CoR has started to analyse the challenges and opportunities faced by regions and cities in implementing the new legal framework.

By responding to this survey, you will help us to identify these key challenges and to gather the views of regions and cities on the types of policy needed to help overcome them.

How will the survey results be used?

The CoR is expected to publish the survey results in May 2019 in a summary paper that will be circulated to all respondents. They will also feed into the CoR opinion on the implementation of the 2014 Directives on public procurement.

Who should respond to the survey?

If you represent a local or a regional authority (official, politician, or other), or if you are a stakeholder acting at regional or local level, and you are potentially impacted by the EU Public Procurement Directives, we would like to hear from you!

Practical information

The survey will be open until Monday 13 May 2019

It should take no more than 20 minutes to complete the survey

The survey is available in any of the official EU languages

All responses will be kept confidential

For more information, please contact econ-survey-cor@cor.europa.eu

Details of respondent

* First name

* Last name

* Email

* Function/Position

* Organisation

* Function / Position

* Country

- | | | | |
|--------------------------------------|-------------------------------|--------------------------------------|---------------------------------------|
| <input type="radio"/> Austria | <input type="radio"/> Finland | <input type="radio"/> Lithuania | <input type="radio"/> Slovak Republic |
| <input type="radio"/> Belgium | <input type="radio"/> France | <input type="radio"/> Luxembourg | <input type="radio"/> Slovenia |
| <input type="radio"/> Bulgaria | <input type="radio"/> Germany | <input type="radio"/> Malta | <input type="radio"/> Spain |
| <input type="radio"/> Croatia | <input type="radio"/> Greece | <input type="radio"/> Netherlands | <input type="radio"/> Sweden |
| <input type="radio"/> Cyprus | <input type="radio"/> Hungary | <input type="radio"/> non-EU country | <input type="radio"/> United-Kingdom |
| <input type="radio"/> Czech Republic | <input type="radio"/> Ireland | <input type="radio"/> Poland | |

- Denmark
- Estonia
- Italy
- Latvia
- Portugal
- Romania

* You are responding to this survey on behalf of

- A region (region, province, Land, federated state, NUTS1 and NUTS2 level or equivalent)
- An intermediary entity (in countries with three levels of sub-national government, department, province, county, etc.)
- A municipality of less than 50 000 inhabitants
- A municipality of between 50 000 and 500 000 inhabitants
- A municipality of more than 500 000 inhabitants
- Other (e.g., inter-municipal or inter-regional cooperation structure)

The 2014 EU Directives on public procurement

Please note that all of the questions deal with procedures governed by the EU Directives, i.e., procurements over the thresholds, unless otherwise specified

In what ways have you worked with public procurement?

You may select multiple answers

- Through planning and/or preparation (drawing up contracts/specifications, advertising, etc.)
- Through evaluation of tenders and awarding of contracts
- Through legal review of contracts / auditing
- Through contract implementation
- Through other means

Please specify

How was your experience of the following change introduced by the 2014 Directives: ***The new higher thresholds for when the rules apply***

- Positive
- Negative
- Not applicable

Please explain

How was your experience of the following change introduced by the 2014 Directives: ***A more flexible competitive procedure with negotiation***

- Positive
- Negative
- Not applicable

Please explain

How was your experience of the following change introduced by the 2014 Directives: ***New light-touch regime for social and health services***

- Positive
- Negative
- Not applicable

Please explain

How was your experience of the following change introduced by the 2014 Directives: ***Less red tape for bidders with simplified procedures and easier access for SMEs (introduction of turnover cap, 'divide or explain' principle)***

- Positive
- Negative
- Not applicable

Please explain

How was your experience of the following change introduced by the 2014 Directives: ***The 'most economically advantageous tender' criterion (MEAT)***

- Positive
- Negative
- Not applicable

Please explain

How was your experience of the following change introduced by the 2014 Directives: ***Stronger provisions on integrity and transparency which target corruption and fraud***

- Positive
- Negative
- Not applicable

Please explain

How was your experience of the following change introduced by the 2014 Directives: ***Extended scope covering also the modification/termination of contracts***

- Positive
- Negative
- Not applicable

Please explain

How was your experience of the following change introduced by the 2014 Directives: ***Electronic procurement***

- Positive
- Negative
- Not applicable

Please explain

How was your experience of the following change introduced by the 2014 Directives: ***Other aspects of the new legal framework***

- Positive
- Negative
- Not applicable

Please specify

Did your organization/authority need to hire staff with a high level of professionalization and specific skills, or to undertake specific training courses for staff, due to the new legislation on public procurement?

