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Delegations will find attached document COM(2017) 572 final.

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Making Public Procurement work in and for Europe**

## Introduction

In times of fundamental change for the EU and of a renewed debate about its future direction, it is clear that Europeans deserve and increasingly demand an EU that delivers concrete results. Actions taken at EU level should translate into economic growth and competitiveness, sustainability, solidarity and security. As spelled out by the Investment Plan for Europe,<sup>1</sup> stimulating investment is key to obtain such results by unlocking the creation of more jobs and sustainable growth in the single market.

A substantial part of public investment in our economy is spent through public procurement, representing 14 % of the EU GDP, making it a fundamental element of the investment ecosystem. Public authorities can use this lever in a more strategic manner, to obtain better value for each euro of public money spent and to contribute to a more innovative, sustainable<sup>2</sup>, inclusive and competitive economy. Moreover, improving procurement is part of the stronger single market, called for in the 2017 State of the Union address of President Juncker.

This Communication presents a public procurement strategy which sets out the overall policy framework and defines clear priorities to improve procurement in practice and support investment within the EU. Three concrete initiatives are presented alongside this strategy. The Commission presents a Communication on a mechanism for large infrastructure projects to provide clarity and guidance to public authorities on public procurement. It also proposes a Recommendation to professionalise public buyers because a skilful workforce is essential for effective implementation. In parallel, a targeted consultation is launched on a draft guidance on public procurement of innovation, to support the breakthrough of new and more sustainable solutions for our societies.

### 1. PUBLIC PROCUREMENT MATTERS MORE THAN EVER

**Europeans** expect a fair return on their taxes in the form of **high-quality public services**. Parents would like to see healthy food for their children in schools, city dwellers expect increased investment in smart and sustainable cities for better living with dedicated safe bike paths, squares and playgrounds built with safe and innovative materials; road users expect safe, high-quality infrastructure constructions, patients need improved access to a better quality of healthcare and expect the latest innovation driven medical equipment and diagnostics tools. To ensure the delivery of high-quality public services, a strategic approach to sourcing is needed. This strongly **depends on modern and efficient public procurement processes**.

For **public authorities**, procurement is a **powerful tool for spending public money in an efficient, sustainable and strategic manner**, especially in times of strained national budgets. Representing EUR 2 000 billion every year,<sup>3</sup> better managed procurement can lead to significant savings in public budgets and to more investment. For example, an efficiency gain of 10 % could yield significant savings of EUR 200 billion per year, without cutting the level of service offered to Europeans. Procurement has also a major impact on the EU structural and investment funds, where almost half of these funds are spent via public contracts. Good contracting helps to get the best value for money from these EU funds.

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank: An investment plan for Europe (COM/2014/0903).

<sup>2</sup> Integrating resource-efficiency, energy-efficiency and economic considerations

<sup>3</sup> Estimation of total general government expenditures on works, goods and services, based on Eurostat.

Procurement matters also for **European companies** who benefit from the single market when bidding for public contracts in their own, as well as other EU Member States. Technological acceleration and digitalisation, changing demographics and evermore interconnected markets strongly affect our societies and economies. In a globalised world, the economic integration brought about by the single market remains a key driver for wealth creation and competitiveness, and therefore our best protection.

**Public procurement is a strategic instrument** in each Member State's economic policy toolbox. The 2015 single market strategy<sup>4</sup> made the case for more transparent, efficient and accountable public procurement systems. This requires a shift from a purely administrative approach to a strategically and needs-driven approach, in full compliance with the rules. With roughly 14 % of the EU GDP in expenditure each year, public procurement can contribute to address many of Europe's major challenges, especially in creating sustainable growth and jobs.<sup>5</sup> It can enable investment in the real economy and stimulate demand to increase competitiveness based on innovation and digitalisation, as highlighted in the Industry Communication<sup>6</sup>. It can also support the transition to a resource-efficient, energy-efficient and circular economy<sup>7</sup> and foster sustainable economic development and more equal, inclusive societies.

The **new generation of public procurement directives**,<sup>8</sup> adopted in 2014, provides a framework for procuring in a more flexible way. They simplify public procurement procedures, improving access of SMEs to procurement. The overall objective is to obtain better value for public money, to deliver better outcomes for societal and other public policy objectives while increasing efficiency of public spending. Finally, the directives' stronger provisions on integrity and transparency target corruption and fraud.

