

EUROPEAN UNION



Committee of the Regions

Transposition of the Public Procurement Directives and its effect on Local and Regional Authorities

**This file note was written by SWECO and t33 srl.
It does not represent the official views of the Committee of the Regions.**

More information on the European Union and the Committee of the Regions is available online at <http://www.europa.eu> and <http://www.cor.europa.eu> respectively.

Catalogue number: QG-01-15-353-EN-N

ISBN: 978-92-895-0815-5

DOI: 10.2863/970972

© European Union, May 2015

Partial reproduction is permitted, provided that the source is explicitly mentioned.

Table of Contents

- 1. Executive Summary 1
 - 1.1 Aim and empirical base of the study..... 1
 - 1.2 The validity of the results..... 1
 - 1.3 Five main observations 2
- 2. Introduction 3
- 3. Assignment and design of the study..... 7
- 4. Constitutional preconditions in various Member States 9
- 5. Variations and similarities in the participation of local and regional authorities across the EU 11
 - 5.1 Participation of LRA in the national transposition process 11
 - 5.2 The importance attributed to the LRA’s comments and requests..... 12
 - 5.3 Viewpoints and criticism delivered by the LRA-group..... 13
 - 5.4 Examples of different handling of LRA in the transposition process 14
- 6. Conclusion..... 15
 - 6.1 Significant observations 15
 - 6.2 The need of follow-up evaluations..... 16
- Annex I: The web-surveys 17
- Annex II: Response rates and methodological remark 23

1. Executive Summary

In 2011 the European Commission presented two directives aimed at replacing the existing European Public Procurement legislation in order to modernize a rather complicated set of Directives, thus making the legislation better suited to deal with an evolving political, social and economic context with greater attention being placed on innovation, the environment and social inclusion. Prior to the adoption of the Directives the European Committee of the Regions as well as other representatives of Local and Regional Authorities (LRAs) were active in delivering their views on how to make the Public Procurement legislation better adapted to their recourses and needs. In February 2014, the legislative process was completed with the adoption by the European Parliament and the European Council of the new Public Procurement Directives (2014/24/EU and 2014/25/EU).

1.1 Aim and empirical base of the study

The aim of this report, commissioned by the Committee of the Regions (CoR), is i) to assess the national transposition processes and evaluate the involvement of the LRAs, and ii) to assess whether the Member States have taken the authorities views into account when drafting new legislation regarding Public Procurement.

The main empirical base of the study consists of two web-based surveys. The first survey was sent to Governmental officials responsible for the transposition process within the member states who are members of the Public Procurement Network (PPN). The second survey was sent to procurement experts in member organizations of the Council of European Municipalities and Regions (CCRE/CEMR). The survey results have been checked and contextualized through interviews with a limited number of key officials in charge of the transposition processes at the national and regional level in some member states.

1.2 The validity of the results

The study provides a general picture of the way most of Member States have handled the views and interests of their local and regional authorities' in the ongoing implementation of the new EU Procurement Directive into national law. The results should be interpreted as a reasonably accurate description of the current situation in the bulk of the Union's Member States. The report also

provides information regarding some of the problems that LRAs can face when applying the new procurement legislation after it has entered into force in 2016.

1.3 Five main observations

The study illustrates how most Member States have handled the views and interests of their LRAs' in the ongoing transposition of the new EU Public Procurement Directive into national law. The following observations have been made:

- A first general observation is that the intention of all Member States is to consult and try to accommodate the interests of the local and/or regional authorities when implementing the new European Procurement Directive into national legislation.
- A second observation, however, is that there are important differences between the Member States when it comes to how they consult their LRA.
- The third important result is a discrepancy between the answers from the central Governments and the LRA representatives regarding how much the LRAs' viewpoints and requests will be taken into account in the final version of the national procurement legislation.
- There is also a discrepancy between the Governments' and their LRAs' assessment of the concrete impact of the new procurement regime on authorities at the local and regional level.
- Finally, due to the early stage in the national transposition process, it is important to underline the need of an ex-post evaluation of the impact of the new European procurement regulation during the first year(s) after the legislation has entered into force in all Member States.

