

Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (Text with EEA relevance)

TITLE IV

GOVERNANCE

Article 99

Enforcement

1 In order to effectively ensure correct and efficient implementation, Member States shall make sure that at least the tasks set out in this Article are performed by one or more authorities, bodies or structures. They shall indicate to the Commission all authorities or structures competent for those tasks.

2 Member States shall ensure that the application of public procurement rules is monitored.

Where monitoring authorities or structures identify by their own initiative or upon the receipt of information specific violations or systemic problems, they shall be empowered to indicate those problems to national auditing authorities, courts or tribunals or other appropriate authorities or structures, such as the ombudsman, national parliaments or committees thereof.

3 The results of the monitoring activities pursuant to paragraph 2 shall be made available to the public through appropriate means of information. Those results shall also be made available to the Commission. For instance, they may be integrated in the monitoring reports referred to in the second subparagraph of this paragraph.

By 18 April 2017 and every three years thereafter Member States shall submit to the Commission, a monitoring report covering, where applicable, information on the most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules, on the level of SME participation in public procurement and about prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interest and other serious irregularities.

The Commission may, not more than every three years, request Member States to provide information on the practical implementation of national strategic procurement policies.

For the purposes of this paragraph, ‘SME’ shall be understood as defined in Commission Recommendation 2003/361/EC⁽¹⁾.

On the basis of the data received under this paragraph, the Commission shall regularly issue a report on the implementation and best practices of national procurement policies in the internal market.

4 Member States shall ensure that:

- a information and guidance on the interpretation and application of the Union public procurement law is available free of charge to assist contracting authorities and economic operators, in particular SMEs, in correctly applying the Union public procurement rules; and
- b support is available to contracting authorities with regard to planning and carrying out procurement procedures.

5 Member States shall, without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, designate a point of reference for cooperation with the Commission as regards the application of public procurement legislation.

6 Contracting authorities shall, at least for the duration of the contract, keep copies of all concluded contracts with a value equal to or greater than:

- a 1 000 000 EUR in the case of supply contracts or service contracts;
- b 10 000 000 EUR in the case of works contracts.

Contracting authorities shall grant access to those contracts; however, access to specific documents or items of information may be denied to the extent and on the conditions provided for in the applicable Union or national rules on access to documents and data protection.

Article 100

Individual reports on procedures for the award of contracts

1 Contracting entities shall keep appropriate information on each contract or framework agreement covered by this Directive and each time a dynamic purchasing system is established. This information shall be sufficient to permit them at a later date to justify decisions taken in connection with:

- a the qualification and selection of economic operators and the award of contracts;
- b the use of negotiated procedures without a call for competition by virtue of Article 50;
- c the non-application of Chapters II to IV of Title II by virtue of the derogations provided for in Chapters II and III of Title I;
- d where necessary, the reasons why other means of communication than electronic means for the electronic submission have been used.

To the extent that the contract award notice drawn up pursuant to Article 70 or Article 92(2) contains the information required in this paragraph, contracting entities may refer to that notice.

2 Contracting entities shall document the progress of all procurement procedures, whether or not the procedures are conducted by electronic means. To that end, they shall ensure that they keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on communications with economic operators and internal deliberations, preparation of the procurement documents, dialogue or negotiation if any, selection and award of the contract. The documentation shall be kept for at least three years from the date of award of the contract.

3 The information or documentation, or the main elements thereof, shall be communicated to the Commission or the national authorities, bodies or structures referred to in Article 99 where they so request.

Article 101

National reporting and statistical information

1 The Commission shall review the quality and completeness of data that can be extracted from the notices, referred to in Articles 67 to 71, 92 and 96, which are published in accordance with Annex IX.

Where the quality and completeness of the data referred to in the first subparagraph of this paragraph is not compliant with the obligations stipulated in Articles 67(1), Article 68(1), Article 69, Article 70(1), Article 92(3) and Article 96(2), the Commission shall request complementary information from the Member State concerned. Within a reasonable time, the Member State concerned shall supply the missing statistical information requested by the Commission.

2 By 18 April 2017 and every three years thereafter, Member States shall forward to the Commission a statistical report for procurement which would have been covered by this Directive if its value had exceeded the relevant threshold laid down in Article 15, indicating an estimation of the aggregated total value of such procurement during the period concerned. That estimation may, in particular, be based on data available under national publication requirements or on sample-based estimates.

That report may be included in the report referred to in Article 99(3).

Article 102

Administrative cooperation

1 Member States shall provide mutual assistance to each other, and shall put in place measures for effective cooperation with one another, in order to ensure exchange of information on issues referred to in Articles 62, 81 and 84. They shall ensure the confidentiality of the information which they exchange.

2 The competent authorities of all Member States concerned shall exchange information in compliance with personal data protection rules provided for in Directive 95/46/EC of the European Parliament and of the Council⁽²⁾ and Directive 2002/58/EC of the European Parliament and of the Council⁽³⁾.

3 To test the suitability of using the Internal Market Information System (IMI) established by Regulation (EU) No 1024/2012 for the purpose of exchanging information covered by this Directive, a pilot project shall be launched by 18 April 2015.

- (1) Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, (OJ L 124, 20.5.2003, p. 36).
- (2) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).
- (3) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).