Although turning the directives into national law has been slow,<sup>9</sup> this modernised legal framework is now in place in a large majority of Member States. The European semester process<sup>10</sup> however, identified many specific areas where improvements in the national public procurement landscape would contribute decisively to competitiveness and efficiency gains. Also, Member States are not using to their full extent the possibilities of public procurement as a strategic tool to support sustainable, social policy objectives and innovation. **The time is therefore right to focus on the smart application of the new rules in practice.**

With this Communication, the Commission identifies **specific areas where change can make a difference to the way public money is spent** in the Member States, thus tangibly contributing to growth and jobs in the EU. It outlines the Commission's vision of what public procurement in Europe could and should be in the near future. While fully recognising the powers of the Member States and their public authorities, the Commission commits to firmly support a change of the public procurement culture in Member States. This needs strong political ownership at all levels of government and a step change in the way public procurement is carried out. The Commission therefore **calls for a broad partnership** with

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<sup>4</sup> COM(2015) 550 final 'Upgrading the Single Market: more opportunities for people and business'.

<sup>5</sup> [https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan\\_en](https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan_en).

<sup>6</sup> COM(2017) 479 final

<sup>7</sup> See COM/2014/0398 final/2 'Towards a circular economy: A zero waste programme for Europe'.

<sup>8</sup> As part of the 2014 reform, Directive 2014/23/EU (concessions), Directive 2014/24/EU (general) and Directive 2014/25/EU (utilities) were adopted.

<sup>9</sup> Several Member States have not yet transposed at least one of the three directives.

<sup>10</sup> In 2017, seven Member States received Country Specific Recommendations related to public procurement.

and between Member States' authorities at all levels of government and other stakeholders, with clear mutual commitments.

## 2. PROCUREMENT TODAY: CHANGE IS HAPPENING, CHALLENGES REMAIN

**At EU level, several initiatives launched in the past years are starting to bear fruit.** The legal framework in place has helped to improve and integrate further procurement markets of Member States. The creation of a single EU procurement market is a major achievement compared to other regions of the world. Data show that total cross-border procurement (direct and indirect) has increased in recent years, to around 23 %<sup>11</sup> of the total value of procurement in the EU, although there is still room for improvement. As announced in the Communication 'Better governance for the single market'<sup>12</sup> the Commission provided an extensive assistance to the Member States during the process of turning the new directives into national law. In the context of the European Structural and Investment Funds (ESIF), Member States have to meet the preconditions on procurement, which should guarantee that the basic framework conditions for efficient and effective investments co-financed by the funds are in place. Reform processes should continue in the Member States, with the full support of the Commission.

**In several Member States, encouraging steps have been taken** in recent years to radically reform procurement practices or structures. In France, for example, the State Purchasing Directorate was created in March 2016 to define the State's purchasing policy and deliver training to public buyers. In Ireland, a central purchasing body<sup>13</sup> was set up in 2014, with a clear mandate to improve the management of public spending through the extensive use of market and other procurement data. In Italy, an average saving of 23 % was achieved by creating a coordinated system of identifying needs and procedure for cooperative procurement. In the HAPPI<sup>14</sup> project, innovative solutions for healthy aging have been procured jointly by contracting authorities in several Member States.<sup>15</sup> Slovakia has put in place a contract register that gives public access to all contracts concluded by the public authorities in the country, thus improving transparency and allowing for public scrutiny. 40 public authorities from 8 EU countries calculated that the more than 100 tenders launched under the EU funded GPP 2020 project<sup>16</sup>, led to savings of more than 900,000 tons of CO<sub>2</sub> equivalent.

**Change can also happen bottom-up.** The 'Pact of Amsterdam,'<sup>17</sup> a broad partnership agreed in May 2016 among a large number of stakeholders and institutions, including urban authorities, aims at a balanced, sustainable and integrated approach to deal with urban challenges. Procurement is one of the key means to achieve this, including through innovative, green and responsible public procurement. Such examples can inspire others to follow similar paths, taking into account their specificities.

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<sup>11</sup> A recent Commission study showed that direct cross-border procurement accounted for 3.5% of the total value of contracts during 2009-2015. Indirect cross-border procurement (through their foreign subsidiaries) accounted for above 20%. These figures do not take into account the increasing international trade within supply chains.

<sup>12</sup> [http://ec.europa.eu/internal\\_market/strategy/docs/governance/20120608-communication-2012-259-2\\_en.pdf](http://ec.europa.eu/internal_market/strategy/docs/governance/20120608-communication-2012-259-2_en.pdf)

<sup>13</sup> The Office of Government Procurement [ogp.gov.ie/](http://ogp.gov.ie/)

<sup>14</sup> Healthy Ageing Public Procurement of Innovations. <http://www.happi-project.eu/>

<sup>15</sup> More than 20 healthcare organisations from France, Italy, Luxembourg, Belgium or Netherlands purchased HAPPI solutions.

