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**COMMISSION STAFF WORKING DOCUMENT**

**Annual Public Procurement Implementation Review  
2013**

**Annual Public Procurement Implementation Review**

**2013**

Based on information collected for 2011

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## Glossary of terms

**OJ TED (Tenders Electronic Daily):** TED is the online version of the *Supplement to the Official Journal of the European Union*, dedicated to European public procurement.

**Public Sector Directive:** Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, OJ L 134, 30.4.2004, p. 114.

**Utilities Directive:** Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, OJ L 134, 30.4.2004, p. 1.

**Public Sector Remedies Directive:** Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, OJ L 395, 30.12.1989, p. 33.

**Utilities Sector Remedies Directive:** Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, OJ L 76, 23.3.1992, p. 14.

**Directive 2007/66/EC:** Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts, OJ L 335, 20.12.2007, p. 31.

**Defence Procurement Directive:** Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC, OJ L 216, 20.8.2009, p. 76.

**Review:** The Annual Public Procurement Implementation Review.

**TFEU:** The Treaty on the Functioning of the European Union.

## Introduction

The purpose of this Annual Public Procurement Implementation Review is to present developments in the application of the public procurement rules across the EU.

As was the case in 2012, the Review is structured in three chapters. The first chapter shows the economic significance of the European public procurement market.<sup>1</sup> The second chapter presents an update on national structures for applying procurement law and on the implementation of e-procurement. The third chapter addresses the implementation of EU law: infringements at EU and national level, with special focus on the implementation of the Defence Procurement Directive. Now that transposition of this Directive has been completed in all the Member States, it is useful to provide an overview of the initial phase of its application. This is especially the case given that defence industry and market issues, including the implementation and application of this Directive, are important priorities for the EU institutions, as demonstrated by the Commission Communication of July 2013 and the European Council Conclusions of December 2013.

As was the case in the previous year, the sources of information for the Review include data collected by Commission staff from the available databases: TED/MAPPS for general figures and economic data or Commission databases for infringements of EU law, supplemented by information from the MSs. Specific information concerning the MSs differs depending on the quality of the data received by the Commission in reply to its questionnaire.

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<sup>1</sup> For most Member States, the data collected relate to 2011.

## Chapter A — Measuring public procurement in the EU

This chapter gives an overview of the European public procurement market along with statistical figures. These figures have been obtained from the same sources of information as the previous year: the OJ/TED database, desk research undertaken by DG MARKT, and statistical reports from the MSs.<sup>2</sup>

While it is possible to estimate the value of contracts published in TED, these contracts may represent future spending over several years and are not strictly compared with budget or expenditure figures. Utilities figures are even more difficult to compare owing to differences in the definition of sectors and confidentiality issues.

### 1. Values and economic indicators

#### *Nature and size of the market*

Government and utilities expenditure continues to be a significant and influential factor in the economy although it has decreased slightly as a proportion of GDP since 2009, when it was estimated at 20% of EU GDP; in 2010 the percentage fell to 19.7% and in 2011 it fell still further to 19%.

The total number of contracts advertised in TED continued to increase overall in 2011, although it fell in 9 MSs compared to 2010. However, the main development in 2011 was that the total estimated value of tenders published in the Tenders Electronic Daily (TED) decreased from EUR 447 billion in 2010 to EUR 425 billion in 2011, a reduction of 4.8%. This is the first fall since 2007. It seems that many MSs have reduced public expenditure on public procurement, most likely in response to the financial and economic crisis:

- the value of calls for tender published in TED fell in 15 MSs in 2011 compared to 2010;
- the MSs that experienced the largest reductions in absolute terms in 2011 were the UK (a fall of EUR 15.2 billion from 2010 to 2011), ES (EUR 9.0 billion) and IT (EUR 7.2 billion);
- in relative terms, the countries that experienced the largest falls were PT (-48.2%), SK (-47.8%) and ES (-26.4%). The value of calls for tenders published in TED in EL again fell significantly in 2011 (-14.4%), after having fallen 37.1% in 2010.

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<sup>2</sup> Provided for under Article 75 of Directive 2004/18/EC and Article 67 of Directive 2004/17/EC.

**Table 1: Commission estimates for the value of tenders published in the TED and the total value of procurement above the thresholds reported by MSs in 2011<sup>3</sup> [in EUR billion]**

Billion Euro	Statistical reports	Commission estimates
Belgium	7.96	10.93
Bulgaria	1.91	2.83
Czech Rep.	6.26	9.52
<i>Denmark*</i>	8.59	11.75
Germany	16.96	33.79
Estonia	1.11	2.62
Ireland	3.80	3.49
Greece	1.47	4.68
Spain	19.60	25.08
France	69.67	80.66
Italy	31.43	45.91
Cyprus	0.51	0.91
Latvia	1.26	3.55
Lithuania	1.86	1.71
Luxembourg	0.25	0.56
Hungary	4.52	5.13
<i>Malta*</i>	0.36	0.29
<i>Netherlands*</i>	20.34	9.74
Austria	5.50	5.53
Poland	17.44	28.57
Portugal	2.81	3.67
Romania	9.86	10.37
Slovenia	1.18	1.94
Slovakia	1.98	3.98
Finland	6.84	8.14
Sweden	30.53	15.41
UK	86.13	94.69
EU27	360.13	425.44

Source: DG MARKT, based on OJ/TED data and MSs' statistical reports

These figures seem to broadly reflect the fiscal consolidation efforts carried out by MSs. However, while drawing conclusions in this respect, it should be remembered that there can be significant year-to-year volatility in procurement expenditure due to the impact of large individual contracts. This is especially the case for smaller economies.

The 2011 figures confirm that there are still large disparities across MSs in the estimated value of tenders published in TED — expressed as a percentage of GDP.

While the EU average for 2011 is 3.4%, the relevant estimate for 4 MSs is below 2%: DE (1.3%), LU (1.3%), the NL (1.6%) and AT (1.8%).

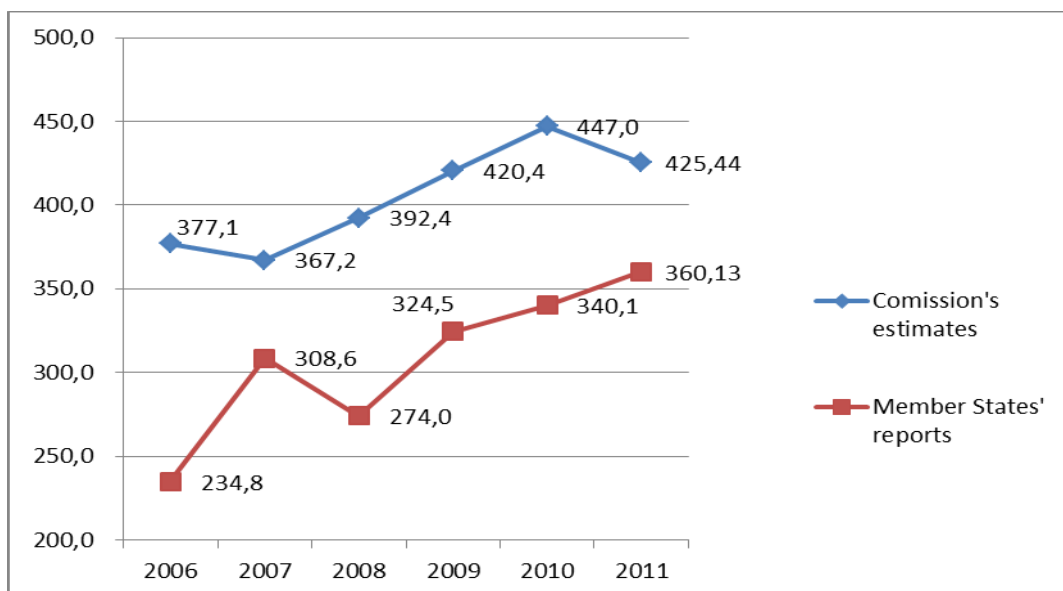
<sup>3</sup> Data based on 2011 statistical reports submitted by 24 MSs. Data for DK and the NL are based on 2009 Statistical Reports, and for MT on the 2010 Statistical Report (marked in the table: \*) as no reports for subsequent years were submitted.



These 4 MSs also have the lowest value of public procurement published in TED, expressed as a percentage of the total expenditure on goods, works and services. By contrast, over the period 2007-2011, the estimated value of tenders published in TED was more than double the EU average in 5 MSs: BG, EE, LV, PL and RO. Although figures vary slightly from year to year, the overall pattern is consistent over the period 2007 to 2011.

The Commission estimates based on the TED data still result in higher figures than in the MSs' statistical reports, although this difference is less significant in 2011 than in previous years. The reasons for this difference were partly explained in last year's review. A new, multiple-imputation based methodology is being developed and should be used for the 2012 Commission estimates. The new methodology is expected to eliminate at least some of the discrepancies.

**Figure 1: Commission estimates for the value of tenders published in the OJ/TED and the total value of procurement above the thresholds reported by MSs in 2006-2011 [in EUR billion]**



Source: DG MARKT, based on OJ/TED data and MSs' statistical reports

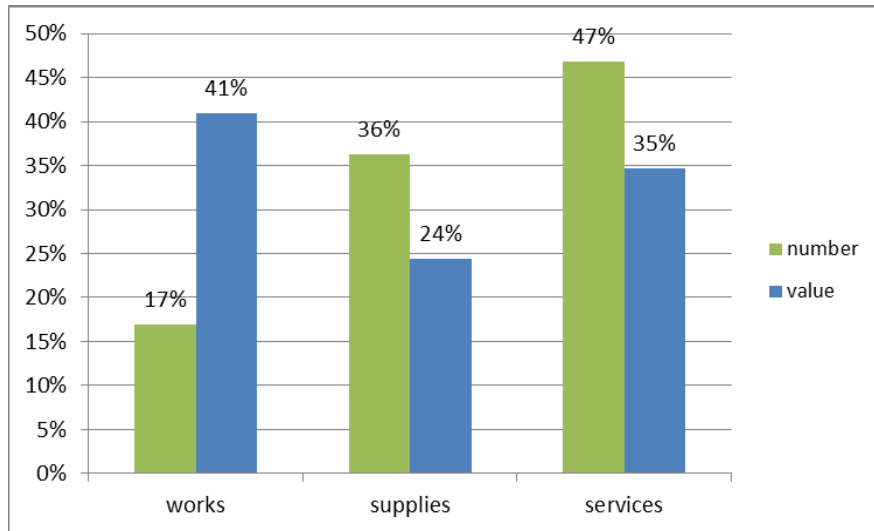
### Market Structure

While the distribution of contract award notices by number remained the same in 2011 as in 2010, the relative values changed. The share of works has grown by 5%, while the share of supplies and services decreased by 2% and 7% respectively.