2. Introduction

Current Public Procurement legislation in the EU Member States is based on the Directives 2004/17/EC and 2004/18/EC. These Directives aim at establishing transparency and a result-oriented procurement praxis in the Member States family by sharpening the competition for public contracts, thus generating savings and quality improvements in the procurement process and its outcome.

In 2011, however, the Commission presented two draft directives aiming at modernizing the existing European Public Procurement legislation in order to make it better suited to deal with an evolving political, social and economic context with greater attention being placed on innovation, the environment and social inclusion. The Commission's review of the Public Procurement legislation was also motivated by a generally felt need to increase the flexibility, and simplify the rules, of the Public Procurement process. The expectation was thus to reduce the administrative procurement burden generally, and especially for SMEs and sub-national contracting authorities. Another important reason for the revision was the limited contracts awarded to firms from other member states, usually just a few percent of the total procurement volume.¹

Prior to the adoption of the Directives the European Committee of the Regions as well as other representatives of Local and Regional Authorities (LRAs) were active in delivering their views on how to make the Public Procurement legislation better adapted to their recourses and needs.²

The active role of the European LRAs in the process has been essential. Good Public Procurement rules must ensure best value for taxpayer's money while ensuring open and transparent tendering procedures that promote competition and supports social and economic innovation. Actors at the local and regional levels are generally quite experienced in public procurement. They also hold substantial knowledge on how to use Public Procurements effectively in order to secure positive impacts on the local economy, the environment and society. Furthermore, a sizable proportion of the public procurement in the EU is currently managed by the Unions LRA.³

¹ Cross-border procurements account for approximately 2 % of the public contracts within the Union. See e.g. "Revision of EU procurement legislation". Committee of the Regions, January 2012.

² CoR opinion on the Public procurement package - CDR99-2012_00_00_TRA_AC and "Public Procurement: Keep it short and simple!" CEMR position and proposals for amendments to the Commission's proposal for a new Directive on public procurement/COM(2011) 896 final. CCRE/CEMR, June 2012. EUROCITIES' position on the European Commission's legislative proposal on public procurement, EUROCITIES, April 2012.

³ In Scotland, for instance, about 50 % of the Public Procurements are handled by the local the Governments.

In February 2014 the legislative process closed as European Parliament and the European Council adopted the new Public Procurement Directives (2014/24/EU and 2014/25/EU)

The key important features of the new directive:

- Contracting authorities might reserve the award of certain services contracts to mutuals/social enterprises for a limited time-period.
- The Commission will review the economic effects of the thresholds on the internal market. This review must be completed by 2019.
- SME participation is facilitated by encouraging Contracting authorities to break contracts into lots and to introduce a turnover cap.
- Concessions contracts will be subject to EU regulation in order to ensure that they are completed effectively.
- In order to facilitate suppliers to bid cross-border, a central, on-line point called “E-certis” will be established.
- Simplification of the process of assessing bidders’ credentials, involving greater use of supplier self-declarations, in which only the winning bidder should have to submit various certificates and documents to prove their status.
- Poor performance under previous contracts is explicitly permitted as grounds for exclusion.
- More flexibility to negotiate (i.e. less constraints on using the competitive dialogue)
- Distinction between Part A and Part B Services has been removed, and a new light-touch regime has been introduced.
- Electronic versions of the procurement documentation and full electronic communication will become mandatory for public contracts.

The new EU Directive met some of the expectations of the local and regional stakeholders. For example, the new regulation will reduce the procurement publicity obligations, including e-handled procurement procedures. The sub-national authorities may also more freely set their own procedural deadlines (e.g. tendering bids) by mutual agreements with participating companies. However, the threshold values above which the Directive must be applied were not raised in accordance with the request from CoR and other LRA representatives.