<sup>16</sup> <http://www.gpp2020.eu/home/> GPP 2020 aimed to mainstream low-carbon procurement in Europe in support of the EU's climate goals.

<sup>17</sup> [http://ec.europa.eu/regional\\_policy/sources/policy/themes/urban-development/agenda/pact-of-amsterdam.pdf](http://ec.europa.eu/regional_policy/sources/policy/themes/urban-development/agenda/pact-of-amsterdam.pdf)

However, these positive developments often still remain isolated good practices and need to be embedded in a wider movement, encouraging also others to join and to learn from these experiences. Several indicators show that there is much room for improvement.

**Strategic procurement possibilities are not sufficiently used.** 55 % of procurement procedures still use the lowest price as the only award criterion. The public procurement directives leave public buyers entirely free to opt for purchases based on cost-effectiveness, quality-based criteria<sup>18</sup>. Yet, most economically advantageous tenders on the basis of a cost effectiveness approach which may include social, environmental, innovative, accessibility or other qualitative criteria<sup>19</sup> are still underused.

On the innovation side, analyses show that innovation procurement is hampered by various barriers.<sup>20</sup> One way of improving the situation could consist in a wider use of the innovation partnerships procedure. This tool, whereby market players are invited to bring innovative solutions, has been set-up by the 2014 directives to meet the specificities of innovation procurement, as well as to increase the legal certainty and reduce the innovation inherent risks. To date, 17 innovation partnership procedures have been initiated.

Public procurement relies on open competition to deliver the best value for public money. This **competitive process is either not present or it is losing intensity**. 5 % of public contracts published in TED are awarded after negotiation, without a call for tender being published. Between 2006 and 2016, the number of tenders with only one bid has grown from 17 % to 30 %. The average number of offers per tender fell from five to three in the same period. This shows that companies have more difficulties accessing procurement markets, especially across borders. SMEs win only 45 % of the value of public contracts above EU thresholds, clearly below their weight in the economy.

Often, public procurement is still considered as a mere administrative procedure by which public authorities purchase the basic products, services or works required for their operations. This is exemplified by the fact that **clear and consolidated procurement data are often not available**. There is no EU-wide consensus on which data need to be collected and for what purpose. In many Member States, central authorities are unable to indicate the exact size of public procurement spending in their country, despite the huge amounts of money involved. In such cases, public scrutiny is largely absent, there is no possibility for a data-driven policy-making and even budgetary control is hampered.

In the same way, the **digital transformation of public procurement is slow**. In a 2016 survey, only four Member States rely on digital technologies for all major steps of the procurement process<sup>21</sup>. Member States are not yet using the advent of new technologies as an opportunity to simplify and accelerate their procurement procedures.

**Contracting authorities are rarely buying together**, as only 11 % of procedures are carried out by cooperative procurement. Buying in bulk often leads to better prices and also offers an opportunity to exchange know-how and obtain better quality. Although not all types of

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<sup>18</sup> The 2014 public procurement directives explicitly allow Member States to restrict the use of price or cost alone as award criteria.

<sup>19</sup> which could include also assessment of the external costs, over the full-life cycle of a project

<sup>20</sup> See Study on 'Strategic use of public procurement in promoting green, social and innovation policies' [https://ec.europa.eu/growth/single-market/public-procurement/studies-networks\\_en](https://ec.europa.eu/growth/single-market/public-procurement/studies-networks_en)

<sup>21</sup> E-notification; E-access to tender documents; E-submission; E-evaluation; E-award; E-ordering; E-invoicing; E-payment.

purchases are suitable for aggregation, overall low aggregation rates suggest lost opportunities.

It is argued that **procurement procedures are too complex and suffer from an excessive administrative burden**, even after the major reform and simplification of EU rules undertaken in 2014, mentioned above. There are even more complexities for transnational infrastructure projects which, by their very nature, are not standard as they involve various actions to be implemented in different Member States. The real degree of complexity depends also on how the rules are applied in practice and the extent to which the new tools are used. Procurement can be further streamlined by standardising processes, sharing best practices among authorities and through the professionalisation of public procurement.

### 3. MOVING FORWARD: A BROAD PARTNERSHIP FOR COMMON SUCCESS

To enhance the recognition of the strategic dimension of public procurement and improve public procurement in practice, **there is a need for strong and broad political ownership** at all levels of government. There is a significant potential for improvement if authorities commit to seriously take the issue in their hands. Instead of considering procurement as an administrative obligation, there is much to be gained from a proactive policy approach.

