



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Single Market for Public Administrations
Innovative and E-Procurement

Commission Implementing Regulation establishing standard forms for the publication of notices in the field of public procurement ("eForms") – explanatory note for the Advisory Committee on Public Contracts

1. Introduction

The Commission proposes a major update to the public procurement standard forms. This update aims to significantly improve the usefulness of data on European procurement for all users: companies, governments and citizens. The Implementing Regulation on eForms¹ will replace the [Implementing Regulation 2015/1986](#).

Given the technical complexity of the file, eForms have been based on extensive stakeholder consultation. Through multiple rounds of feedback undertaken over several years, this has allowed designing eForms in a way that will make them a strong tool for better public procurement around the EU.

The [first consultation](#) on eForms took place from Nov. 2016 to Jan. 2017 and the Commission discussed its results with the EU countries' experts in the Economic and Statistical Working Group (ESWG) on 8 April 2017. The [second consultation](#) took place from June to October 2018 and the outcome was discussed at a joint meeting of the ESGW and the Commission Government Experts Group on Public Procurement (EXPP) on 10th Dec. 2018.

In the second consultation, more than 200 issues and 500 comments were raised and exchanged via [GitHub](#), an innovatively used online forum. Six webinars were held. More than 30 people, coming mainly from national administrations and covering more than half of EU countries, contributed and raised over 200 issues, which resulted in approximately 100 changes in the proposal.

The third consultation, a [public feedback on the Better Regulation Portal](#), took place between 11th February 2019 and 15th March 2019. The main item for consultation was the draft Implementing Regulation, including its Annex. The proposal following the consultation was discussed with the Advisory Committee on Public Contracts on 6th May 2019, where Member States made additional comments.

During the last round of consultation, the Commission received 14 submissions on the Better Regulation Portal, 87 issues were open on GitHub and 9 submissions came via email. The [list of all issues submitted via GitHub](#) as well as a [list of all issues that resulted in a change of the proposal](#) are available online. Overall, these comments resulted to more than 100 changes in the proposal.

¹ Commission Implementing Regulation establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 2015/1986

2. Policy context

eForms are one of the actions in the Communication on Making Public Procurement work for and in Europe and the Communication on Upgrading the Single Market. In the latter, the European Commission has committed to "*facilitate the collection, consolidation, management and analysis of procurement data, supporting Member States' efforts towards better governance in public procurement [because] governance of procurement systems needs to be improved to ensure efficiency, transparency and integrity.*"²

3. Purpose

The main purpose of the new eForms is to meet the needs of a diverse set of stakeholders involved in the publication and use of procurement data, while complying with the applicable provisions of the directives. Overall, these needs can be grouped into three goals: improving access to business opportunities for companies (esp. SMEs), good governance of public spending, and low costs of publishing (incl. low administrative burden). These reflect the procurement directives' core principles of equal treatment, non-discrimination, transparency, proportionality, and competition.

Concretely, eForms will bring many improvements large and small, such as:

- Improving the accuracy of information by defining the meaning of each field.
- Simplifying the forms by removing unnecessary differences and confusing concepts.
- Making forms more user-friendly and understandable by giving Member States the freedom to use the field labels that work in their national contexts.
- Simplifying the legal framework: from 22 types of forms to just 6, from 150 pages of legislation to 30.
- Lowering administrative burden by improving consistency and removing duplication with other standards and tools such as the ESPD.
- Giving more freedom to buyers by allowing them to specify more information (e.g. selection criteria) at the level of lots instead of the level of notices.
- Helping improve governance by including a limited number of policy relevant fields (e.g. on green, social, and innovative procurement).
- Balancing transparency and competition by adding the option to, in justified cases, mark fields in contract award notices as not intended for publication.
- Supporting the (voluntary) publication of below-threshold notices in the TED format by including fields relevant for below-threshold procurement.
- Simplifying the forms by updating the process for publishing corrections of notices.
- Enabling better identification of business opportunities in the EU by introducing an EU wide procurement procedure identifier.

² <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2015%3A550%3AFIN>, p. 13, p.59 (shortened)

4. Support measures

One of the important goals of the new Implementing Regulation is to give more freedom and flexibility to Member States, e-procurement systems and buyers in how they get the most benefits from the standard forms. However, this does not mean that Member States will be left alone with more implementation work. The Commission will provide various support tools to help Member States with implementation.

