



ReSPA

Regional School
of Public Administration

BASELINE ANALYSIS ON TRANSPARENCY IN PUBLIC PROCUREMENT

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ReSPA

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ReSPA is a joint Initiative of the European Union and the Western Balkan countries working towards fostering and strengthening the regional cooperation in the field of public administration among its Members. It seeks to offer excellent innovative and creative training events, networking activities, capacity building and consulting services to ensure that the shared values of respect, tolerance, collaboration and integration are reaffirmed and implemented throughout the public administrations in the region.

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I) Document background

The Regional School of Public Administration (ReSPA) is the inter-governmental organization for enhancing regional cooperation, promoting shared learning and supporting the development of public administration in the Western Balkans. ReSPA Members are Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia, while Kosovo*¹ is a beneficiary.

ReSPA established the Public Procurement Working Group (PPWG), composed of senior professionals, decision-makers and expert practitioners, with the purpose to generate ideas for promotion of more effective solutions to strengthen public procurements in the Western Balkans.

During the PPWG activities, it has been recommended to address the issues of transparency in public procurement, as something that might significantly contribute to the improved procurement related problems. More specifically, it has been emphasized that the focus should be concentrated on the procurement planning processes, for which there are no sufficient regulatory inputs offered by the EU procurement directives, while recognized in the Directive 21014724/EU. Hence, this document is to serve to fill that gap, by referring to the EU acquis requirements and the best practice of EU Member States, as well as the ReSPA Members.

This document provides a short overview of transparency elements at different aspects of the public procurement system and public procurement processes. Based on the presented elements and inspired by the existing examples of methodologies for assessing procurement systems², a self-assessment questionnaire on the transparency in public procurement has been developed.

The questionnaire is planned to be used by the ReSPA Members as an assessment tool on progress related to transparency of the national public procurement system. Tools that enable fast assessment and overview of novelties in this sector could be of great importance for the national institutions within the EU integration and accession process on Chapter 5 Public procurement.

In line with the good practices and continuous development of the implementing mechanisms, especially IT tools, the questionnaire should be gradually upgraded and updated.

1 This designation is without prejudice to positions on status and is in line with UNSCR 1244 and ICJ Advisory opinion on the Kosovo Declaration of independence

2 OECD "Methodology for Assessing Procurement Systems", <http://www.oecd.org/gov/ethics/benchmarking-assessment-methodology-public-procurement-systems.htm>

II) General on transparency in public procurement

The European Commission (EC) in October 2017 adopted the public procurement strategy “Making Public Procurement work in and for Europe”³ outlining six strategic policy priorities, aiming to improve the following features of EU public procurement practices:

- Uptake of innovative, green, and social procurement
- Professionalisation of public buyers
- Access to procurement markets
- **Transparency, integrity and data**
- Digital transformation
- Cooperation among the contracting authorities.

As it is stated in the strategy:

“Reliable data are essential to prepare appropriate policy responses. The digital transformation, the growing wealth of data in general and the availability of open data standards offer opportunities to create better analytics for needs-driven policy-making and warning systems to signal and tackle corruption in public procurement. Better and more accessible data on procurement should be made available as it opens a wide range of opportunities to assess better the performance of procurement policies, optimise the interaction between public procurement systems and shape future strategic decisions. Electronic procurement systems must produce good quality data, but — even more importantly — policymakers must use these data and share them with other interested parties. They also provide a means to detect irregularities...

...Access to public procurement data should enable the dialogue with civil society and holds governments more accountable. Public authorities are thus better equipped to fight fraud and corruption. To this end, setting up publically accessible contract registers is strongly recommended, providing transparency on awarded contracts and their amendments.”.

Transparency in public procurement means that information on the public procurement processes and procedures should be available to all parties, from the economic operators to the interested public. Exceptions are possible when there are legal and justified reasons to keep certain information confidential and undisclosed.

Transparent data on public procurement allow monitoring of the procurement expenditure and acts as a deterrent for corrupt practices. In that respect, online platforms have important role in enabling insight into information on procedures and overall procurement spending.

³ Communication from the Commission to the Institutions: Making Public Procurement work in and for Europe, COM(2017) 572 final, <http://ec.europa.eu/docsroom/documents/25612>

With increased transparency, competent authorities and civil society are able to more effectively scrutinise procurement expenditure by public authorities, having impact on increasing accountability for spending of public money. Transparent procurement data are very beneficial for anti-corruption efforts as well.

Advanced modernisation and digitisation have contributed a lot to procurement transparency and availability through the machine-readable, standardised, and accessible online data. A key pre-condition for transparency of the national IT procurement platform is the availability and access to procurement data, achieving optimum by use of the open data environment. Public procurement data should be provided in standardised, interoperable and machine-readable format and, to the extent possible⁴, available to access, use and publish. Availability of data enables monitoring and evaluation of the public procurement system and, when required, planning of its further development.