The Commission is, alongside well established legal cooperation and assistance, keen to engage with Member States and stakeholders on the issues they face and where EU-wide actions and support can bring clear added value. In order to carry out the necessary improvements the Commission proposes **a broad collaborative partnership** to move to an effective, transparent, digital, smart public procurement system fully responsive to the challenges of today's changing environment. Each partner will have their role to play, but the commitments should be mutually reinforcing. Several simultaneous and coordinated improvements can yield higher overall benefits than the simple sum of all individual efforts, through the leveraging of multiplier effects.

The partnership could cover the following stakeholders and aspects:

- **National authorities** could enhance the organisation of procurement, by formulating clear national procurement strategies, by ensuring a more efficient coordination at national and regional levels, by providing clear national rules and practical guidelines, exchange good practices, put in place competence support centres and centralised purchasing bodies, increasing transparency and providing speedy, independent, and equitable review procedures.
- **Regional and local authorities** could cooperate more and use aggregated procurement, promote strategic and digital procurement and professionalise their public buyers.
- **The Commission** would commit to work in a collaborative way and further develop a range of support tools, including guidelines and best practices on multiple key areas in order to make procurement as simple and effective as possible. At the same time, it will continue to pursue its enforcement policy and use its discretionary power in a strategic way to focus on the most important breaches of EU law affecting the interests of citizens and businesses.

- **Businesses**, industry and business associations could e.g. encourage higher participation in procurement markets, also beyond their national borders, by drawing up evaluation models for comparing different solutions on an objective basis. Review procedures should be used in a responsible way. Prior market consultations are an important phase to improve procurement expertise and should also involve SMEs.
- **Stakeholders**: There is a growing attention to participatory budget approach across many cities and communities which could enable increased attention to strategic criteria promoted by local groups. Journalists and the public should use the available data to exercise public scrutiny of procurement and to hold public buyers accountable. Scientists and academics have an important role, also by developing analytics and data models.

At EU level, the relevant committees of the **European Parliament** and the **Competitiveness Council** could become a forum for a continued political debate on public procurement in Member States. The partnership could also materialise through voluntary structured dialogues on procurement, which would be, where relevant, fully aligned with the European semester process. These dialogues would be implemented in a collaborative manner between the Commission and Member States. This also allows a differentiated approach, focusing on delivering structural reforms and compliance where necessary and more advanced support for others. Similar processes can also be set-up at national level, involving relevant stakeholders in a genuine collaborative process. As at present 70 % of the EU population is concentrated in urban areas, the urban agenda proposed by the Commission to provide a pan-European platform for multi-layer stakeholder engagement has an important role to play.

Implementing smart public procurement systems which are fit for the 21<sup>st</sup> century requires commitment and determination to modernise, digitalise and professionalise. Clear agreement on how success is to be measured is needed, accompanied by clear milestones and monitoring of progress. Authorities at all levels and stakeholders — given the heterogeneous public procurement systems and the divergent level of maturity and advancement in individual Member States — are best placed to determine the content and level of their commitments.

The Commission is ready to enable such efforts and to foster the exchange of information, knowledge and experience, also at national and regional level. It also commits to a number of supporting actions listed in the Appendix. It is looking forward to a broad policy dialogue, cooperation and collaboration with national and local authorities and other stakeholders for the establishment of voluntary, yet strong commitments. The Commission is also working on improving its own procurement practices to make greater use of strategic criteria<sup>22</sup>.

#### 4. WHAT NEEDS TO IMPROVE — SIX STRATEGIC PRIORITIES

The Commission has identified six priority areas, where clear and concrete action can transform public procurement into a powerful instrument in each Member State's economic policy toolbox, leading to substantial benefits in procurement outcomes.

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<sup>22</sup> In line with the Circular Economy Action Plan, the Commission will lead by example, by making sure that Green Public Procurement (GPP) is used as widely as possible in its own procurement, and by reinforcing the use of GPP in EU funding. For example, efforts are ongoing within the Commission in a number of areas such as the reduction of single-use plastics .



### a. Ensuring wider uptake of strategic public procurement

Strategic public procurement should play a bigger role for central and local governments to respond to societal, environmental and economic objectives, such as the circular economy. Mainstreaming innovative, green, and social criteria<sup>23</sup>, a more extensive use of pre-market consultation or qualitative assessments (MEAT<sup>24</sup>) as well as procurement of innovative solutions at the pre-commercial stage requires not only a highly competent pool of public procurers but above all policy vision and political ownership. Some Member States made MEAT, including green criteria mandatory for their procurement processes. Others could consider setting voluntary targets to monitor the uptake. In any event, to achieve optimum outcomes in public procurement, **strategic criteria need to be applied systematically**. This can be enabled by extensive practical support, such as dissemination of standards, methodologies for benchmarks, regular updates of labels<sup>25</sup> and evaluation criteria and availability of a library of good practice.

