

# FIT FOR FUTURE Platform Opinion

<b>Topic title</b>	Public procurement legislation (e-procurement) <a href="#">2021 AWP</a> <a href="#">Directive 2014/24/EU</a> (on public procurement) <i>Legal reference</i>
<b>Date of adoption</b>	10 December 2021
<b>Opinion reference</b>	2021/SBGR1/05
<b>Policy cycle reference</b>	<input type="checkbox"/> Contribution to (ongoing) legislative process - <i>Commission work programme reference</i> <input type="checkbox"/> Contribution to the (ongoing) evaluation process Evaluation to be launched in 2021 <i>Title of the ongoing evaluation</i> <input type="checkbox"/> Included in Annex VI of the Task force for subsidiarity and proportionality No <input checked="" type="checkbox"/> Other The <a href="#">2014 Public Procurement Directives</a> impose the use of electronic tools and devices for communication in procurement procedures. Article 22(1) of Directive 2014/24/EU defines the rules on the use of electronic means of communications and includes the requirements to be respected <sup>1</sup> . Furthermore, Article 22(7) of the Directive empowers the Commission to take legislative measures to ensure interoperability <sup>2</sup> .

<sup>1</sup> The tools and devices to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the ICT products in general use and shall not restrict economic operators' access to the procurement procedure;

<sup>2</sup> To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the Commission shall be empowered to adopt delegated acts in accordance with Article 87 to establish the mandatory use of such specific technical standards, in particular with regard to the use of electronic submission, electronic catalogues and means for electronic authentication, only where technical standards have been thoroughly tested and proved their usefulness in practice. Before making the use of any technical standard mandatory, the Commission shall also carefully consider the costs that this may entail, in

End-to-end digitization and interoperability of the various e-procurement solutions and the "search and find" of tenders on a central platform are important success factors for a better process. It is also important that existing standards are used in that context and, if necessary, that these are expanded. eProcurement can also act as a catalyst in facilitating SMEs access in procurement markets.

This opinion is an effort to identify difficulties and missing links in the transition to digital public procurement at regional level.

**Have your say:  
Simplify!** *No relevant suggestions on this topic have been received from the public.*

**Commission follow up**      REFIT Scoreboard:      [Standard Procurement Document and eProcurement](#)  
Annual Burden Survey:      [The EU's efforts to simplify legislation](#)

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particular in terms of adaptations to existing eProcurement solutions, including infrastructure, processes or software;

## SUGGESTIONS SUMMARY

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<b>Suggestion 1:</b>	<b>Simplification of the European Single Procurement Document (ESPD)</b>
<b>Suggestion 2:</b>	<b>Ensure the interoperability of platforms and their compatibility with various national databases – digitising the whole procurement procedure</b>
<b>Suggestion 3:</b>	<b>Place an emphasis on the needs of SMEs and small procuring authorities</b>
<b>Suggestion 4:</b>	<b>Addressing missing links with respect to eSignature</b>
<b>Suggestion 5:</b>	<b>More targeted efforts to enhance technical capacity to support the transition to eProcurement</b>
<b>Suggestion 6:</b>	<b>Improve the user-friendliness of eCertis</b>

## SHORT DESCRIPTION OF THE LEGISLATION ANALYSED

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To create a level playing field for all businesses across Europe and enable procurers to make better use of public procurement in support of common societal goals, EU law sets out minimum harmonised public procurement rules. These rules organise the way public authorities and certain public utility operators purchase goods, works and services. They are transposed into national legislation and apply to procurements with a value net of value-added tax (VAT) estimated to be equal to or greater than certain thresholds. For procurements of lower value, national rules apply. Nevertheless, these national rules also have to respect the general principles of EU law.

The Commission proposed in December 2011 to simplify public procurement procedures. The European Parliament and Council supported these objectives. The new rules became effective on 17 April 2014. The initiative delivers a set of procurement rules including the creation of a European Single Procurement Document, which is a standardised self-declaration that aims to facilitate participation in procurement procedures.

Every year, over 250 000 public authorities in the EU spend around 14% of GDP on the purchase of services, works and supplies. Against this background, public procurement demonstrates an important potential in stimulating demand for socially and environmentally sustainable good production, service provision and consumption.

