

# Procurement Monitoring Report Template

## In view of the Member States' reporting process under the Directives 2014/23/EU, 2014/24/EU and 2014/25/EU

Fields marked with \* are mandatory.

### I. Information about reporting authority

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[EUSurvey Privacy Statement-2020.pdf](#)

\* Country

Belgium

\* Name of National Authority

Chancellery of the Prime Minister of Belgium,

\* Name of Unit/Department

Public procurement unit

\* E-mail address

16\_procurements@premier.fed.be

Name of contact person (not published)

E-mail address of contact person (not published)

## II. The public procurement framework

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### 1. Legal framework

- \* Please indicate links to the main legal instrument implementing the public procurement Directives and its main amendments that occurred during the current reporting period.

*5000 character(s) maximum*

Please list the links in the text box below. You can link multiple links.

#### A. Classical and utilities sectors:

- The law of 17 June 2016 on public contracts
- The Royal Decree of 18 April 2017 on the award of public contracts in the classical sectors
- The Royal Decree of 18 June 2017 on the award of public contracts in the utilities sectors
- Royal Decree of 14 January 2013 establishing the general rules for the performance of public contracts

#### B. Information and review procedures :

- The Law of 17 June 2013 on the grounds, information and review procedures relating to public contracts, certain works, supply and service contracts and concessions

#### C. Concessions :

- Law of 17 June 2016 on concession contracts
- The Royal Decree of 25 June 2017 on the award and general rules for the execution of concession contracts

#### D. Defence and security

- The Law of 13 August 2011 on public contracts and certain contracts for works, supplies and services in the fields of defence and security
- The Royal Decree of 23 January 2012 on the award of public contracts and certain works, supply and service contracts in the fields of defence and security

#### E. This legislation is available via the following link:

<https://bosa.belgium.be/fr/themes/marches-publics/reglementation/lois-et-arretes-marches-publics>

#### F. Main amendments that occurred during the current reporting period :

The Act of 8 February 2023 "amending the Act of 17 June 2016 on public contracts and the Act of 17 June 2016 on concession contracts, with regard to governance" introduced various measures to improve data collection and monitoring. This amendment enables authorities to monitor the participation of SMEs in public contracts in greater detail. The act generalises the use of electronic platforms for submitting tenders. The former exception whereby the use of those platforms was not obligatory for contracts below the European thresholds awarded by negotiated procedure without prior publication has been repealed with effect from 1 September 2023. The law and his implementing decree of 13 August 2023 have also generalised the use of contract award notices. More specifically, contracting authorities also need to publish a (simplified) contract award notice for contracts below the European thresholds. This increases transparency for those procedures. For subsequent contracts based on a framework agreement and low-value contracts, an annual reporting system has been introduced so that, in time, data will also be made available on this subject.

The Royal Decree of 4 September 2023 amending the Royal Decree of 14 January 2013 establishing the general rules for the performance of public contracts introduced changes to the rules on deposits in the context of public contracts. Systematically imposing a deposit is likely to hinder the participation of SMEs in public contracts. This is why the possibility has been created for contracting authorities to no longer require a deposit in cases where it is not necessary in the light of the risk of non-performance. Under the amended system, the provision of a deposit is still required in principle, but the contracting authority may simply decide to waive this requirement. These amendments came into force on 1 November 2023.

Finally, the Act of 22 December 2023, published in the Moniteur belge on 8 January 2024, aims to introduce a number of measures to facilitate access for SMEs. First of all, this act made it compulsory, in certain cases, to grant advance payments to SMEs in increasing percentages according to the size of the company. In this area, obligations have been laid down for the public contracts of the State, Regions, local authorities and contracting authorities whose activities are mainly financed by them and whose management is subject to their control. Furthermore, in certain cases, the granting of a bidding fee has been imposed in cases where tenderers, at the request of the contracting authority, are required to add drawings or samples in the bidding phase. Finally, once the "opening report" has been drawn up by the contracting authority, it will be ensured that, in certain cases, companies taking part in public contracts already receive information on their individual position in the provisional ranking, for certain contracts below EU thresholds. The aim is to enable them to better assess their chances of being awarded the contract.

## **2. Procurement institutional framework**

Please provide key bodies and institutions regarding public procurement matters, in charge of:

Body of normative regulatory function (including transposition) and policy development	FPS Chancellery of the Prime The federal level is competent
Bodies responsible for monitoring and reporting	The FPS Chancellery of the F acts as a point of reference for been created by law to assist mentioned Committee and m. - FPS Policy and Support, - FPS Economy, SMEs, Midd - l'Institut fédéral pour le déve - The Interfederal Corps of th - Service fédéral d'audit interr - Social Information and Inves - Flemish Government, - Walloon Government, - Government of the Brussels - Government of the German
Review bodies	Council of State, Courts and
Bodies responsible for the e-procurement and the functioning of the public procurement web portal	FPS Policy and Support
Centralised procurement bodies	Several central purchasing bodies For the federal level : FORCMS <a href="https://bosa.belgium.be/nl/the/deelname-aan">https://bosa.belgium.be/nl/the/deelname-aan</a>  For the Regions : Flemish Region : <a href="https://www.vlaanderen.be/he">https://www.vlaanderen.be/he</a> For the Brussels Capital Region <a href="https://be.brussels/fr/propos-c">https://be.brussels/fr/propos-c</a> ET: <a href="https://be.brussels/fr/propos-c">https://be.brussels/fr/propos-c</a>
Competence centres	
Other bodies	Court of Audit, Belgian Competition fédérale, the federal Ombuds

### III. Key quantitative indicators on public procurement

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#### 1. The total number of awarded contracts

Total number of contracts awarded **above** EU thresholds (in a yearly breakdown)

	2021	2022	2023
Number	6811	6680	6743

\* Please describe the methodology on collection of data and/on the source (in case of a database(s)) of data collected:

*5000 character(s) maximum*

Official data from the FPS Policy and Support (taken from e-procurement) were used to collect the data.

Total number of contracts awarded **below** EU thresholds (in a yearly breakdown)

	2021	2022	2023
Number	unknown	unknown	unknown



\* Please describe the methodology on collection of data (in case of assessment based on a sample) and/on the source (in case of a database(s)) of data collected:

*5000 character(s) maximum*

/

**2. The total value of procurement**

Total value of contracts awarded **above** EU thresholds (in a yearly breakdown)

	2021	2022	2023
Value (in EUR million)	23 839 606 960.06 €	11 540 761 762.88 €	17 895 391 214.71 €

\* Please describe the methodology on collection of data and/on the source (in case of a database(s)) of data collected:

*5000 character(s) maximum*

Official data from the FPS Policy and Support (taken from e-procurement) were used to collect the data.

Total value of contracts awarded **below** EU thresholds (in a yearly breakdown)

	2021	2022	2023
Value (in EUR million)	6.063.573.747 €	5.819.505.835 €	6.222.689.568 €

\* Please describe the methodology on collection of data (in case of assessment based on a sample) and/on the source (in case of a database(s)) of data collected:

*5000 character(s) maximum*

The law of 17 June 2016 stipulates that contracting authorities must send the FPS Chancellery of the Prime Minister the total value of contracts below the European thresholds by 15 March 2017 at the latest and every three years thereafter. The information must be sent using an electronic form. The total value of these contracts must be broken down according to whether they are for works, supplies or services. The Prime Minister decided to remind contracting authorities of this legal obligation by publishing the notice of 5 February 2024 in the Belgian official journal (Moniteur belge) relating to the transmission of statistical data for public contracts below the European thresholds. The publication of this notice was also highlighted on the <https://bosa.belgium.be> website. The FPS Chancellery of the Prime Minister could receive 1361 responses. The information gathered concerned the contract award values below the European thresholds (excluding VAT), including negotiated procedures without prior publication, but excluding very low-value contracts that can be concluded simply by accepting an invoice (below 30.000 €). If a framework agreement is used, only the total value when the framework agreement is awarded was taken into account. In other words, the value of the various contracts based on the framework agreement wasn't taken into account in order to avoid double counting. Further information on the information gathered by the SPF Chancellery of the Prime Minister is available in the above-mentioned notice. A summary verification of the abnormal amounts was carried out by the FPS Chancellery of the Prime Minister.

## IV. Sources of wrong application or of legal uncertainty (including possible structural or recurring problems)

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### 1. Preparation and launch of a public procurement procedure:

Which are the main sources of wrong application (or aspects with which legal uncertainty is related)?

In case your answer to question 2, 7, 8 or 9 is yes, additional options will appear.

- 1. Preliminary market consultation
- 2. Estimation of contract value (if yes, please specify below)
- 3. Wrongful setting of deadlines
- 4. Inappropriate selection criteria (too restrictive, tailor made for a particular economic operator, not related to subject matter of contract)
- 5. Discriminatory technical requirements
- 6. Conflict of interest
- 7. Procedures without publication (if yes, please specify below)
- 8. Inappropriate use of specific procedures (if yes, please specify below)
- 9. Other issues (if yes, please specify below)

### 2. Estimation of contract value:

- Underestimation of contract value to avoid application of EU public procurement rules
- Artificial splitting of the contract (including no aggregation of value of similar contracts)

### 7. Procedures without publication wrongly justified by:

- Reference to unsuccessful previous procedure
- Lack of alternative solution

- Extreme urgency
- Other reasons

8. Inappropriate use of specific procedures:

- Competitive procedure with negotiations
- Competitive dialogue
- Innovation partnership
- Electronic auctions
- Dynamic purchasing systems

9. Other issues, please specify:

*5000 character(s) maximum*

Technical conditions do not always allow to receive (appropriate) bids

Flanders:

- Misjudgement of the definition of a public contract itself, one does not qualify a certain agreement as a public contract but erroneously as a grant, cooperation agreement, etc... If the contract is examined more closely, in certain cases we come to the conclusion that the operation should be regarded as a public procurement contract.
- Misapplication and lack of clarity on estimation rules rather than deliberate splitting.

The fact that the terms on the publication platform in German are sometimes not the same as those used in French and the non-existence of user manuals in German lead to cases of wrong application.