III) EU standards

As stated in the “Commission interpretative communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives”⁵:

“The European Court of Justice (ECJ) has developed a set of basic standards for the award of public contracts which are derived directly from the rules and principles of the Treaty⁶. The principles of equal treatment and non-discrimination on grounds of nationality **imply an obligation of transparency** which, according to the ECJ case-law⁷, ‘consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of the procedures to be reviewed’⁸...

... According to the ECJ⁹, the principles of equal treatment and of non-discrimination imply an obligation of transparency which consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the market to be opened up to competition. The obligation of transparency requires that an undertaking located in another Member State has access to appropriate information regarding the contract before it is awarded, so that, if it so wishes, it would be in a position to express its interest in obtaining that contract¹⁰.”

4 When enabling access to procurement data, confidential nature of some data needs to be considered.

5 Commission interpretative communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (2006/C 179/02), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52006XC0801%2801%29#n-tr6-C_2006179EN.01000201-E0006

6 EC/EU Treaty

7 Cases C-324/98, Telaustria, [2000] ECR I-10745, paragraph 62, C-231/03, Coname, judgment of 21.7.2005, paragraphs 16 to 19 and C-458/03, Parking Brixen, judgment of 13.10.2005, paragraph 49.

8 Telaustria case, paragraph 62 and Parking Brixen case, paragraph 49 (emphasis added)

9 Telaustria case, paragraph 62 and Parking Brixen case, paragraph 49.

10 Coname case, paragraph 21.

Standards developed by the ECJ are reflected in the following key EU public procurement directives and regulations:

- Directive 2014/24/EU on public procurement
- Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors
- Directive 2014/23/EU on the award of concession contracts
- Directive 92/13/EEC and Directive 89/665/EEC, as amended by Directive 2007/66/EC on review procedures
- Commission Implementing Regulation (EU) 2015/1986 establishing standard forms for the publication of notices in the field of public procurement.

The directives define transparency as one of the principles of procurement and awarding contracts. The contracting authorities and entities have to treat economic operators in a transparent manner and comply with the principle of transparency¹¹¹².

Furthermore, publication and transparency provisions elaborate the key requirements in ensuring the transparency of the processes, from publication to informing candidate, tenderers and applicants¹³.

Provisions of the *acquis* are mostly focused on the transparency requirements in the tendering and contract awarding phase, with some demands on the contract performance in case of the contract modification during its terms. The key provisions for transparency are related to the electronic availability of procurement documents, prescribing that the contracting authorities have to, by electronic means, offer unrestricted and full direct access free of charge to the procurement documents from the date of publication of a notice or the date on which an invitation to confirm interest was sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which the procurement documents are accessible¹⁴.

Nevertheless, transparency in sound and efficient national public procurement systems should go beyond mandatory requirements of the *acquis*, covering the entire process from preparation of the strategic and legal framework to the availability of statistical data.

11 Art 18 of the Directive 2014/24/EU

12 Art 93 of the Directive 2014/25/EU

13 Art 48 – 55 of the Directive 2014/24/EU, Art 67 – 75 of the Directive 2014/25/EU

14 Art 53 of the Directive 2014/24/EU

IV) Transparency within the procurement system

Requirements of the acquis on transparency are mostly covering the tendering and contract awarding phase of the procurement processes. Nevertheless, transparency should be strengthened on a much broader level, influencing the national procurement systems as a whole. Therefore, transparency aspects are present within various elements of the national public procurement systems and phases of the public procurement process at the level of contracting authorities.

1. Public participation in the preparation of the strategic and legal framework

Public participation in shaping and implementation of public policies is considered as a critical ingredient of participatory democracy. Among other functions, this process contributes to the quality of the adopted strategic and legislative framework and its smooth implementation.

This process is of particular importance on the development of the legal framework on public procurement that is on a daily basis implemented by a large number of stakeholders, namely contracting authorities and economic operators.

Although the content of a big part of the legal provisions is shaped by the harmonisation process with the relevant EU acquis, a number of implementing elements should be defined at the national level. The practice shows that the large scale of administrative burdens and bureaucratic requests in the procurement processes, very often with a negative impact on efficiency, are nationally defined.

Therefore, the broad and active participation of all relevant stakeholders within the national public procurement system in the adoption of strategic and legal documents is a method to develop the most efficient framework with reduced unnecessary bureaucratic requirements. Whenever possible, the adoption process should be based on the regulatory impact assessment. An important element is the adequate and timely dissemination of information on the new framework before its entering into force, mainly through comprehensive training.

Good practice recommendations:

- ✓ Carrying out a comprehensive preparatory process for drafting national strategic and legal framework. Consultations should be held with all interested parties, with special emphasis on public procurement practitioners, from both contracting authorities and economic operators. The adoption process should be based on the regulatory impact assessment, defining the best options for the specific procedural aspects.

- ✓ Enabling an open public discussion on the drafted documents, preferably through internet platforms and web pages. Received comments and proposals, as well as the response of competent institutions should be clearly presented and elaborated.
- ✓ Ensuring adequate and timely dissemination, presentation and elaboration of information on the newly adopted strategic and legal documents before their entering into force. In that respect, seminars and training activities should be organised and supported with development of the guidance tools.