In 2011, approximately 41% of the value of contract award notices published in the OJ/TED was attributable to works contracts, 35% was spent on services and 24% on goods. If these proportions were to be extrapolated to the Commission estimates of the value of contract

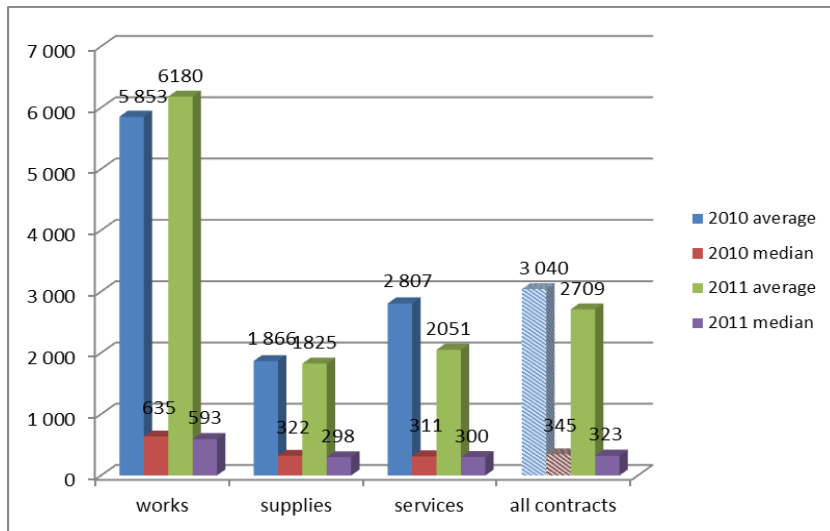
notices published in the OJ, the total values would be EUR 174 billion spent on works, EUR 104 billion on supplies and EUR 147 billion on services.

**Figure 2: Number and value of contract award notices published in the OJ/TED in 2011, grouped by type of contract [in %]**



The differences in the ratios between the number and the value of works and supply contracts respectively can be explained by the difference in thresholds. Works usually involve much higher sums than supply or service contracts (the average total value of a works contract is around EUR 6 million, whereas it is 1.8–2 million for supply and service contracts).

In general, most of the values decreased in 2011 compared to 2010. Notably, the average value of contract award notices dropped from around EUR 3 million in 2010 to EUR 2.7 million in 2011. As shown in Figure 3, the median value of all contracts awarded above all thresholds has gone down from around EUR 345 000 to around EUR 323 000. The average value of contract notices (published in the TED) decreased for supply and services contracts. The exception is the average works contract, which has increased slightly.



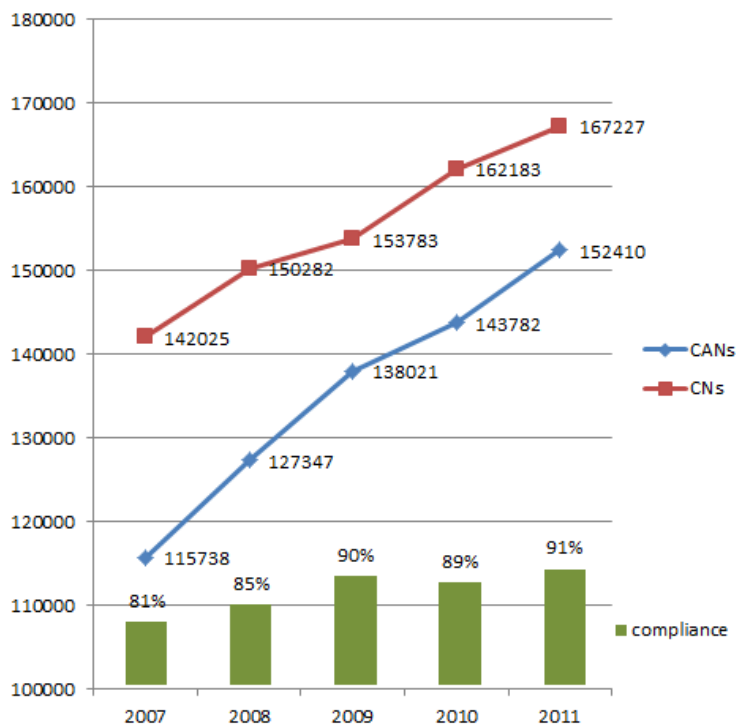
**Figure 1: Average and median value of contract award notices published in the TED in 2010 and 2011, grouped by the type of contract [in EUR thousand]**

Source: DG MARKT, based on TED data

### Transparency

The steady improvement in transparency in public procurement markets over recent years has generally been maintained.

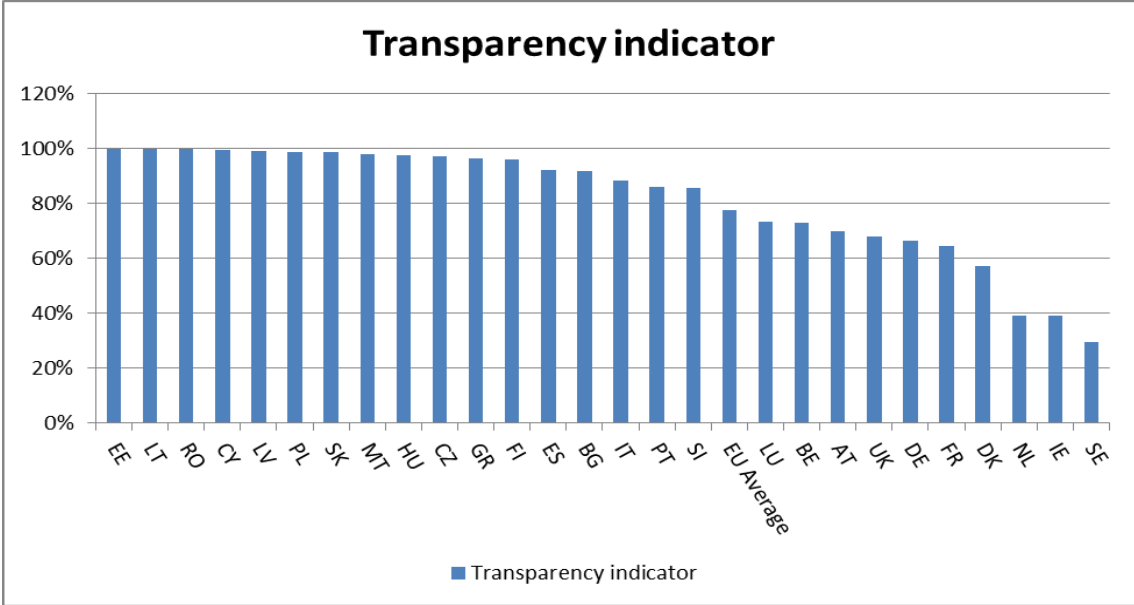
**Figure 4: Number of CNs and CANs published by EU MSs in the OJ/TED in 2007-2011**



Source: DG MARKT, based on TED data

However, there is still a significant difference between MSs when it comes to the information provided in notices. In particular, large variations are still evident when it comes to publishing the final value of contracts awarded in the contract award notices. There are a number of MSs where the low number of notices containing information on the value of awarded contracts gives cause for concern in terms of transparency. This is particularly the case amongst those MSs having the longest period of application of the rules (see: Figure 5). The pattern has not changed significantly since the period covered by the previous review. It should be borne in mind that the award notices do not cover cancelled procedures. However, this does not have much impact on the above conclusions as the number of cancellations is relatively insignificant.

**Figure 5: Percentage of CANs published by EU MSs in the TED in 2011 with contract values**



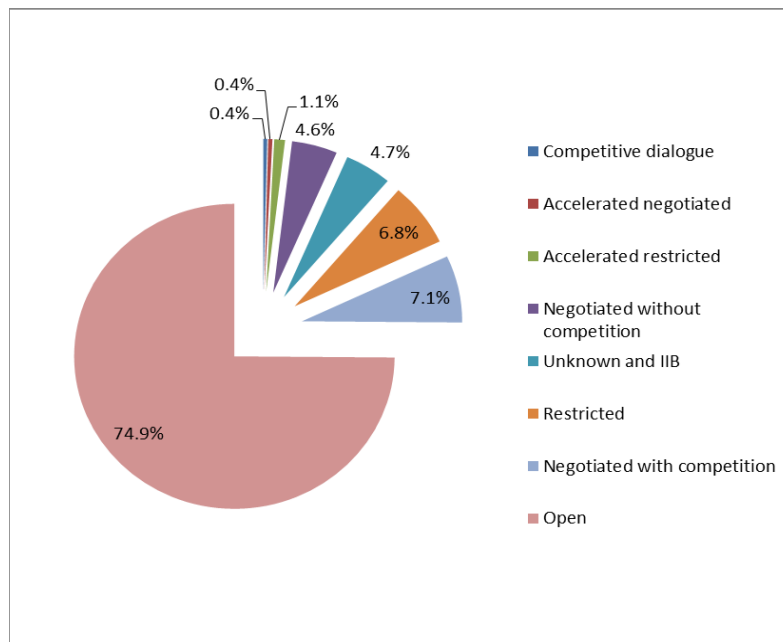
Source: DG MARKT, based on TED data

### Procedures used

Open competitions remain the most common type of procedure. The value of contracts awarded following this type of procedure accounted for 51%<sup>4</sup> of the value of all contracts awarded and published in 2011 (4% more than in the previous year), representing approximately 75%<sup>5</sup> of all contract award notices (2% more than in the previous year). The second most popular procedure in terms of its share of the total value of contracts published is the restricted procedure (21% of the total value,<sup>6</sup> against 22% reported in 2010, although only 7% of CANS<sup>7</sup>).