In particular:

- The Commission will prepare guidance on implementing the standard forms and will maintain a collaborative platform for the exchange of best practices and discussion of issues.
- Member States will have access to models (including labels) used in the TED and eNotices applications (in all languages), which they can reuse and build on in their own form filling and notice displaying tools.
- Member States will have access to a new version of the eNotices application, currently under preparation by the Publications Office. The Publications Office will provide the forms and a series of services (APIs) that 3rd parties can re-use and integrate in their applications; this will make the development of their own applications faster and easier.
- The Commission will propose funds for the implementation of eForms in the Connecting Europe Facility 2019 and 2020 work programs. (The final allocation of money is approved by Member States in the Telecom Configuration of the CEF Coordination Committee).
- The Publications Office and the European Commission will provide technical support (e.g. mapping between current forms and future forms; test environments).

5. Future updates

In the future, after the adoption of this regulation, the Implementing Regulation on standard forms should be amended more often than in the past (e.g. every one or two years instead of every four³). However, these changes should consist of minor "bug-fixing" changes, not major reforms. This more agile approach is appropriate for an IT environment, which eForms are unavoidably part of, and will avoid the current situation where problems often go unsolved for years. Such an approach also corresponds well with the flexibility given by the advisory procedure, an administratively light procedure, which is used for adopting the act.

It is worth emphasizing that, currently, besides infrequent legal changes, there are also twice-per-year technical changes which are done to the IT implementation of the standard forms. This process is led by the Publications Office of the EU, in cooperation with the national e-senders. Aligning the processes of legal and technical changes more closely will lead to higher quality of both. Both of these processes will also be part of a broader governance framework, building on the Publications Office's current work with eSenders, which will ensure that needs and problems are accurately and rapidly collected and resolved.

Besides allowing technical improvement to the standard forms, this responsive approach to legislation will also allow Member States to innovate in the area of data while respecting the Directives' provision that "Notices published at national level shall not contain information other than that contained in the notices dispatched to the Publications Office of the European Union."⁴ Specifically, Member States will be able to add fields at national level, because these will then be added (as optional) also at the EU level⁵. Thus, equal treatment for companies will be ensured while Member States will be able to innovate for the sake of competition and transparency.

The fact that such fields will be optional at EU level means that for other Member States, their addition into the Implementing Regulation will not imply additional costs, as nothing will need to be changed in their software systems.

³ The current update is planned for July 2019. In the past, the implementing regulation has been updated in November 2015, August 2011, and September 2005.

⁴ Article 52(2) of Directive 2014/24/EU, Article 72(2) of Directive 2014/25/EU and Article 32(5) of Directive 2009/81/EC. The Article may cause legal uncertainty in particular depending on the interpretation of "notice" (e.g. what information from national contract registers may be seen as a notice) and whether this Article is read literally or teleologically (e.g. whether it should apply only to information which could plausibly lead to unequal competition).

⁵ This approach replaces the "extensions" approach discussed in the first rounds of the eForms consultation.

Annex I – Submitting feedback via GitHub

[GitHub](#), the online forum used in the previous rounds of consultation, may continue be used for asking questions concerning eForms during the procedure with the Advisory Committee on Public Contracts. Unless other conditions are met, the responses of the Commission will be considered as clarifications with no impact on the proposal.

Member of the Advisory Committee on Public Contracts shall send the official opinions on the draft act by email.

However, in their email, they may list GitHub issues/comments. In that case (and only in that case) will these issues be considered as part of an official opinion on the draft standard forms and taken into account in the advisory procedure.

Using GitHub

GitHub is a particularly useful tool for this complex project, because it allows discussing issues one by one, enables exchanges between all participants, and helps keep track of different topics easily and transparently.

1. Go to github.com/eForms/eForms, click "Sign up" and follow the instructions. For easier communication, we suggest using your name and surname as "Username".
2. Again at github.com/eForms/eForms, you can download the consultation documents in the bottom left. In the top right, you can choose your email notification settings.
3. If you would like to comment (e.g. to suggest a change), click "Issues". There, you can open new issues by clicking on "New issue". Also, you can comment on issues already opened by others by scrolling or searching.

The 2nd consultation on eForms, the update to the EU's procurement standard forms. Scroll down for more information.

20 commits 1 branch 0 releases 1 contributor

Branch: master New pull request Find file Clone or download

eForms Update README.md Latest commit b8f64ad 16 hours ago

- 20180604_eForms_consultation.xls Add files via upload 17 hours ago
- 20180604_eForms_consultation_introduction.docx Add files via upload a day ago
- README.md Update README.md 16 hours ago

README.md

eForms consultation

Welcome to the 2nd consultation on eForms, the update to the European Union's procurement standard forms.