## PROBLEM DESCRIPTION

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*Existing evidence suggests the following:*

In its opinion on Public Procurement (Ref. XII.19b), the REFIT Platform made several recommendations to improve the practical functioning of the current framework such as recommending that (i) national authorities are encouraged to use the IMI system to extract and validate information; (ii) that the user-friendliness of the TED continues to be improved; (iii) that a helpdesk is being set up by the Commission to provide ex ante and user friendly advice to procurers and that (iv) automatic translation tools are improved to facilitate cross-border public procurement. Regarding suggestions on the European Single Procurement Document (ESPD), some members of the Stakeholder group refers to the adopted Platform opinion XII.19.a on how the ESPD could be improved. Such recommendations are feeding actions undertaken by the Commission to improve the practical implementation of the new procurement framework. Importantly, e-procurement also needs to enable and reflect the needs of sustainable procurement, supporting the implementation and up-take of good practices promoted by the Commission, in guidance such as *Buying Social*<sup>3</sup> and *Buying Green*.<sup>4</sup>

The ESPD is a self-declaration form used in public procurement procedures. It offers preliminary evidence concerning exclusion criteria (e.g. criminal convictions, grave professional misconduct) and selection criteria (financial, economic and technical capacity); while the full set of underlying documentation (e.g. attestations, certificates) only needs being presented by the winning economic operator. According to Directive 2014/24/EU and Directive 2014/25/EU, the ESPD shall be provided exclusively in electronic form. The ESPD is based on a standard form introduced through the Implementing Regulation (EU) 2016/76. When contracting entities procuring in accordance with Directive 2014/25/EU apply (some of) the exclusion and/or selection criteria provided for under Directive 2014/24/EU they also have to accept the ESPD pursuant to Article 80(3) of the Directive 2014/25/EU.

As of April 2016, the European Commission provided an ESPD service to support the ESPD's uptake. However, as planned, on 2 May 2019, the Commission's ESPD service has been turned off.

Since April 2018, the ESPD can only be provided in electronic form and contracting authorities and contracting entities have an obligation to accept a standardised form of self-declaration as preliminary evidence that the tenderer is eligible to participate in the procurement. Instead of using the Commission service, users should now rely on national ESPD services. Almost all EU countries currently provide one or more ESPD service. The Commission keeps a non-exhaustive, regularly updated list of ESPD providers.

The advantage of using national services is that these can be better integrated with national eProcurement services and databases. This is necessary for users to get all of the electronic ESPD's benefits and ensure greater interoperability.

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<sup>3</sup> European Commission (2021): *Buying Social – A Guide to taking account of social considerations in public procurement* (2<sup>nd</sup> edition), <https://ec.europa.eu/docsroom/documents/45767>;

<sup>4</sup> European Commission (2016): *Buying Green – A Handbook on green public procurement*, [https://ec.europa.eu/environment/gpp/buying\\_handbook\\_en.htm](https://ec.europa.eu/environment/gpp/buying_handbook_en.htm);

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The Commission continues to support the implementation of the ESPD in the Member States and its integration with the national e-procurement systems and registers/databases of certificates/evidences. This will contribute to implementing the Once-Only Principle (OOP) in the Member States.

In its quest for supporting the process of simplifying EU law and reducing regulatory burdens, for the benefit of citizens, civil society, business and public authorities, the European Commission Regulatory Fitness and Performance (REFIT) Platform requested to carry out a specific action on the European Single Procurement Document (ESPD).

In particular, under ‘Priority 4 - Simplification and burden reduction for a deeper and fairer Internal Market’, REFIT adopted 15 opinions, in 2017, which were followed up by legislative and non-legislative measures. In addition to these measures, REFIT requested an action on the ESPD, stating that: “the opinion feeds the efforts in improving the implementation of this tool”.

In 2019, following this request, DG GROW decided to launch an EU wide satisfaction survey<sup>5</sup> on the electronic ESPD and to discuss the results with the relevant stakeholders<sup>6</sup>.

Furthermore, in 2017, the Commission had prepared a report<sup>7</sup> to the European Parliament and the Council on the review of the practical application of the European Single Procurement Document.