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with 'enter'.

Prior verification by the Inspectorate of Finance (according to the royal decree of 20/5/2022 on administrative, budgetary and management control)

For the federal level:

- prior market consultations, correct and adequate planning of purchases, correct expression of needs. As part of the federal purchasing policy, particularly with a view to stimulating SME access and making quality purchases, market prospection is given priority. It enables buyers to gain a better understanding of the market, its structure and how it operates. To this end, the FPS BOSA has published a practical information sheet explaining how and why to do market consultations. In the context of centralised federal purchasing (Royal Decree 21/07/2023), the central purchasing body must carry out a market consultation.

Brussels-Capital Region :

- Make the procurement documents as simple and clear as possible - allow regularisation (if legally possible) - Education;
- Grouped contracts and framework agreements;
- Collaboration with the Agency's legal department or even external lawyers, ask for advice from the Price Observatory;

- Systematize market consultation, guide contract managers to remove obstacles and extend it to the 3 aspects of technical description/budget/price determination. Draw up annual plans in which the milestones in the awarding of a contract are set out + prepare a calendar for the management bodies to better anticipate aspects related to the planning ;
- The problems of justification mainly concern the correct legal formulation of the reasons for the decision. We have put in place a model for the reasoned award decision, in order to limit omissions and ensure that the legal grounds are correctly formulated;
- We are trying to better define our needs upstream, in particular through prior consultation with the market sector concerned, organised in compliance with the law of 17 June 2016;
- Drafting the technical requirements in a way that is better calibrated to the type of contract (example: providing for more options) and with a view to encouraging the receipt of (appropriate and acceptable) bids.

#### Wallonia:

Article 162, al. 2, 6° of the Constitution, establishes the supervision of local authorities by giving the supervisory authority and the federal legislative power the power to monitor provincial and municipal institutions to ensure that their decisions comply with the law (control of legality) or the general interest (control of appropriateness). Each year, the SPW issues the "Tutelle report"

<https://interieur.wallonie.be/sites>

[/default/files/2023-10/Rapport%20tutelle%202022%20VF.pdf](https://interieur.wallonie.be/sites/default/files/2023-10/Rapport%20tutelle%202022%20VF.pdf)

in which the following considerations are made:

- Problems with the time taken to receive tenders in the event of site visits ;
- Problems relating to the division into lots ;
- Discrepancy(ies) between the decisions setting out the terms of the contract, the contract notice and the technical specifications ;
- No requirement for qualitative selection ;
- Use of ESPD when the EU threshold for publication isn't reached (not allowed in Belgium) ;
- Price review not provided for ;
- Problem with price review in relation to price increases ;
- Problems linked to subcontracting chains ;
- Maximum order value for framework agreements ;
- Problems calculating the advertising period ;
- Peculiarities in the verification of tax and social security debts ;
- Reasons for the waiver of deposits that are not acceptable ;
- Problems concerning the period within which the deposit must be lodged ;
- Control of unit prices ;
- Incomplete justification for the award criteria ratings ;
- Confusion between regularity and award criteria.

#### Flemish government :

A variety of information is made available to share knowledge about public procurement regulations and to make it as applicable as possible by offering various tools. Explanations of public procurement regulations are provided, model documents are made available, training courses are provided, e-learnings are available, and there are various forms of knowledge sharing and workshops. In addition, a wide range of framework contracts are open to entities inside and outside the Flemish government. All relevant information can be found on the following website:

<https://www.vlaanderen.be/het-facilitair-bedrijf-overheidsopdrachten-en-raamcontracten>

For the entities of the Flemish Government itself, there is the possibility of requesting advice and support. Through carrying out various types of audit assignments, Audit Flanders is regularly active in the field of public procurement. Audit Flanders is an agency that works independently of the Flemish Government. It is competent for both the audit of the Flemish administration and the audit of local administrations (municipalities, Public Centres for Social Welfare, provinces). It carries out financial,

compliance and operational audits and also forensic audits.

## 2. Evaluation of tenders and contract award:

Which are the main sources of wrong application (or aspects with which legal uncertainty is related)?

In case your answer to question 8 is yes, additional options will appear.

- 1. Unlawful exclusion of tenderers/rejection of offers
- 2. Non compliance with mandatory exclusion grounds
- 3. Unlawful exclusion of third country bidders covered by GPA or by other international agreement
- 4. Incorrect evaluation of award criteria
- 5. Incorrect application of rules related to abnormally low tender
- 6. Lack of publication of contract award notice
- 7. Unlawful modification of the tender conditions before conclusion of the contract
- 8. Other reason (if yes, please specify below)

## 8. Other reasons, please specify:

*5000 character(s) maximum*

- Incomplete record-keeping
- Problems in the justification of the award decision
- Inadequate negotiation/no bid improvement requested
- unfairly refuse to reject a bid
- the absence of certain exclusion grounds (mandatory or optional) is very difficult to verify in practice
- failure to apply own specifications during the entire procedure
- being confronted with unclear/contradictory own specifications during the examination of the bids
- lack of clarity as to what may or may not still be requested from missing documents from the bid during the examination of the bids
- incorrect verification of the authority that should sign
- incorrect or insufficient justification of certain aspects in the award report, including the evaluation of the award criteria against the bids

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with 'enter'.



Prior verification by the Inspectorate of Finance (according to the royal decree of 20/5/2022 on administrative, budgetary and management control)

As far as the Brussels-Capital Region is concerned :

- Collaboration with the Price Observatory
- Systematic publication of European public procurement procedures once awarded/unawarded if the final decision on these contracts is taken.

On the Walloon public procurement portal, you can find a number of thematic sheets:

- Price verification guide

[https://marchespublics.wallonie.be/files/Guide%20v%c3%a9rification%20des%20prix%20des%20march%c3%a9s%20publics%20-%20V12\\_20181206.pdf](https://marchespublics.wallonie.be/files/Guide%20v%c3%a9rification%20des%20prix%20des%20march%c3%a9s%20publics%20-%20V12_20181206.pdf)

- Thematic sheet on award criteria

<https://marchespublics.wallonie.be/files/Les%20crit%c3%a8res%20d'attribution.pdf>

The Department of Mobility and Public Works in Flanders has an application that provides support for the (price) examination of tenders. This application, which is based on a price database compiled from historical tender prices, makes it possible to carry out a detailed price investigation of tenders and more easily identify (presumably) abnormal tender prices (this information was also mentioned in the 2021 monitoring report).

See also the answer to question IV.1 "best practices"

### 3. Contract implementation:

Which are the main sources of wrong application (or aspects with which legal uncertainty is related)?

In case your answer to question 2, or 3 is yes, additional options will appear at the end of STAGE 3 to provide further details.

- 1. Illegal contract modifications
- 2. Wrong application of procurement instruments (if yes, please specify below)
- 3. Other reasons (if yes, please specify below)

2. Wrong application of procurement instruments related to:

- Award of specific contracts under framework agreement
- Use of electronic catalogues

3. Other reasons, please specify:

*5000 character(s) maximum*

- failure to apply penalties/fines (correctly)
- late approval of progress reports in public works contracts
- letting unauthorised persons take decisions in the execution of a public contract
- insufficient knowledge of the applicable legislation (for the execution phase)/interpretation of the rules regarding contract modification

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with enter.

Prior verification by the Inspectorate of Finance (according to the royal decree of 20/5/2022 on administrative, budgetary and management control)

See also the answer to question IV.1 "best practices"

As far as the Brussels-Capital Region is concerned :

- Raising awareness among in-house staff
- Training (for instance training of in-house staff on the contract changes that are allowed according to the procurement documents)
- Checking and adapting the delegation of powers
- Use of early feasibility studies
- Strict supervision of contract modifications

#### 4. Problems that may originate at different stages:

Which are the main sources of wrong application (or aspects with which legal uncertainty is related)?

In case your answer to question 4 is yes, additional options will appear.

- 1. Wrong application of centralised or joint procurement
- 2. Failure to comply with legal deadlines (prescribed by EU or national law)
- 3. Biased prior involvement of candidates or tenderers
- 4. Other issues (if yes, please specify below)

4. Other issues, please specify:

*5000 character(s) maximum*

The complexity of the legislation and grey areas giving rise to interpretation issues.

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with enter.

Prior verification by the Inspectorate of Finance (according to the royal decree of 20/5/2022 on administrative, budgetary and management control)

Federal level : The federal procurement policy aims to procure as many federal purchases as possible jointly. The procurement model devised for this purpose seeks to encourage cooperation between federal government departments, through a strategic consultative body. The new procurement model became official with the Royal Decree of 21 July 2023.

The federal procurement model rests on three pillars:

- 1° a strong federal procurement consultation that identifies, coordinates and decides on the common needs of the different federal entities
- 2° centralisation and professionalisation of procurement within the federal public services.
- 3° the Procurement Service Centre that provides support to the federal public services throughout the entire

procurement process (legal support, tools & applications, operational support in the common procurement process, etc.).

The federal procurement model has the following objectives: obtaining efficiency gains through homogenisation and standardisation of the federal common procurement process, implementing an efficient cooperation model that reduces the labour force required (efficiency gains), increasing the participation rate for Small and Medium Enterprises (SMEs) in the public procurement market, promoting sustainability of public service and supply procurement in.

As far as the Brussels-Capital Region is concerned :

- promote the use of feasibility studies ;
- Frame the use of market consultations and give clear instructions on what is authorized and what is not (market consultations are carried out in the above mentioned region by procurement managers/project leaders);
- Before drawing up the special specifications, carefully identify the needs and willingness to join of the various regional institutions, which will then be put on the list of potential beneficiaries of the central purchasing body. This enables bidders to make better offers if they can hope that as many of the institutions on the list as possible will then call on the central purchasing body once the framework agreement has been awarded.

- The "tutelle report" from Wallonia:

(<https://interieur.wallonie.be/sites/default/files/2023-10/Rapport%20tutelle%202022%20VF.pdf> ) gives a number of considerations to the remarks made by local authorities in the practice of public procurement:

- Advertising deadlines

Flanders:

Within the Department of Mobility and Public Works in Flanders, the EPM environment has been used since 2023 for the start-up of new public contracts to keep the entire file digitally. All documents are thus merged per dossier on one environment, from start-up to end of execution. In this way, the entire administrative file is bundled.