You may select multiple answers

- Yes, new recruitments were needed
- Yes, training courses were needed
- Neither were needed

To what extent do you use the following procedures for procurement above the EU thresholds?

You may select multiple answers

	Always / Often	Occasionally	Rarely / Never
Open	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Restricted	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Competitive procedure with negotiation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Competitive dialogue	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Negotiated procedure without prior publication	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public to public contracts (in house)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Innovative partnership	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pre-commercial procurement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

For the above-mentioned procedures that you *rarely or never* use, do you still see a need for them? Why?

Do you believe that cross-border purchasing brings an added-value to your area?

- Yes
 No

What are the advantages of cross-border purchasing?

You may select multiple answers

- Higher competition
 Better choices (quality and price)
 Other

Please specify

What are the disadvantages of cross-border purchasing?

You may select multiple answers

- Some sectors do not have a cross-border dimension, e.g., in areas of the social domain such as youth care, disabled care and social support
 Differing legislation in other policy areas, e.g., taxation, labour law
 Difficulty in designing a particular call for tenders in such a way as to encourage cross-border bidders to participate
 Despite costly and time-consuming EU-wide advertising, there are no, or few, cross-border bids
 It makes it more complicated to give preference to local bidders for social, environmental or innovative reasons
 Language barriers
 Other

Please specify

Is there, at national level, a separate legal framework for procurement 'below the EU threshold'?

- Yes
 No

How would you assess this national framework on comparison with the EU Directives, i.e., the legal framework for procurement 'above the EU threshold'?

- Easier/less complex
- The same
- More complex
- Don't know

In terms of the total value of procurement, which framework do you use the most?

- The national framework (for procurement below the EU threshold)
- The European framework

Every three years, Member States have to submit a report to the European Commission on the most frequent sources of misapplication or legal uncertainty, on prevention measures, as well as on the detection and adequate reporting of cases of procurement fraud, corruption, conflict of interest and other serious irregularities. Are you involved in this reporting?

- Yes
- No

In your experience, what are the main sources of wrong application or legal uncertainty with the new framework?

You may select multiple answers

- Complexity of the new framework
- Lack of technical expertise (relevant knowledge and skills of the staff)
- Difficulty in defining specific requirements as award criteria when using the best price-quality ratio
- High workload for procurement officers
- Other

Please specify

In your experience, what kind of measures would improve the implementation of the Directives and make framework simpler for local and regional authorities?

You may select multiple answers

- It must be further emphasized that fair competition and transparent tendering are the only means to achieve the overarching objectives of best value for public money
- It must be made clearer under which circumstances local and regional governments are allowed to specifically promote local economic growth, local social structures, and local environmental benefits
- National authorities should provide further training opportunities for staff
- Other

Please specify

What is your view on how the 2014 Directives are applied in your organization?

Strategic procurement - Public procurement of innovation

From your perspective, is there a need for innovation procurement criteria?

- Yes, there is a strong need
- Yes, there is a low need
- No, there is no need

Please explain why

In your experience, what are the key challenges, if any, of promoting public procurement innovation?

You may select multiple answers

- Complexity of the legal framework
- Lack of technical expertise (relevant knowledge and skills of the staff) to carry out innovation procurement
- Difficulty in conducting a preliminary market analysis to assess whether the desired product exists on the market and/or establish the number of potentially interested suppliers on the market
- Difficulty in defining specific requirements as award criteria when using the best price-quality ratio
- Difficulty in using the procedures that are designed to support innovation in public procurement such as the competitive dialogue and the innovation partnership
- High risk of complaints, remedies or irregularities that are linked to the procedures suitable for innovation procurement
- Organisational culture not conducive to trying new processes and working with innovative methodologies
- Other

Please specify

In your experience, what measures are being taken to overcome these challenges?

You may select multiple answers

- National guidance
- Regional guidance
- Hiring specialized staff
- Training courses organized at central level / helpdesks
- Training courses organized at regional level / helpdesks
- Nothing is being done
- Other

Please specify

Strategic procurement - Social public procurement

From your perspective, is there a need for social procurement criteria?

- Yes, there is a strong need
- Yes, there is a low need
- No, there is no need

Please explain why

In your experience, what are the key challenges, if any, of promoting social public procurement?