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## SUGGESTIONS

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### **Suggestion 1: Simplification of the European Single Procurement Document (ESPD)**

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**Description:** From the RegHub consultation on eProcurement and the evidence submitted by members of the platform, it transpires that both contracting authorities<sup>8</sup> and economic operators still face *challenges* with the ESPD, a fact that hinders the simplification pursued with the ESPD. Those challenges could be summarised as follows:

- The form is regarded as too complicated and difficult both for contracting authorities and for the economic operators, especially SMEs and small contracting entities. Likewise, difficulties with the practical use of the tool have been reported, like the lack of possibility for in-between-saving of information and the lack of a possibility to return to the previous page when someone would like to work further in the document<sup>9</sup>.
- Most authorities do not provide an individualised ESPD request for the contracting business organisations. They just refer to the main standard ESPD forms that include all of the possible templates which often leads to misunderstandings and uncertainty on

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<sup>5</sup> <https://op.europa.eu/en/publication-detail/-/publication/0ed8c64a-5137-11ea-aece-01aa75ed71a1/language-en>

<sup>6</sup> <https://op.europa.eu/fr/publication-detail/-/publication/0ed8c64a-5137-11ea-aece-01aa75ed71a1/language-en>

<sup>7</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017DC0242;>

<sup>8</sup> Also 'contracting entities' as defined in Directive 2014/25/EU (throughout the text);

<sup>9</sup> RegHub consultation on eProcurement and report on *How to facilitate public procurement for SMEs* - evidence submitted to the platform by Denmark;

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the part of the companies. Article 59 of the Directive 2014/24/EU [...contracting authorities shall accept the European Single Procurement Document (ESPD)....] allows a company to spontaneously submit a standard version of the form (with all possible templates). Within that framework, it could be useful for contracting authorities to provide tailored templates for each tender, as often not all information required in the standard ESPD templates is required for a specific tender, a fact that complicates the process. Furthermore, companies are not always sure what to understand under the phrasing of the templates<sup>10</sup>.

- The administrative burden is further exacerbated if a tender is submitted by a temporary association and/or with the support of other entities. Even with all the tools available to them (the ESPD tool, public procurement manual), errors are still often made. This is particularly true for businesses that participate in public procurement only sporadically, such as SMEs and sole proprietors, even though one of the aims of the Directive is to give SMEs more access to public procurement<sup>11</sup>.
- Some members argue that there are excessive documentation requirements: additional certificates are still requested in addition to the ESPD something that runs counter to the aim pursued with the ESPD and the rationale behind its creation<sup>12</sup>. In relation to this point, it should be noted that the challenges are thus more related to the documentation requirements rather than to the ESPD itself. It should be recalled, at the same time, that contracting authorities are and must be allowed to request documents necessary to assess compliance with e.g. tax and social security obligations for the purpose of verifying exclusion criteria in the tendering process. Likewise, the verification of in particular green and social selection criteria specific to a contract may necessitate requests for specific types of evidence from bidders<sup>13</sup>.
- The ESPD submission does not eliminate the difficulties that contracting authorities face when verifying the existence and content of data or other information indicated in the tender<sup>14</sup> including when it comes to compliance with social and environmental criteria.
- There are practical challenges in re-using the ESPD and documentation in tenders, including challenges of heterogeneous digital solutions.

Some of the *proposals/suggestions for improvement* put forward in the context of the RegHub consultation on eProcurement and through the evidence submitted by members of the platform can be as follows:

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<sup>10</sup> *How to facilitate public procurement for SMEs*, report written on behalf of the EU SME Envoys by the Belgian Federal Public Service Economy, 2019, evidence submitted to the platform by Denmark;

<sup>11</sup> RegHub consultation on the Implementation of the public procurement Directives, 2019;

<sup>12</sup> *How to facilitate public procurement for SMEs, op.cit.*, evidence submitted to the platform by Denmark;

<sup>13</sup> Input submitted by ETUC. According to the Commission's Buying Social Guide, "Evidence in relation to selection criteria comes, in the first instance, from the ESPD or may come, in some cases, from another form of self-declaration. As with exclusion criteria, it is possible to request supporting documents at any point in the procedure." (p. 69). The Guide recommends as well to "Use mandatory and optional exclusion criteria to ensure that bidders have not committed any violations of applicable social or labour law, or collective agreements" (p. 69);

<sup>14</sup> Input submitted to the platform by Slovenia;