## 5. Which are the specific legal provisions of EU public procurement law that raise problems?

Directive 2014/23/EU ('Concessions Directive')

Directive 2014/24/EU ('Classical Directive')

Directive 2014/25/EU ('Utilities Directive')

Directive 2007/66/EC ('Remedies Directive')

Please list the articles of the Directives and describe the issue you face (e.g., unclear, too strict/vague, meets contradictory interpretations or practices):

*5000 character(s) maximum*

Several grey areas have been mentioned in the previous monitoring reports. It seems that many elements listed in the previous reports are still relevant. The previous monitoring reports can be consulted with the following link :

<https://bosa.belgium.be/fr/themes/marches-publics/monitoring/rapports-de-controle>

For instance, the following aspect were mentioned in the 2021 report :

- Unclear rules in the event of a serious crisis (if a direct award is authorized or not)
- Very complicated verification of the absence of grounds for exclusion on the part of members of the administrative or supervisory bodies of the economic operator

- Verification of the absence of grounds for exclusion is sometimes far from easy in the case of urgent procurement
- Unclear rules regarding the publication of procurement documents in multi-stage procedures can cause problems and delay
- Lack of definition of the concept of "competitive contract" in the context of public-public cooperation
- Methods to calculate the estimated contract value
- Confusion regarding certain cases of collateral in-house control
- Competitive procedure with negotiation - uncertainty regarding article 26.4, b, de la directive 2014/24/UE
- The difference between irregular or unacceptable tenders and inappropriate tenders
- Questions related to 72.1.b of directive 2014/24/UE

...

(for more information, see the monitoring report of 2021)

As far as the Brussels-Capital Region is concerned and with regard to the ESPD and means of proof:

- failure to submit the ESPD invalidates the tender, which in our view is too strict
  - in the context of the review of the absence of grounds for exclusion, problems arise as the means of proof vary from one member state to another and extracts from criminal records, for example, may be different. The fact that other languages are used than the official languages in Belgium also renders this verification more complicated
  - the complexity of the need to check proof documents written in another language.
- > There is therefore a need for centralisation at European level...

As far as Flanders is concerned (in the following comments, reference is made to directive 2014/24/EU):

- Article 5: Methods for calculating the estimated value of a contract:

2. Where a contracting authority consists of separate operational units, the estimated total value of those units shall be considered.

Notwithstanding the first subparagraph, where a separate operational unit is independently responsible for its procurement or certain categories thereof, values may be estimated at the level of each operational unit.

> It is not always clear how far these provisions extend in practice. In certain cases, an entity will produce internal delegation rules which, in practice, give one's own decision-making power as part of an entity regarding the award and/or execution of a public contract. In addition, these expenditures are also often based on their own budget lines. In this view, one can very quickly satisfy the condition that one is considered responsible for one's own procurement as part of the entity.

7. In the case of public works contracts, the calculation of the estimated value takes into account the value of the works, as well as the estimated total value of the goods and services necessary for the performance of the work made available to the contractor by the contracting authority.

> It is not always clear to what extent services needed, for example, for the preparation of the works should be included when preparing the estimate for the work itself. An example is whether architectural services should also be included when determining the estimate for the final construction project.

- Article 63: Reliance on carrying capacity:

1. This article indicates that, as a company, one can rely on the carrying capacity of other entities to meet certain selection criteria. One thereby indicates the further modalities that apply if carrying capacity is invoked. The last paragraph of Article 63, 1 provides that a combination may invoke the carrying capacity of the participants in the combination (or of other entities) under the same conditions.

> It is unclear what exactly is meant by this last provision, as in principle it is not necessary for entrepreneurs within a consortium to rely on each other's carrying capacity, given that they form a combination together.

## 6. Which are the patterns and behaviours that do not stem from wrong application or of legal uncertainty, but indicate possible problems in the application of public procurement rules?

In case your answer to any of these questions is yes, additional options will appear below to provide further details.

- 1. Preference for lowest price as award criteria negatively affective quality of the purchase (if yes, please specify below)
- 2. Frequent use of derogatory procedures (if yes, please specify justifications used for derogatory procedures)
- 3. Frequent use of shortest possible deadlines (if yes, please specify below)
- 4. Recurrent award of contracts to the same economic operator
- 5. Recurrent award of contracts to third country economic operators not covered by GPA or by other international agreement (if yes, please specify justification below)
- 6. Contract awarded in suspected situation of unfair competition (if yes, please see below)
- 7. Low use of green requirements or award criteria (if yes, please provide us with further explanation below)
- 8. Low use of social requirements or award criteria (if yes, please provide us with further explanation below)
- 9. Low use of procurement of innovation (if yes, please provide us with further explanation below)
- 10. Lack of monitoring of implementation of contract (if yes, please specify below)
- 11. Other issues (if yes, please specify below)

### 1. Preference for lowest price as award criteria negatively affective quality of the purchase, caused by:

- Lack of professionalisation
- Lack of resources
- Budgetary constraints
- Purchase of commonly used or off-the-shelf products, works or services

### 2. Frequent use of derogatory procedures, please specify:

*5000 character(s) maximum*

Competitive procedure with negotiation: the conditions are quite generally formulated and leave room for interpretation. Contracting authorities might be inclined to use this procedure to be able to negotiate with the bidders (also above EU threshold).

Negotiated procedures: are more flexible and shorten the procedure for contracting authorities.

According to one member in the committee, the frequent use of derogatory procedures is mainly related to wrongly using the exception of monopoly

### 3. Frequent use of shortest possible deadlines due to:

- Lack of mid-term/long-term planning
- Situation of unexpected urgency
- Other justifications

### 7. Low use of green requirements or award criteria, caused by:

- Lack of governance
- Lack of professionalisation
- Lack of legal certainty
- Higher prices
- Lack of available offers on the market

Other reasons

8. Low use of social requirements or award criteria, caused by:

- Lack of governance
- Lack of professionalisation
- Lack of legal certainty
- Higher prices
- Lack of available offers on the market
- Other reasons

9. Low use of procurement of innovation, caused by:

- Lack of governance
- Lack of professionalisation
- Lack of legal certainty
- Higher prices
- Lack of available offers on the market
- Other reasons

10. Lack of monitoring of implementation of contract due to:

- Lack of resources
- Lack of professionalisation
- Other reasons

11. Other issues, please name and explain the issues identified:

*5000 character(s) maximum*

- contracting authorities do not always sufficiently implement the economic or strategic aspect of a procurement  
/public contract in the contract documents or lack knowledge about it  
- purchasers do not always succeed in making the rules, that are complex on certain aspects, applicable in practice

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with enter.

Prior verification by the Inspectorate of Finance for the federal level :

Brussels-Capital Region :

The digitalisation allows for an easier tracking of the orders

Monitoring and training;

Provide more resources to implement the requirements and systematically pool best practice at European level;

Carry out a thorough analysis of the subject of the contract and, depending on the subject, analyse whether it is appropriate to include a social clause.

Wallonia:

As part of Wallonia's Recovery Plan, the Walloon Government approved the Walloon Strategy for Responsible Public Procurement on 1 June 2023, as a lever for recovery and the transition to sustainable development, which aims to deploy a comprehensive and unifying approach to public procurement. One of the Strategy's 4 strategic objectives is to professionalise public procurement

<https://marchespublics.wallonie.be/news/adoption-de-la-strategie-de-la-commande-publique-responsable>

Flanders :

<https://www.vlaanderen.be/het-facilitair-bedrijf-overheidsopdrachten-en-raamcontracten/duurzame-en-innovatieve-overheidsopdrachten>

(a) Innovative public procurement:

In Flanders, the Innovative Public Procurement Programme (PIO) is running. Project proposals with sufficient relevance and potential innovation impact can count on guidance and co-financing in this programme. PIO helps the Flemish government and the Flemish public sector - through public procurement to have innovative solutions developed, tested and validated. These are solutions for public needs for which there are no ready-made solutions on the market. PIO looks for these solutions together with enterprises, knowledge and research centres. PIO is open to all themes and sectors. In total, PIO has an annual budget of EUR 3.7 million that is made available to support and co-finance these projects. In the period 2021-2023, 33 new projects were selected. The PIO portfolio built up since 2016 now exceeds 100 selected projects. An evaluation was carried out in 2022. Based on the results of the evaluation, it was decided to continue the programme as a regular instrument.

(b) Socially responsible public procurement:

A public procurement manual that provides for sustainability considerations in public procurement. A number of product groups are specified explaining which sustainability criteria can be included. Standard clauses are also made available. These clauses focus mainly on social responsibility in the broad sense. A guide against social dumping is also available, showing in concrete terms the possibilities offered by public procurement regulations to combat social dumping in certain sectors susceptible to fraud.

"Vlaanderen circulair" offers a website on circular procurement (good examples, inspiration and tools on circular procurement) :

<https://aankopen.vlaanderen-circulair.be/nl>

Since 2022, the Flemish government and the Dutch central government have been working together to develop, update and publish criteria for socially responsible public procurement, the "MVOO criteria tool". The CO2 performance ladder is a tool that can be used in public procurement to encourage CO2 reductions in the construction sector. Through this tool, contracting authorities can help reduce CO2 emissions. It is a certifiable management system that encourages companies to reduce CO2 both structurally, within their operations and in projects and in the supply chain. The Flemish and Walloon governments tested the tool. The pilot phase showed that using the tool leads to significant CO2 reductions. A wider roll-out will take place.

Sustainability information on public procurement is monitored in the eDelta contract management system in Flanders. Contracting authorities have to specify elements on the sustainability content of their public contracts in this system. Findings for the period 2020 - 2023 :

- o 882 out of a total of 5148 contracts were classified as environmentally sustainable. These contracts represent an estimated value of €3.75 billion, representing 40% of the total estimated value of all registered contracts.