For example, for green procurement, the Commission will make a proposal to amend the Clean Vehicles Directive 2009/33/EC<sup>26</sup>, issue an updated version of the ‘GPP Training Toolkit’ and intends to develop instruments for voluntary use to calculate the life-cycle costs for certain products. On social public procurement the existing guidance will be updated. A collaborative approach will be adopted for such update; it will start with a stakeholder consultation to gather suggestions on the scope of the guidance and the issues it should address, including on how to best integrate the demand-side function for social innovation and social entrepreneurship. The proposed European Accessibility Act<sup>27</sup> aims at setting common functional accessibility requirements for disabled and older persons. On innovation, an overview of the enabling policy and implementation framework and guidance on innovation-friendly public procurement procedures is under preparation.

While the wider uptake of strategic procurement is a priority, the Commission acknowledges that in many Member States there are still shortcomings in the proper functioning of the public procurement system. The Commission will continue to provide support and guidance to achieve fully operational public procurement systems in those countries, before engaging further into mainstreaming green, social and innovative criteria.

**A targeted approach is needed for priority sectors**, such as construction, healthcare and the IT sector, because of their leverage effect, specificities and particular challenges, including the rapid technological and market evolution. The Commission initiative for a voluntary *ex-ante* assessment mechanism for large infrastructure projects<sup>28</sup> can be seen in this context. There are already initiatives and instruments such as promoting value-based healthcare procurement, building information modelling<sup>29</sup> and life-cycle thinking approaches to support procurement of sustainable public buildings<sup>30</sup> or the European catalogue of ICT standards for public procurement, to improve interoperability and avoid vendor lock-in.

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<sup>23</sup> which should also include the obligation of accessibility for persons with disabilities

<sup>24</sup> Most economically advantageous tender which allows for giving more prominence to quality.

<sup>25</sup> Such as Ecolabels, energy or fair trade labels.

<sup>26</sup> as announced in the Commission Work Programme 2017

<sup>27</sup> COM/2015/0615 final

<sup>28</sup> Accompanying this Communication

<sup>29</sup> Building Information Modelling is a digital form of construction and asset operations. The European Commission has co-funded the production of a handbook for the Introduction of BIM in public procurement (see <http://www.eubim.eu/handbook/>).

<sup>30</sup> Such as LEVEL(s): <http://ec.europa.eu/environment/eussd/buildings.htm>

Alongside these, the defence and security sectors need to be specifically targeted, including cybersecurity<sup>31</sup>. Work is already well advanced in the context of the European defence action plan. The focus of the action plan is on the effective implementation of the Defence Procurement Directive, with the view to provide opportunities to European companies irrespective of their size and location. This implies:

- providing guidance on certain aspects of the Directive;
- establishing periodic reports (scoreboards) on the application by Member States;
- discussing with Member States on enforcement; and
- promoting initiatives to improve cross-border market access for SMEs and sub-suppliers (recommendation to Member States and engagement with industry).

## **b. Professionalising public buyers**

People with the right skill-set are needed to drive the change. The low level of professionalisation of public buyers<sup>32</sup> is a systemic problem in many Member States. Improving procurement skills at all stages of the procurement process, including e-skills, is of vital importance. The changing culture and the increased use of strategic public procurement require a wider use of flexible practices, knowledge of markets and innovative tools. The public sector needs to put in place a comprehensive strategy to counteract risk aversion and to attract, train and develop talent and skills across the public procurement landscape.

Member States are at different stages in their journey towards professionalisation but it is important that all commit to that journey. Sharing experiences will enable them to improve their procurement practice and will increase the impact and reputation of procurement in delivering public policy objectives. **Long-term professionalisation strategies at national level are essential** to have the right people with the right skills and tools in the right place at the right time to deliver the best outcomes.

The Commission commits to assist Member States in their efforts in devising and implementing such strategies through a Recommendation on Professionalisation adopted with this Communication, setting up a European competence framework, establishing an E-competence centre for information knowledge and the sharing of good practice and via targeted assistance for capacity building and training offered by country related support instruments available across different Commission programmes.<sup>33</sup>

## **c. Improving access to procurement markets**

SMEs are key for job creation, growth and innovation, but they have difficulties finding access to procurement, both within the EU and in international markets. Currently, SMEs win 45 % of the aggregate contract value above EU thresholds — directly or as joint bidders or subcontractors. The 2014 directives include measures<sup>34</sup> that should **facilitate the access of companies including SMEs to public procurement, also cross-border**. These enhanced procurement opportunities for SMEs need to be communicated more vigorously to the general

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<sup>31</sup> As set out in the recent Cybersecurity Strategy - JOIN(2017) 450 final

<sup>32</sup> According to a study (Bandiera, Prat, Valletti, 2008), the lack of professional procurement skills is an even more important problem than corruption: 83% of the resources wasted in public purchasing are due to the lack of professionalisation and incentives and only 17% due to corruption.