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- In general, the ESPD should be shorter, questions should be simplified and easier to understand.
  - It should be simplified and information should be even easier to recycle (reuse). The general information about the company may be accessible by the public service provider via a central business register and only be updated once or twice a year or on ad hoc basis (where necessary). However, the company must be responsible for the communication of the correct information<sup>15</sup>. Likewise, it is stressed that economic operators also have a basic responsibility to make sure they understand procurement systems (this is also in their own interest)<sup>16</sup>. It has been also stressed that the emphasis should be placed on the digitalisation of required data, and not of forms<sup>17</sup>.
  - The practical challenges in re-using the ESPD and documentation in tenders, including challenges of heterogeneous digital solutions, can be addressed through a more efficient and uniform/standardised (digital) tendering and dock mentoring process, e.g. the use of a common procurement system to be used by all contracting entities when tendering for public contracts. This serves both the protection of public contracts and the respect of the underlying EU rules. At the same time, there is a potential to lower transaction costs and increase the clarity of the rules. Thus, there will be potential to address the challenges of the ESPD through more consistent digital solutions<sup>18</sup>.
  - A possible simplification of the templates with the possibility to tailor the needs in cases of less required information or more explanations of what is meant by the requested requirements/points will prove useful. It has also been noted that further clarification by means of a ready-made and completed form/template would be most helpful for companies<sup>19</sup> and that additional explanations or further clarifications should not stand in the way of the aim to simplify the templates.
  - Another suggestion is to impose inclusion of the ESPD in buyer profiles: When a buyer puts a consultation online, a *buyer ESPD* would be systematically generated using the data from the consultation. The economic operator, for his part, would have on his profile the information needed to generate the *company EPSD*. When a proposal is submitted, the cross-referencing of the two would automatically generate a response ESPD specific to the consultation<sup>20</sup>.
  - In order to increase the use of the ESPD, it should be used in a real and strong conjunction with eCertis to increase transparency so as to help bidders determine what evidence is requested and public buyers what evidence is provided, while preserving the possibility of the contracting authorities to control and verify tenderers, especially when they are established in a different country<sup>21</sup>. It has been also argued that, in the context of this interconnected use, it could be considered whether certain evidences

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<sup>15</sup> RegHub consultation on eProcurement, 2021;

<sup>16</sup> Input submitted by the Netherlands;

<sup>17</sup> Input submitted to the platform by Slovenia;

<sup>18</sup> *Evaluering af udbudsloven*, Danish Competition and Consumer Authority, May 2020, evidence submitted to the platform by Denmark;

<sup>19</sup> *How to facilitate public procurement for SMEs*, op. cit.;

<sup>20</sup> RegHub consultation on eProcurement, 2021;

<sup>21</sup> Input submitted by ETUC;

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could be accepted based on the principle of mutual recognition and that implementation of the ESPD-EDM V3 should be explored and the advantages of this latest version should be clearly explained to the Member States<sup>22</sup>. Some members, however, draw attention to the fact that instead of simplification, this suggestion may further complicate the ESPD since, usually, when systems are used in conjunction their use becomes more complex<sup>23</sup>.

- It could be helpful to leave each member state the option of adapting ESPD vocabulary without affecting its organisation. A gap is noticed in practice between the national vocabulary and the EU vocabulary<sup>24</sup>.
- It is also recalled that simplification must not result in watering down social and environmental obligations, such as established by Article 18 Directive 2014/24, and cannot be made at the expense of control and verification<sup>25</sup>.
- In light of the aforementioned challenges and the fact that the ESPD is regarded as a complicated and difficult tool by its users, it is even suggested that the instrument's (initial) purpose - the reason why we have an ESPD in the first place, and what would be the best implementation for achieving its goals - should be reevaluated as well with a view to developing its full potential<sup>26</sup>.

**Expected benefits:** Electronic tools in public procurement are expected to bring significant savings for all parties, simplified and shortened processes, reduction in red-tape and administrative burdens, increased transparency, greater innovation and new business opportunities by improving the access of enterprises, including SMEs, to public procurement markets<sup>27</sup>.

Likewise, the restriction by the Procurement Directives of the possibility for contracting authorities to obtain documentation at an earlier stage of the procedure has been introduced in order to reduce the administrative burden on businesses and is particularly targeted at SMEs. However, it would be contrary to the interests of the ESPD if it were to become a widespread practice for the contracting authorities to obtain evidence for more bidders at an early stage of the procurement process, as it imposes costs on tenderers. If the contracting authority nevertheless requires evidence from a large part of the tenderers, the ESPD loses its purpose and instead potentially acts as an unnecessary administrative burden<sup>28</sup>.