- o 4179 of the total 5148 registered contracts contained a non-discrimination clause.

- o 329 out of a total of 5148 registered contracts contain a clause around ethical production.

- Participation in various initiatives around making public procurement more sustainable, such as the Circular and Fair ICT Pact, the Procura+ network, TruStone and Electronics Watch.

- There is a central sustainable public procurement contact point that provides advice on making public procurement more sustainable (tailor-made support). When awarding framework agreements, "Facilitair bedrijf" (=central purchasing body) always examines which sustainability gains can be realised.

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## V. Qualitative reporting on application of public procurement review system



**1. Please indicate relevant figures for the national review system in the table below, as described below.**

(A) **Number of first instance review decisions** (all the first instance review decisions),

(B) **Median length of first instance reviews - median length of all the first instance reviews** (the number of calendar days between a starting date and an end date, where the starting date is when the complaint/action is registered and the end date is when the review decision is issued) and

(C) **Number of first instance review decisions that were appealed to the (next) judicial level and its results** - (all the first instance review decisions that were appealed to the (next) judicial level, both on merit or procedural reasons, in addition, it shall include the number of first instance review decisions that were

a) (primarily) upheld;

b) (primarily) rejected; or

c) neither upheld nor rejected by the (next) judicial level (e.g. because they were not yet decided, retracted).

	2021	2022	2023
A. Number of first instance review decisions	390	352	363
B. Median length of first instance reviews	28 days	28 days	35 days
C. Number of first instance review decisions that were appealed to the (next) judicial level and its results	/	/	/

**2. Indicate best practices** that are aimed at reducing the number of obstructive complaints/actions for review (A)

*5000 character(s) maximum*

Sorry but the response in this box is not related to best practices but provides further explanation on the methodology used to produce the above-mentioned data on review procedures.

The data in point 1.A, B C, relating to the number of first instance review decisions only include the judgments of the Belgian Council of State and thus not of the ordinary courts (dual judicial system). The data do not cover all relevant bodies.

The data in point 1.A include all the judgments in public procurement procedures of the Belgian Council of State (the presents system of data collection does not allow to make a further distinction with regard to the European thresholds; content of the decisions according to the guidelines etc.). These data include only decisions upon a complaint because the judicial system does not provide a system ex officio.

With respect to point 1.B, most procedures with regard to public procurement and concessions are introduced at the Council of State by urgent suspension proceedings within the standstill period. This procedure is in our opinion also most comparable with a first instance review. The median length of this type of procedure at the Belgian Council of State as regards tendering/concession procedures is 28 days. The mentioned median length concerns only the urgent review proceedings at the Belgian Council of State. In Belgium the public procurement decisions of administrative authorities are reviewed by the Belgian Council of State. The public procurement decisions of contracting authorities that are not administrative authorities are reviewed by the ordinary courts.

With respect to point 1.C, as already mentioned, the data of the ordinary courts are at present not available. Against judgments of the Belgian Council of State no appeal is possible, except for appeal before the Court of Cassation on conflicts of jurisdiction.

**3. Indicate best practices** that are aimed at reducing the length of first instance review decisions as marked in the previous column (B)

*5000 character(s) maximum*

/

**4. Indicate best practices** that are aimed at reducing the number of first instance review that were appealed to the next judicial level as marked in the table above (C)

*5000 character(s) maximum*

The data in point 1.A, B C relate tot the number of first instance review decisions only include the judgments of the Belgian Council of State and thus not of the ordinary courts (we have a dual judicial system). Against judgments of the Belgian Council of State no appeal is possible, except for appeal before the Court of Cassation on conflicts of jurisdiction.

## **VI. Fraud, corruption, conflict of interests and other serious irregularities**

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Describe the actions undertaken and/or mechanisms put in place to ensure prevention, detection and adequate reporting of case of public procurement serious irregularities including fraud and corruption and conflicts of interests.

**1. Regulatory requirements on:**

- Enhanced rules on the application of whistle-blower system
- Enhanced rules on transparency
- Enhanced rules on conflict of interest
- Enhanced rules on anti-corruption
- Enhanced rules on the application of exclusion grounds
- Other rules (if yes, please describe below)

Other rules, please describe:

*5000 character(s) maximum*

Brussels-Capital Region : staff training + rules set out in internal instructions  
 Wallonia: Delegation of powers (cascade)  
 Flanders: the Whistleblowers directive was transposed into Administrative Decree (with specific additions) >  
 Decree on Local Government: regulation on conflicts of interest

### 1.1. Best practices.

If available, indicate best practices aimed at detecting irregularities as marked in the previous column and provide a link to any publicly available document relevant for the issues you indicated.

Please provide quantitative data e.g.: number of cases detected and pursued further by the competent authorities.

*5000 character(s) maximum*

Please provide further information on these elements, if applicable. You can list multiple links separated with enter.

A number of control bodies :

- Court of Auditors
- Prior verification by the Inspector of Finance
- Declaration of absence of conflicts of interest for public contracts subsidised by the European Union (ERDF) for Wallonia : next to the elements mentioned above, delegation of powers (cascade)

for the Brussels-Capital Region :

- 21 MARS 2018. - Arrêté du Gouvernement de la Région de Bruxelles-Capitale portant le statut administratif et pécuniaire des agents des organismes d'intérêt public de la Région Bruxelles-Capitale : CHAPITRE II. - Des droits et devoirs - 21 MARS 2018. - Arrêté du Gouvernement de la Région de Bruxelles-Capitale relatif à la situation administrative et pécuniaire des membres du personnel contractuel des organismes d'intérêt public de la Région de Bruxelles-Capitale - 16 MAI 2019. - Décret et ordonnance conjoints relatifs au médiateur bruxellois : CHAPITRE III. - Du système de dénonciation des atteintes suspectées à l'intégrité - Depuis 2018 en région bruxelloise toutes les procédures au-dessus de 30.000,00 euro sont publiées.

Flanders :

In the first instance, it is the task and responsibility of each entity of the Flemish government to exercise sufficient supervision and control itself over the public contracts it puts on the market.  
 Article III.114 et seq. of the Decree of 7 December 2018 (Administrative Decree) stipulates that departments, internally corporatised agencies and externally corporatised agencies must ensure their organizational control. To this end, a guide "Organisational Management and Internal Control" was drawn up. Since internal control takes place before a final decision is taken (or implemented), this also allows effective risk management. This goes hand in hand with a graduated system of delegation whereby, the higher the amount of an expense, the higher up the hierarchy the decision must be taken and is subject to stricter control procedures.

The Flemish Personnel Statute (decree of the Flemish government of 13 January 2006) provides for the protection of members of staff who, in the performance of their duties, establish negligence, abuse or offences and report or disclose them. Employees of the Flemish government are obliged under Article 29 of the Code of Criminal Procedure to report crimes and misconduct to the competent public prosecutor: "Every constituted authority, public office or public servant who, in the performance of his duties, becomes aware of a crime or malpractice, is obliged to report it immediately to the public prosecutor at the court within whose jurisdiction that crime or malpractice has been committed or the suspect might be found, and to forward to that magistrate all relevant information, minutes and deeds."

Further concretisation of the deontological rights and duties of employees of the Flemish government covered by the Flemish Personnel Statute is contained in the deontological code of the Flemish government. Every staff member of the Flemish Government has the decree right to directly inform Audit Flanders of irregularities. A protocol was concluded between the Flemish Ombuds Service and Audit Flanders in which the mutual relations were laid down in the event that a whistleblower were to signal certain abuses through the channel of the Flemish Ombuds Service and/or invoke the protection of the Ombudsman. If a forensic audit reveals that crimes may have been committed, the Central Service for Combating Corruption (federal police)-and the competent public prosecutor-are informed by the administrator-general of the Audit Flanders agency.

By conducting regular audits (organisation audits, process audits, etc.) and forensic audits, efforts are made to prevent or uncover any irregularities in the award and execution of public contracts.

Flanders is part of the Belgian State, which is organised according to a federal system. As such, federal Belgian legislation and the federal judicial framework also apply to Flanders. If an interested party considers that a public contract would not have been awarded correctly, it has several possibilities to react:

- lodging a complaint with the administrative authority that took the decision and, if necessary, in the second instance, as appropriate, with the administrative authority exercising supervision or with the Flemish Ombudsman's Service;
- appeal to an administrative court, namely the Council of State, which has full autonomy to suspend and/or annul the decision taken. In this case, damages may also be imposed;
- in case of serious irregularities, e.g. suspicions of corruption: file a complaint with the Audit Flanders agency and/or with the judicial authorities.

Provisions on whistle-blowing in Administrative Decree

See also answer to question IV.1

## 2. Enforcement measures:

- Reporting/monitoring system in place to prevent/detect fraud, corruption, conflict of interest and other serious irregularities
- Reporting/monitoring system in place to measure fraud, corruption, conflict of interest and other serious irregularities
- Systemic audit in place to prevent/detect fraud, corruption, conflict of interest and other serious irregularities
- Sanction system in place to remedy fraud, corruption, conflict of interest and other serious irregularities
- Other rules (if yes, please describe below)

Other rules, please describe:

*5000 character(s) maximum*

Law 17-06-2016 on public procurement and implementing royal decrees and, as far as the Brussels-Capital Region is concerned, the transparency reports for that Region

Flanders :

Prevention (regular audits), response (forensic audit)

## 2.1. Best practices.

If available, indicate best practices aimed at detecting irregularities as marked in the previous column and provide a link to any publicly available document relevant for the issues you indicated.

Please provide quantitative data e.g.: number of cases detected and pursued further by the competent authorities.

*5000 character(s) maximum*

Please provide further information on these elements, if applicable. You can list multiple links separated with enter.

See answer to question VI.1.1.