2. Information on the legal framework, institutional arrangements and implementing tools

In order to implement public procurement procedures in line with the legal requirements, all information have to be easily accessible to public procurement practitioners. In addition to the online availability of legal framework, being already as a standard, the key requirement is the development and availability of various implementing tools. On-line availability of manuals, guidelines, instructions is an option that enables easy access without significant costs for competent institutions. Developed tools have to cover assistance to both contracting authorities and economic operators.

Acquis

Member States shall ensure that:

- (a) information and guidance on the interpretation and application of the Union public procurement law is available free of charge to assist contracting authorities and economic operators, in particular SMEs, in correct applying the Union public procurement rules; and
- (b) support is available to contracting authorities with regard to planning and carrying out procurement procedures.¹⁵

The emphasis should be given to a timely provision of information and clarifications, especially in relation to the newly identified procedural issues or gaps, providing for real-time reaction and prevention of further irregularities. In order to be useful for public procurement practitioners, implementing tools should be updated to reflect the latest legislative changes and practice (for example, to reflect the practice of the review bodies).

Provision of manuals, guidelines and examples is also necessary when introducing or promoting the modern public procurement elements on which stakeholders do not have adequate expertise.

¹⁵ Art 84 para 4 of the Directive 2014/24/EU

Promotion and dissemination of developed tools is very important. Therefore sufficient awareness raising methods should be put in place to make sure that procurement practitioners know where to find them.

An example of the implementing tools on the sustainable procurement of the Sweden National Agency for Public Procurement.¹⁶

The website of the Dutch Procurement Expertise Centre PIANOo¹⁷ posts a collection of EU and national procurement jurisprudence, as well as a weekly summary of procurement judgements available free of charge.¹⁸

Good practice recommendations:

- ✓ Establishing and maintaining a single point of information on national public procurement systems, such as websites of national PPO/PPAs or IT procurement platforms.
- ✓ Timely releasing of the implementing tools, before new legal rules go into effect.
- ✓ On-line availability of manuals, guidelines, instructions, opinions and similar documents for contracting authorities and economic operators.
- ✓ Taking active measures on promotion and dissemination of the developed implementing tools.
- ✓ Establishing a call-centre or similar mechanisms (communication through social networks, e-mail communication, etc.) for providing fast assistance.

3. Planning of public procurement procedures

General procurement planning at the level of the contracting authorities covers a process used to plan procurement activity for a specific period, usually for a financial year. Nevertheless, planning is also necessary at the level of individual procurement procedure.

General procurement planning refers to the annual (or multiannual) procurement plans, directly correlated with the budgetary and financial cycle. The planning

¹⁶ <https://www.upphandlingsmyndigheten.se/en/sustainable-public-procurement/>.

¹⁷ <https://www.piano.nl>

¹⁸ Reference source: EC E-library of public procurement good practices http://ec.europa.eu/regional_policy/sources/good_practices/GP_fiche_06.pdf

process of individual procurement procedures should correlate with the annual procurement plan.

At the level of contracting authorities, the planning process and drafting of the annual procurement plans improve the overall financial management and contribute to better internal and external control mechanisms.

On-line publication of the annual procurement plans of the contracting authorities provides information on potential contracting opportunities to market. Not less important, it represents a powerful tool for the interested public for monitoring of planned public funds spending and related activities of the contracting authorities. Better impact on improved transparency is achieved if annual procurement plans are published at the single point of information (e.g. national procurement platform) compared to publication at the individual websites of contracting authorities.

When defining national provisions on procurement plans, it is important to set obligations that do not decrease efficiency or even block procurement processes. For example, it is a good practice that, if there was a need for an amendment of the annual procurement plan, the contracting authority could start with the initiation of an individual procurement procedure before the plan amendment.

As regards the individual procurement procedures, the drafting of the tender documents should be based on the market research carried out by the contracting authority, especially on setting up an estimated value of procurement. Nevertheless, it has to be considered that there are a number of market research methods, such as those requiring a non-bidding market, internet research, catalogue research. The most useful sources of information for the contracting authorities are previous similar contracts (theirs or of other contracting authorities). Therefore, if legal requirements on market research were introduced, they should have adequate flexibility in enabling the use of various mechanisms.

Preparation of the tender documents is the most important part of the procurement process as it is the basis for contract awarding and execution. In that respect, an adequate expertise is required, especially for the preparation of technical specifications, selection and award criteria. A significant expert's input is possible to get from the market through carrying out prior market consultations on the draft tender documents. A significant impact on reducing irregularities in individual procedure and more efficient execution of the contract can be achieved. When conducting public consultations, the contracting authorities have to be in line with the general public procurement principles.