Therefore, the differences observed between the most recent data and those of the previous year should be considered insignificant.

**Figure 6: Procedures used by number in 2011 [in %]**



Source: DG MARKT, based on OJ/TED data

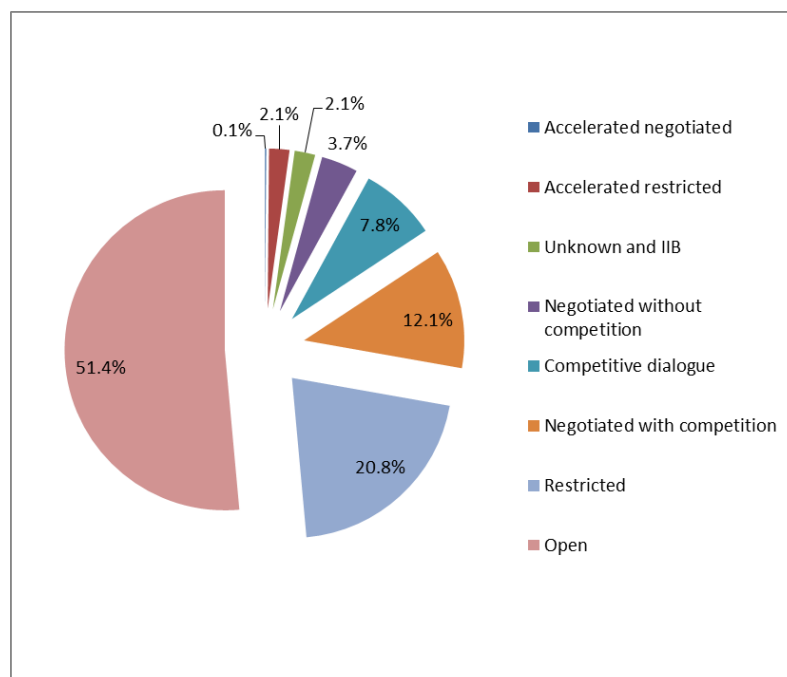
<sup>4</sup> 51.4% in 2011, compared with 47.3% in the previous year.

<sup>5</sup> 74.9% in 2011, compared with 72.8% in the previous year.

<sup>6</sup> 20.8% in 2011, compared with 22.1% in the previous year.

<sup>7</sup> 6.8% in 2011, compared with 7.1% in the previous year.

**Figure 7: Procedures used by value in 2011 [in %]**



Source: DG MARKT, based on OJ/TED data

### Exempted utilities markets

Between 20 April 2011 and 13 November 2013, the Commission issued 1 negative decision concerning the application of Article 30(1) of Directive 2004/17 to the activity of coal mining (CZ), 2 positive decisions exempting the production and wholesale sale of electricity (DE, IT), 2 positive decisions exempting the exploration for oil and gas and extraction of oil (Denmark, Italy), 1 positive decision exempting the exploration for oil and gas (CY), 1 positive decision exempting certain postal services (HU) and 1 positive decision exempting certain financial services in the postal sector (HU). 1 application concerning postal services is pending (AT).<sup>8</sup>

## 2. Procurement below the EU thresholds

In this part of the questionnaire, MSs were requested to provide information on the total value and volume of contracts below the thresholds in 2011.

The following replies were received:

AT	BE	BG	CY	CZ	DE
Number: 1237968	Number: Around 5 000	Number: no information	Number: 5 392	Number: 7 049	Number: no information
Value: EUR 1 919 793 865		Value: BGN 1 483 464 667 (without VAT)	Value: EUR 335 million	Value: CZK 48 959 001 308 (with VAT)	Value: EUR 4 981 492 000
<i>(figures are</i>		(EUR			

<sup>8</sup> [http://ec.europa.eu/internal\\_market/publicprocurement/rules/exempt\\_markets/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/rules/exempt_markets/index_en.htm).

<i>incomplete: utilities, municipalities and some regions are not contained)</i>		758 495 074)		(EUR 1912 610 411)	
<b>DK</b>	<b>EL</b>	<b>EE</b>	<b>ES</b>	<b>FI</b>	<b>FR</b>
Number: 3 530 Value: No information	No information	Number: 12 605 Value: EUR 1 669 926 032	Number: 109 387 Value: EUR 5 762 670 774	Number: no information Value: EUR 5 824 586 227	Number: 106 447 Value: EUR 18 129 278 149
<b>HU</b>	<b>IE</b>	<b>IT</b>	<b>LT</b>	<b>LU</b>	<b>LV</b>
Number: 8 707 Value: HUF 376.3 million  (EUR 1 270 425)	Number: no information  Value: EUR 1 765 875 000	Number: 19 634 Value: EUR 7 361 925 477	Number: 654 921 Value: LTL 6256.1 million  (EUR 1 811 891 797)	<i>Statistics not available</i>	Number: 4 482 Value: LVL 672 296 470  (EUR 956 733 271)
<b>MT</b>	<b>NL</b>	<b>PL</b>	<b>PT</b>	<b>RO</b>	<b>SE</b>
No information	No information	Number: 166 299 Value: EUR 40.6 billion	Number: 102 673 Value: EUR 2 096 334 084	Number: 59 223 Value: LEI 15 539 504 218  (EUR 3 479 668 641)	No information
<b>SI</b>	<b>SK</b>	<b>UK</b>	<b>HR</b>		
Number: no information available Value: EUR 933 166 456 <sup>9</sup> (net of VAT)	<i>SK does not have numbers for 2011, but presented figures for 2012:</i>  Number: 6 780 Value:  EUR 738 343 000	Number: no information available Value: £ 990 1927.44  (EUR 11 698 874)	Number: 22 263 Value: HRK 13 083 805 936  (EUR 1 718 726 559)		

These data are only partially available for some of the MSs that replied to the DG MARKT questionnaire. In SK figures will only be available from 2012 onwards and NL expects to be

<sup>9</sup> Only figures for 2012 were reported.

able to provide information for next year's review. Based on the information received from the MSs, a total of 2 532 360 public contracts were awarded in these MSs under the EU thresholds, adding up to around EUR 102 billion in value,<sup>10</sup> showing discreet growth in the number of contracts and only a slight downward trend in contract values.

Given the incomplete nature of the information, it is not possible to draw any firm conclusions. The figures are not only partial (no data for a significant number of MSs<sup>11</sup>), but also very disparate. Some figures are very high while others appear abnormally low. For instance, the total value of procurement below the threshold in PL purportedly amounted to over EUR 40 billion, while the average value of such contracts is over EUR 200 000. The total number of contracts in AT was reported to be as high as 1 237 968, which would mean that the average value of a contract below the threshold awarded in this MS would be as low as EUR 1 550. In HU, the total value of procurement below thresholds only reached EUR 1 270 425, bringing the average value of such contracts to an improbable EUR 145 per contract. Although some of these phenomena could be explained by the specific nature of national procurement markets (e.g. the very high average value of contracts below thresholds might be due to the unusually high proportion of works contracts), such anomalies could also result from reporting errors and misunderstandings. In the future, collection of this kind of data should be followed by in-depth discussion with the MSs, so as to obtain explanations for unusual figures, and allow for corrections or reservations to be made where necessary.

### **3. Information on concessions**

The award of service concessions is subject only to the Treaty principles, i.e. equal treatment, non-discrimination and transparency, while works concessions (with the exception of the utilities sector) are also partially covered by some secondary legislation.<sup>12</sup> The Directive on the award of concession<sup>13</sup> contracts should be fully transposed by the beginning of 2016. It will require the compulsory publication of contract notices (CNs) and contract award notices (CANs), covering both works concessions and services concessions in all sectors, including utilities, with the exception of those explicitly exempted, most notably in the field of drinking water.

The aim of this part of the questionnaire was to gather data on the number and value of concessions awarded in MSs. They were requested to provide information on the number and value of service and works concessions awarded in 2011.

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<sup>10</sup> In 6 of the MSs (FR, HU, IT, LT, LV and SK) the number of contracts has grown and there is also detectable growth in the values of the contracts in CY, CZ, EE, LT, LV and PT, while at the same time the overall trend for the value of contracts is downwards which is clearly visible in 8 MSs (BG, FI, FR, HU, IE, IT, PL, SK).

<sup>11</sup> Almost every MS provides incomplete data in some parts of the questionnaire.

<sup>12</sup> Title III of Directive 2004/18/EC.

<sup>13</sup> Its adoption is expected at the beginning of 2014.



The following replies were received:<sup>14</sup>

AT	BE	BG	CY	CZ	DE
<p>Number of concessions at the federal level is unknown.</p> <p>AT has information though from regions:</p> <p>Kärnten: 1</p> <p>Value: EUR 95 000</p> <p>Steiermark: 5812</p> <p>Value: EUR 34 560 634</p>	<p>Works: 10</p> <p>Services: 17</p> <p>Value: not submitted</p>	<p>Works: 2</p> <p>Indicative value: BGN 8 847 200 (EUR 4 523 571)</p> <p>Services: 45</p> <p>Indicative value: BGN 571 265 504 (EUR 292 087 894)</p>	0	<p>Total number: 25</p> <p>Total value: CZK 5 911 854 000 (EUR 230 949 839)</p>	No information
DK	EL	EE	ES	FI	FR
<p>Works: 1</p> <p>Services: not submitted</p> <p>Value: not submitted</p>	Information not submitted	0	<p>ES has data from 2010 (2011 information is not available):</p> <p>Works: 106</p> <p>Value: EUR 667 147 899</p> <p>Services: 473</p> <p>Value: EUR 808 989 058</p>	<p>Works: 11</p> <p>Services: 12</p> <p>Total value of these contracts: EUR 25 620 899</p>	<p>Estimated nr of concessions: 10 000</p> <p>Estimated value: EUR 80 000 000</p>

<sup>14</sup> Where 'total number' or 'total value' is indicated, information submitted had not been broken down into works and services concessions was not.