<sup>33</sup> For example SRSS, TAIEX\_REGIO Peer 2 Peer programme under ERDF and CF funds.

<sup>34</sup> Measures to improve SMEs' access to public procurement markets include an encouragement to divide contracts into lots, a limit to the turnover required to participate in a tender procedure and a reduction in documentation requirements.

public, companies and contracting authorities. This is particularly important in view of promoting more cross-border procurement. The aim is to increase the SME share of public procurement in line with their overall weight in the economy. The Commission has also initiated specific actions to facilitate access to procurement for SMEs, such as projects funded by the COSME Programme. Moreover, specifically in the defence sector, actions have been launched to facilitate cross-border market access for SMEs as presented in the European defence action plan<sup>35</sup>.

Another way to improve access is to build trust among market players, including SMEs, to participate in procurement procedures. This can be done by offering fair, efficient possibilities for **problem solving and an independent review of procurement decisions**. The remedies directives<sup>36</sup> have been recently evaluated<sup>37</sup> and a network of first instance review bodies has been set-up in March 2017. The Commission will continue to monitor the situation in this area, provide guidance and actively promote cooperation and exchanges of best practice between Member States, including review and appeal bodies, to improve the efficiency and quality of the review systems across the EU.

The EU is the world's most open market for procurement, but **access for our companies in other countries is not always reciprocal**. Major EU trade partners maintain discriminatory measures affecting EU businesses by granting preferential treatment to national bidders.<sup>38</sup> The Commission's reflection paper on harnessing globalisation stressed that restoring a level-playing field is more than ever necessary and called for a rapid adoption of an international procurement instrument<sup>39</sup>. This would increase the European Union's leverage in its negotiations with trade partners. There is an urgent need to unlock the current stalemate in the Council with regard to this instrument.

The Commission will continue to lead efforts to promote access to procurement markets, helping EU companies to sell abroad. In this context, the Commission encourages non-EU countries to join the WTO Agreement on Government Procurement and strives to conclude ambitious procurement chapters in the free trade agreements. These aim to ensure that EU businesses have a legal right to participate in tenders in third countries, including accession and partner countries of the EU's neighbourhood policy, on an equal footing with domestic companies.

The Commission also promotes a favourable regulatory environment in non-EU countries<sup>40</sup> by promoting the development of global and convergent standards in procurement.

#### **d. Increasing transparency, integrity and better data**

Reliable data are essential to prepare appropriate policy responses. The digital transformation, the growing wealth of data in general and the availability of open data standards offer opportunities to create better analytics for needs-driven policy-making and warning systems to signal and tackle corruption<sup>41</sup> in public procurement. **Better and more accessible data on**

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<sup>35</sup> COM(2016)950

<sup>36</sup> Directive 92/13/EEC and Directive 89/665/EEC, as amended by Directive 2007/66/EC

<sup>37</sup> COM/2017/028 final.

<sup>38</sup> Such as the policies 'Buy American', 'Make in India' or 'Buy Chinese'.

<sup>39</sup> COM(2016) 34 final.

<sup>40</sup> Regulatory and policy dialogues and cooperation programmes will be developed in procurement markets such as India, Brazil and China.

<sup>41</sup> As reflected in some Country Specific Recommendations in the European Semester process.

**procurement should be made available**<sup>42</sup> as it opens a wide range of opportunities to assess better the performance of procurement policies, optimise the interaction between public procurement systems and shape future strategic decisions. Electronic procurement systems must produce good quality data, but — even more importantly — policy makers must use these data and share them with other interested parties. They also provide a means to detect irregularities. At EU level, the Commission will propose new e-forms<sup>43</sup> to improve the collection of data.

Access to public procurement data should enable the dialogue with civil society and holds governments more accountable. Public authorities are thus better equipped to fight fraud and corruption.<sup>44</sup> To this end, **setting up publically accessible contract registers**<sup>45</sup> is **strongly recommended**, providing transparency on awarded contracts and their amendments.

Enabling the reporting of corruption by **setting up effective reporting mechanisms and protecting whistleblowers against retaliation** can also contribute to improving the transparency of public procurement and saving public money.<sup>46</sup> The Commission is currently assessing the need, legal feasibility and scope for horizontal or further sectorial action at EU level for strengthening the protection of whistleblowers.

