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NOTE

From: Presidency
To: The High Level Working Group on Competitiveness and Growth

Subject: Public procurement
Discussion paper for the High Level Working Group on Competitiveness
and Growth

Delegations will find in Annex a Note by the Presidency in view of the meeting of the High Level Working Group on Competitiveness and Growth on 12 September 2016.

Public Procurement and the European Semester

Public procurement is linked to many of the key policy challenges that the EU is facing, including investment, growth and jobs and responsible public finances. Every year public authorities in the EU spend more than €1.9 trillion in public procurement which corresponds to around 14% of GDP (around 19% when including spending by utility companies). In many sectors such as energy, transport, health care, education and waste management, public authorities are the principal buyers. Public procurement is of key importance for SMEs and for employment.

Given its overall importance for national economies and for the EU overall, the Commission regularly assesses the performance of the EU Member States' national public procurement systems in the European Semester process. The analysis covers all relevant areas, from basic structural issues including legislation and administrative capacity and questions of fair competition, transparency and openness to issues regarding efficient public procurement and strategic procurement. In total, public procurement issues were assessed in 24 country reports in 2016.

Since 2011, 38 country-specific recommendations related to public procurement were issued to 13 Member States. The number of CSRs varied significantly over the years and peaked in 2014 with 11 recommendations. In 2016, six Member States are subject to a CSR on public procurement, and for three additional Member States there are CSR recitals linked to public procurement. Most of the CSRs focussed on basic structural issues which are hampering the efficient and effective functioning of the public procurement. Those address e.g. administrative capacity, transparency, fair competition and prevention of corruption as well as openness to cross-border procurement. On the other hand, issues of strategic procurement and SME access to public procurement have hardly been addressed in CSRs so far and these issues have also been assessed to a lesser extent in the country reports. Future cycles of the European Semester could integrate these elements more systematically, to exploit the possibilities opened by the new public procurement directive.

The focus and sequencing of public procurement related CSRs varied significantly across Member States. Many CSRs were rather general and did not refer to concrete policy action; others focused on a single specific issue; yet others were complex and ambitious and covered several issues requiring multi-annual implementation. For some Member States, the sequencing in time of CSRs took account of the progress made in implementing previous recommendations and the focus moved on to other issues not dealt with previously. In the absence of progress, some Member States received a one-off recommendation only while others were subject to repeated CSRs over subsequent years. Yet others were subject to a series of CSRs with shifting focus between general and specific reform issues over time.

Overall the progress in the implementation of CSRs on public procurement has been mixed and limited in most cases. Slow implementation and remaining structural challenges notwithstanding, however, in many cases CSRs on public procurement were discontinued despite a lack of sufficient progress in their implementation. Difficulties of implementation may have been due to complex procurement systems, involving a large number of players with different responsibilities and varying capacity to implement reforms. They also reflect difficulties to address possible trade-offs between different policy objectives.

This raises the issue to what extent country-specific recommendations on public procurement have contributed to setting effective reform incentives under the European Semester and complemented other available instruments to foster improvements in the functioning of national and European public procurement markets. These instruments include: (1) **infringement proceedings** in the case of gaps or delays in the transposition of relevant EU legislation and their application (19 cases open as of December 2015); (2) progress monitoring of the completion of **national action plans on public procurement** to meet the ex-ante conditionalities related to the ESIF implementation (with a lack of effective implementation possibly resulting in a loss of access to the funds) and of the national strategies in support of the improvement of public procurement as adopted by certain Member States; and (3) a series of instruments to promote **SME access and strategic procurement**, including financial support for innovation, seminars for practitioners and revised guidance documents (following the transposition of the 2014 EU public procurement legislation which aims inter alia at making tenders more accessible to SMEs, reducing administrative burden and facilitating the use of evaluation criteria related to strategic innovation, social and environmental objectives).

Questions for discussion

1. Which are for you the most relevant policy objectives of public procurement?
 2. What are, in your opinion, the main reasons for the observed lack of progress in implementing CSRs in this area? What can be done to improve the implementation record?
 3. Are there public procurement issues that you consider particularly relevant and that have not found sufficient attention in the European Semester?
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