You may select multiple answers

- Complexity of the legal framework
- Lack of technical expertise (relevant knowledge and skills of the staff) to carry out Socially Responsible procurement
- High risk of complains, remedies or irregularities
- High workload for contracting authorities
- Difficulty in defining the conditions related to the way the contract is carried out while ensuring that those conditions are non-discriminatory and compatible with EU law
- Difficulty in assessing the equivalence of certification (social labels) from other Member States when public procurement documents refer to national or regional certification of the contracting authority
- Other

Please specify

In your experience, what measures are being taken to overcome these challenges?

You may select multiple answers

- National guidance
- Regional guidance
- Hiring specialized staff
- Training courses organized at central level / helpdesks
- Training courses organized at regional level / helpdesks
- Nothing is being done
- Other

Please specify

Strategic procurement - Green procurement

From your perspective, is there a need for green procurement criteria?

- Yes, there is a strong need
- Yes, there is a low need
- No, there is no need

Please explain why

In your experience, what are the key challenges, if any, of promoting green public procurement?

You may select multiple answers

- Complexity of the legal framework
- Lack of technical expertise (relevant knowledge and skills of the staff) to carry out green procurement
- High risk of complains, remedies or irregularities
- High workload for contracting authorities
- Difficulty in defining the conditions related to the way the contract is carried out while ensuring that those conditions are non-discriminatory and compatible with EU law
- Difficulty in assessing the equivalence of certification (social labels) from other Member States when public procurement documents refer to national or regional certification of the contracting authority
- Other

Please specify

In your experience, what measures are being taken to overcome these challenges?

You may select multiple answers

- National guidance
- Regional guidance
- Hiring specialized staff
- Training courses organized at central level / helpdesks
- Training courses organized at regional level / helpdesks
- Nothing is being done
- Other

Please specify

Small and Medium-size Enterprises (SMEs)

The EU definition of an SME is a company with fewer than 250 employees and a turnover of less than € 50 million

The procurement legislation encourages authorities to divide contracts into lots, to facilitate the access for SMEs. This is not obligatory, but authorities must provide the main reasons for their decision not to divide into lots. How is your organization/authority disposed towards the 'divide or explain' principle?

- Positive
- Negative
- Don't know

What is the reason for this?

You may select multiple answers

- Having one contract is easier to organise
- One contract can lead to economies of scale
- Other

Please specify

Do you think that there is a general need to change the EU-definition of SMEs?

- Yes
- No
- No opinion

Why?

Social and health services

Is your organization/authority using the new light-touch regime for social and health services?

- Yes
- No
- Don't know

What is the reason for this?

You may select multiple answers

- Difficulty in applying the new rules
- Does not fit with our national rules or national systems
- Other

Please specify

What is your experience with the new light regime, as opposed to the old light regime?

You may select multiple answers

- The threshold for publication is too high
- The threshold for publication is too low
- The range of services under the light regime is too wide

- The range of services under the light regime is too narrow
- The new light regime has led to better procurement results
- The new light regime has led to worse procurement results
- The new light regime has led to better access for SMEs
- The new light regime has led to worse access for SMEs
- Other

Please specify

What are the key challenges of using the light regime for social and health services?

You may select multiple answers

- Complexity of the legal framework
- High workload for contracting authorities / lack of required expertise
- Difficulty in defining the conditions related to the way the contract is carried out while ensuring that those conditions are non-discriminatory and compatible with EU law
- Complex network of actors in the particular field
- Other

Please specify

What is your view on how the 2014 Directives are applied in your organisation?

Privacy statement

By filling out and submitting your answers to this survey, you consent to the Committee of the Regions of the EU processing and collecting the data for the purpose of informing an opinion on the implementation of the 2014 Directives on public procurement.

This data is collected and processed according to Regulation (EC) 2018/1725. This data will not be made public or transferred to any third parties without your prior written consent. The follow-up to this survey application requires that your personal data and answers be processed in a file, which will be kept for a period of 5 years. You have the right to access your personal data, and the right to correct any inaccurate or incomplete personal data or to request its deletion by sending an email to econ-survey-cor@cor.europa.eu.

The requests will be processed without undue delay and in any event within one month of receipt of the request. Any queries concerning the processing of the personal data can be addressed to the same email, which is the first level contact for complaints and irregularities. The Data Protection Officer of the Committee of the Regions can be contacted at data.protection@cor.europa.eu. You have the right to have recourse at any time to the European Data Protection Supervisor: edps@edps.europa.eu.

I have read the privacy statement.