3. Assignment and design of the study

The new Directive on Public Procurement must be implemented into national legislation by April 2016. The legal procedure within the Member States differs according to the constitutional set-up of individual Member States. In most Member States the transposition process is handled by the central Government. However, in some Member States containing autonomous regions, the implementation of the Directive is handled by qualified legislative assemblies at the regional level.⁴

The variations in the national implementation processes are reinforced by the fact that the Member States are given some leeway for national interpretations on how to implement the European Public Procurement Directive into their national legislation. For instance, the Directive does not guarantee that the Member State's legislators take into account the specific needs of their local and regional authorities. It is thus of great importance for the CoR to closely follow the national implementations of the new Public Procurement Directive, and – if needed – encourage the Member States to take into account the views of their local and regional authorities when undertaking the transposition.

This is the background to this assignment from the Committee of the Regions. *The aim of the mission is to look into the national transposition processes and evaluate the involvement of the local and regional authorities, and to assess whether the Member States have taken these authorities views into the account when drafting the new Public Procurement legislations.*

Moreover, it is also important to map similarities and differences between the viewpoints of local and regional authorities across the European Union. If such differences between various countries or groups of countries can indeed be identified, what are the reasons for this? Finally, there is also a need to provide, if possible, examples of concrete situations where different national transpositions of the Directive may affect the operations of local and regional authorities.

The main empirical base of the commissioned study consists of two web-based surveys. The first survey was sent to Governmental officials responsible for the transposition process within the member states who are members of the Public Procurement Network (PPN). The second survey was sent to procurement

⁴ For more information on the various legislative preconditions, see next section of the report.

experts in member organizations of the Council of European Municipalities and Regions (CCRE/CEMR)⁵.

The results of the surveys have been checked and contextualized through semi-structured in-depth interviews with a limited number of key officials in charge of the transposition processes at the national level in some member states. These interviews have been complemented with similar in-depth information gathered from the representatives responsible of the Public Procurement process at the subnational level in a sample of member states.⁶

⁵ A description of the study lay-out, including the contents of the two web-surveys (in word-format), response rate and some other technical details is presented in an attachment (Annex I) to the report. Deadline for response on the two surveys were originally scheduled for February 19th (central governments) and February 19th (LRA). Due to a very poor response rate, however, the final deadline date was changed to March 13th.

⁶ Annex II contains information on the questions submitted to the interviewees and the countries and types of public authorities they represent.

4. Constitutional preconditions in various Member States

The transposition into national legislation of the new EU Directive on Public Procurement is handled by each Member State according to its constitutional set-up, administrative structure and available human resources. This means that different Member States apply different legal procedures, which in turn affects the LRAs' possibilities to make their voice heard in the process (and also the timetable for the transposition).

Regarding the legal conditions of the national transposition of the Directive, the Member States can be divided into two categories. The first, overwhelmingly largest group, consists of Member States where the transposition is handled by parliament and competent state authorities at the national level. This group of countries can be further divided into (i) centralized nation-states where all legislation is concentrated to the national parliament and (ii) federal or semi-federal (regionalised) Member States with some of the legislative processes decentralised to regional parliaments.⁷ Obviously, in the first of these two groups of Member States, the national parliament has full responsibility for, and authority over, the transposition.

The second category of Member States is a bit more complicated. In a majority of these states the procurement legislation is national/federal, and thus not within the legislative competence of their regional parliaments.⁸ However, the constitution of these states makes it hard to ignore the regions' interests in the transposition process. The constitutional prerequisites as well as the legal praxis vary to some extent between these countries. Thus, in some of these states, despite its federal or regionalised structure, it is constitutionally possible for the central government to pay little attention to the regional and local levels when transposing the new public procurement Directive into national law.