The point VIII.2.1, where we indicate that federal and regional institutions were encouraged to screen candidates in public procurement. The SIIS (SIOD SIRS) cannot provide data from the other institutions and regions. In terms of preventive measure the SIIS, in cooperation with the inspection services, organizes flash checks in certain sectors. Flash checks have mainly an informative and preventive character and are published in advance on the SIIS website and communicated to the social partners. However, in case of serious and/or repeated infringements, an official report will be issued. In 2024, the construction, moving, hospitality, agriculture-horticulture and transport sectors (including buses and trucks) are scheduled to be covered. In the area of reporting, the SIIS's Contact Point for a Fair Competition (<https://www.meldpuntsocialefraude.belgie.be/en/>) exists. Where citizens, companies as well as social partners can file reports of various social law violations. Ranging from undeclared work, benefit fraud, but also social dumping /detachment fraud. The SIIS has also encouraged the social partners of various fraud-sensitive sectors (e.g. construction sector, green sectors, surveillance sector, etc) to use this contact point more often. Under existing protocols, organisations such as "Regie der Gebouwen", "Facilitair Bedrijf" en "Service Public de Wallonie" periodically submit lists of public construction yards (and cleaning services, among others) to the SIIS. The SIIS makes these available to social inspection agencies for target selection during inspections.

SPW's Public Procurement and Insurance Department currently has two social inspectors whose task is to monitor compliance with social and labour law in the context of works contracts and certain service contracts.

Brussels-Capital Region :

A code of conduct for Brussels civil servants is included in the statutes of the SPRB (Brussels Regional Public Service) and set out in the Working Regulations applicable to members of staff of the Brussels Regional Public Service.

[https://etaamb.openjustice.be/fr/arrete-du-gouvernement-de-la-region-de-bruxellescapit\\_n2018011463.html](https://etaamb.openjustice.be/fr/arrete-du-gouvernement-de-la-region-de-bruxellescapit_n2018011463.html)

## 3. Soft law/Policy measures

- Guidance related to the prevention of fraud, corruption, conflict of interest, serious irregularities
- Recommendations related to the prevention of fraud, corruption, conflict of interest, serious irregularities
- Guidance on ethical conduct for public administration staff
- Guidance on fighting bribery practices
- Guidance on the detection of collusion/bid-rigging practices
- Guidance on compliance with competition rules
-

National strategy to prevent fraud, corruption, conflict of interest, serious irregularities

- Action plan for the implementation of practices to prevent fraud, corruption, conflict of interest, serious irregularities
- Training/conference related to the prevention of fraud, corruption, conflict of interest, serious irregularities
- Reinforced cooperation among different state bodies
- Establishment of open-access information system to enhance transparency (public registry, declarations)
- Other measures (if yes, please describe below)

Other measures, please describe:

*5000 character(s) maximum*

At federal level, two draft circulars are currently being prepared. The first aims to clarify the nature of conflicts of interest after leaving office that may arise among former members of staff of the federal administration. This is the revolving door mechanism. Its scope is not limited to public procurement. The second draft, unlike the first, is limited to the field of public contracts, and aims to repeal and bring together the content of the circulars of 21 June 2010 and 5 May 2014, which respectively concern the declaration of absence of conflict of interest, and the revolving door mechanism applicable specifically to the field of public contracts.

### 3.1. Best practices.

If available, indicate best practices aimed at detecting irregularities as marked in the previous column and provide a link to any publicly available document relevant for the issues you indicated.

Please provide quantitative data e.g.: number of cases detected and pursued further by the competent authorities.

*5000 character(s) maximum*

Please provide further information on these elements, if applicable. You can list multiple links separated with enter.

Prior verification by the Inspectorate of Finance (according to the royal decree of 20/5/2022 on administrative, budgetary and management control)

Guide on collusion in public procurement (Belgian Competition Authority)

Contracting authorities may include the following elements in the works specifications or as an annex thereto:

- 1) Clauses and conditions to be complied with by tenderers (and their subcontractors) in terms of: limiting the chain of subcontractors, prior identification of all subcontractors, prohibition on housing workers on the site, place of residence made available to workers, social clauses, language spoken by the representative of the successful tenderer in contacts with the contracting authority or labour inspectorates but also by management staff, documents to be provided by the tenderer (Dimona/Limosa declaration, A1 certificate), compulsory attendance at all site meetings, etc. as well as the respective amount of the penalties in the event of non-compliance with these clauses and conditions.
- 2) A statement of the contracting authority's commitment to promoting fair competition and combating social dumping. This document may specify the commitments that a contracting authority makes to combat social dumping. It takes the form of a list of actions to be taken at the various stages of the contract.
- 3) A declaration by contractors for fair competition and against social dumping: the contracting authority may require this declaration to be signed by any contractor taking part in the public contract. It sets out the main provisions to be complied with in terms of working conditions, pay and employment.

As far as the Brussels-Capital Region is concerned :

- Monitoring, reporting, auditing and training;
- Purchasing policy, training, circulars relating to the transparency of contract awards;
- TITLE 4 of the public procurement law of 17 JUNE 2016 related to Governance
- Partitioned organisation of the subsequent contract award and the execution stages;
- Reinforced internal control (control of budgetary commitments and payments);
- Implementation of a priori and a posteriori controls by external supervisory bodies (Inspectorate of Finances or Court of Auditors).

Flanders :

In 2022, a working group was set up within the Flemish Cooperation Forum on Public Procurement to update the Flemish Guide against Social Dumping in Public Procurement. This updated guide was already finalized by the end of 2023: Flemish Guide against Social Dumping in Public Procurement.

In 2018, a cooperation protocol Flemish Government and the Social Intelligence and Investigation Service (SIOD) was concluded. This protocol serves to detect abuses more efficiently through mutual exchange of data. This cooperation protocol is an important tool in the fight against social dumping. By entering into a cooperation with the SIOD, a great knowledge sharing between social inspectorates and contracting authorities is possible. In case of suspicion of social dumping, the SIOD can be informed, and the contracting authority can be confident that it will be thoroughly investigated by the competent inspection services.

Training in integrity in public procurement in collaboration with specialised service provider (2021), training in public procurement from an audit perspective.

## VII. Level of SMEs' participation in public procurement

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### SMEs' participation

SMEs are defined in the Commission Recommendation (2003/361/EC) as having less than 250 persons employed and an annual turnover of up to EUR 50 million or a balance sheet total of no more than EUR 43 million.

Further information is available at [http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition\\_en](http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en)

### 1. Qualitative reporting on SME participation

Policy measures:

- Policy initiatives launched to support SMEs participation in public procurement;
- Measures targeting SME participation in different techniques for aggregated procurement (framework agreements, dynamic purchasing systems, and centralised procurement activities);
- Measures targeting the participation of start-ups and scale-ups in public procurement;
- Measures ensuring that payment for public contracts are made on time, especially in the case of SMEs;
- Measures addressing the payments to subcontractors;
- Guidelines for contracting authorities on the application of 'divide or explain' principle (concerning division into lots);
- Policy measures in place to monitor SME participation in subcontracting
- Other measures (if yes, please describe below)

Other measures, please describe below:

*5000 character(s) maximum*

A new e-Procurement platform that replaces an outdated platform

For the Brussels-Capital Region:

The contracting authority is encouraged to divide the contract into lots (where appropriate) to enable SMEs to bid for one lot (and not for the whole contract); As required by law, we try to divide into lots as much as possible.

### 1.1. Best practices.

Indicate best practices that are aimed at encouraging the participation of SMEs in public procurement as marked in the previous column.

Please provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

In Belgium, new federal legislation provides for more favorable payment terms and deadlines (advance payment, relaxation regarding deposits, bidding fees, payment deadlines) for SMEs.

For the general framework, see the joint federal action plan "Promoting SME access to public procurement"  
<https://economie.fgov.be/fr/publications/charte-acces-des-pme-aux>

The attention is drawn to the following elements:

=> Digitalisation More procedures are done digital : p. 11-13 (NL/FR) New e-Procurement platform: p. 13 (NL/FR)

Mandatory e-invoicing b2g: p. 13-14 (NL/FR)

=> Payment modalities Relaxation of deposit requirement: p. 52 + p. 60-61 (NL) / p. 53 + 61 (FR)

Generalisation of advance payments: p. 53-54 + p. 61-63 (NL) / p. 53-54 + p. 62-63 (FR) Introduction of bidding fee: p. 54 p. 63-65 (NL) / p. 55 + p. 64-65 (FR)

=> More transparency and administrative simplification Expansion Telemarc ("only once"): p. 15 (NL/FR)

Provisional ranking of bidders after opening of bids (for certain below EU threshold contracts) : p. 79 (NL) / p. 80 (FR)

=> Monitoring Establishment of quality data: p. 93 and onwards (NL/FR) + for question VII.2 . Quantitative reporting on SME Participation:

=> Latest available figures, including methodological context: see charter p. 93-95 (NL) / p. 93-96 (FR)

=> Future dataset of much higher quality (2024 and beyond): see charter for measures, p. 96-97 (NL) / p. 96-98 (FR).

In Wallonia, the Responsible Public Procurement Strategy

(<https://marchespublics.wallonie.be/news/adoption-de-la-strategie-de-la-commande-publique-responsable>)

aims to facilitate access to public contracts

for SMEs through a number of projects:

1. A network to coordinate supply and demand by organising meetings between buyers and Walloon businesses

2. A range of technical and legal services for businesses (single access point, demo and tutorial on the eprocurement platform).

3. A public procurement portal containing all the tools businesses need to bid for public contracts.

4. A business directory: enabling businesses to make themselves known to contracting authorities and to get to know each other via a business card (in collaboration with the federal public service Policy and Support).



5. Study on the accessibility of central purchasing bodies to SMEs, containing best practices (in the process of being published).
6. Monitoring of SME participation in public procurement by the Walloon Public Procurement Observatory.
7. A communication campaign aimed at businesses to demystify public procurement and encourage participation.
8. Optimization of the purchasing process via a company pathway.

Flanders:

A project SME participation in public procurement was set up in which the Flemish government, on the one hand, sensitizes its own purchasers to increase SME participation and, on the other hand, convinces SMEs to participate in public procurement. Several actions have been taken in the context of this project. Good practices are shared, instructional videos and interviews with tips and tricks are shared and model documents are made available for contracting entities.