Annex 6: Summary slides on the study commissioned by the European Committee of the Regions assessing the implementation of the 2014 Directives on public procurement at regional and local level

Assessing the implementation of the 2014 Directives on public procurement

challenges and opportunities at regional and local level

Alessandro Valenza, t33

Agenda

- INSIGHTS FROM LRAs

- LESSONS LEARNT FROM CASE STUDIES

- SUGGESTIONS

From LRAs: positive aspects



- LRAs are actively using quality criteria **to promote social and environmental objectives** through public procurement
- LRAs have embraced e-procurement by **developing their own ICT systems** or adopting national public procurement portals
- **Transparency and prevention of corruption** is well understood and there were no specific objections or issues. Indeed, national legislation is sometimes more demanding

From LRAs: Black and white aspects



Division of contracts into lots is widely implemented and consortia are encouraged,

but


SMEs still find difficulties in being involved, especially start-ups and newcomers, mainly due to economic requirements

Qualitative criteria (MEAT) are welcomed,

but

they are difficult to define and may be seen as too discretionary

From LRAs: negative aspects

- 
- **National transposition** can be affected by gold plating
 - **Simplification** not fully exploited
 - **More innovative procedure** not often embraced

- on pre-commercial procurement market dialogue

Municipality of Hyvinkää (Finland)

- on health sector procurement innovation

Stockholm County (Sweden)

- on qualitative criteria

Marche Region (Italy)

Antwerp Province (Belgium)

- on strategic green procurement

South Dublin County (Ireland)

- on procurement strategy enhancing administrative capacity

Province of Bozen (Italy)

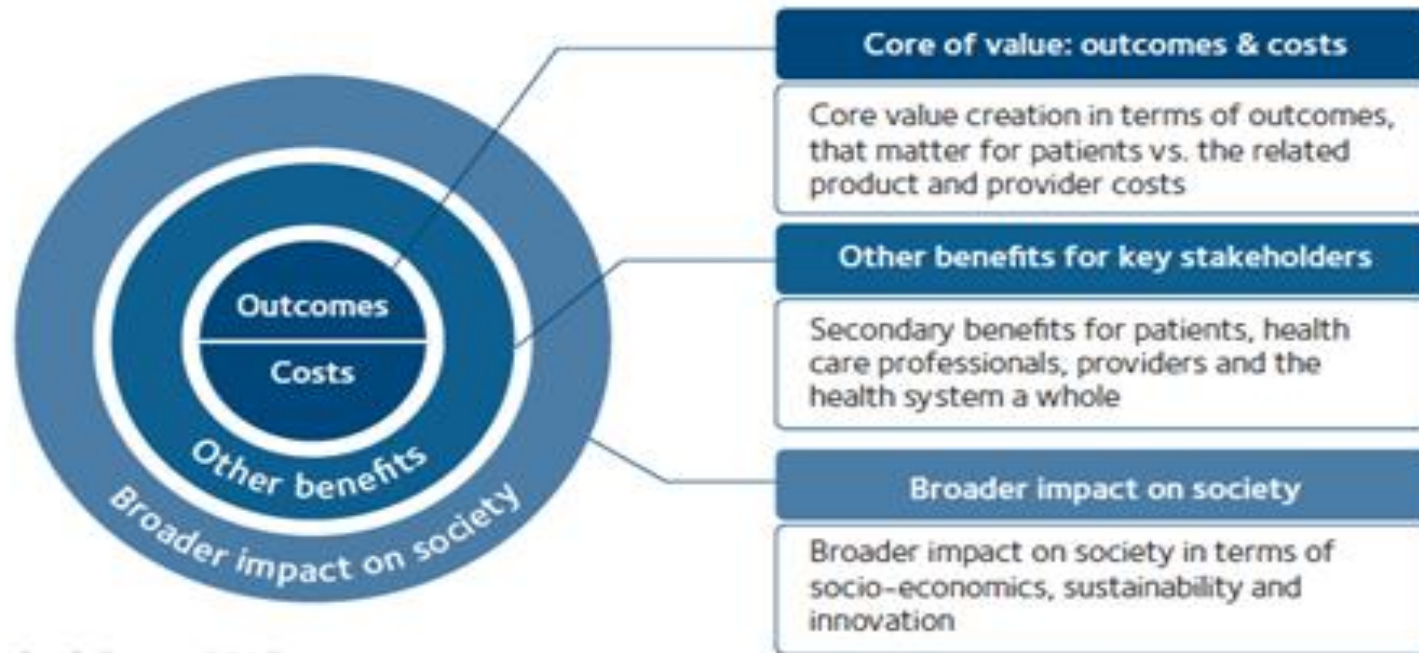
- on e-procurement supporting SMEs

Case studies



Lessons learnt: procurement beyond the costs

Holistic definition of value, starting with the patient outcomes and cost to achieve them