The procurement directives offer ample opportunities to move towards corruption-free, fully transparent public procurement procedures, i.e. by introducing mandatory e-Procurement by 2018 and by strengthening the provisions on conflicts of interest<sup>47</sup> or the extension of exclusion grounds in respect of bidders. Awareness of these possibilities needs to be raised at all levels of government.

Collusion is a recurring feature in some public procurement markets. It may add up to 20 % to the price otherwise paid in competitive markets.<sup>48</sup> Competition authorities have been entrusted with investigation and enforcement powers to punish collusive practices but only when collusion is suspected to have already occurred. The Commission will therefore develop tools and initiatives addressing this issue and raising awareness to minimise the risks of collusive behaviours on procurement markets. This will include actions to improve the market knowledge of contracting authorities, support to contracting authorities careful planning and design of procurement processes and better cooperation and exchange of information between public procurement and competition authorities. The Commission will also prepare guidelines on the application of the new EU procurement directives on exclusion grounds on collusion.

#### **e. Boosting the digital transformation of procurement**

New digital technologies offer great opportunities to streamline and simplify the procurement

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<sup>42</sup> While respecting the fundamental rights, and in particular the right to protect personal data, to the extent applicable

<sup>43</sup> e-Forms is an initiative announced in the Single Market Strategy to revise the standard forms used for public procurement procedures.

<sup>44</sup> According to the Commission's 2014 Anti-Corruption Report, corruption costs EU society around EUR 120 billion per year. According to a 2013 study (PWC and Ecorys for the European Commission), the overall direct costs of corruption in public procurement in only five sectors (road and rail, water and waste, urban/utility construction, training, and research and development) and in only eight EU countries ranged from EUR 1.4 billion to 2.2 billion.

<sup>45</sup> To the extent that such register will contain personal data, it shall comply with the requirements of the data protection legislation.

<sup>46</sup> According to the 2017 study 'Estimating the economic benefits of whistleblower protection in public procurement' (Milieu Ltd, prepared for the European Commission), the potential benefits of effective whistleblower protection for the EU as a whole in the area of public procurement are in the range of EUR 5.8 to 9.6 billion each year.

<sup>47</sup> Minimum standards in the definition of conflicts of interests and the obligation of EU countries to take appropriate measures to detect, prevent and tackle conflicts of interests.

<sup>48</sup> See Anderson and Kovacic, 'Competition Policy and International Trade Liberalisation: Essential Complements to Ensure Good Performance in Public Procurement Markets', PPLR, 18 (2009): 67.

process through the roll-out of electronic public procurement. The procurement directives provide that the electronic submission of tenders will be mandatory by October 2018. However, the full benefits of e-procurement will only be captured if the **whole public procurement process undergoes digital transformation**. This includes many phases, from planning, notification and submission to invoicing, payment and archiving.

New technologies provide the possibility to rethink fundamentally the way public procurement, and relevant parts of public administrations, are organised. There is a unique chance to reshape the relevant systems and achieve a digital transformation.

The Commission will further improve and promote the tools and standards<sup>49</sup> it has developed to enable this digital transformation of procurement at national level, as well as implement tools in complementary areas, such as the Single Digital Gateway<sup>50</sup> and the European services e-card.<sup>51</sup> It will continue supporting Member States on a bilateral basis by identifying areas of concern in the digital transformation of public procurement. This includes issues with the interoperability of solutions or definitions<sup>52</sup>, setting up of appropriate policy architectures, skills and rallying the stakeholders needed for implementing the reforms in an efficient way.

#### **f. Cooperating to procure together**

The aggregation of public purchasing has started to take hold across the EU.<sup>53</sup> As aggregators central purchasing bodies (CPBs) manage increasing shares of public procurement markets. They are becoming important players in promoting public procurement reform, including the implementation of a strategic approach. They create the possibility to increase the leverage of public purchasers, which is indispensable in certain markets dominated by a small number of market operators. Depending on the situation, CPBs can be set-up with a general mandate at national level, target specific sectors (such as health, IT) or specialise in regional/municipal procurement.

The large procurement volumes of CPBs could be used to leverage strategic procurement, e.g. by setting procurement targets. Their role in the standardisation of public procurement processes and market insight also represents a key element for the professionalisation of public administrations and it enables SME-friendly procedures. The aggregation of knowledge and expertise creates spill-over effects, as CPBs often provide support and consulting services for other contracting authorities.

There is also much to be gained from a stronger cooperation among contracting authorities<sup>54</sup>. Joint cross-border procurement, where contracting authorities from different countries jointly organise their procurement procedures, is greatly facilitated by the new EU rules. Several recent examples demonstrate the feasibility of such partnerships. Also, the procurement of large infrastructure projects that are crossing national borders requires strong cooperation

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<sup>49</sup> Such as eCertis, the European Single Procurement Document (ESPD), the European Standard for eInvoicing.