An SME fair was organised in 2022 where SMEs could meet contracting authorities. Four seminars were also organised which specifically targeted SMEs and procurers. These included interviews and several concrete guidelines that are always available for consultation by SMEs and contracting authorities.

Public contracts have been registered in e-Delta Simplified Registration since 1/1/2018. Among other things, this keeps track of the participating and awarded companies. From 1/1/2018 to 31/12/2023 (delimited by award date), of the 23,382 tenders submitted, 13,244 (56.6%) were from SMEs.

## **2. Quantitative reporting on SME participation**

Please quantify the impact of these best practices in the table below:

**2.1. Value of contracts directly awarded to SMEs over total value of awarded contracts – above threshold**

	2021	2022	2023
Value (in EUR million)	unknown	unknown	unknown

**2.1.1. Value of contracts directly awarded to SMEs over total value of awarded contracts – below threshold**

	2021	2022	2023
Value (in EUR million)	unknown	unknow	unknown

Please explain the calculation/assessment method used for collection of data.

/

**2.2. Number of contracts directly awarded to SMEs over total number of awarded contracts – above threshold**

	2021	2022	2023
Number	unknown	unknown	unknown

**2.2.1. Number of contracts directly awarded to SMEs over total number of awarded contracts – below threshold**

	2021	2022	2023
Number	unknown	unknown	unknown

Please explain the calculation/assessment method used for the collection of data.

5000 character(s) maximum

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## VIII. Practical implementation of national strategic procurement

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### 1. Green procurement ('GPP')

Green Public Procurement ('GPP') is defined as "a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured." [1] A voluntary target of 50 % GPP per Member State in number and value of relevant procedures was proposed by the Commission and welcomed by the Council in 2008.

[1] Commission Communication (COM (2008) 400) "Public procurement for a better environment".

#### 1.1. What is the state of play of green procurement in your Member State? (regulatory requirements and policy measures related to GPP)

1.1.1. How do you in general evaluate the degree of the GPP implementation in your country:

Please assess based on:

- Existence of enabling public procurement legal framework,
  - Existence of GPP policies/action plans,
  - Provisions of practical support to practitioners,
  - Results of monitoring of contracts which include sustainability requirements,
  - Results of monitoring of sustainable outcomes.
- 
- Implementation is advanced
  - Implementation is in progress
  - Implementation is low

The broad objectives in GPP policies are met:

- Yes
- Partially
- Not yet

1.1.2. Existing GPP regulatory requirements in your Member State:

- General legal obligation imposing GPP goals
- Sectoral regulations requiring sustainable development including public procurement
- Sectoral regulations encouraging sustainable development including public procurement
- Other regulatory requirements (if yes, please describe below)

If other regulatory requirements, please describe:

5000 character(s) maximum

The EU-legislation on mandatory GPP is applicable and/or transposed in national law (e.g. the clean vehicles directive (2019/1161) or the former energy efficiency directive (2012/27/EU)).

Besides this legislation, there is other national or regional legislation impacting public procurement. E.g., as far as Flanders is concerned:

- The Flemish legislation on materials and waste (VLAREMA) contains rules for governments acquiring specific products. A recent amendment of this legislation includes a number of mandatory requirements on the use of recyclates. Specifically, these are obligations relating to the % of recyclate in compost barrels and compost bins (article 68), plastic wheelie bins for waste (article 69), plastic nursery pots, nursery trays and plant trays (article 70) and furniture with plastic parts in public outdoor areas (article 71), noise barriers (article 72), underground non-pressurised pipes for drainage of rainwater and wastewater (article 73), plastic cover plates for utilities, gas pipes, cables (article 74) and window systems (article 75). These rules are all applicable to public procurement.

- Art. 5.3.12.2 VLAREMA also forbids governments to use single use packaging for drinks, essentially obliging them to procure multi-use drinking cups

Indicate best practices that are aimed at encouraging the use of GPP criteria. Please provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

In Dutch: <https://www.gidsvoorduurzameaankopen.be/nl/federale-regelgeving>

In French: <https://www.gidsvoorduurzameaankopen.be/fr/reglementation-federale>

Brussels-Capital Region :

- Bâtiments durables et abordables - Ordonnance du 8 mai 2014 relative à l'inclusion de clauses environnementales et éthiques dans les marchés publics – Circulaire du 5 février 2009 relative à l'insertion de critères écologiques et de développement durable dans les marchés publics de fournitures et de services et modifiant la circulaire ministérielle du 8 juillet 1993 relative à l'Eco-consommation et à la gestion des déchets dans les administrations publiques régionales en Région de Bruxelles-Capitale - We have a green procurement policy (not available online but contact : [lbusseniers@innoviris.brussels](mailto:lbusseniers@innoviris.brussels) to receive the document)

Wallonia adopted the Decree of 02 May 2019, which amends various decrees with a view to making it compulsory to include environmental, social and ethical clauses (known as "ESE clauses") in the specifications for public works contracts subsidised by the Walloon Region.

While the implementation of this decree requires an executive order setting out the terms and conditions for the inclusion of these clauses, the finalisation of this order itself requires the definition of standard clauses, including environmental clauses. Work on the latter is in progress, and is supported by several actions in Wallonia's Recovery Plan, including the introduction of the 'Environmental Clause Facilitators' scheme, which aims to strengthen the integration of environmental clauses (including circulars) in 'project author' public works and services contracts. The data collected as part of this network will be used to help define standard environmental clauses, based on practical examples.

Flanders:

see answer to question IV.6 – best practices

1.1.3. GPP policy measures applied in your Member State:

Guidelines to encourage the use of GPP



- National strategy to encourage the use of GPP
- National action plan to implement measurable objectives in GPP
- National target of GPP in certain sectors/in public procurement
- Monitoring/reporting on the use of GPP criteria
- Existence of national competence centre/national network of experts to promote the use of GPP
- Existence of specific working groups to promote the use of GPP in specific sectors
- Mandatory regular trainings for the promotion of GPP
- Optional trainings/events/workshops for the promotion of GPP
- Online information tool on the use/on best practices of GPP
- Other policy measures (if yes, please describe below)

Indicate best practices that are aimed at encouraging the use of GPP criteria. Please provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

- Guidelines SPP:  
<https://www.gidsvoorduurzameaankopen.be/nl>  
<https://www.gidsvoorduurzameaankopen.be/fr>

-Federal strategy:  
<https://bosa.belgium.be/nl/themas/overheids-opdrachten/federaal-aankoopbeleid#:~:text=Het%20federaal%20aankoopbeleid%20streeft%20ernaar,middel%20van%20een%20strategisch%20overlegorgaan>

- National GPP target in vehicle-sector: [https://www.gidsvoorduurzameaankopen.be/sites/default/files/content/download/files/wet\\_18\\_mei\\_2022\\_overheidsopdrachten.pdf](https://www.gidsvoorduurzameaankopen.be/sites/default/files/content/download/files/wet_18_mei_2022_overheidsopdrachten.pdf)

- Monitoring/reporting GPP:  
<https://www.gidsvoorduurzameaankopen.be/nl/studies-en-projecten/monitoring-2017> <https://www.gidsvoorduurzameaankopen.be/fr/etudes-projets/monitoring-2017>

- indicators FOD BOSA - National competence center study (2023): <https://www.gidsvoorduurzameaankopen.be/nl/downloads/icdo-evaluatie-2023>

- Working groups to promote SPP in specific sectors:  
<https://www.gidsvoorduurzameaankopen.be/nl/networking-ict-2021>  
<https://www.gidsvoorduurzameaankopen.be/fr/etudes-et-projets/reseaux-tic-2021>

- Trainings on SPP: <https://bosa.belgium.be/nl/trainings/basistraject-voor-federale-aankopers> <https://bosa.belgium.be/fr/trainings/trajet-de-base-pour-acheteurs-federaux>

- Information tools SPP:  
<https://www.gidsvoorduurzameaankopen.be/nl>  
<https://www.gidsvoorduurzameaankopen.be/fr>

Wallonia:  
 Strategic framework :  
 - Responsible Public Procurement Strategy  
<https://marchespublics.wallonie.be/news/adoption-de-la-strategie-de-la-commande-publique-responsable>  
 - Circular economy deployment strategy - Circular Wallonia (<https://economiecirculaire.wallonie.be/fr/wallonie-circulaire>)

Best practices to encourage the use of GPP criteria in public procurement in Wallonia:  
 - The "Responsible Public Purchasing" Helpdesk  
<https://marchespublics.wallonie.be/pouvoirs-adjudicateurs/outils/achats-publics-responsables/outils-transversaux.html>  
 - The Network of Responsible Public Purchasers  
<https://developpementdurable.wallonie.be/thematiques/achats-publics-responsables/pour-vous-accompagner/reseau-acheteurs-publics-responsables>

- The development of specific tools on the public procurement portal  
<https://marchespublics.wallonie.be/pouvoirs-adjudicateurs/outils/achats-publics-responsables.html>
  - The "Rendez-vous des acheteurs publics responsables"  
<https://developpementdurable.wallonie.be/rendezacheteurs-publics-responsables-retrospective>  
The Most Responsible Public Procurement Award
  - The charter for responsible public purchasing  
<https://developpementdurable.wallonie.be/achats-publics-responsables/charte>
  - The Walloon public procurement observatory  
<https://marchespublics.wallonie.be/pouvoirs-adjudicateurs/acteurs/observatoire-de-la-commande-publique-wallonne.html>
- Various initiatives exist to encourage the use of environmental clauses in public works contracts:
- The Network of facilitators in sustainable and circular construction/renovation  
<https://economiecirculaire.wallonie.be/fr/reseau-faciliteurs-construction>
  - The CO2 performance scale (<https://www.co2-prestatieladder.be/fr>)
  - The TOTEM tool (<https://developpementdurable.wallonie.be/construction/totem>)
  - The GRO tool  
<https://developpementdurable.wallonie.be/construction-durable/gro-outil-evaluation-durabilite-circularite>
  - Free sustainable construction training courses on the tools available for sustainable construction in public procurement (<https://developpementdurable.wallonie.be/construction/formations>)
- Flanders:  
see answer to question IV.6 – best practices

## 1.2. What are the key challenges for the uptake of green public procurement?

- Lack of professionalisation of public procurement staff
- Lack of capacity of public procurement staff
- Risk or a perception of a risk amongst public buyers of higher procurement costs
- Risk of no available offer on the market or a perception of some public buyers that such risk exists
- Risk of legal actions for wrong application of GPP criteria or a perception of some public buyers that such risk exists
- Lack of policy guidance and support on GPP
- Lack of policy strategy on GPP
- Lack of guidance on implementation of GPP requirements/criteria in procurement procedures
- Lack of strategic planning by the buyers
- Lack of interest
- Other reasons (if yes, please explain below)

Indicate best practices that are aimed at encouraging the use of GPP criteria. Please provide a link to any publicly available document relevant for the issues you indicated.