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<sup>22</sup> Input submitted to the platform by France (General Secretariat for European Affairs). Input from ETUC emphasised that eCertis is a database which does not build on the principle of mutual recognition and does not determine what evidence will be accepted. According to the website of the Commission service: "eCertis is the information system that helps you identify different certificates requested in procurement procedures across the EU. [...] eCertis can help you understand what evidence is requested or provided by the other party. [...] Please note that eCertis is a reference tool and not a service of legal advice. It does not guarantee that the information resulting from a query will be recognised as valid by a contracting authority".

<sup>23</sup> Input submitted by the Netherlands;

<sup>24</sup> *Ibid*;

<sup>25</sup> Input submitted by ETUC;

<sup>26</sup> Input submitted by the Netherlands;

<sup>27</sup> [Digital procurement | Internal Market, Industry, Entrepreneurship and SMEs \(europa.eu\)](https://ec.europa.eu/eip/eip-internal-market-entrepreneurship-and-smes/);

<sup>28</sup> *Evaluering af udbudsloven*, Danish Competition and Consumer Authority, May 2020, Evidence submitted to the platform by Denmark;



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Greater uniformity in the ESPDs to be used by the tenderer may also provide greater clarity, as bidders can learn more easily how and what to fill in. It can also help to reduce transaction costs by requiring less time to fill in the ESPD. SMEs in particular will benefit from a greater uniformity of the ESPD, allowing them to save resources which they would otherwise need to familiarise themselves with the different formats and ways of completing the ESPD. Consequently, more uniformity may reduce barriers to competition because it can help create a level playing field for SMEs<sup>29</sup>.

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**Suggestion 2: Ensure the interoperability of platforms and their compatibility with various national databases – digitising the whole procurement procedure**

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**Description:** The challenges raised in the context of the RegHub consultation on eProcurement and through the evidence submitted by members of the platform can be summarized as follows:

- Multi-layered platforms/multitude of platforms: Since in many Member States there is a high number of platforms existing at various administrative levels (national, regional, local) or public/private platforms running in parallel, that multitude of platforms is regarded as critical by many stakeholders. Potential bidders would have to register on all platforms and familiarise themselves with their IT structure. This discourages many bidders from participating. This applies in particular to SMEs without their own IT department<sup>30</sup>. Likewise, it is noted that it is difficult for bidders to register in a variety of systems all of them working differently since this often means that access data is no longer available and multiple registrations occur<sup>31</sup>.
- When buyers are free to choose their own platform, this results in a multiplication of sites. This leads to two difficulties for companies: i) a difficulty in finding contracts (they have to login on all the different websites or to pay an aggregator) and ii) a difficulty in responding to contracts (each site has its own interface). In concrete terms, for businesses, this means wasted time and therefore costs because they need to search for all opportunities on all available platforms, get used to them, learn and adapt their processes each time a new platform is created. Likewise, it is noted that a large number of platforms makes it difficult for suppliers to obtain a full overview of public procurement<sup>32</sup>.
- The volume of data generated by e-procurement is not always compatible with the IT infrastructure in place (faulty or too weak networks and ageing or obsolete hardware). Similarly, system compatibility is sometimes a problem (java applet, firewall, etc.)<sup>33</sup>.
- Access to national databases and registers and/or other external systems, e.g. national control systems for economic operators, is not ensured and this results in higher administrative burden (e.g. no possible to verify online the guarantee letters from

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<sup>29</sup> *Ibid.*

<sup>30</sup> RegHub consultation on eProcurement, 2021.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

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financial institutions)<sup>34</sup>. This problem is emphasized when the tenderers are based in different States: in these cases it is very difficult for the contracting authority to transnationally access databases.

Lack of interoperability of IT tools is identified as one of the main challenges and it is stressed that this is already a challenge within a given Member State and tends to increase in a cross-border context<sup>35</sup>.

- Some members, however, expressed the concern that, although interoperability is deemed as important for access to national databases and registers, it might at the same time prove costly<sup>36</sup>. Moreover, since interoperability is the data exchange between different systems that speak directly to one another in the same language, different languages outside the technical context creates additional limitations to the search of interoperability due to language barriers<sup>37</sup>.
- Discrepancies between the platforms and etools used by contracting authorities does not allow public authorities to work together and share costs<sup>38</sup>.