Acquis

Before launching a procurement procedure, contracting authorities may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements. For this purpose, contracting authorities may for example seek or accept advice from independent experts or authorities or from market participants. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.¹⁹

In Croatia, the PPL contains provisions on the prior market research and prior obligatory consultations on the key parts of the tender documents in open and restricted procedures above the EU thresholds.²⁰ Prior consultations are carried out at the national IT procurement platform.²¹

In 2015, the Eastern Institute of Cardiovascular Disease (VUSCH) in Slovakia developed its own website to conduct prior market consultations with suppliers of medical equipment.²²

Good practice recommendations:

- ✓ Establishing a single point for online publication of the procurement plans, such as national IT procurement platforms.
- ✓ Encouraging or introducing prior consultations on the draft tender documents in high-value procedures, preferably through online publication.

4. Tendering phase

Tendering phase is a procurement procedure phase that is at the large extent regulated by the acquis, especially related to the publication of notices, availability of tender documents and submission of tenders. The 2014 directives have introduced obligations on electronic procurement, therefore steering development of national IT procurement systems.

¹⁹ Art 40 of the Directive 2014/24/EU

²⁰ Art 198 of the Croatian Public Procurement Law (OG 120/16)

²¹ Elektronički oglasnik javne nabave, <https://eojn.nn.hr/Oglasnik/>, part "Prethodna savjetovanja"

²² Reference source: EC E-library of public procurement good practices http://ec.europa.eu/regional_policy/sources/good_practices/GP_fiche_22.pdf

Acquis

The most important provisions of the Directive 2014/24/EU: Article 22 Rules applicable to communication, Article 48 Prior information notices, Article 49 Contract notices, Article 50 Contract award notices, Article 51 Form and manner of publication of notices, Article 52 Publication at national level, Article 53 Electronic availability of procurement documents, Article 54 Invitations to candidates, Article 55 Informing candidates and tenderers

In the context of comprehensive provisions of the acquis on this phase of the procurement process, a focus of the national bodies should be on the strategic decisions related to optimal solutions, mainly on IT platforms and mechanisms (single or multiple platforms, interoperability, etc.).

Advanced modernisation and digitisation have a significant influence on the increased transparency and reduction of the administrative burden. Interoperability between a national procurement platform and other national databases (for example, tax administration or criminal record) increases the efficiency of the procurement procedures through the abandonment of paper procedures and certificates. Also, it has an influence on improving the integrity of the procurement system and prevention of irregularities.

In line with introduced obligatory e-procurement elements in the 2014 directives, all EU Member states have been establishing or upgrading various forms of IT procurement platforms. A number of their activities are focused on interoperability of procurement platforms with other national databases relevant for procurement procedure (for example, criminal records).

Good practice recommendations:

- ✓ Gradual upgrading of national procurement platforms in order to introduce e-procurement modules (notices, tender documents, submission of tenders).
- ✓ Implementing measures on interoperability of procurement platforms with other national databases relevant for procurement procedure, in order to reduce requirements on submitting documents in procurement procedures.

5. Contract award

In addition to the tendering phase, the acquis sets the transparency requirements on contract award.

Acquis

Not later than 30 days after the conclusion of a contract, or of a framework agreement, following the decision to award or conclude it, contracting authorities shall send a **contract award notice** on the results of the procurement procedure.²³

The public procurement directives comprise obligation on the preparation of **individual reports on procedures** for the award of contracts.²⁴ For covered contracts, framework agreements and established dynamic purchasing systems, the written reports have to be drawn up. The contracting authorities have to document the progress of all procurement procedures, whether or not those are conducted by electronic means. They have to ensure that they keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on communications with economic operators and internal deliberations, preparation of the procurement documents, dialogue or negotiation if any, selection and award of the contract.

National IT procurement platforms should enable more efficient options for the contracting authorities on dissemination and availability of award documents, such as award decisions or reports, to all participants in the procedures. Compared to submission by, for example, regular postal service, use of IT systems have an impact on reducing costs, saving time and expediting procedures, as well as decreasing risk of irregularities.

Good practice recommendations:

- ✓ Gradual upgrading of national procurement platforms in order to introduce e-procurement modules (notices, tender documents, submission of tenders).
- ✓ Developing options on dissemination of relevant procedural documents (for example, decisions, report) through IT procurement platforms.
- ✓ Implementing measures on interoperability of procurement platforms with other national databases relevant for procurement procedure, in order to reduce requirements on submitting documents in procurement procedures.

²³ Art 50 of the Directive 2014/24/EU

²⁴ Art 84 of the Directive 2014/24/EU, Art 100 of the Directive 2014/25/EU

6. Contract management

Transparency in the contract management phase is of special importance considering the modifications to a contract during its performance.

Acquis

The 2014 directives define when the modifications to a contract during its performance are possible²⁵ and how to proceed with them.

The acquis contains obligations on the publication of contract award notices and notices of modifications of a contract during its term.²⁶ Nevertheless, national legislators are encouraged to provide for additional mechanisms in that respect.

When deciding on transparency elements on contract management, the emphasis should be given to putting in place the mechanisms that provide relevant data, but without introducing an unnecessary bureaucratic burden on the contracting authorities with no actual influence on the availability of relevant information.