- Here is the consultation introductory note. Section 6 explains in detail how to use GitHub.
- Here is the main spreadsheet (the draft annex to the future implementing regulation).

How to name your issue?

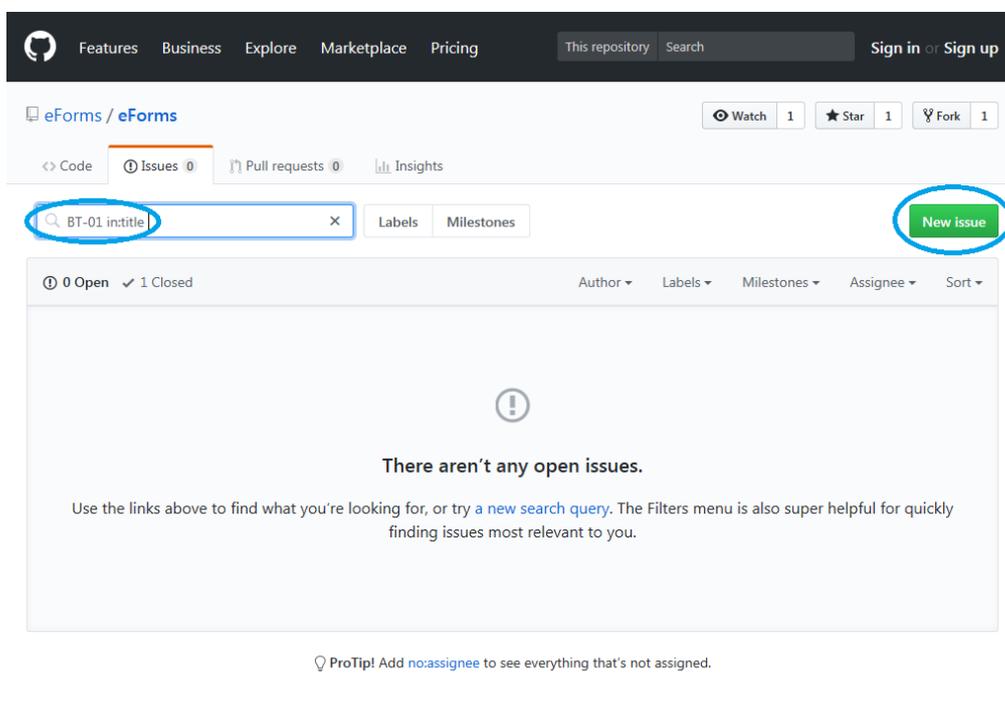
To ensure readability, the title of each issue must clearly identify the topic of the issue. In particular, this means including in the title the following information.

1. ID (the first column of the spreadsheet concerning the Annex or Rules) and Name (for the Annex or codelist) to be discussed, e.g. "BT-01 (Legal Basis);"
2. Name of the column to be discussed (e.g. "Description," or "PIN only D81;")
3. Short summary of the issue (e.g. "Typo", "Inconsistent with other BTs", "rename")
4. Document being commented (if other than the Annex):
 - [ACT]
 - [CODELIST]
 - [RULE]

For example, a title could be "BT-01 (Legal Basis); Description; Typo" or "Activity Authority; defence listed twice; [CODELIST]" or "BR-33; Description; wrong business term identifier; [RULE]."

If your issue does not fit the instructions above (e.g. because it is more general), just follow them as far as possible.

Before opening a new issue, look whether someone else has not opened it already. You can do this, for example, by writing the ID number in the search bar (if you specify "in:title", your search will be more accurate). For example, if you wanted to search for the issue mentioned in the box above, you would search for "BT-01 in:title".



(To ensure the consultation is easy to read, please note we may format the submitted issues.)

Annex II – New policy fields

This Annex provides an overview of new policy fields proposed for eForms. Following the feedback from stakeholders on the Better Regulation Portal, the Commission will include fields in the Implementing Regulation as optional. The main reason for including such fields as optional is that in the digital age, optional fields do not imply any costs for countries that do not use them. Furthermore, as explained in section 5, above, notices at national level cannot contain more information than notices on TED and the Commission does not want to “block” national developments.

Below, we offer certain considerations that Member States should keep in mind when, in the future, they will choose whether to set fields as mandatory at national level. In particular, this should be based on a careful comparison of the fields’ **costs** and **benefits**.