The group of regionalised Member States also contains two countries where the legislative competence, and thus the full responsibility for the implementation of the Directive, is devolved to an autonomous region's parliament, namely the United Kingdom (Scotland) and Finland (Åland Islands). However, these two Member States are asymmetrically regionalized, which implies that the regional interests in the transposition process are formally secured only for Scotland and Åland respectively. How the regional and local level's interests are safeguarded

⁷ Austria, Germany, Italy, Spain, Belgium, Portugal, UK and Finland. See also Arribas, G.A. & Bourdin, D.: "The role of Regional Parliaments in the Process of Subsidiarity Analysis within the Early Warning System of the Lisbon Treaty", European Institute of Public Administration and European Center for the Regions, 2010.

⁸ Austria, Germany, Italy, Spain, Belgium and Portugal.

in the rest of the country is therefore an open question that should be examined in the same way as for other Member States.

5. Variations and similarities in the participation of local and regional authorities across the EU

The first aspect noticed regarding the implementation of the new procurement Directive into national legislation is that the transposition process has started only recently in most Member States – and not at all in some of them.⁹

However, work aiming at implementing the Directive into national legislation has started in most Member States. Thus, in all the Member States that have responded to our two surveys, transposition has started. Most of the respondents report that they are in the midst of the implementation process. In three of the web-survey answers from the LRA-level (Scotland, the entire UK, Romania), the respondents report that the process is concluded. However, according to the web-answer from the national level and other received information, the new procurement legislation is still not in place and in operation in these countries.

5.1 Participation of LRA in the national transposition process

Most of the Member States that have responded to the two web-surveys state that they have consulted a number of stakeholders during the transposition process. The most common stakeholders addressed are the business community and the local authorities closely followed by public authorities at the national and regional levels.¹⁰ In some countries civil society actors are also added to the consultation lists.

The main aim of the consultation brought forward by the responding countries are to collect opinions from contracting parties and, if possible, adjust the forthcoming new procurement legislation. Another commonly stated reason is that this is needed in order to comply with national regulation regarding transparency in and public access to the legislative process.

Some of the responding countries are reporting that they have not as yet started a consultation process (Belgium, Slovakia, Lithuania, Germany, Scotland). All of

⁹ Of the 11 states with which the consults have not been able to establish any contact (questionnaire or interview), it is likely that - in at least some cases - this is due to the fact that the countries concerned are in a very early stage of the process, or have not yet commenced the transposition of the Directive.

¹⁰ The difference between the regional and local results is due to the fact that some of the Member States lack authorities at the regional level (e.g. Scotland, Ireland).

these countries maintain that they are going to carry out some sort of stakeholder's consultation during the present year (2015). The stakeholder groups mentioned in the "open answers sections" of the survey are contracting authorities on the national/regional/local level, business groups, social enterprises, trade unions and NGOs.

However, one of the rapporteurs from the local level states that no such referral will be carried out at all in his/her country. Interestingly, this is contrary to the national response to the web-survey for the same country, where it is asserted that their LRAs are indeed included in the consultation.

5.2 The importance attributed to the LRA's comments and requests

The responding authorities at the national as well as on the local and regional levels agree that the upcoming new procurement regulation probably will affect their LRA's to at least some degree, more often to a high degree. In some instances the national answer is that they do not know/cannot judge the question.

The most commonly stated reason for the new procurement legislation's impact is that it will induce a lot of changes to the procurement process for all public authorities concerned, including those at the local and regional level. The new regulations have to be adapted and mastered, something that could be difficult for especially small and medium-sized authorities. Furthermore, the new EU Directive allows for greater flexibility in some areas of the procurement process, which could be of particular importance for small and resource-poor authorities at the regional and local levels.

Almost all national survey respondents state that they will take their LRA's viewpoints into account. The exception concerns mainly the regional level, and can probably be explained by the very weak, almost non-existent, regions in some Member States (e.g. Ireland, Latvia). Furthermore, some of the national respondents also maintain that the interests of their LRA's will be taken into account in the implementation process in other ways than being consulted by the central Government.