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See best practices above  
Brussels-Capital Region:  
- Regulations and expertise from "Brussels Environment" - Training and circulars.

Wallonia :

The 12 priority projects of the Responsible Public Procurement Strategy have been set up with a view to meeting these various challenges. The best practices aimed at encouraging the use of SPP criteria in public procurement (mentioned in the previous point) also help to overcome these obstacles.

## 2. Socially responsible public procurement ('SRPP')

Socially responsible public procurement is defined as procurement that takes into account one or several social considerations for advancing social objectives. SRPP covers a wide spectrum of social considerations, such as employment opportunities, decent work conditions, compliance with social and labour rights, social inclusion, equal opportunities and accessibility.

### 2.1. What is the state of play of SRPP in your Member State?

#### 2.1.1. How do you in general evaluate the degree of the SRPP implementation in your country:

Please assess based on:

- Existence of enabling public procurement legal framework,
  - Existence of SRPP policies/action plans,
  - Provisions of practical support to practitioners,
  - Results of monitoring of contracts which include social requirements,
  - Results of monitoring of social outcomes.
- 
- Implementation is advanced
  - Implementation is in progress
  - Implementation is low

The broad objectives in SRPP policies are met:

- Yes
- Partially
- Not yet

#### 2.1.2. Existing SRPP regulatory requirements in your Member State:

- General legal obligation imposing SRPP goals
- Mandatory requirements regarding employment from vulnerable groups
- Respecting minimum criteria on human- and labour rights in the value chain
- Specific SRPP requirements for the performance of contracts
- Mandatory exclusion grounds related to SRPP
- Sectoral regulations requiring equal treatment and non-discrimination

Indicate best practices that are aimed at encouraging the use of SRPP. Please provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

In the context of the Public Procurement Act and the implementation of the Social Information and Investigation Service (SIIS) action plan "combating social fraud" and the Government Plan 2022- 2025 for the fight against social fraud and social dumping, the SIIS asked the federal and regional institutions to be extra vigilant when awarding public contracts and to apply a systematic screening of social clauses, taking into account available capacity at these institutions. This letter was jointly signed by several ministers. When

awarding public contracts, the rules around the exclusion (mandatory or optional) of an economic operator in the case of child labour, others forms of trafficking in human beings, debts of a fiscal or social nature or non-compliance with environmental, social or labour law must be taken into account. Furthermore, the contractor is prohibited from fully subcontracting the contract entrusted to him. Moreover, the subcontracting chain is limited to 2, 3 or 4 levels (depending on the case) and in sectors susceptible to fraud. Currently, the SIIS (SIOD-SIRS) cannot reproduce, details of screening within regions and other institutions. However, the SIIS is currently implementing a process for informing contracting authorities about the labor/social law compliance of potential contractors. As an umbrella organisation involving several inspectorates, we are able to provide the contracting authority with a report on the compliance on labour or social law based on the constataions made by inspectorates. As an example, at the end of last year, the Contact Point for a Fair Competition within the SIIS conducted a comprehensive screening of 8 candidate suppliers for the opening ceremony of the EU Presidency. Based on the information from the databases (e.g.: previous social law violations), an assessment was given. Some guides and guidelines: The FPS Chancellery made recommendations in the Guide "Combating social dumping in public procurement and concession contracts". Federal Circular:

[https://www.siod.belgie.be/sites/default/files/Downloads/Sociale%20dumping/omzendbrief\\_sociale\\_dumping.pdf](https://www.siod.belgie.be/sites/default/files/Downloads/Sociale%20dumping/omzendbrief_sociale_dumping.pdf)

Wallonia:

- Social clauses scheme: Over the past 10 years, "social clauses facilitators" have been set up in Wallonia. The facilitators' role is to provide information, advice and assistance with the inclusion or implementation of social clauses. The facilitators are available to the various parties involved in a contract that includes a social clause to assist them at every stage of the contract.

- Social clause reports: an annual report provides detailed indicators on the contracts that include social clauses, the contracting authorities that include them in their specifications, the companies that implement them, the trainees/learners who benefit from them, etc. (<https://developpementdurable.wallonie.be/thematiques/achats-publics-responsables/pour-vous-informer>)

- Training: as part of the training courses on the tools available for sustainable construction in public procurement, one course is dedicated to the inclusion of social clauses in works contracts (<https://developpementdurable.wallonie.be/construction/formations>)

- Practical tools: guides on how to include social clauses in your works contracts are available on the public procurement portal: guide to the flexible social clause, guide to the social training clause, guide to reserving contracts, guide to promoting fair competition and combating social dumping, etc.

<https://marchespublics.wallonie.be/pouvoirs-adjudicateurs/outils/achats-publics-responsables/clauses-sociales/marches-de-travaux.html>

Other initiatives designed to strengthen the capacity of public authorities in terms of SRPP:

- Awareness-raising and capacity-building actions for contracting authorities (Responsible Public Purchasers Network, Responsible Public Purchases Helpdesk, Rendez-vous des acheteurs publics responsables, Prix du marché public le plus responsable...);

- The development of specific tools according to the type of contract (supplies, works or services: maintenance of green spaces, cleaning, etc.) and according to product categories (food, digital, etc.).

- A legal framework note that aims to summarise the legal opportunities for incorporating environmental, social and ethical clauses into special specifications in the light of Belgian public procurement regulations, which include in particular the law of 17 June 2016

[https://marchespublics.wallonie.be/files/March%20c3%a9s%20publics%20responsables/note%20de%20cadrage%20juridique\\_20\\_08\\_web\\_0.pdf](https://marchespublics.wallonie.be/files/March%20c3%a9s%20publics%20responsables/note%20de%20cadrage%20juridique_20_08_web_0.pdf)

- A price verification guide that proposes a methodology for managing the price verification process at the contract award stage, as well as various tips and tools designed to facilitate this management

[https://marchespublics.wallonie.be/files/Guide%20v%20c3%a9rification%20des%20prix%20des%20march%20c3%a9s%20publics%20-%20V12\\_20181206.pdf](https://marchespublics.wallonie.be/files/Guide%20v%20c3%a9rification%20des%20prix%20des%20march%20c3%a9s%20publics%20-%20V12_20181206.pdf)

### 2.1.3. SRPP policy measures applied in your Member State:

- Guidelines to encourage SRPP
- National strategy to encourage SRPP
- National action plan to implement measurable objectives in SRPP
- National target of SRPP in certain sectors/in all sectors
- Monitoring/reporting on the use of SRPP criteria
- Existence of national competence centre/ specific working groups to promote the use of SRPP
- Mandatory regular trainings for the promotion of SRPP
- Optional trainings/events/workshops for the promotion of SRPP
- Online information tool on the use/on best practices of SRPP
- Other policy measures (if yes, please describe below)

Indicate best practices that are aimed at encouraging the use of SRPP. Please provide a link to any publicly available document relevant for the issues you indicated.

*5000 character(s) maximum*

<https://www.gidsvoorduurzameaankopen.be/nl/sociale-aspecten>  
<https://www.gidsvoorduurzameaankopen.be/fr/considerations-sociales>

Regional legislation from the Brussels-Capital Region : Best practice is explained in:  
<https://www.actiris.brussels/media/jzjdfik1/vade-mecum-clauses-sociales-h-A52D444A.pdf>  
(actiris.brussels)

Flanders :

The "Facilitair Bedrijf" has produced an updated manual on public procurement reserved for social enterprises with attached model clauses. The manual has been updated in the light of recent case law of the Council of State and evolving policy and legislation. The manual provides insight into the opportunities of reserving contracts to social enterprises, indicates what to look out for and how to proceed in practice. It also describes a number of alternative ways to engage social enterprises in the execution of your public contracts. By using the model clauses, you can reserve contracts with a minimum of administrative burden and in a legally sound manner.

### 2.2. Key challenges – What are the key challenges in the uptake of SRPP?

- Lack of professionalisation of public procurement staff
- Lack of capacity of public procurement staff
- Risk or a perception of risk amongst public buyers of higher procurement costs
- Risk of no available offer on the market or a perception of some public buyers that such risk exists
- Risk of legal actions for wrong application of SRPP or a perception of some public buyers that such a risk exists
- Lack of policy guidance and support on SRPP
- Lack of policy strategy on SRPP
- Lack of guidance on implementation/insufficient implementation of policies on SRPP
- Lack of strategic planning by the buyers
- Lack of interest
- Other reasons (if yes, please explain below)

Indicate best practices that are aimed at encouraging the use of SRPP. Please provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

see answer to question VIII.2.1.3 "best practices"

### 3. Public procurement of Innovation

An innovative solution is defined in 2014/24/EU Art.2 (1.22) as "a new or significantly improved product, service or process". This includes not only those solutions resulting from R&D but also those solutions resulting from activities, "including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations." Please report on both dimensions.