General Considerations on Costs and Benefits

- Costs and benefits of collecting information largely fall on different entities. The costs are largely concentrated. Overwhelmingly, they are born by buyers (who fill in notices) and e-procurement providers (who provide the technical infrastructure). Furthermore, ministries responsible for public procurement deal with “administrative” costs of receiving complaints from buyers and e-procurement providers if something goes wrong, the forms are too long, etc.

On the contrary, benefits are dispersed – good information about procurement could be considered a “public good”. Beneficiaries include companies, other buyers and any others re-users of the data such as business intelligence companies, citizens, NGOs, academics⁶, etc. Moreover, besides public procurement ministries who can better take care of national procurement, they also include sectoral ministries responsible for particular topics (e.g. green procurement, trade).

To balance correctly the costs and benefits, the Commission recommends having inclusive discussions at national level, where **all the relevant stakeholders are around the table** and agree on the overall priorities.

- If all Member States collect certain data, it becomes more useful for everyone. For example, benefits can come from benchmarking (e.g. on green procurement) or from ensuring that home companies have access to certain information from abroad (e.g. on electronic signatures). Furthermore, many procurement procedures are paid for by EU funds, the efficient spending of which is a matter of interest for all EU countries.
- Buyers spend months of work on preparing procurement documents, evaluating bids, etc. Significant sums are involved (€144,000 for the lowest threshold). By contrast, filling in a form takes around 20 minutes. In this context, the cost of filling an additional field may be considered as limited. On the other hand, experience shows that as the number of fields increases, the quality of information goes down. In other words, a reasonable balance needs to be maintained.
- As more and more fields are automatically filled in thanks to the progressing digitalisation of procurement and a new generation form-filling systems, the overall burden on buyers in this area is likely to significantly decrease. Not all fields require the same effort to fill in. Most fields can be filled in automatically - some cannot.

⁶ In fact, [Tenders Electronic Daily data](#) is the most popular dataset on the EU Open Data portal.

- There are alternatives to collecting policy-relevant information through standard forms. For example, there can be surveys within e-procurement systems. Their main advantage is flexibility – questions can be changed regardless of procurement law. Their main disadvantage is that to bring the same quality of information as standard forms, they need to duplicate a large portion of the standard forms existing “infrastructure”. In particular, if their results are to be comparable across EU countries, they need a forum where shared descriptions are agreed; if they are to be easily accessible, they need to be included in e-procurement systems; if they are to be mandatory for buyers, they need appropriate regulation (esp. to be included in private e-procurement systems).

In the table below, we list new policy fields suggested for eForms by the Commission as mandatory. We include their name and description (the remaining information are available in the Regulation’s Annex) as well as considerations about their costs and benefits. The fields are listed in the same order as in the Annex (i.e. not in the order of importance).

Policy fields I (general)

Name	Description	Considerations
<p><i>Winner Owner Nationality (BT-706)</i></p>	<p>”The nationality (or nationalities) of the beneficiary owner(s) of the winner(s), as published in the register(s) established by anti-money laundering legislation. If such a register does not exist (e.g. in case of non-EU contractors) then equivalent information from other sources. ”</p>	<p>Structured information on who controls the suppliers of EU governments would improve the:</p> <ul style="list-style-type: none"> • negotiation of EU’s trade agreements; • security of the EU, e.g. in the context of the dependency on third country owned suppliers of IT infrastructure, or on suppliers potentially covered by economic sanctions; • understanding of the benefits that the public procurement single market brings to individual Member States. <p>The cost of submitting this information should be small, because the information will be freely publicly available (by 2020) under the latest Anti-Money Laundering Directive⁷ and thus can be prefilled automatically.</p>
<p><i>Winner Listed (BT-746)</i></p>	<p>”The nationality (or nationalities) of the beneficiary owner(s) of the winner(s) is not published in the register(s) established by anti-money laundering legislation, because the winner is listed on a regulated market (e.g. a stock exchange) that ensures adequate transparency in line with anti-money laundering legislation.” <i>(Response: yes/no)</i></p>	<p>This field would cover the cases not catered for by the field above.</p>

⁷ Buyers should use these registries regardless of the field on winner nationality, as they are useful as a reference point to comply with the Directives’ provisions on exclusion grounds, in particular the last paragraph of Art. 57 of Directive 2014/24/EU.