This picture is confirmed by LRA-respondents. The main difference, though, is that the national respondents generally state that the local and regional interests are taken into account "to a high degree", whereas the most common LRA answer is "to some degree". Indeed, one LRA respondent is highly skeptical about the possibility that any local interests will in reality be taken into account at all.

5.3 Viewpoints and criticism delivered by the LRA-group

According to the reports of the survey answers from the national level, half of countries concerned have received some sort of response from their LRA's (7 out of 14 responding MSs). A common reason for those that have not received any comments from their LRA's is that it is as yet too early in the process ("not yet known due to ongoing consultation process"). Those member states who have received comments are especially mentioning problems related to understanding and applying the new European Single Procurement Document (ESPD) and how to implement the social requirements of the new procurement regime. One of the responding countries reports that it "cannot point out particularly prevalent comments", but that "the ongoing dialogue (with the LRAs) has been very useful".

Our LRA's survey reveals, however, a number of comments and viewpoints from the representatives of local and regional levels ranging from very positive ("much welcomed reform", "efficient use of e-procurement in-house") to rather negative or even highly critical comments ("too complicated, can only be understood by lawyers", "more complicated and bureaucratic procedures", "the ESPD is a disaster").

A commonly stated concern is the complexity, and thus difficulty, in applying the new award criteria (social, green) in relation to the traditional price criteria. Another important view is that the new national legislation regulating procurements below the thresholds of the EU Directive should aim at substantial reductions of the administrative and financial burdens facing the LRA-sector. Indeed, according to some of the interviewed experts, the failure to raise the thresholds for EU regulated public procurement is highlighted as a major disappointment in the new procurement Directive.

The most common positive views of LRA's regarding their expectations are that the new legislation will, hopefully, reduce the procurement burden through shared services between procurement running authorities, in house e-procurement and "lighter rules regarding advertising".

5.4 Examples of different handling of LRA in the transposition process

The general picture emerging from the two surveys (and the complementary expert interviews) is that the Member States will by and large accept the need to involve their LRAs in the transposition process.

The way of involving the LRAs, however, varies considerably between different Member States. Thus, there are examples from the national web-surveys where LRA are very briefly consulted, and also examples where the answers from the local and regional level indicates some serious scepticism regarding the real value of the stated intentions from the central Government to take into consideration viewpoints from local authorities.

On the other hand, most of the responding Member States assert, with various degree of support from their LRAs, that they have involved (or are planning to involve) their LRAs in the consultation process, and also to take into consideration their views when implementing the new procurement legislation.

6. Conclusion

As stated above, none of the countries that have responded to our surveys, or have otherwise contributed with expert input to the study (telephone interviews), have as yet finalized the transposition of the EU Directive into national legislation. According to the information received from various national experts on Public Procurement legislation, none of the 28 Member States have so far implemented the new procurement Directive into their national legislation.¹¹

Therefore, concrete experiences of the new legislation's actual impact on the LRAs do not exist yet. However, it is quite possible to deliver a general assessment of the trends and preliminary results of national transposition process so far. The result, though, applies only to those States which have participated in the study in some form (web-survey, expert interview). Therefore, strictly speaking, we cannot say anything for sure about the situation in the Member States that have not participated in the study.¹²

6.1 Significant observations

A first general observation is that *the intention of all Member States is to consult and try to accommodate the interests of the local and/or regional authorities when implementing the new European Procurement Directive into national legislation.*

A second observation, however, is that *there are important differences between the Member States when it comes to how they consult their LRAs.* In some countries the consultation is constitutionally compulsory and is also implemented in a very systematic and professional manner. In some other countries the consultation is less formal and, at least in principle, voluntary. It is also clear that the Member States attach different degrees of importance to the viewpoints and comments of their local and regional authorities. In most cases, LRAs are perceived as just one of several other important stakeholders (mainly the business community) who should be consulted in the transposition process.

¹¹ Among those who responded to the web-survey Denmark is at the forefront, planning to get the new procurement legislation adopted by the national Parliament in June 2015. In most cases, the adopted new procurement act will not enter into force until early 2016.