HU	IE	IT	LT	LU	LV
Works: 3 Value: HUF 2.8 billion (EUR 9453072) <sup>13</sup> Services: 1 Value: HUF 24 million (EUR 81026)	No information	Works: 64 Value: EUR 204664466 Services: 443 Value: EUR 473694307	<i>Law on Public Procurement of the Republic of Lithuania does not include concessions</i>	No information	No information
MT	NL	PL	PT	RO	SE
<i>The information will be available with the next questionnaire</i>	No information	Works: 31 Value: not submitted Services: 36 Value: not submitted	PT has data from 2012 (2011 information is not available): Works: 181 Value: EUR 6589639.49 Services: 298 Value: EUR 18510328.64	Works: 9 Value: LEI 521765044 (EUR 116835739) Services: 107 Value: LEI 1143141951 (EUR 255976970)	Total number: 62 Value: not submitted
SI	SK	UK	HR		
Works: 1 Value: not submitted Services: 12 Value: not submitted	0	<i>Comprehensive information not available</i>	Works: 1 Services: 2883 Contract value not available		

Approximately half of MSs provided information on both the number and value of concession contracts. This may be due to the fact that the existing level of transparency still leaves much room for improvement. Moreover, the definitions of concessions are not consistent across all MSs. Data collected for the purpose of the Impact Assessment prepared prior to the adoption of the proposal for a Directive on the award of concession contracts show that, in many cases, concessions are being confused with public contracts or authorisations and other contracts. Moreover, it is not certain whether the data collected include concessions awarded by contracting entities such as public undertakings and private entities enjoying exclusive rights in the field of utilities. The quality of data should improve after transposition of the new Directive, which provides for a uniform definition of concession.

Data received show that there are significant discrepancies as regards the number and value of concessions awarded in various MSs. In CY, EE, LT and SK no concession contracts were

awarded or published in 2011, while only 1 concession was awarded in DK. The lowest figures for services concession contracts awarded are substantially higher than those for works concessions. However, there is a marked downward trend in the figures for services concession contracts in some MSs (in BE, HU and RO the figures have even halved).

The highest number of concessions can be observed in FR (around 10 000) ES (579), IT (507) and PT (479). In 9 of the countries (AT, DE, EL, IE, LU, LV, MT, NL, UK) that did reply to DG MARKT's questionnaire, comprehensive data is not yet available.

#### 4. Number of contracting authorities and entities

Information obtained in reply to this part of the questionnaire was intended to establish a relationship between the size (population) of a MS and the number of contracting authorities and contracting entities there.

The following replies were received from the MS's:<sup>15</sup>

AT	BE	BG	CY	CZ	DE
Around 5600	Around 5000	4514	Around 700	1989	Directive 2004/18/EC – covers more than 30000 contracting authorities at federal, regional and municipal level  Directive 2004/17/EC – In 2010: 239 contracting authorities, and in 2011: 366 contracting authorities reported awarding a utilities contract
DK	EL	EE	ES	FI	FR
469	no information available	1364	8339	540	132652
HU	IE	IT	LT	LU	LV
11175	2372 (2010/2011)  Currently 3319	Central Ministerial Authorities: 15  Other national public bodies: comprehensive information not available	6737 (2011)  7703 (2012)	no information available	2258  Contracting authorities: 2030;  Contracting entities: 228

<sup>15</sup> Figures for the MSs that did not provide an answer to this paragraph are assumed to be the same figures as those submitted for the previous Review.

<b>MT</b>	<b>NL</b>	<b>PL</b>	<b>PT</b>	<b>RO</b>	<b>SE</b>
152	Around 7000-8000	13 890	4 467 (2012)	12 903 (2011) 13 524 (2012)	Around 3 700
<b>SI</b>	<b>SK</b>	<b>UK</b>	<b>HR</b>		
Around 3000	2 245 (2010) 2 389 (2011) 2 919 (2012)	Around 5 000	1 707 (2011) 1 811 (2012)		

The total number of contracting authorities/entities mentioned in the replies amounts to about 270 000, double that of the previous Review, but this is mostly due to the fact that some MSs, which did not provide any input last year (e.g. IT, NL, HR), provided data this year. However, the number of contracting authorities and contracting entities is higher in some MSs (specifically in IE, from 807 to 3 319). The information provided was sometimes difficult to interpret. Most importantly, MSs which provided numbers of contracting entities did not specify whether these contracting entities also include certain contracting authorities (quoted separately) or whether the figures refer exclusively to contracting entities which, strictly speaking, are not contracting authorities (such as public undertakings).

## **Chapter B — Overview of national structures for procurement, national arrangements for reviews, central purchasing and e-procurement**

### **5. Overview of national structures responsible for applying the EU public procurement rules**

This part of the questionnaire was intended to update the information collected last year on the national structures tasked with framing procurement policy, providing guidance to contracting authorities/entities and tenderers, preparing legislation, monitoring the implementation of public procurement rules, publishing and information sharing, as well as maintaining relations with their counterparts in other MSs and following developments at EU level. As in the previous year, MSs were also requested to indicate whether any specific institutions were in charge of the tasks listed above for the utilities and defence sectors, or for procurements below the thresholds.

As the 2012 Review includes a description of the structures in all those MSs that replied to the questionnaire, the following observations concern the structures in those MSs which provided responses for the first time. None of the MSs that replied last year has notified any changes.

Replies to this part of the questionnaire from HR, LU and NL, i.e. those MSs which did not provide the required data last year, indicate that the national institutions responsible for procurement perform almost all the tasks listed above. However, in LU and NL the tasks are divided between three authorities.

The MSs which replied to the question of whether the same structures are responsible for the utilities sector (HR, LU, NL, PL, RO and SK) answered in the affirmative.

The same institutions that are responsible for contracts above the threshold are also responsible for procurement contracts below the EU thresholds in every MS which responded (AT, BG, CY, CZ, DK, FI, FR, HR, HU, IE, IT, LT, LV, MT, PL, RO, SE, SI, SK and UK), except for PT where the Institute of Construction and Real Estate is responsible for below-threshold contracts.

As regards the MSs which provided an explicit answer to the question of whether the same structures are responsible for the defence sector (AT, BE, CY, CZ, DE, DK, FI, FR, HU, IT, LT, LV, PL, PT, RO, SK and UK), in 6 MSs this field is dealt with — at least partially — by institutions distinct from the civil sector: in DE, FI and the UK the Ministries of Defence, in IT the Ministry of Defence together with a public company, in RO the Agency for Offsetting Special Technique Procurements and in PT responsibility is assigned to the 'Directorate General of Armament and Infrastructures' and, in the Ministry of Internal Affairs, to the 'General Directorate of Infrastructure and Equipment'.

## 6. National arrangements for reviews

Information for this section was gathered from the replies provided by the 28 MSs. In the questionnaire, MSs were requested to provide information on the bodies competent to carry out review procedures and to describe the first- and last-instance review bodies, the appeals system and the nature of the review body (administrative or judicial). They were also asked whether there might be features of the domestic system that could reduce the attractiveness of domestic reviews/remedies (such as prohibitive fees).

As the 2012 Review includes a description of the decisions by MSs as to whether reviews are to be handled by administrative or judicial bodies, the following observations concern decisions in those MSs which provided responses for the first time in 2013. None of the MSs that replied last year has notified any changes, but some specifications have been added.

The Remedies Directives leave the choice of review system (administrative or judicial) to the MS. First-instance independent reviews are carried out by judicial bodies in 14 MSs (HR was added last year), and by an administrative body also in 14 MSs. There have been no changes since last year in this regard, but MT reported that in February 2013 the review of the procurement process had been changed. Whilst the function and role of the Public Contracts Review Board<sup>16</sup> have not changed, the Board's decisions are now subject to appeal before the Court of Appeal Superior Jurisdiction. Such an appeal suspends the award process.<sup>17</sup>

As regards the question of whether there might be features of the domestic system that could reduce the attractiveness of domestic reviews/remedies (such as prohibitive fees), some<sup>18</sup> MSs admitted that the fees can sometimes be considered prohibitive, but that such cases were always accompanied by a clear justification. HR pointed out that the length of the review procedure might also reduce the attractiveness of domestic reviews/remedies.

The cost of applying for a domestic review/remedy procedure varies between about EUR 200 and EUR 86 500.<sup>19</sup> The figures need to be considered in light of the economy of the MS concerned and the fact that some MSs refund the fee in the event of a successful public procurement tribunal review.

Generally speaking, MSs do not necessarily consider the fees to be prohibitive, since they are a necessary evil in some respects, as they have the effect of reducing unfounded complaints, which is necessary in pursuing the principle of procedural economy.

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<sup>16</sup> The Board is responsible for the hearing and determination of objections, requests for pre-contractual remedies and requests for the declaration of ineffectiveness of contracts.

<sup>17</sup> The Maltese law Courts are, however, obliged to deliver a judgment within four months of the date when all parties are notified of the appeal.

<sup>18</sup> DE, EE, IT, NL, PL.

<sup>19</sup> According to the implementing decree of the PPA, the fee of certain review procedures can be very high, in some cases as much as HUF 25 million.