<i>Received Participation Requests (BT-152)</i>	”Number of requests to participate received. All requests to participate received must be counted, regardless of whether they are admissible or inadmissible. ”	<p>This field would enable comparing the impacts of single and multiple-stage procedures (in particular open and restricted) on competition. More appropriate use of these procedures could significantly help solve procurement’s competition problems.</p> <p>The costs of submitting this information should be minimal, because electronic submission is mandatory and the number of requests to participate can be automatically prefilled from eSubmission modules.</p>
<i>Received Tenders SME (BT-148)</i>	”Number of tenders received from small and medium enterprises (SMEs). [...]”	These fields on received tenders are already mandatory for most types of notices. We suggest adding them for the light regime.
<i>Received Tenders EU (BT-147)</i>	”Number of tenders received from tenderers registered in other European Economic Area countries. [...]”	This would enable evaluating the impacts of the Directives on this market, esp. to understand cross-border interest.
<i>Received Tenders Non EU (BT-723)</i>	”Number of tenders received from tenderers registered in countries outside of the European Economic Area. [...]”	The costs of submitting this information should be minimal, because electronic submission is mandatory and these fields can be automatically prefilled from eSubmission modules.
<i>Received Tenders Inadmissible (BT-741)</i>	”Number of tenders received that were found inadmissible. A tender is found inadmissible where it has been verified that it has been submitted by a tenderer who has been excluded or who did not meet the selection criteria, or when it is not in conformity with the technical specifications, or is irregular (e.g. it was received late, having an abnormally low price or cost), unacceptable or unsuitable.”	<p>Inadmissible tenders represent wasted time and opportunities – of companies and buyers. Consequently, this information would help identify low professionalism and address it. Furthermore, inadmissible tenders may indicate collusion⁸.</p> <p>The costs of submitting this information should be small, because it is just one (already collected) number. Furthermore, the information can automatically come from e-evaluation modules.</p>

⁸ See e.g. OECD, “Detecting bid rigging in public procurement” (point 6), URL: <http://www.oecd.org/competition/cartels/42594486.pdf>

<i>Received Tenders Unverified (BT-742)</i>	”Number of tenders received for which it has not been verified if they are admissible or inadmissible (e.g. because award criteria have been evaluated for all tenders and admissibility is checked only for the winning tender).”	This field would cover the cases not catered for by the field above.
<i>Review Requests (BT-712)</i>	”Number of tenderers that requested the buyer to review the award decision.”	<p>This field measures the use of Art. 1(5) of Directives 89/665/EEC and 92/13/EEC (“the review Directives”).</p> <p>Complaints indicate potential problems with professionalism, can explain slow procurement procedures, and can help evaluate the costs for buyers stemming from the need to respond to such requests.</p> <p>The costs of submitting this information should be small, because it is just one (already collected) number.</p>
<i>Strategic procurement (BT-06)</i>	“A technical specification, award criterion, or contract performance condition aims to reduce the environmental impacts of the procurement, fulfil social objectives and/or buy an innovative work, supply or service. “	This field would bring basic information on so-called green, social and innovative procurement. It relies on self-evaluation by buyers and does not provide a more detailed definition because no EU-wide definitions are currently available.
<i>Accessibility (BT-754)</i>	“The use of accessibility criteria for persons with disabilities in the technical specifications.”	<p>Art. 42(1) of Directive 2014/24/EU obliges buyers to include accessibility considerations in technical specifications, unless duly justified.</p> <p>This field would help monitor the extent to which duly justified exceptions are being used. This is particularly relevant in the context of the recently adopted European Accessibility Act.</p>

Justifications

A particular type of policy fields are justifications. In many cases, the Directive sets out special cases that require justifications, but it does not specify where these justifications should be included. Since justifications should be made in writing (e.g. for audit purposes) and their preparation takes the same effort regardless of where they are published, it seems the most reasonable to include justifications in the notices, because they contribute to the transparency of procurement also vis-à-vis citizens. Furthermore, several of the justifications below are codes and can consequently be analysed to understand, for example, what are the most common reasons for not publishing information about awarded contracts.