¹² Austria, Bulgaria, Croatia, Czech Republic, Estonia, France, Greece, Hungary, Luxembourg, Portugal and Slovenia. In the case of Spain and Finland, interviews with procurement experts from Åland and the Basque Country were executed. However, no web-answers were received from those two autonomies or their "mother-states" Finland and Spain.

The third important result to be reported is *a discrepancy between the answers from the central Governments and LRA representatives regarding how much the LRA's viewpoints and request will be taken into account in the final version of the national procurement legislation*. The most common answer from the central Governments is that they will be taken into account to a high degree. The most common view among the participating local and regional authorities is rather that their opinion will be considered only to some degree, and in some cases it is doubted whether they will be considered at all.

Finally there is also *a discrepancy between the Governments' and their LRA's assessment of the concrete impact of the new procurement regime on authorities at the local and regional level*. The LRA-answers (web-survey) generally indicates an expectation of a high degree of impact. This opinion is further developed in many of the "open answers" in the survey (learning difficult new bureaucratic rules, interpretation of award criteria, problematic ESDP etc.). The Governments' opinion tends generally to be more restrained, and indicates a belief that there will be less potential problems for LRAs when the new law is applied.

6.2 The need of follow-up evaluations

This study generates a general picture of the way most of the Member States has handled their LRAs' views and interests in the ongoing implementation of the new EU Public Procurement Directive into national law. *The results should be interpreted as a reasonably accurate description of the current situation in the bulk of the Union's Member States. The study also provides information about the type of procurement problems that local authorities most probably will face after the new law enters into force during 2016.*

However due to the early stage in the national transposition process, no qualified assessment of the final impact on the LRA's procurement activities throughout the Union can be executed. *It is thus important to underline the need of an ex-post evaluation of the impact of the new European procurement regulation during the first year(s) after it has entered into force in all Member States.*

Annex I: The web-surveys

Member States to which the two web-surveys were sent:

Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Greece, Ireland, Italy, Croatia, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, United Kingdom, Sweden, Czech Republic, Germany, Hungary, Austria.

Survey (1): National Governments (Member States)

Introductory letter

Dear Sir/Madam,

On behalf of the Committee of the Regions, Sweco is conducting a study regarding the transposition of the Public Procurement Directive and its effects on Local and Regional Authorities. This survey aims to examine to what extent the member states are considering the views of Local and Regional Authorities when undertaking the transposition. The target group for this survey is the national contact point for the Public Procurement Network.

The questionnaire should take no more than 10 minutes to answer. You find the survey by clicking on the link attached to the email. Please forward the questionnaire if you consider someone else in your organization to be more suited at answering the questions in a fair manner. We appreciate if you could take your time to answer our questions no later than the 16th of February.

The survey data is anonymized by Sweco. As such it will not be possible to identify specific participant's views.

Questions regarding the survey and study will be answered by Ellen Irenaeus, Sweco, +46 (0)72 527 05 40 ellen.irenaeus@sweco.se

Thank you in advance for your participation!

Markus Burman, Bjarne Lindström and Ellen Irenaeus, Sweco Strategy, Sweden

The national web-survey in word-format

1. To what extent has your country incorporated the new EU Directive on Public Procurement into national legislation?
Work has not started / Work has just begun / We are in the midst of work / Work is about to be completed / Work is completed + Please comment your answer.
2. Has the Government issued an inquiry or referral to allow stakeholders to voice their opinion regarding how the EU Directive should be implemented into national law?
Yes / No + Open response
If Yes: Which stakeholders have been consulted?
The business community and its organizations / National Authorities / Regional Authorities / Local Authorities / Civil Society / Other groups / Interests (multiple responses possible)
If Yes: What is the main reason for such a referral to have been carried out? (open response)
If no: Is the Government planning to consult relevant stakeholders? Yes / No + open response
If Yes: Which actors and stakeholders will be consulted?
The business community and its organizations / National Authorities / Regional Authorities Local Authorities / Civil Society / Other groups / interests (multiple responses possible)
If No: What is the main reason that you shall not carry out such a referral? (open response)
3. In your opinion, are there stakeholders that are particularly important to consult?
Yes / No. If Yes: What groups? Open answer
4. Have there been comments regarding the legislation from the local and regional level that have been particularly prevalent?
Open response
5. In your opinion, have or will Local and Regional Authorities' viewpoints be sufficiently taken into account in the implementation process?
Yes to a high degree / Yes to some degree / Yes, to a small extent / No not at all+ Do not know / Can't judge the question