#### 3.1. What is the state of play of procurement of innovation in your Member State?

3.1.1. How do you in general evaluate the degree of the innovation procurement implementation in your country:

Please assess based on:

- Existence of enabling public procurement legal framework,
  - Existence of innovation policies/action plans,
  - Provisions of practical support to practitioners,
  - Results of monitoring of contracts which include innovation aspects,
  - Results of monitoring of innovation procurement.
- 
- Implementation is advanced
  - Implementation is in progress
  - Implementation is low

The broad objectives in policies supporting innovation are met:

- Yes
- Partially
- Not yet

3.1.2. Innovation policy measures applied in your Member State:

- Guidelines to describing the procurement of innovation
- National strategy to encourage the procurement of innovation
- National action plan to implement measurable objectives to procure innovation
- National target to procure innovation in certain sectors/in all sectors
- Monitoring/reporting on the procurement of innovation
- Existence of national competence centre/specific working groups develop policies on the procurement of innovation
- Mandatory trainings related to the procurement of innovation
- Optional trainings/events/workshops related to the procurement of innovation
- Online information tool on the use/on best practices related to the procurement of innovation
- Other policy measures (if yes, please describe below)

Indicate best practices that are aimed at encouraging the procurement of innovation. Please provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

Creation of an organisation at Brussels Capital Region level dedicated to innovation (Innoviris.brussels)

Wallonia:

To encourage innovative and circular public procurement, as part of the Circular Wallonia Strategy, a legal, economic and technical support scheme for contracting authorities to effectively integrate circular and innovative considerations into selected public procurement contracts has recently been set up. In addition, there are plans to organise activities designed to bring together public purchasers to share best practice and discuss the difficulties encountered, and to organise an annual meeting between public and private purchasers and suppliers of circular tenders to strengthen the dialogue between the private and public sectors. Educational tools will also be developed to capitalise on these projects.

### 3.2. Key challenges – What are the key challenges for the uptake of Procurement of Innovation?

- Lack of professionalisation of public procurement staff
- Lack of capacity of public procurement staff
- Risk or a perception of a risk amongst public buyers of higher procurement costs
- Risk of no available offer on the market or a perception of some public buyers that such a risk exists
- Risk of legal actions for procedures carried out wrongly
- Lack of policy guidance and support on Innovation
- Lack of policy strategy on procurement of innovation
- Lack of strategic planning by the buyers
- Lack of interest
- Other reasons (if yes, please explain below)

Indicate best practices that are aimed at mitigating indicated issues.

5000 character(s) maximum

For the Brussels-Capital Region, call on Innoviris specialists.  
See also answer to question IV. 6

## IX. The level of competition in public procurement

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### 1. Do you monitor the level of competition in public procurement in your Member State?

To assess please consider in particular: proportion of single bids, proportion of negotiated procedures without prior publication, proportion of cancelled tenders

- Yes, the level of competition is monitored
- Yes, the level of competition is partially monitored (not comprehensive for all the procurement markets)
- No, the level of competition is not monitored

**If the reply to the previous question is yes, please indicate whether the level of competition compared to the previous reporting period:**

- Increased
- Remained unchanged
- Decreased

**If the reply to the above question is yes, please provide best practices** (e.g.: including on the tools used, methodology, indicators, etc.)

*5000 character(s) maximum*

The data in the new e-procurement database (from september 2023 onwards) shows that :  
21.16% of single bidders (following publication of a contract notice) ;  
50.43% of single bidders (following an invitation without publication (negotiated procedure without prior publication, etc.)).

**2. Did you launch/complete a comprehensive analysis of main causes of the lack of competition on the public procurement market during the current reporting period?**

- Yes, a comprehensive analysis of main causes of the lack of competition was launched/completed in the current reporting period
- No, a comprehensive analysis of main causes of the lack of competition was not launched/completed in the current reporting period
- No, a comprehensive analysis of the main causes of the lack of competition was not launched/completed in the current reporting period as the level of competition is satisfactory

**3. What are the sectors mostly concerned by low competition?**

Please list the sectors concerned:

*5000 character(s) maximum*

It can be observed that in public procurement in a wide variety of sectors, sometimes few (or even no) bids are submitted. Based on 31 award files (framework agreements with a total of 63 lots) submitted to the Finance Inspectorate for opinion until 26/10/2022, it was found that: a) 24 lots (38.1%) had 0 or 1 tenderer; b) 15 lots (23.8%) had 2 tenderers; c) 24 lots (38.1%) had 3 or more tenderers. This means that for more than half of the lots, 2 bids at most could be received.

Another member of the committee indicated the food sector (meat, fish, etc.)

Please list other relevant factors (for example regions, areas, level of administrative level, type of public buyer, calendar period):

*5000 character(s) maximum*

/

**4. What are the main causes for the decrease in competition?**

- 1. Structure of the market (e.g. size of the market)
- 2. Market concentration in the sectors concerned
- 3. Recurrent, particularly low number of bidders due to (if yes, please specify below):



- 4. Low attractiveness of the public procurement market, in particular (if yes, please specify below):
- 5. Anticompetitive market practices (collusions)
- 6. Other reasons (if yes, please specify below)

3. Recurrent, particularly low number of bidders due to:

- Structure of the market (e.g. monopolistic, oligopolistic market)
- Suspicion of collusion between bidders (bid rigging)
- Tailor-made public procurement procedures

4. Low attractiveness of the public procurement market, in particular:

- Lack of market knowledge of buyers (unrealistic demand)
- Lack of mid/long term planning of public procurement needs
- Not optimal contract size (too large for SMEs, too small for non SMEs)
- Complex tender documents and requirements
- Short period available for publication and submission of offer
- High administrative burden linked to submission of offer
- Lack of trust of companies in fair chances to win (e.g. suspicion of fraud, corruption, conflict of interests and other serious irregularities)
- Limited possibility of contract modification
- Strict contract terms and risk of penalties
- High risk of delayed or no payment
- Perceived unattractiveness of public procurement

6. Other reasons, please specify:

*5000 character(s) maximum*

- Technical and administrative obstacles for bidders to access public procurement: complexity of using platforms (particularly for "small" procedures);

- complex legislative and regulatory rules;

- very limited possibilities to regularise bids for procedures above the EU thresholds.

- Increase in bankruptcies due to the various crises.

- problems for certain economic operators in switching to the use of digital tools (obligation to use electronic platforms, e.g. Mercurius, peppol, e-procurement, etc.)

Please provide a link to any publicly available document relevant for the issues you indicated:

*5000 character(s) maximum*

/

## X. Additional information

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Please provide any other information you consider relevant:

*5000 character(s) maximum*

CLARIFICATIONS :

- clarification to point IV.1.2, misestimation of contract value does occur but not so much as to deliberately split up or avoid other thresholds. The Home Affairs Agency in Flanders notes that there are questions on

conflicts of interest which do not only arise from the Public Procurement Act but also concern conflicts of interest arising from the provisions of the Flemish Local Government Decree of 22 December 2017. Also, regarding unjustified use of the negotiated procedure without prior publication because of either unjustified underestimation or unjustified belief that there is a monopoly for the contract in question. As far as inappropriate use of procedures is concerned, this mainly concerns negotiated procedure without prior publication+limited value contracts

- clarification regarding the answer to Question IV.2, as far as the lack of publication of contract award notices is concerned : according to a member of the committee, the e-procurement platform should be simplified : the platform makes it very hard to publish award notices and very complicated to publish contract notices.

- clarification regarding the answer to Question IV.3. Contract implementation, Which are the main sources of wrong application (or aspects with which legal uncertainty is related)? The wrong application of contract modifications is related, according to a member of the committee, to the wrong application of the rules imposed by articles 38 and further of the royal decree of 14 January 2013 (article 72 of directive 2014/24 /EU) AND to unjustified extension of the contract or exceeding of the end date. The wrong application of procurement instruments related to award of specific contracts under framework agreements is related, according to the same member of the committee, to the deviation from the inventory/bid (order) versus the inventory of the framework agreement

- clarification regarding the answer to Question IV.6, the low use of green requirements or award criteria is also caused by the fact that human and budgetary resources are limited and it is impossible to monitor these elements

- clarification regarding the answer to Question IV.6, the low use of social requirements or award criteria is also caused by the fact that the subject matter of the contract (and the specialized nature of the contract) is not compatible with this type of clause;

- clarification regarding the answer to Question IV.6, the low use of procurement of innovation is also caused by a lack of resources

- clarification of point. VI.1 These are the Act of 8 December 2022 on reporting channels and the protection of those reporting breaches of integrity in federal public sector bodies and within the integrated police (see link: <http://www.ejustice.just.fgov.be/eli/loi/2022/12/08/2022034749/justel>), and the Royal Decree of 20 October 2023 determining the elements of the procedures and follow-up of internal alerts, the purposes and content of the archiving of alerts and the arrangements for public consultation, referred to in Articles 10, § 1, paragraph 4, 11, paragraph 3, 27, § 5, paragraph 3, and 76, paragraph 3, of the Act of 8 December 2022 on reporting channels and the protection of persons reporting breaches of integrity in federal public sector bodies and within the integrated police. The purpose of these binding texts is to enable the reporting of any threat or breach of the general interest in the broadest sense, and not just in the field of public procurement. Point VI.2, 1st box: These are the Law of 8 December 2022 and the Royal Decree of 20 October 2023, both mentioned above. Point VI.2, 4th box: The Royal Decree of 2 October 1937 on the status of State employees (see link: <http://www.ejustice.just.fgov.be/eli/arrete/1937/10/02/1937100201/justel>) requires federal employees to report any illegality or irregularity of which they are aware to their hierarchical superior or a more senior hierarchical superior (art. 7 § ). This system is not limited to the field of public contracts, but covers all irregularities and illegalities that run counter to the general interest. Similarly, the aforementioned Royal Decree contains a disciplinary system designed to punish employees who commit irregularities and illegalities. Point VI. 3, 3rd box: The Royal Decree of 2 October 1937 on the status of civil servants (see link: <http://www.ejustice.just.fgov.be/eli/arrete/1937/10/02/1937100201/justel>) requires federal civil servants to report any illegality or irregularity of which they are aware to their hierarchical superior or to a more senior hierarchical superior (art. 7 § ). This system is not limited to the field of public contracts, but covers all

irregularities and illegalities that run counter to the general interest. Similarly, the above-mentioned Royal Decree contains a disciplinary system designed to punish employees who commit irregularities and illegalities. Point VI.3, 9th box: Risk awareness workshops

## **Contact**

GROW-C2@ec.europa.eu