## 7. E-procurement

The new Public Procurement Directives<sup>20</sup> make e-procurement the standard means for conducting public procurement. Electronic publication of procurement notices (e-notification), electronic access to documents (e-access), and electronic submission of tenders (e-submission) would gradually become mandatory.<sup>21</sup>

To facilitate e-procurement, the Council and the European Parliament have adopted a Directive<sup>22</sup> which aims to reduce barriers to e-invoicing across borders in the EU by providing a European standard. Spill-over effects should also facilitate the take-up of e-invoicing by all market operators. The chosen approach is twofold. Firstly, in order to eliminate interoperability problems between national standards, the European Committee for Standardisation (CEN) is mandated to develop a new European e-invoicing standard which would standardise the information contained in an e-invoice, which is essential to enable cross-border interoperability and to ensure legal compliance. Secondly, the Directive aims to make it obligatory for MS administrations to accept e-invoices which comply with the new European standard.<sup>23</sup>

Despite a continuous increase in the use of e-procurement, it was still only used in about 10% of procurement procedures carried out across the EU in 2011. The targets set out in the Manchester Ministerial Declaration in 2005 have still not been achieved.<sup>24</sup>

The level of development of e-procurement varies depending on the phase of procurement (e-notification, e-access, e-submission, e-invoicing, etc.). E-notification of and e-access to procurement documents are generally available across the EU, though in some MSs these means are not used for all procedures and purchases. 22 MSs have already made the use of e-notification mandatory, well ahead of the entry into force of EU legislation. Regarding e-invoicing, according to data from Eurostat,<sup>25</sup> only 12% of enterprises use electronic means when sending invoices to public authorities or receiving them.

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<sup>20</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, and Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, *OJ L 94, 28/03/2014*.

<sup>21</sup> See Commission proposal: [http://ec.europa.eu/internal\\_market/publicprocurement/modernising\\_rules/reform\\_proposals\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/modernising_rules/reform_proposals_en.htm) and Communication 'A Strategy for e-procurement': [http://ec.europa.eu/internal\\_market/publicprocurement/e-procurement/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/e-procurement/index_en.htm).

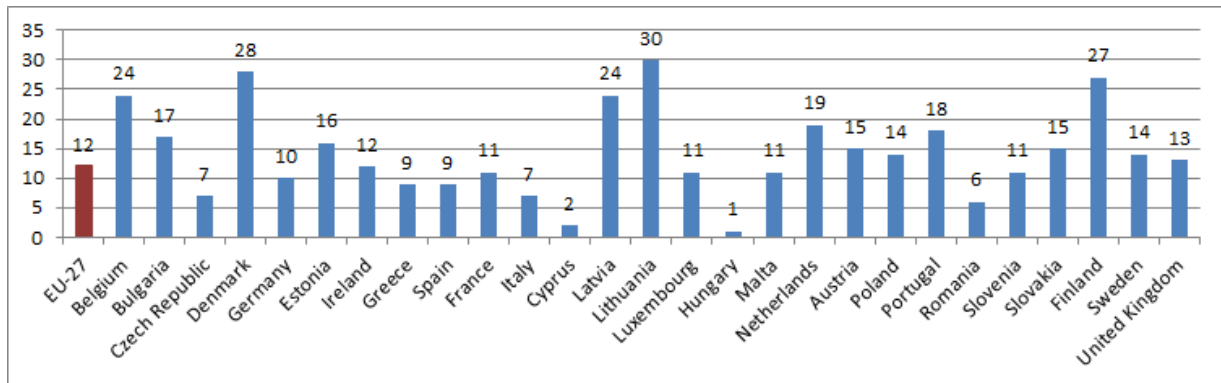
<sup>22</sup> Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement, *OJ L133, 6.5.2014, p.1*.

<sup>23</sup> See: [http://ec.europa.eu/internal\\_market/publicprocurement/e-procurement/e-invoicing/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/e-procurement/e-invoicing/index_en.htm).

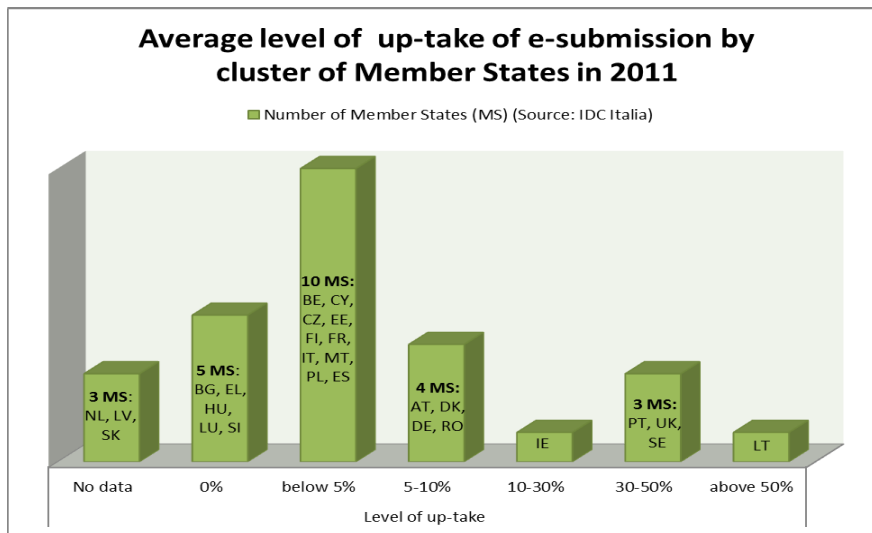
<sup>24</sup> According to the Manchester Ministerial Declaration of 24 November 2005 'all public administrations across Europe will have the capability of carrying out 100% of their procurement electronically' and 'at least 50% of public procurement above the EU public procurement threshold will be carried out electronically' by 2010: [http://ec.europa.eu/information\\_society/activities/egovernment/docs/pdf/manchester\\_declaration.pdf](http://ec.europa.eu/information_society/activities/egovernment/docs/pdf/manchester_declaration.pdf).

<sup>25</sup> Source: Eurostat, <http://appsso.eurostat.ec.europa.eu/>.

**Enterprises sending/receiving both e-invoices in a standard format, suitable for automatic processing, and electronic data to/from public authorities in 2011 [%] (Source Eurostat)**



A study carried out for the European Commission in 2013<sup>26</sup> estimates the level of take-up of e-submission in the EU at about 10%<sup>27</sup> in 2011 (+13% compared with 2010).

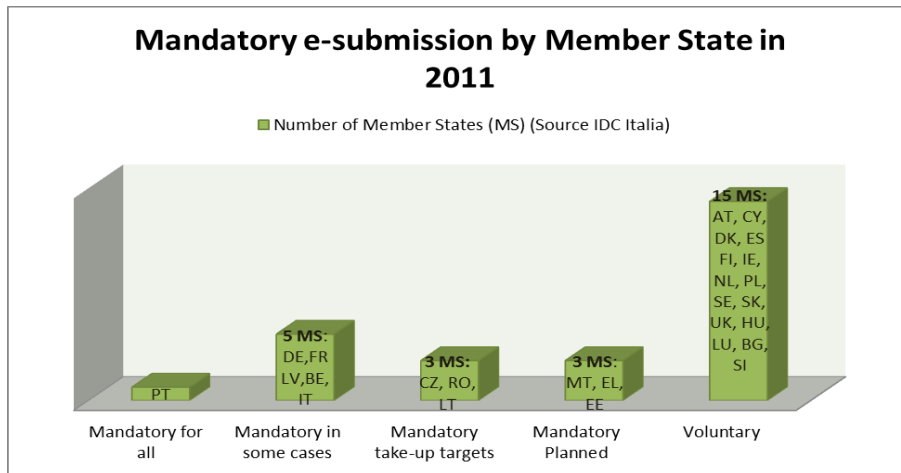


Lithuania, Portugal, Sweden and the UK made significant progress, as the take-up of e-submission was estimated to be above 30% in 2011. However, the level in most countries was below 5%, while 4 MSs had no e-submission availability in public procurement in 2012: Bulgaria, Greece, Hungary and Slovenia.

<sup>26</sup> The study is carried out by IDC Italia and Caggemini: [http://ec.europa.eu/dgs/internal\\_market/tenders/2011-097-c/download\\_en.htm](http://ec.europa.eu/dgs/internal_market/tenders/2011-097-c/download_en.htm).

<sup>27</sup> Take-up is estimated as the value of public procurement for which companies submitted offers electronically in the EU, divided by the total value of procurement in the EU.





In the majority of MSs (15<sup>28</sup>) e-submission is voluntary. Only Portugal has made it mandatory for all contracting authorities and purchases, but only above a certain threshold. It is mandatory in 5<sup>29</sup> MSs in certain cases. It is estimated that the use of e-procurement in Portugal generates savings of 6 to 18% of the total public procurement expenditure. Based on information provided by the MSs to the European Commission, e-procurement has also become mandatory at regional level.

The new public procurement Directive<sup>30</sup> provides for a gradual transition towards full electronic communication.

MSs play a key role in implementing full e-procurement, as they need to set up actionable strategies to govern the transition. Most strategies that have already been set up do not contain action plans to address operational issues. Only 8 of the 22 MSs that have established strategies for e-procurement have set e-procurement take-up targets.

In order to implement these strategies, specific action plans should be established to: set-up intermediate targets, govern the transition by opting for a strategy that maximises the benefits of end-to-end e-procurement, promote administrative burden reduction, encourage the participation of SMEs and cross-border suppliers, set up training programmes for users, monitor procurement spend and key performance indicators at national level by using information generated by e-procurement systems, etc.

<sup>28</sup> AT, CY, DK, ES, FI, IE, NL, PL, SE, SK, UK, HU, LU, BG, SI.

<sup>29</sup> DE, FR, LV, BE, IT.

<sup>30</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

## Chapter C — Application of the EU public procurement *acquis* at European and national levels

Infringements of EU procurement law are pursued either by the Commission in its role as guardian of the Treaties via infringement proceedings under Articles 258 and 260 TFEU or handled by the MSs' review bodies. The two Remedies Directives set out the broad legal framework, the essential requirements for the review process and the powers of the review bodies. The purpose of this chapter is to give an overview of the state of play with regard to the number of infringements handled at these two levels, the types of infringements and the sectors most affected by the violation of public procurement rules.<sup>31</sup>

### 8. Infringements at EU level

MSs are responsible for the implementation (transposition and application) of EU law into their legal systems. The Commission, in turn, monitors and verifies whether they are implementing it correctly. If a MS fails to fulfil its obligations, the Commission can request it to end to the infringement and, if necessary, may refer the case to the Court of Justice of the European Union.