In Slovenia, the contracting authorities publish contracts and framework agreements on the national procurement platform eNaročanje.²⁷ In Croatia, the contracting authorities are obliged to maintain the registries of public procurement contracts and framework agreements and they are available on the national procurement platform EOJN.²⁸

Good practice recommendations:

- ✓ Introducing an online publication of the contract registries, preferably on a single point of information (e.g. national procurement platform).
- ✓ Introducing an online publication of awarded contracts and framework agreements and their amendments.

7. Review

At the level of the contracting authorities and procurement procedures, transparency in the context of review means that there is an obligation to provide to economic operators the information rights to remedies and procedural rules,²⁹

25 Art 72 of the Directive 2014/24/EU, Art 89 of the Directive 2014/25/EU

26 Related to modifications as referred in Art 72(1) of the Directive 2014/24/EU and Art 89(1) of the Directive 2014/25/EU

27 <https://www.enarocanje.si/objavaPogodb/>

28 <https://eojn.nn.hr/Oglasnik/> - under "Registri ugovora"

29 Commission Implementing Regulation (EU) 2015/1986 of 11 November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011

as well as the information on reaching all relevant decisions.

At the system level, consistent and transparent review processes are crucial for legal certainty within the public procurement system as a central requirement for the rule of law. Availability and easy access to review decisions has a significant impact on spreading knowledge and strengthening the administrative capacities of the contracting authorities and economic operators.

In order for stakeholders to understand and properly use the available legal protection mechanisms, there is a need for publication of instructions, manuals or guidelines on review procedures. Such tools should cover the steps in review procedures relevant for both contracting authorities and economic operators. Detailed information on when and to whom review procedures are available should be presented.

Publication of such documents on the internet platforms or websites of the review bodies provides for easy availability to all interested parties with low costs for competent institutions.

Decisions of the review body should be systematically published, including comprehensive search options for published decisions. Online publication of decisions is a cornerstone for legal certainty and improving knowledge and skills of all stakeholders.

Online publication and availability are also relevant for the court judgements regarding the cases brought against the decisions of the public review body’.

Good practice recommendations:

- ✓ Ensure timely online publication of review bodies’ decisions and court judgments. Putting in place comprehensive search mechanisms for published documents.

8. Access to overall data on the national public procurement system (statistics, etc.)

Acquis

Public procurement acquis provides obligations for MSs on governance and enforcement³⁰. They have to ensure that the application of public procurement rules is monitored. Where monitoring authorities or structures identify, by their own initiative or upon the receipt of information specific violations or systemic problems, they shall be empowered to indicate those problems to national auditing authorities, courts or tribunals or other appropriate authorities or structures, such as the ombudsman, national parliaments or committees thereof. The results of those

³⁰ Art 83 of the Directive 2014/24/EU, Art 99 of the Directive 2014/25/EU

monitoring activities have to be made available to the public, through appropriate means of information, and to the EC.

Every three years MS have to submit to the EC a monitoring report covering, where applicable, information on the most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules, on the level of SME participation in public procurement, and about prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interest and other serious irregularities.

The *acquis* also covers obligations on national reporting and statistical information.³¹ Every three years MSs have to forward to the EC a statistical report for procurement which would have been covered by this Directives if its value had exceeded the relevant thresholds, indicating an estimation of the aggregated total value of such procurement during the period concerned. That estimation may, in particular, be based on data available under national publication requirements or sample-based estimates. Also, MSs have to make available to the EC information on their institutional organisation related to the implementation, monitoring and enforcement of the Directives, as well as on national initiatives taken to provide guidance on or assist in implementation of EU rules on public procurement, or to respond to challenges confronting the implementation of those rules.

Beyond obligations in line with the *acquis*, preparation and publication of national statistical and other reports is of significant importance in order to identify and monitor trends within the public procurement and, if necessary, to plan and implement various follow up actions. Reports on the monitoring results and the most common mistakes are a useful source of information for the contracting authorities in the preparation and implementation of procurement procedures, having a significant impact on the prevention of irregularities. Statistical documents are also a very useful source of information for the interested public, especially media, NGOs, etc.

Good practice recommendations:

- ✓ Developing national IT procurement platforms in a way that they enable collection and dissemination of all relevant data on national public procurement, as well as preparation of various reports.
- ✓ Regular on-line publishing of statistical and other reports.
- ✓ Enabling access to additional data beyond the published report in line with the established good practices and standards³².

³¹ Art 85 of the Directive 2014/24/EU, Art 101 of the Directive 2014/25/EU

³² Such as Open Contracting Data Standard, <http://standard.open-contracting.org/latest/en/>

V) Assessment methodology on transparency in public procurement

In Annex 1 the Self-Assessment Questionnaire is provided. It has been developed as a tool that the ReSPA Members can use to assess the transparency element within their national public procurement systems. Tools that enable fast assessment and overview of novelties in this sector could be of great importance for national institutions within the EU integration and accession process on Chapter 5 Public procurement.

