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WORKING DOCUMENT

on the European Court of Auditors' Special Report No 10/2015 (2014 Discharge): Efforts to address problems with public procurement in EU Cohesion expenditure should be intensified

Committee on Budgetary Control

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Introduction

According to the Europe 2020 strategy EU public procurement policy is a key instrument in establishing the single market and in achieving smart, sustainable and inclusive growth.

EU public procurement should also ensure the most efficient use of public funds. Improving the efficiency of public spending and achieving value-for-money are central objectives for government. Rules have been set up at various levels of government to ensure the best possible use of public funds where public purchasing takes place.

EU public procurement rules aim to ensure that the principles and fundamental freedoms in the Treaty on the Functioning of the European Union (TFEU) are observed. This would, in turn, increase competition and cross-border trading, resulting in better value for money for public authorities, while increasing the productivity in the supply industries and improving the participation and access to such markets by SMEs.

EU public procurement is governed by the EU public procurement directives, establishing common rules and procedures which public authorities contracting works or services must follow.

The Court examined the consistently high level of errors concerning public procurement in EU spending within the cohesion policy area. In particular, the report investigates whether the Commission and the Member States are taking appropriate and effective actions to address the problem.

ECA findings

The ECA audit focused on the results of the Court's Statement of Assurance audits in the period 2009 to 2013, and took account of actions taken by the Commission and Member States from 2009 to 2014 to address the problem of non-compliance with public procurement rules.

The audit firstly examined whether the Commission and Member States have a robust analytical basis for understanding the problem of public procurement errors. It arrived at the conclusions that:

- systematic analysis of public procurement errors by the Commission and Member States is very limited;
- failure to comply with public procurement rules is still a significant source of error in the area of cohesion policy;
- complexity, lack of administrative capacity and insufficient planning are among the causes of public procurement errors;
- public procurement errors can stem from inconsistent interpretation of the legislation;
- Member States sometimes complicate the framework with additional regulation, that go beyond the EU directives, at national level;
- fraud can also be a cause of error in the area of public procurement;

- comprehensive analysis of errors in Member States is still precluded by a lack of coherent data;
- the Commission does not yet comprehensively and systematically analyse public procurement errors by collecting data and building databases.

The audit also examined the actions taken by both the Commission and Member States in recent years. The conclusions were the following:

- the Commission and Member States have started to implement actions to address the problem, but there is still a long way to go;
- actions taken by the Commission since 2010 have begun to target the overall problem and the Commission put in place, in 2013, a public procurement action plan;
- if correctly applied, new legislation has the potential to help address the problem of public procurement errors;
- the new public procurement directives to be implemented by April 2016 introduce new monitoring and reporting requirements and may help to reduce errors;
- Member States' first-level checks are still insufficiently effective and have only recently started to take preventive actions;
- IT tools like e-procurement could help address public procurement problems but will need to be fully implemented and databases to analyse public procurement errors is a recent development.

Court's recommendations

In light of its findings the Court recommended that the Commission and the Member States should:

1. The Commission should develop a database on irregularities. It should analyse the frequency, seriousness and causes of public procurement errors in the area of cohesion policy. The Commission should publish its analysis as part of the public procurement report required by the new directives;

The relevant authorities in Member States should develop and analyse their own databases on irregularities in the area of cohesion policy and should cooperate with the Commission to provide such data in a form and at a time that facilitates the Commission's work;

2. If the ex-ante conditionality concerning public procurement is not fulfilled by the end of 2016, the Commission should use its powers consistently to suspend payments to Member States concerned, until they have rectified the shortcomings;
3. The Commission should update and publish its internal action plan on public procurement. It should report on progress annually. To this end, the Commission should improve co-ordination across its departments dealing with related public procurement issues;

4. The Commission should set up a high-level group to provide leadership in tackling the problem of public procurement errors, to avoid the risk that actions are not consistently implemented in all Commission services. The group should act as an advocate for improvements in public procurement, including, where necessary, for simplification in this field;
5. The Commission should impose financial corrections wherever it finds that Member States' first-level checks are insufficiently effective and, where necessary, pursue infringement procedures for breaches of the public procurement directives;
6. The Commission should exploit further the opportunities provided by developments in information technology, including promoting e-procurement and data-mining tools and good practice. Member States should exploit further the opportunities provided by e-procurement and data-mining tools;

Recommendations by the draftsman for possible inclusion in the 2014 Commission discharge report

1. Welcomes the findings and recommendations of the European Court of Auditors' Special Report No 10/2015: Efforts to address problems with public procurement in EU Cohesion expenditure should be intensified;
2. Notes that with a total of 349 billion euros allocations between 2007-2013, the cohesion policy is the key policy to reducing economic and social disparities between regions in Europe; highlights therefore the importance of proper public procurement processes when it is the procurement process that is identified by the Court as a major source of the errors within EU cohesion expenditure;
3. Emphasises that 40% of the projects implemented between 2007-2013 contained errors in public procurement procedures; unjustified direct awards, misapplication of selection criteria and bias treatment to select tenders were the main errors;
4. Notes that the main sources of errors were the lack of administrative capacity, the incorrect transposition of EU directives by member states, inconsistent interpretation of legislation and insufficient planning;
5. Draws attention to the fact that complexity of the legal and administrative public procurement framework is viewed as one of the causes of errors; notes that 90 % of 69 audit authorities claimed that the current level of complexity is higher than it needs to be; nearly 50% pointed out that the main area for improvement of Public procurement practice could be simplification of the procedures;
6. Calls therefore on the Member States to avoid rules that go beyond the EU directives; believes that this would also encourage and facilitate the participation of SME in public procurement procedures;
7. Notes that the main finding of the Court was that there is an insufficient effort made by the Commission and member states to conduct regular and systematic analysis of public procurement and that the lack of coherent, detailed data made it impossible to analyse, address and prevent these errors;

8. Shares the Court's view that the Commission should develop a database to analyse the frequency, seriousness and causes of public procurement errors; Commission should ensure that it obtains consistent and reliable information from the Member States on irregularities;
9. Welcomes the proactive approach undertaken by the Commission for 2014-2020 programming period which aims to support through guidance, monitoring and technical assistance national action plans to be implemented until 2016; acknowledges that with this proactive approach the Commission intends to reduce the risk of possible suspension of payments to operational programs after 2016;
10. Expects the Commission to suspend payments and impose financial corrections on those Member States which failed to achieve these targets; only as a last resort, should all the other means of prevention, correction and assistance being exhausted already;
11. Welcomes the fact that the Commission has addressed the problems of public procurement errors in the area of Cohesion Policy which were evident since long but now in a more coordinated way under the umbrella of the public procurement action plan and calls in this context on the Commission to push forward the implementation of this plan and report on its progress annually;
12. Expects the Commission to set up a high level group to provide leadership in tackling the problem of public procurement and promote its simplification;
13. Encourages the Commission and Member States to exploit the opportunities provided by e-procurement which has a high potential for improving transparency and a broader access to tenders also for SME and for preventing irregularities and fraud;
14. Encourages the Commission and Member States to continue their efforts in the field of exchange of experience and best practice;
15. Welcomes the initiative ARACHNE and calls on all Member States to encode comprehensive and good-quality data that this programme could work properly.