Infringement proceedings launched by the Commission can be grouped into three categories: cases of non-communication, where a MS fails to notify any implementing measures by the deadline set, cases of non-conformity, where the transposition measure is not in line with EU law, and cases of incorrect application, where the infringement takes the form of some action or omission attributable to the MS.

#### *Material infringements of law: incorrect transposition and wrong application*

This section provides a snapshot of the current situation for the period covered, for ongoing investigations and open cases.

The figures are put into perspective against the background of infringement proceedings over the last three years. Since 1 January 2010, excluding cases of non-communication, 52 infringement cases have been opened against MSs where the procedure reached at least the stage of sending a letter of formal notice:

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<sup>31</sup> The period under scrutiny is mentioned in each sub-section.

BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
1	2	0	0	2	0	0	14	1	0	8	1	2	0	0	2	2	2	2	3	1	3	1	0	0	1	4

Of this number, 43 cases were based on complaints lodged with the Commission:

BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
0	2	0	0	2	0	0	14	1	0	6	1	2	0	0	1	0	0	2	2	1	3	1	0	0	1	4

The other 9 were based on investigations carried out by the Commission on its own initiative.

BE	IT	HU	MT	NL	PL
1	2	1	2	2	1

Of a total of 52 cases, 44 concerned incorrect application of the procurement rules:

BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
1	2	0	0	2	0	0	14	1	0	5	1	2	0	0	1	1	2	1	2	0	3	1	0	0	1	4

Five concerned incorrect transposition of the Directives:

HU	MT	AT	PL	PT
1	1	1	1	1

Three cases concerned violations of provisions of the Treaty.

During the same period, a total of 208 cases were opened in EU Pilot in the area of public procurement by DG MARKT.

Regarding the current situation, for the purpose of this exercise, two categories of cases were taken into account: (1) ongoing open infringement cases where a letter of formal

notice was sent by the Commission, and (2) cases where a letter of formal notice was not sent but the alleged infringement was being investigated by DG MARKT in the context of EU Pilot. While these cases do not necessarily mean that an infringement of EU law took place or that a case will be taken forward to the next stage, they are nevertheless an indication of the number of issues raised by complainants or found by the Commission that seem serious enough to merit further analysis.

On 31 December 2012, there were 78 cases open in EU Pilot/NIF.

#### *Cases of wrong application*

The number of infringement cases stemming from the incorrect application of public procurement rules stands at 56. Currently there are 2 cases open in court.

The negotiated procedure is still the procedure most affected by errors in application (even excluding cases of direct awards), followed by the open and the restricted procedures.

Among these cases of wrong application, the services sector (legal, IT, consultancy, etc.) (concerning 5 MSs: AT, BG, CZ, DE, SK) and the infrastructure sector (5 MSs: BG, NL, CZ, RO, SK) come top, followed by defence (CZ), waste (SE) and land development and abusive use of language-related requirements (ES).

Such cases of incorrect application involve central and sub-central levels nearly equally, with the sub-central level very slightly ahead.

Open type of procedure (BG, ES, NL) are those most affected by confirmed application errors, fewer negotiated procedures (NL, SK) and restricted (SK, UK) procedures — other than direct awards.

#### *Cases of incorrect transposition*

There are far fewer cases of errors in transposing EU procurement law have been initiated than in the period covered by the previous Review. On substance, the non-conformity cases regarding the Public Sector Directive concerned the following issues: discrimination of tenderers with a certain type of ownership structure and off-sets in military procurement (CZ 2 cases), non-conformity of the legislation and bad application in a particular tender (FR 3 cases) and 1 non-conformity case concerning the Remedies Directives (MT). Other MSs did not submit precise information on this item.

## 9. Review procedures at national level

This section provides insight into MS national procurement remedies systems (both above and below threshold).

The ratio of national review procedures to the total number of procurement procedures carried out in the MSs<sup>32</sup> remains low in most of the MSs (e.g. CY: 3.9%, FI 2-3%, HU 7%, LT 3%, SE 7%). The highest percentage was noted in LV with 12.3%, still well below 20%.

In most countries<sup>33</sup> the success rate of complainants before a review body stands at around 1/3 of the total number of cases (CY 3%, CZ 35%, DE less than 11%, DK 21.7%, ES 31%, HR 22%, LT 16.6%, MT 45%, NL 22%, PL 40%, RO 33%, SE 31%). In DE and LT the number is significantly lower (between less than 11 and 16.6%), whereas in 4 MSs, the figures are somewhat higher (CY 38%, CZ 35%, MT 45%, PL 40%). The biggest changes compared with the previous year's Review are in DE that has come down from above 20% to less than 11%, and MT whose percentage has grown from 29% to 45%.

The breakdown of the contracts by type of procurement (works, services and supplies) where available and submitted by the MSs are set out in the table below.

	ES	HU	NL	PL	HR	RO	SI
Works	3.5% <i>3.5% less than last year</i>	36.1% <i>7% less than last year</i>	31%	26.52% <i>5.31% less than last year</i>	21.01%	44.09%	27.71%
Services	66% <i>1% less than last year</i>	39.7% <i>3.5% more than last year</i>	49%	40.21% <i>3.56% more than last year</i>	39.24%	23.68%	37.21%
Supplies	20% <i>1% more than last year</i>	24.2% <i>3.9% more than last year</i>	20%	33.23% <i>1.71% more than last year</i>	39.12%	32.23%	35.08%

As regards the sectors most affected by procurement problems, MSs indicate<sup>34</sup> IT services and telecommunications (10 MSs: AT, BG, CY, CZ, HR, LV, NL, PL, SE, SK), the construction sector (8 MSs: BG, CZ, EE, LV, MT, NL, PL, SK), health and medical services (6 MSs: AT, CY, CZ, HR, MT, PL), infrastructure (5 MSs: CY, ES, HR, NL, SK), security services (3 MSs: BG, ES, LV),

<sup>32</sup> Of 16 MSs that replied to the questionnaire, contributions were considered from CY, CZ, DE, DK, ES, HR, LT, MT, NL, PL, RO and SE. Contributions from MSs were left out if they were contradictory or if they were not broken down into the categories and percentages as requested and, as such, would have thrown out the calculations.

<sup>33</sup> Figures based on contributions by: CY, CZ, DE, EE, ES, HU, LV, MT, PL, RO, SE and SK.

<sup>34</sup> Figures based on contributions by: AT, BG, CY, CZ, EE, ES, HR, LV, MT, NL, PL, SE and SK.

social housing/social services (2 MSs: AT, ES), transport services (2 MSs: MT, SE), insurance services (2 MSs: BG, HR), food services (2 MSs: BG, SE), waste collection (BG) and sewage/refuse/cleaning and environmental services (EE).

Nine MSs (AT, CY, CZ, EE, HR, LU, MT, NL and SK) provided replies on the provisions violated. Most mentioned that problems were related to principles of transparency and equality (CY, NL, SK), technical specifications (CZ, EE, SK), criteria for qualitative selection (CZ, LU, SK), the wrong choice of procedure (AT, HR), wrong decisions concerning exclusions (AT, SK), principles of awarding contracts (CZ, EE), verification of the suitability and choice of participants and award of contracts (AT, EE), technical and material matters of the rejected offer (LU), incorrect evaluation of the offer or the bid (MT), invalidity of application (NL), insufficient research and reasoning in award notices, and illegal composition of evaluation committee/awarding body (CY).

The table below shows the number of first-instance decisions appealed against before higher-instance bodies in the MSs which submitted this figure.

AT	BG	CY	CZ	DE	ES	FI	HU	LV	MT	PL	RO	SE	DK	EE	NL	HR
21	470	12%	356	17	22	66	130	31	6	5%	750	755	8	25%	17	92

Almost half show an increasing trend (AT, BG, CY, CZ, DE, MT, SE), while DE has come down from 226 to 17 (which might also be a mathematical error) and RO from 917 to 750, with modest decreases in HU, ES, LV, FI and PL.

The success rate of the appeals (i.e. when decisions of the first instance were quashed or overturned by the higher body) is moderate (CZ 20%, DE 18%, HR 15%, NL 35%, PL 13%) and is especially low in some countries (AT 2.9%, CY 0% and RO 1.23%). An exceptionally high percentage was registered in SK (70%).

Most of the review bodies give their decisions within a period of 1 to 3 months (BG 1 month, AT 1.5 months, SE 2 months, CY 3 to 4 months). In PL, EE, ES and RO decisions are reached within a month or less. In CZ the period is 4 to 6 months, in DK 8 months and in LV the Procurement Monitoring Bureau makes a decision within 1 month, while it might take 1-1.5 years in court.

At the other end of the scale is FI, where it still takes 8 months to issue a decision.

## Chapter D — Defence

2012 was the first full year, in which Directive 2009/81/EC, the Defence Procurement Directive, should have been fully applied by all MSs.

The Defence Procurement Directive is an important element of the Commission's policy to create a truly European defence equipment market and level playing field for defence procurement. It constitutes the regulatory backbone of the European defence market.

The deadline for transposition of the Defence Directive expired in August 2011. However, while the majority of MSs had transposed the Defence Directive by the end of 2012, it had still not been transposed, or fully transposed, in 3 MSs. 2012 must therefore be considered a year of transition.

In the three years from 2008 to 2010, before the Defence Directive came into force, notices totalling some EUR 4 billion were published on TED plus EUR 4.76 billion on the publication tool of the European Defence Agency. The total number of notices was 1 844. The amount is estimated at 3.3% of defence procurement expenditure in Europe.

In 2012, 19 MSs published a total of 1 479 notices under the Defence Directive on TED. 777 of these notices were contract notices, 336 contract award notices, 244 'voluntary ex-ante transparency notices', 88 prior information notices and 7 buyer profiles.