The Questionnaire is structured in line with the phases presented under chapter IV) Transparency within the procurement system in the form of yes/no questions and provision of relevant additional notes (for example, description of legal provisions, links to websites, reports). Although there is yes/no answering system, proposed assessment methodology does not anticipate any scoring based on the national inputs and number of questions marked with “yes” answer. The reasoning is that the number of elements tackled in questions cannot be straightforwardly assessed based only on yes/no answer. For example, on the question, if there are rules on procedures bellow national thresholds, for the majority of countries the current answer is “no” due to the fact that the national thresholds are really low, especially when compared to the EU thresholds and EU Member States’ practices. Therefore, no existence of such rules could not be simply assessed as a shortcoming of the system.

Respectively, the Questionnaire should be the most beneficial for the regional organisations such as ReSPA as a tool that enables fast overview of the existing systems and identification of possible additional measures focused on increasing transparency in the national public procurement system.

The Questionnaire is foreseen as a living document which should continually be edited and updated:

- in line with the new good practices and continuous development of the implementing mechanisms, especially IT tools achieved development at the national level.

VI) Overall assessment of transparency

Based on the information provided in the self-assessment questionnaires it can be concluded that there is an overall good level of transparency in the national procurement systems of the Western Balkan countries. All ReSPA Members adopted an approach on establishing the central national points of contact/ IT procurement platforms that showed to be the most beneficial as regards the size, administrative systems and practice of the countries. Establishment and continuous development of the national IT public procurement platforms focused on the gradual introduction of e-procurement elements, has significantly contributed to the increase of transparency of the procedures and entire

national systems. In that respect, the most of recommended follow-up activities on ensuring additional levels of transparency should be incorporated in the planned further upgrades of the existing platforms driven by the requirements of harmonisation with the EU public procurement directives as that approach is assessed as financially the most sound one.

At the individual level of the ReSPA Members, there is a room for further improvements related to transparency, within future upgrades of the platforms (mid-term priority). Possible option for **Albania, Bosnia and Herzegovina, Kosovo***, **Montenegro** and **Serbia** is introducing features on public consultations on the draft tender documents and publication and online availability of tender evaluation reports. **Macedonia** could also consider improvements related to tender evaluation reports.

In **Albania, Macedonia, Montenegro** and **Serbia** options on the introduction of an obligation related to the publication of contracts or the most relevant parts of contracts could be assessed.

In **Bosnia and Herzegovina**, short-term improvements could also be achieved related to the online availability of the manuals or guidelines on review procedures.

As regards the general level of public procurement system in **Kosovo***, the introduction of regulatory impact assessment (RIA) when preparing and adopting public procurement legislation in the mid-term period could significantly contribute to the quality and better implementation of new legislation. As a short-term priority it is recommended to implement an improved search for published decisions of the review body.

Macedonia could consider the improvement of the online availability of procurement plans in the mid-term period.

In **Montenegro**, as a short-term priority, it is recommended to implement an improved search for published decisions of the review body.

Serbia could, in the short-term period, develop and make available the online implementing tools (manuals, guidelines, instructions, etc.) for economic operators.

As regards all ReSPA Members it has to be emphasised that a lot of data on public procurement procedures has been regularly collected and analysed. Therefore, there are options for application of additional tools and data standards, such as those developed by the Open Contracting Partnership³³ that could be used for presentation of public procurement information in the more structured form, beyond statistical reports.

33 Open Contracting Partnership

VII) Useful sources of information

- Commission interpretative communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives, OJ C 179, 1.8.2006, p. 2–7

[https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52006XC0801\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52006XC0801(01)&from=EN)

- SIGMA Public Procurement Training Manual

<http://www.sigmaweb.org/publications/public-procurement-training-manual.htm>

- SIGMA Public Procurement Briefs

<http://www.sigmaweb.org/publications/key-public-procurement-publications.htm>

- OECD Methodology for Assessing Procurement Systems

<http://www.oecd.org/gov/ethics/benchmarking-assessment-methodology-public-procurement-systems.htm>