6. In your opinion, will Local and Regional Authorities' viewpoints be taken into account in the implementation process in other ways than being consulted by the Government?
Yes / No / Open respond

7. In your opinion, will the new national public procurement legislation affect the procurement process for Local Authorities?
Yes to a high degree / Yes to some degree / Yes to a small extent / No not at all / Do not know / Can't judge the question
If Yes: Briefly describe one (or more) important ways in which Local Authorities will be affected / Open response
If No: Please comment on why you think that the legislation will not have an impact / Open response

8. In your opinion, will the new national public procurement legislation affect the procurement process for Regional Authorities?
Yes to a high degree / Yes to some degree / Yes to a small extent / No not at all / Do not know / Can't judge the question
If Yes: Briefly describe one (or more) important ways in which Regional Authorities will be affected / Open response
If No: Please comment on why you think that the legislation will not have an impact / Open response

9. In order to prevent negative impacts on local level, are there specific aspects that need to be taken into account?
Open response

10. In order to prevent negative impacts on the regional level, are there specific aspects that need to be taken into account?
Open response

Many thanks for your participation!

Survey (2): Regional and local authorities

Introductory letter

Dear Sir / Madam,

On behalf of the Committee of the Regions, Sweco is conducting a study regarding the transposition of the Public Procurement Directive and its effects on Local and Regional Authorities. This survey aims to examine to what extent the member states are considering the views of Local and Regional Authorities when undertaking the transposition. The target group for this survey is Procurement Experts in organizations that are members of Council of European Municipalities and Regions (CCRE/CEMR). The questionnaire should take no more than 10 minutes to answer. Please forward the questionnaire if you consider someone else in your organization to be more suited at answering the questions in a fair manner. We appreciate if you could take your time to answer our questions no later than the 19th of February.

The survey data is anonymized by Sweco. As such it will not be possible to identify specific participant's views.

Questions regarding the survey and study will be answered by Ellen Irenaeus, Sweco, +46 (0)72 527 05 40 ellen.irenaeus@sweco.se

Thank you in advance for your participation!

Markus Burman, Bjarne Lindström and Ellen Irenaeus, Sweco Strategy, Sweden

You find the survey by clicking on the link below.

The web-survey in word-format

1. To what extent has your country incorporated the new EU Directive on Public Procurement into national legislation?
Work has not started / Work has just begun / We are in the midst of work / Work is about to be completed / Work is completed + Please comment your answer
2. Has the Government issued an inquiry or referral to allow stakeholders to voice their opinion regarding how the EU Directive should be implemented into national law?

Yes / No + Open response

If Yes: Which stakeholders have been consulted? The business community and its organizations / National Authorities / Regional Authorities / Local Authorities / Civil Society / Other groups / Interests / Open response

If No: Is the Government planning to consult relevant stakeholders? Yes / No + Open response

If Yes: Which actors and stakeholders will be consulted?

The business community and its organizations / National Authorities / Regional Authorities / Local Authorities / Civil Society / Other groups / Interests

If No: Why is the Government not planning to consult Local and Regional Authorities? Open response

3. Has the Government asked for your input regarding the legislation and/or its implementation process?

Yes / No / To some extent + Open response

4. In your opinion, have or will Local and Regional Authorities' viewpoints be sufficiently taken into account in the implementation process?