It is particularly noticeable that almost 50% (361) of the contract notices were published in FR alone, followed by DE with 171 notices, although DE did not transpose the Defence Directive until mid-2012. On the other hand, ES, which had transposed the Defence Directive within the deadline, did not publish a single notice in 2012. The process of transposition alone can therefore not explain the large discrepancies.

Also in 2012, IT published the greatest number of contract award notices (111) followed by DE (89). Indeed, IT published significantly more contract award than contract notices, a feature also evident for HU.

Of the significant number of 'voluntary ex-ante transparency notices' the UK alone published around 60%, followed by DK with 17%. This practice could indicate the high use of negotiated procedures without publication, or other procedures not covered in the Directive. The same is true in countries where the contract award notices largely outnumber the contract notices. When a new procurement directive is first implemented, the contrary is to be expected.

EU-wide publication does not necessarily lead to cross-border competition or the cross-border award of contracts. Moreover, MSs with higher publication rates awarded few contracts to non-national suppliers. However, this does not necessarily indicate a persisting 'buy national' policy on the part of MSs as defence companies may be reluctant to operate outside their home markets. Evaluation of the values is on-going.

Following the transitional phase and as part of the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (COM(2013) 542 final) '*Towards a more competitive and efficient defence and security sector*' adopted on 24/07/2013, '*the Commission will monitor the openness of Member States' defence markets and regularly assess with the EU's Tenders Electronic Daily (TED) and other specialised sources how the new procurement rules are applied. It will coordinate its market monitoring activities with those of the EDA in order to exploit potential synergies and avoid unnecessary duplication of efforts*' (action 2.1. Ensure market efficiency).

In 2012, the Commission also made its efforts to assist MSs in phasing out offsets. In the past, 18 MSs maintained offset policies requiring compensation from non-national suppliers when they procured defence equipment abroad. Such offset requirements are restrictive measures which go against the basic principles of the treaty. They discriminate against economic operators, goods and services from other MSs, and they impede the free movement of goods and services. Most MSs have, in the meantime, abolished or amended their legislation. However, some legislative difficulties remain and the way the changes are implemented in practice will have to be closely monitored.

### **Conclusions**

The previous Review published by the Commission attracted much interest and has often been referred to, particularly in the publications of industry organisations, think tanks and international organisations. It gave the first overview of public procurement in the 27 MSs. Besides providing an update, this second edition of the Review aims to present some new developments in terms of the policies pursued by the Commission (particularly in the field of e-procurement and defence procurement), as well as information on public procurement trends and law enforcement throughout the European Union. The results of this exercise show that there is still a need to improve the methodology used to collect data from the Member States. The data submitted by MSs for the Review was treated with caution because, not only were the figures incomplete (data were missing for a significant number of MSs in all the chapters of the Review), but they were also very disparate. Significant discrepancies persist as to the availability of information on various aspects of procurement, its depth and comprehensiveness, making conclusions difficult to draw. Data received from MSs is not always comparable, and those collected for future editions of the Review will be subject to in-depth discussion with the competent bodies in MSs to ensure their methodological consistency. These discussions should also provide a better understanding of the difficulties encountered by the national authorities in gathering the relevant data, thereby improving the quality of the conclusions.



Following the transposition of the revised Public Procurement Directives and the Concession Directive, the Commission should obtain, on the regular basis, information concerning serious irregularities and systemic problems encountered in MSs, such as fraud, corruption and conflicts of interest. The aforementioned Directives impose specific reporting obligations on the MSs in this regard, and oblige Member States to ensure that one or more national authority or structure will monitor the application of public procurement rules.

MSs, on their side, are requested to suggest how to improve data collection, including areas where the data can be collected and ways of searching for information, and analysing and processing it.

Overall, the situation in 2011 did not change much from that of the previous year. Procurement indicators did not differ dramatically from the figures for 2010, nor did the data concerning enforcement and structural aspects of the procurement in the MSs. Two areas in which the review reflects more significant developments were e-procurement and defence procurement.

While the level of take-up of e-procurement in the EU remained low in 2011 (10%<sup>35</sup>), this level is increasing. Compared to 2010, the level of take-up increased considerably in 2011 (+13%).<sup>36</sup> To maintain this positive trend, the European Commission encourages Member States to set-up devise national strategies for implementing e-procurement containing specific objectives (set intermediate targets, select a strategy which maximises the benefits of end-to-end e-procurement to manage the transition, promote administrative burden reduction, training, etc.).

As regards defence, the Review provides an initial snapshot of the implementation of the Defence Procurement Directive. Action to deepen the internal market for defence will continue. This is strongly supported at the highest political level: the European Council of December 2013 stated that 'a well-functioning defence market based on openness, equal treatment and opportunities, and transparency for all European suppliers is crucial', and stressed the 'importance of ensuring the full and correct implementation and application' of the Defence Procurement Directive.

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<sup>35</sup> Take-up is estimated as the value of public procurement for which companies submitted offers electronically in the EU, divided by the total value of procurement in the EU.

<sup>36</sup> The study is carried out by IDC Italia and Capgemini: [http://ec.europa.eu/dqs/internal\\_market/tenders/2011-097-c/download\\_en.htm](http://ec.europa.eu/dqs/internal_market/tenders/2011-097-c/download_en.htm).

## Annex

### Available and useful reports from the Member States on the implementation of the procurement rules

Findings or conclusions are listed if they were provided by the MS or if the document was available to DG MARKT.

#### Austria

An annual report by the Federal Procurement Review Authority (*Bundesvergabebamt*) has been presented to the Parliament. The 2012 report is available on: [http://www.parlament.gv.at/PAKT/VHG/XXIV/III/III\\_00417/index.shtml](http://www.parlament.gv.at/PAKT/VHG/XXIV/III/III_00417/index.shtml).

#### Bulgaria

Annual reports with results of the activities in 2012 of the relevant institutions will be published on the following internet sites:

- ✓ PPA ([www.aop.bg](http://www.aop.bg));
- ✓ Public Financial Inspection Agency (<http://www.adfi.minfin.bg/bg/page/19>);
- ✓ Commission for protection of competition ([www.cpc.bg](http://www.cpc.bg));
- ✓ National Audit Office ([www.bulnao.government.bg](http://www.bulnao.government.bg)).

#### Cyprus

Annual Report of the Tenders Review Authority for 2011.

The main findings of this document were used in the chapter on national review procedures of this Report.

#### Czech Republic

Relevant information can be found as follows:

- ✓ Law No 55/2012 Coll.
- ✓ Decree No 230/2012 Coll.
- ✓ Decree No 231/2012 Coll.
- ✓ Decree No 232/2012 Coll.
- ✓ Decree No 133/2012 Coll.

- ✓ Decree No 162/2011 Coll.
- ✓ Decree No 9/2011 Coll.
- ✓ Government Regulation No 77/2008 Coll., as amended
- ✓ Resolution no. 419 to the Annual Report on the public procurement in the Czech Republic
- ✓ Report on the Implementation of the Strategy for electronic public procurement for the period 2011-2015 in 2011.

## **Germany**

Evaluierung der Vereinfachungsmaßnahmen bei der Vergabe von Aufträgen über Liefer- und Dienstleistungen nach dem Konjunkturpaket II,

Abschlussbericht zur Studie im Auftrag des Bundesministeriums für Wirtschaft und Technologie, September 2011,

available at:

<http://www.bmwi.de/BMWi/Navigation/Service/publikationen,did=452274.html>

Main findings, room for improvement:

- ✓ simplify rules and raise national thresholds for application of the national PP rules;
- ✓ increase transparency;
- establish a uniform legal framework for procurement in DE;
- room for more negotiation;
- strengthen and professionalise the procurement activity;
- introduce long-term price monitoring;
- promote innovative procurement.

## **Denmark**

An English summary of the report 'Account of competition in publicly provided services 2012' is available on:

[http://en.kfst.dk/Indhold-](http://en.kfst.dk/Indhold-KFST/Publikationer/Engelsk/2012/~media/KFST/Publikationer/Engelsk/2012/Account%20of%20competition%20in%20publicly%20provided%20services%202012%2001012012.pdf)

[KFST/Publikationer/Engelsk/2012/~media/KFST/Publikationer/Engelsk/2012/Account%20of%20competition%20in%20publicly%20provided%20services%202012%2001012012.pdf](http://en.kfst.dk/Indhold-KFST/Publikationer/Engelsk/2012/~media/KFST/Publikationer/Engelsk/2012/Account%20of%20competition%20in%20publicly%20provided%20services%202012%2001012012.pdf)

## **Estonia**

Results of National Audit Office of Estonia are available on:

<http://www.riigikontroll.ee/Riigikontrollipublikatsioonid/tabid/103/language/en-US/Default.aspx>

## **France**

- ✓ Rapports d'activité de la commission consultative des marchés publics pour 2011 et pour 2012, available on: <http://www.economie.gouv.fr/daj/rapports-dactivite>
- ✓ Rapports d'activité de la direction des affaires juridiques pour 2011 et pour 2012, available on <http://www.economie.gouv.fr/daj/rapports-dactivite-daj>
- ✓ Rapports et publication de l'Observatoire économique de l'achat public pour 2011 et 2012, available on:
  - [http://www.economie.gouv.fr/files/files/directions\\_services/daj/marches\\_publics/oeap/publications/lettre/2013/lettre28.pdf](http://www.economie.gouv.fr/files/files/directions_services/daj/marches_publics/oeap/publications/lettre/2013/lettre28.pdf)
  - [http://www.economie.gouv.fr/files/files/directions\\_services/daj/marches\\_publics/oeap/recensement/chiffres-recensement-2011.pdf](http://www.economie.gouv.fr/files/files/directions_services/daj/marches_publics/oeap/recensement/chiffres-recensement-2011.pdf)
  - [http://www.economie.gouv.fr/files/files/directions\\_services/daj/marches\\_publics/oeap/recensement/recensement-mp-2011-Resultats-globaux\\_pme.pdf](http://www.economie.gouv.fr/files/files/directions_services/daj/marches_publics/oeap/recensement/recensement-mp-2011-Resultats-globaux_pme.pdf)
  - [http://www.economie.gouv.fr/files/files/directions\\_services/daj/marches\\_publics/oeap/presentation/reunions\\_institutionnelles/assemblee\\_pleniere\\_oeap/2012/sythese-place-PME-en-2011.pdf](http://www.economie.gouv.fr/files/files/directions_services/daj/marches_publics/oeap/presentation/reunions_institutionnelles/assemblee_pleniere_oeap/2012/sythese-place-PME-en-2011.pdf)

## **Hungary**

The Procurement Authority prepares an Annual Report each year. The one for 2011 is available here:

<http://kozbeszerzes.hu/nyelvi-verziok/english/>

According to Article 172(3) of the PPA the Council operating within the framework of the PPA Authority shall prepare a report to the Parliament on its activity, its experience as to the fairness and transparency of public procurement processes, and its experience of review procedures, each year.