- Open Contracting Partnership

<https://www.open-contracting.org/>

- Open Contracting Data Standard

<http://standard.open-contracting.org/latest/en/#>

Annex 1 Self-assessment questionnaire
TRANSPARENCY IN PUBLIC PROCUREMENT

PUBLIC PARTICIPATION IN PREPARATION OF STRATEGIC AND LEGAL FRAMEWORK			
Question	Elaboration	Answer	Reference
Are there rules on obligatory public consultations when adopting a strategic framework on public procurement?	Information on existence/ non-existence of rules on obligatory public consultation when adopting the strategic framework.	Yes / No	<i>If any, reference to legal provisions (law, article) that prescribe obligatory public consultations for the adoption of the strategic framework.</i>
Are there rules on obligatory public consultations when adopting a legislative framework on public procurement?	Information on existence/ non-existence of rules on obligatory public consultation when adopting a legislative framework.	Yes / No	<i>If any, reference to legal provisions (law, article) that prescribe obligatory public consultations for adoption of a legal framework.</i>
Are there rules or practice on conducting regulatory impact assessment (RIA) when adopting a legal framework on public procurement?	Information on existence/ non-existence of rules or practice (e.g. pilot projects) on conducting RIA when adopting a legal framework	Yes / No	<i>If any, a reference to legal provisions (law, article) or practical examples (e.g. pilot projects) related to RIA when adopting a legal framework on public procurement</i>
INFORMATION ON LEGAL FRAMEWORK, INSTITUTIONAL ARRANGEMENTS AND IMPLEMENTING TOOLS			
Question	Elaboration	Answer	Reference
Is there a single point (web-page or similar) for obtaining relevant information on the national public procurement system?	Information on web pages(s), portals, IT system, etc. where relevant information on national procurement system (legal framework, manuals, instructions, guidelines, etc.) is available to all interested stakeholders	Yes / No	<i>If any, link to the public procurement portal, IT system, etc.</i>
Is all public procurement legislation available online and free of charge on a single point of information?	Information of online availability of full legislative framework on a single point of information (web-page, portal, etc.)	Yes / No	<i>If any, link to the section on the public procurement web-page, portal, IT system, etc. providing information on the full legislative framework.</i>
Is information on the public procurement institutional set-up available online and free of charge on a single point of information?	Information about online availability of information on an institutional framework on a single point of information (web-page, portal, etc.)	Yes / No	<i>If any, link to the section on the public procurement web-page, portal, IT system, etc. providing information on institutional set-up.</i>
Are there implementing tools (manuals, guidelines, instructions, etc.) for contracting authorities/entities available online on a single point of information (web-page, portal, IT system)?	Information on available online manuals, guidelines, instructions, etc. for contracting authorities/entities on a single point of information (web-page, portal, IT system).	Yes / No	<i>If any, link to the section on the public procurement web-page, portal, IT system, etc. where manuals, guidelines, instructions for contracting authorities/entities are published.</i>

Are there implementing tools (manuals, guidelines, instructions, etc.) for economic operators available online on a single point of information (web-page, portal, IT system)?	Information on available online manuals, guidelines, instructions, etc. for economic operators on a single point of information (web-page, portal, IT system).	Yes / No	<i>If any, link to the section on the public procurement web-page, portal, IT system, etc. where manuals, guidelines, instructions for economic operators are published.</i>
PLANNING OF PUBLIC PROCUREMENT PROCEDURES			
Question	Elaboration	Answer	Reference
Is there a legal requirement for publication of the procurement plans at the level of contracting authorities/entities?	Information on the legal requirement on the publication of the procurement plans.	Yes / No	<i>Short elaboration, if any, on legal requirements on the publication of the tender evaluation reports.</i>
Are public procurement plans published on a single point of information (web-page, portal, IT system)?	Information on the publication of the plans on a single point of information, for example, public procurement portal, national IT procurement platform, etc.	Yes / No	<i>If any, link to a single point of information (web-page, portal, IT system) where all public procurement plans are published.</i>
Is there a legal requirement to conduct public consultations on draft tender documents?	Information on conducting public consultations on draft tender documents, for example, through online publication.	Yes / No	<i>Short elaboration, if any, on provisions related to conducting public consultations on draft tender documents (relevant thresholds, time limits, the scope of consultations, reporting).</i>
TENDERING PHASE			
Question	Elaboration	Answer	Reference
Are all tenders above the EU thresholds published before launching of the procedure?	Information on the obligation to publish tenders above EU thresholds.	Yes / No	<i>Short elaboration, if any, on provisions related to the publication of tender procedures above EU thresholds.</i>
Is there a single or multiple national IT platform(s) for publication of tender procedures above the EU thresholds?	Information on the national IT platform(s) for publication of tender procedures.	Yes / No	<i>Short elaboration, if any, on provisions related to the publication of tender procedures above EU thresholds. Link to platform(s) web page(s)</i>
Are all tenders below the EU thresholds, but within the scope of the national public procurement law (national thresholds) published before launching of the procedure?	Information on the obligation to publish tenders above certain thresholds, including the information on thresholds.	Yes / No	<i>Short elaboration, if any, on provisions related to the publication of tender procedures above the defined thresholds.</i>
Is there a single or multiple national IT platform(s) for publication of tender procedures covered by the national thresholds (below the EU thresholds but within the scope on the PPL)?	Information on the national IT platform(s) for publication of tender procedures.	Yes / No	<i>Short elaboration, if any, on provisions related to the publication of tender procedures above the defined thresholds. Link to platform(s) web page(s)</i>