<sup>50</sup> COM(2017)256

<sup>51</sup> A proposal (COM 2016 (823) and COM 2016 (824)), adopted by the Commission in January 2017 and currently being discussed by the European Parliament and Council, introducing an harmonised EU-level procedure for cross-border expansion of construction and business services in the internal market which includes the approval of economic operators entered into the official lists referred to in Article 64 of Directive 2014/24/EU.

<sup>52</sup> benefiting from existing interoperability solutions commonly agreed at EU level such as eIdentity, eSignature, eDelivery, eInvoicing

<sup>53</sup> Demand aggregation refers to contracting authorities or others operating through Central Purchasing Bodies (CPBs) which act as wholesalers or intermediaries.

<sup>54</sup> For example, the joint procurement of clean vehicles for public transport by multiple local authorities.

among procuring entities and the ability to speak a common ‘language’. In certain areas, notably the infrastructure projects on the Trans-European Transport Network, a deeper analysis of the roots of limited cross-border procurement will be undertaken and specific measures may be considered<sup>55</sup>.

In this context, the Commission will further raise awareness and promote good practice for joint cross-border procurement.

## 5. CONCLUSION

Public authorities are, in general, striving to create a fairer society based on equal opportunity, sustainable economic growth and wide market participation, while providing for sustainable public finances. Public procurement will remain a crucial instrument of policy delivery. Given its magnitude in public spending, it can empower governments to achieve key policy outcomes, if used as a strategic tool.

A smart use of public procurement can help tackling global challenges such as climate change and resource scarcity or the ageing society. It supports social policies and accelerates the transition to more sustainable supply-chains and business models. It can improve competitiveness and enable SMEs’ access to procurement opportunities. Transparent and professional public buyers will be able to spend efficiently and to fight corruption.

Several Member States have already started to develop a strategic approach to procurement policies, complemented by promising local initiatives. More can be achieved through working together and drawing inspiration from each other. The Commission is keen to play an enabling role in this transformation process towards modern, innovative and sustainable procurement systems fit for the 21<sup>st</sup> century, driven by an inclusive and committed EU partnership for smart public procurement.

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<sup>55</sup> See on-going public consultation for *Streamlining the implementation of the Trans-European Transport Network (TEN-T)*: [https://ec.europa.eu/transport/themes/infrastructure/consultations/2017-ten-t-implementation\\_en](https://ec.europa.eu/transport/themes/infrastructure/consultations/2017-ten-t-implementation_en)

## **APPENDIX — Overview of EU procurement implementation initiatives by end 2018**

This Communication calls for a broad partnership to improve the functioning of public procurement practice in the EU. The Commission invites Member States, other authorities and public procurement stakeholders to commit to voluntary, yet concrete actions in this regard. For its part, **the Commission indicates its commitment to deliver between now and the end of 2018 on the following specific actions:**

### **1. Ensuring wider uptake of strategic public procurement**

- Establish a voluntary *ex-ante* assessment mechanism for large infrastructure projects;
- Update guidance on green and social procurement and provide guidance on innovation procurement and;
- Exchange good practices regarding strategic procurement, including key sectors (construction, healthcare, IT).

### **2. Professionalising public buyers**

- Adopt a recommendation on the professionalisation of public buyers;
- Develop a European competence framework for public procurement with the essential skills and competences procurers need;
- Create an e-competence centre, as a central information portal and an e-library of good practice on procurement; and
- Establish an EU-wide network of National Innovation Procurement Centres.

### **3. Improving access to procurement markets**

- Further improve access to non-EU procurement markets through trade agreements;
- Strengthen the remedies system by further networking of first instance review bodies and guidance notices on remedies; and
- Launch pilots to boost SME participation via business intermediaries and innovation brokers.

### **4. Increasing transparency, integrity and better data**

- Issue new procurement standard forms to improve the collection of data;
- Promote the establishment of publicly accessible contract registers; and
- Provide guidelines on practical application of new integrity provisions and on exclusion grounds relating to collusion, and set-up a database on irregularities.

### **5. Boosting the digital transformation of procurement**

- Extend the scope of the e-Certis tool and further improve IT systems; and
- Support the implementation of the European Single Procurement Document, the 'once-only principle and electronic invoicing in the Member States.

### **6. Cooperating to procure together**

- Promote joint cross-border public procurement, including innovation by large buyers;
- Launch a pilot training on 'SME-friendly policies in Central Purchasing Bodies'.