The report for 2011 and the reports for previous years are available on the PP Authority's website in Hungarian: <http://kozbeszerzes.hu/tevekenysegek/eves-beszamolol/>

## **Ireland**

Document, reports and circulars are published on [www.etenders.gov.ie](http://www.etenders.gov.ie) and [www.per.gov.ie](http://www.per.gov.ie)

## Italy

The annual report of the AVCP (Autorità per la vigilanza sui contratti pubblici di lavori, servizi e forniture). The last one was presented to the national parliament on 17 July 2013. The report summarises the PP market situation by topic of interest. It also highlights possible critical situations or markets. The report is available on:

[http://www.avcp.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/pdf/Relazione\\_2012.pdf](http://www.avcp.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/pdf/Relazione_2012.pdf)

## Lithuania

The Public Procurement Office prepares an annual report on public procurement in Lithuania. The latest Annual Report for 2012 is available on the Public Procurement Office website: <http://www.vpt.lt/vpt/uploaded/2012/vp/ATASKAITA%202012%20GALUTINE.pdf>

The latest Annual Report on public procurement for the year 2012 is available on Public Procurement Office website:

<http://www.vpt.lt/vpt/uploaded/2012/vp/Informacija%20apie%202012%20m.%20viesuosius%20pirkimus.pdf>

The Annual Report on green public procurement is available on the Public Procurement Office website:

[http://www.vpt.lt/vpt/uploaded/Zalieji\\_pirkimai/2012%20m.%20vykdytu%20zaliuju%20pirkimu%20rezultatu%20ataskaita%20\(2013-04-02\).pdf](http://www.vpt.lt/vpt/uploaded/Zalieji_pirkimai/2012%20m.%20vykdytu%20zaliuju%20pirkimu%20rezultatu%20ataskaita%20(2013-04-02).pdf)

The Annual Report on simplified public procurement from social enterprises is available on the Public Procurement Office website:

[http://www.vpt.lt/vpt/uploaded/2013/socialines\\_imes/Vykdytu%20supaprastintu%20pirkimu%20is%20soc%20imoniu%20ataskaita%202012%20m.pdf](http://www.vpt.lt/vpt/uploaded/2013/socialines_imes/Vykdytu%20supaprastintu%20pirkimu%20is%20soc%20imoniu%20ataskaita%202012%20m.pdf)

The Annual Report on centralised public procurement is available on Public Procurement Office website:

[http://www.vpt.lt/vpt/uploaded/Centralizuoti\\_pirkimai/Centralizuotai\\_vykdyti\\_viesieji\\_pirkimai\\_2012.pdf](http://www.vpt.lt/vpt/uploaded/Centralizuoti_pirkimai/Centralizuotai_vykdyti_viesieji_pirkimai_2012.pdf)

The Annual Report on energy efficiency requirements in public procurement is available on Public Procurement Office website:

[http://www.vpt.lt/vpt/uploaded/Energijos\\_vartojimo\\_efektyvumo\\_reikalavimu\\_taikymas/Energijos\\_efektyvumo\\_reikalavimu\\_taikymo\\_viesuosiuose\\_pirkimuose\\_2012\\_m.\\_ataskaita.pdf](http://www.vpt.lt/vpt/uploaded/Energijos_vartojimo_efektyvumo_reikalavimu_taikymas/Energijos_efektyvumo_reikalavimu_taikymo_viesuosiuose_pirkimuose_2012_m._ataskaita.pdf)

The main findings of the Report on the electronic procurement progress are as follows:

- ✓ About 22 000 organisations were registered in the Central Portal of Public Procurement in 2012: 7 508 contracting authorities and 15 028 suppliers — 581 (4%) of them foreign companies.
- ✓ The number of users (individuals working with CVP IS, and having the right of access to it) is growing constantly: the number of registered users in 2012 — about 50 000, 10 000 more than in 2011.
- ✓ In the period 2009-2012, the number of published e-procurement notices increased by about 47 per cent. The overall annual growth rate — 7.6 per cent.
- ✓ Electronic auction is still rarely used.

## **Malta**

In 2012, the Internal Audit and Investigations Department carried out around 32 audits involving a number of areas, such as construction work and education and training services. Reports are not available as the law governing the Authority does not allow for public distribution of audit reports. The Department of Contracts (DoC) is addressing the findings of the Audits carried out. Below are the main findings of the audits carried out:

1. The DoC needs to include certain categories of information in the Evaluation Report Template as per recommendations circulated by IAID;
2. The DoC needs to increase the use of an internal checklist, which confirms that all required documentation is included in the tender document prior to the publication of call for tender.

## **The Netherlands**

Every other year the ministry of Economic Affairs conducts a study to assess whether the procurement rules have been correctly applied. The last study was conducted in 2010 (Nalevingsmeting Europees Aanbesteden 2010, Significant, 2010).

## **Portugal**

- ✓ [http://www.inci.pt/Portugues/inci/EstudosRelatoriosSectoriais/EstudosRelatrios%20Sectoriais/RelContr\\_Pub\\_2011\\_final.pdf](http://www.inci.pt/Portugues/inci/EstudosRelatoriosSectoriais/EstudosRelatrios%20Sectoriais/RelContr_Pub_2011_final.pdf)
- ✓ [http://www.base.gov.pt/oop/downloads/RelContr\\_Pub\\_2011.pdf](http://www.base.gov.pt/oop/downloads/RelContr_Pub_2011.pdf)
- ✓ National Public Procurement Plan:  
<http://www.ancp.gov.pt/PT/ComprasPublicas/SNCP/Pages/PNCP.aspx>
- ✓ Savings in SNCP:

## **Romania**

The Romanian public procurement legislation, the capacity of Romanian authorities in this field, as well as everyday procurement practices are critical aspects for the speed, legality and efficiency of procedures for concluding public contracts (in a bigger context of increased level of absorption of EU funds) as well as for the later smooth reimbursement of funds from the European Commission (EC, or the Commission).

In the above context, the EC launched a tender to contract out a Study on the assessment of the public procurement system in Romania. This Study was awarded to Deloitte and the project for its execution was initiated at the end of November 2010 — the Study will be completed within the coming months. The objective of the Study is to assess the prevailing situation in Romania regarding public procurement with a view to identifying malfunctions and weaknesses of the institutional framework, applicable procedures and capacity of contracting authorities.

The scope of the Deloitte project was:

- ✓ Assessment of the public procurement system in Romania regarding its capacity to efficiently regulate the market reply, as well as its transparency. Identification of legal, organisational and institutional weaknesses;
- ✓ Assessment of the capacity of contracting authorities to efficiently manage public procurement procedures and the quality of their outputs, supplemented by an in-depth evaluation of some specific contracts;
- ✓ Issuing of detailed recommendations to overcome the possible difficulties and weaknesses arising from the preliminary assessments.

The findings have mainly resulted in the following recommendations:

- ✓ Stabilisation and codification of national legislation
- ✓ Elimination of non-unitary practices between the main actors on the procurement market
- ✓ Evaluating and updating training needs
- ✓ Revaluation of NCSC decisions
- ✓ Strengthen ANRMAP's monitoring capacity
- ✓ Strengthening the capacity and stability of evaluation committees
- ✓ Detection and prevention of conflicts of interest

## **Sweden**

Siffror och fakta om offentlig upphandling (KKV Rapport 2012:6) pp. 40-51

## **Slovenia**

Annual reports on public procurement for the years 2001–2007 and 2012, and summaries of basic public procurement data for the years 2008, 2009 and 2011 (available in Slovenian only): <http://www.djn.mf.gov.si/sistem-javnega-narocanja/letna-porocila>.

The Annual report for 2011 is not available.

Annual reports of the National Review Commission for the years 2000–2012 (available in Slovenian only): [http://www.dkom.si/predstavitev/letna\\_porocila/](http://www.dkom.si/predstavitev/letna_porocila/).

Main findings of the reports and consultancy of the Ministry of Finance:

- ✓ a large number of negotiated procedures without prior publication of a contract notice because of broad interpretation of the provisions,
- ✓ difficulties in determining the estimated value of procurement,
- ✓ segmentation of public procurement due to a large number of small contracting authorities,
- ✓ problems in excluding abnormally low tenders,
- ✓ high demands for insurance, especially bank guarantees, by the contracting authority.

## **United Kingdom**

Improving Government Procurement, a report by the National Audit Office, published in February 2103, reported that the Government Procurement Service had saved some GBP 426 million as a result of centralised procurement.

The report can be found at: <http://www.nao.org.uk/report/improving-government-procurement/>

## **Croatia**

Information on application rules are provided in:

- ✓ 2011 Annual State Audit Office Report
- ✓ 2012 Annual State Audit Office Report
- ✓ Statistical Report on Public Procurement in the Republic of Croatia for 2011
- ✓ Report on the Work of the State Commission for Supervision of Public Procurement Procedure for 2011