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Holistic approach and strategic vision

Lessons learnt: qualitative criteria



- MEAT are the way to embed strategy into PP
- The challenge is using objective parameters

Lessons learnt: communication within the public administration



Collaboration within the administration
VS. work in silos

Lessons learnt: outside communication, open dialogue with the market



- Test the Market
- Understanding the feasibility

Lessons learned: continuous transparent information

Dialogue with the market also exploiting ICT and not only during procurement phase



Autonome Provinz Bozen SÜDTIROL | **Provincia Autonoma di Bolzano Alto Adige** | **Sistema Informativo Contratti Pubblici**

Deutsch

Home e-Procurement Mercato Elettronico Schede Osservatorio Programma Annuale Programmazione Martedì, 05 Marzo 2019 14:53:46

Sito e riferimenti - Normativa

Accedi

Normativa europea

Username

Password

Accedi

Hai dimenticato la password?

Gare

- » Bandi e avvisi
- » Bandi e avvisi speciali
- » Aggiudicazioni ed affidamenti
- » Corrispettivi e compensi

Sito e riferimenti

- » Regole tecniche
- » Requisiti di sistema
- » Normativa
- » Soglie
- » Corrispettivi CIG
- » Patto di integrità

Operatori economici

- **Direttiva 2014/24/UE** - Appalti pubblici e l'abrogazione della direttiva 2004/18/CE
 - **Regolamento delegato (UE) 2017/2365** - Modifica della direttiva 2014/24/UE del Parlamento europeo e del Consiglio riguardo alle soglie applicabili per le procedure di aggiudicazione degli appalti
 - **Regolamento delegato (UE) 2015/2170** - Modifica della direttiva 2014/24/UE del Parlamento europeo e del Consiglio riguardo alle soglie applicabili per le procedure di aggiudicazione degli appalti
- **Direttiva 2014/25/UE** - Procedure d'appalto degli enti erogatori nei settori dell'acqua, dell'energia, dei trasporti e dei servizi postali e l'abrogazione della direttiva 2004/17/CE
 - **Regolamento delegato (UE) 2017/2364** - Modifica della direttiva 2014/25/UE del Parlamento europeo e del Consiglio riguardo alle soglie applicabili per le procedure di aggiudicazione degli appalti
 - **Regolamento delegato (UE) 2015/2171** - Modifica della direttiva 2014/25/UE del Parlamento europeo e del Consiglio riguardo alle soglie applicabili per le procedure di aggiudicazione degli appalti
- **Direttiva 2014/23/UE** - Aggiudicazione dei contratti di concessione
 - **Regolamento delegato (UE) 2017/2366** - Modifica della direttiva 2014/23/UE del Parlamento europeo e del Consiglio riguardo alle soglie applicabili per le procedure di aggiudicazione degli appalti
 - **Regolamento delegato (UE) 2015/2172** - Modifica della direttiva 2014/23/UE del Parlamento europeo e del Consiglio riguardo alle soglie applicabili per le procedure di aggiudicazione degli appalti
- **Direttiva 2009/81/CE** - Procedure per l'aggiudicazione di taluni appalti di lavori, di forniture e di servizi nei settori della difesa e della sicurezza da parte delle amministrazioni aggiudicatrici/degli enti aggiudicatori
 - **Regolamento (UE) 2017/2367** - Modifica della direttiva 2009/81/CE del Parlamento europeo e del Consiglio riguardo alle soglie applicabili per le procedure di aggiudicazione degli appalti

Lessons learned: in short

Procurement can be part of a holistic vision of development

Quality criteria are core to translate strategy into procurement

Communication within the PA

Communication with the market

Continuous communication

LAW MAKING

Stability

Soft law

CAPACITY BUILDING

Web platform

Tailored training

EC guidance

INCENTIVES

Excellence awards

EU programmes to spur the use of more advanced procurement

Thank you for your time



European Committee of the Regions

Created in 1994 following the signing of the Maastricht Treaty, the European Committee of the Regions is the EU's assembly of 350 regional and local representatives from all 28 Member States, representing over 507 million Europeans. Its mission is to involve regional and local authorities and the communities they represent in the EU's decision-making process and to inform them about EU policies. The European Commission, the European Parliament and the Council are obliged to consult the Committee in policy areas affecting regions and cities. It can appeal to the Court of Justice of the European Union if its rights are infringed or it believes that EU law infringes the subsidiarity principle or fails to respect regional or local powers.