Are there any provisions on the proceeding tenders below the national thresholds?	Information on the provisions on proceeding tenders below the national thresholds (e.g. contracting authorities' internal rules); including obligation (if any) on publication method (e.g. single platform, contracting authorities' websites).	Yes / No	<i>Short elaboration, if any, on provisions related to the publication of procedures below thresholds for application of the national PPL.</i>
Is there a legal requirement on the electronic free-of-charge availability of tender documents?	Information on the obligation to publish tender documents	Yes / No	<i>Short elaboration, if any, on provisions related to the publication of tender documents.</i>
Is there a legal requirement on the electronic publication of additional information (e.g. clarifications) on tender documents?	Information on the obligation to publish the additional information (e.g. clarifications) on tender documents.	Yes / No	<i>Short elaboration, if any, on provisions related to the publication of additional information on tender documents.</i>
CONTRACT AWARD			
Question	Elaboration	Answer	Reference
Is there a legal requirement on publication of the tender evaluation reports?	Information on the legal requirement on the publication of the tender evaluation reports.	Yes / No	<i>Short elaboration, if any, on the legal requirements on the publication of the tender evaluation reports.</i>
Is there a legal requirement on the publication of the contract award notices?	Information on the legal requirement on the publication of the contract award notices.	Yes / No	<i>Short elaboration, if any, on the legal requirements on the publication of the contract award notices.</i>
CONTRACT MANAGEMENT			
Question	Elaboration	Answer	Reference
Is there a legal requirement for online publication of information of awarded contracts (beyond contract award notice), their execution, amendments etc. at the level of contracting authorities/entities?	Information on the legal requirement on online publication of the contract registries or similar form of information of awarded contracts and their execution (e.g. actual paid amount, contract amendments, etc.) at the level of contracting authorities/entities?	Yes / No	<i>Short elaboration, if any, on the legal requirements on the publication of the contract registries or similar form of information of the awarded contracts and their execution at the level of contracting authorities/entities.</i>
Is there a single point of information on the national level for publication of contract registries or similar form of information of awarded contracts and their execution?	Information on the existence of a single point of information on the national level for publication of contract registries or similar form of information for all contracting authorities/entities (e.g. obligation on publication on national IT platform or public procurement portal).	Yes / No	<i>If any, link to the section on the public procurement web-page, portal, IT system, etc. providing published contract registries.</i>

Is there a legal requirement for online publication of awarded contracts (or the most relevant part of the contracts) and their amendments at the level of contracting authorities/entities?	Information on the legal requirement on online publication of awarded contracts and their amendments at the level of contracting authorities/entities.	Yes / No	<i>Short elaboration, if any, on legal requirements on the publication of awarded contracts and their amendments at the level of contracting authorities/entities.</i>
REVIEW			
Question	Elaboration	Answer	Reference
Are there any online information (e.g. instructions, manuals) on review procedures?	Information on the published instructions on the review procedure, i.e. lodging an appeal (deadlines, fees, procedures).	Yes / No	<i>If any, link to the section on the web-page, portal, IT system, etc. enabling access to published decisions.</i>
Are the decisions of the review body systematically published (on-line)?	Information on the online publication of the decisions of the review body.	Yes / No	<i>If any, link to published information on review procedure (instructions, guidelines, etc.).</i>
Is there a comprehensive search option for published decisions of the review body (e.g. including keywords, legal references, etc.)?	Information on the available search options for published decisions of the review body.	Yes / No	<i>If any, information of available search options related to published decisions of the review body (search categories).</i>
Are the court judgments regarding the cases brought against the public review body decisions published and available online?	Information on the published court judgments regarding the cases brought against the public review body decisions.	Yes / No	<i>If any, link to the section on the web-page, portal, IT system, etc. enabling access to published court judgements.</i>
ACCESS TO OVERALL DATA ON NATIONAL PUBLIC PROCUREMENT SYSTEM (STATISTICS, ETC.)			
Question	Elaboration	Answer	Reference
Is there a legal requirement on the preparation of the statistical report (national level) on public procurement?	Information on the existence/non-existence of rules on the obligatory preparation of the statistical report.	Yes / No	<i>If any, reference to legal provisions (law, article) that prescribe obligatory preparation of the statistical report.</i>
Is there a legal requirement on the online publication (availability) of the statistical report on public procurement?	Information on the existence/ non-existence of the rules on obligatory online publication (availability) of the statistical report.	Yes / No	<i>If any, reference to legal provisions (law, article) that prescribe obligatory online publication (availability) of statistical report.</i>
Are statistical reports on public procurement (national level) published/ available online on a single point of information?	Information on the published (on-line) statistical reports (on public procurement web-page, portal, etc.)	Yes / No	<i>If any, link to the section on the public procurement web-page, portal, IT system, etc. on which statistical reports are available.</i>

<p>Are additional (online data) data on public procurement (beyond statistical report) available, enabling interested parties more detailed analysis of public procurement on the national level?</p>	<p>Information on the available additional data on public procurement (beyond statistical report), for example, published raw data (spreadsheets or similar), that enable more detailed analysis of public procurement procedures on the national level (e.g. contracting authorities, NGOs).</p>	<p>Yes / No</p>	<p><i>If any, information on the available additional data and link to their publication.</i></p>
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