Yes to a high degree / Yes to some degree / Yes, to a small extent / No not at all+ Do not know / Can't judge the question

5. In your opinion, will Local and Regional Authorities' viewpoints be taken into account in the implementation process in other ways than being consulted by the Government?

Yes / No / Open response

6. In your opinion, will the new national public procurement legislation affect the procurement process for Local Authorities?

Yes to a high degree / Yes to some degree / Yes to a small extent / No not at all / Do not know / Can't judge the question

If Yes: Briefly describe one (or more) important ways in which Local Authorities will be affected / Open response

If No: Please comment on why you think that the legislation will not have an impact / Open response

7. In your opinion, will the new national public procurement legislation affect the procurement process for Regional Authorities?

Yes to a high degree / Yes, to some degree / Yes to a small extent / No not at all / Do not know / Can't judge the question

If Yes: Briefly describe one (or more) important ways in which Regional Authorities will be affected / Open response

If No: Please comment on why you think that the legislation will not have an impact / Open response

8. In order to prevent negative impacts on local level, are there specific aspects that need to be taken into account?

Open response + Please describe one such situation that illustrates the reasoning above

9. In order to prevent negative impacts on the regional level, are there specific aspects that need to be taken into account?

Open response + Please describe one such situation that illustrates the reasoning above

Many thanks for your participation!

Annex II: Response rates and methodological remark

The two web-surveys

It has proved very difficult, especially in the context of the study's limited time frame, to obtain a good response rate on the two web surveys. The first dead-line was set to February 16th (central governments) respective February 19th (LRA level). Despite numerous reminders via email and phone calls, by the end of these two dead-lines, only a few responses were received from the Governmental survey – and none at all from the regional and local level. A new and final dead-line (both surveys) had thus to be set: March 13th.

The result of this extension was an improvement, but still not entirely satisfactory. Among the 28 Member States, 14 responses were finally received from official representatives of the central Government, and only 8 (including Scotland) from representatives of the regional and local level.

Survey responses from central Government were received from the following Member states: Germany, Italy, Malta, Slovakia, the United Kingdom (Scotland), Sweden, Denmark, the Netherlands, Ireland, Cyprus, Poland, Lithuania, Latvia and Belgium.

Survey responses were also received from representatives of the local and regional authorities in the United Kingdom (Scotland plus rest of UK), Cyprus, Belgium, Denmark, Ireland, Romania and Sweden.

The interviews

In order to reduce the negative effects of the rather poor response rate and to deepen the knowledge of the LRA's position in the national implementation of the EU procurement Directive, a number of interviews were conducted with people holding inside-knowledge regarding the procurement legislation in the various Member States.

The interviewed experts were loosely chosen according to their availability and the size and constitutional set-up of their respective Member States. The interviews were conducted by telephone and the people surveyed were assured anonymity. The interviewees (and accessible!) persons representing central and regional / local authorities in the following Member States: Ireland, Sweden, UK (Scotland), Belgium (Flemish region), Spain (Basque Country) and Finland (Åland).

Methodological conclusion

Although the response rate on the web-surveys and the follow-up interviews were not the best, the received responses provide a good picture of the state of the transposition process and the role of the LRA in various Member States with regard to different (i) country size (e.g. Germany/Poland vs. Malta/Cyprus), (ii) constitutional set-up (UK/Germany vs. Sweden/Ireland) and (iii) geographical coverage of the EU territory (e.g. Italy – Ireland – Belgium – Denmark – Latvia – Poland – Romania). Thus, the combination of web-answers and phone interviews from a total of 17 representative Member States¹³ secures a reasonable valid empirical underpinning of the results and conclusions presented in this report.

Thus, even though it's difficult to make any meaningful ex post evaluation of the concrete effects of the forthcoming procurement legislation in various Member States, it is quite possible – based on the received web-answers and expert interviews – to assess the current status and future prospects of the national transposition processes across the Union.

¹³ Including interviews with legislative experts in the Basque country (Spain) and Åland Islands (Finland).