Policy fields II (justifications)

Name	Description	Considerations
<i>Award Criteria Order Justification (BT-733)</i>	“Justification for only indicating the award criteria's order of importance, not their weighing.”	<p>According to Rec. 90 (last paragraph) of Directive 2014/24/EU, instead of indicating the weighing of award criteria, buyers should be permitted “in duly justified cases for which they must be able to give reasons” to indicate the order of importance.</p> <p>Anecdotally, this provision seems to be used extremely rarely. This field would bring more transparency to the use of this provision and help prevents its misuse.</p> <p>Given the minimal use of this provision, the costs linked to filling this field should be minimal.</p>
<i>Documents Restricted Justification (BT-707)</i>	“The justification for restricting access to certain procurement documents.” <i>(codelist only)</i>	This field would bring more transparency to the use of the provision on restricting access to procurement documents and help prevent its misuse.
<i>Submission Nonelectronic Justification (BT-19)</i>	“Justification for electronic submission of tenders not being possible.” <i>(codelist only)</i>	This field would bring more transparency to the use of the provision on restricting access to procurement documents and help prevent its misuse.

<i>Unpublished Justification Code (BT-197)</i>	“Justification for not immediately publishing a field. “ (<i>codelist only</i>)	The mechanism for not publishing fields is based on Art. 50(4) of Directive 2014/24/EU.
<i>Unpublished Justification Description (BT-196)</i>	“Justification for not immediately publishing a field and for the choice of a later date at which it can be published. “	<p>This provision was not reflected in Implementing Regulation 2015/1986, i.e. it was not possible to mark fields as unpublished. Furthermore, we are aware that the interpretation of this provision has been very different in the past. For example, while many countries never use this provision, in other countries it was used to not publish the value of notices in up to 80% of procedures.</p> <p>Consequently, we believe transparency on how this provision is used is necessary. This will allow the development of a more harmonized approach as well as avoid its misuse.</p>
<i>Accessibility Justification (BT-755)</i>	“Justification for not including accessibility criteria even though the procurement is intended for use by natural persons.”	Art. 42(1) of Directive 2014/24/EU does not provide any guidance on what is a duly justified case.

Codelists

Some policy purposes are also covered by new codes.

Policy fields III (new codes)

Name	Description	Considerations
<p><i>Micro, small, medium, large codes</i></p> <p><i>in the codelist for</i></p> <p><i>Winner Size (BT-165)</i></p>	<p><i>“The size of the winner (e.g. micro enterprise, small enterprise, medium enterprise).”</i></p> <ul style="list-style-type: none"> • <i>Micro</i> • <i>Small</i> • <i>Medium</i> • <i>Large</i> 	<p>Currently, information is collected at the general SME level (covering, for example, companies with 5 employees as well as companies with 205 employees). Information that is more granular would allow catering to the different needs of the different types of SMEs.</p> <p>The costs of submitting this information should be small. The information should be automatically prefilled from data in national or regional business registries. Alternatively, it can be submitted by the company itself (e.g. as part of the ESPD) to the buyer, who then (automatically or manually) puts it in the notice.</p>

<p><i>Procurement Service Provider code</i></p> <p><i>in the codelist for</i></p> <p><i>Organisation Role (BT-08)</i></p>	<p><i>Art. 2(17) of Dir. 2014/24/EU:</i></p> <p><i>‘procurement service provider’ means a public or private body which offers ancillary purchasing activities on the market;</i></p> <p><i>Art. 2(15) of Dir. 2014/24/EU:</i></p> <p><i>‘ancillary purchasing activities’ means activities consisting in the provision of support to purchasing activities, in particular in the following forms:</i></p> <p><i>(a) technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services;</i></p> <p><i>(b) advice on the conduct or design of public procurement procedures;</i></p> <p><i>(c) preparation and management of procurement procedures on behalf and for the account of the contracting authority concerned;</i></p>	<p>Procurement service providers (PSP) help buyers procure. Besides central purchasing bodies, procurement service providers are often consulting companies specialized in procurement, law, EU funds or a particular sector (construction, IT, etc.)</p> <p>This field would fill an important information gap on the extent to what procurement is done and influenced by other organisations than the buyer. For example, in some countries, practitioners estimate that up to 50% of procurement procedures are actually done/influenced by private consultancies and law firms. Unfortunately, there is no data to confirm or verify such claims - even though this could have significant implications for policy makers. For example:</p> <ul style="list-style-type: none"> • From a professionalisation point of view, if external organisations often play a role, then training individual buyers may be less important. On the other hand, perhaps there should be certifications, reviews, or ratings for PSPs. • If PSPs seldom play a role, perhaps there is space for improving professionalisation through better support from (private or public) procurement expert centres. <p>Where external organisations often play a role, it might also be worth paying more attention to the prevention of conflict of interest (as mentioned in 2014/24/EU Art. 24, paragraph 2).</p>
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