The suggested solutions can be summarised as follows:

- Interoperability of platforms and efforts to improve the compatibility of national databases with existing platforms: in the interests of simplification for economic operators and in pursuit of interoperability of etools used, some stakeholders suggest limiting the number of platforms, or even using only one<sup>39</sup>.
- Standardise platforms: Currently, there is a lack of standardisation of tools to enable eProcurement to function properly. Like for electronic invoicing, which is done via a single platform for all economic operators in some countries and which should be encouraged to reduce both costs as well as administrative burden<sup>40</sup>, there should be a standardisation of buyers' profiles and the document models used. This would simplify communication, training and use by the players. This standardisation can be achieved via: i) creating a unique platform, or ii) standardised processes and failing that, (i) a website listing all the advertisements with links to the existing platforms, and ii) automatic inclusion of the ESPD in buyers' profiles. Mandate the use of standards has been also identified by the majority of the Hubs as a measure that can improve the implementation of eProcurement<sup>41</sup>.
- Dematerialise the entire procedure: Ideally, as the elements of a contract application are standardised, it should be possible to enter the application elements directly online rather than by submitting documents<sup>42</sup>.

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<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> Input submitted by the Netherlands;

<sup>37</sup> *Ibid.*

<sup>38</sup> RegHub consultation on eProcurement, 2021;

<sup>39</sup> *Ibid.*

<sup>40</sup> Input submitted by EESC;

<sup>41</sup> RegHub consultation on eProcurement, 2021;

<sup>42</sup> *Ibid.*

- There should be a further integration of the e-procurement approach by taking into account most of the downstream phases, such as the link with the authorities responsible for legality control and the archiving of contract documents (the data exchange systems of the buyer profile should be made interoperable with the electronic archiving service)<sup>43</sup>. However, this integration seems to be more a matter for the platforms' offer than for the regulations. It is also argued that such integrated systems should enable monitoring and review of progress towards procurement targets (including social and environmental aspects)<sup>44</sup>.
- Access to national databases and registers and/or other external systems, e.g. national control systems for economic operators, that are an integral part of the national digital infrastructure of public administration. In this way contracting authorities will not have to enter the same data and information several times<sup>45</sup>. This would enable accredited contracting authorities to obtain appropriate information documents before entering into, approving or authorising contracts and subcontracts relating to public works, services and supplies<sup>46</sup>.
- Transnational access to databases should be also facilitated, implementing the existing initiatives (such as the European e-ID and the European Social Security Pass) and strengthening the relevant Authorities (such as the European Labour Authority)<sup>47</sup>.
- The pursuit of interoperability and of the once-only principle (OOP), however, has to go hand in hand with the full respect of data protection and ensure that the rights and freedoms of data subjects are not likely to be adversely affected.

**Expected benefits:** Interoperability is one of the key essential enablers of digital government and the digitalisation of public administrations strongly depends on Member States' capacity to tackle interoperability challenges<sup>48</sup>. In this framework, the mere online transfer of data, processes and services (i.e. from paper to electronic) in public procurement cannot in itself bring the benefits expected from digitalisation. What is required on top of that is the use of data and technology to connect the administrations and enhance cross-sector cooperation, to foster integration and horizontality (digital procurement)<sup>49</sup>. This will, in turn, contribute to the implementation of the once-only principle in the public sector, as businesses (and citizens) will provide diverse data *only once* to a particular public administration which will share and reuse this data – even across borders – in line with data protection regulations and other legal frameworks. This will substantially reduce the administrative burden for contracting authorities, businesses and citizens. In addition, digitising the whole procurement procedure from defining the means of satisfying the needs or of assessing what the market can offer in terms of technical,

<sup>43</sup> *Ibid*;

<sup>44</sup> Input submitted by ETUC;

<sup>45</sup> An interesting report on the state of play and the potential of data re-use in national and cross-border interactions with public administrations is accessible here: <https://op.europa.eu/de/publication-detail/-/publication/4c429e34-e3a6-11e7-9749-01aa75ed71a1>;

<sup>46</sup> RegHub consultation on eProcurement, 2021;

<sup>47</sup> Input submitted by ETUC;

<sup>48</sup> [State-of-play report on digital public administration and interoperability in Europe - Publications Office of the EU \(europa.eu\)](#);

<sup>49</sup> [State-of-play report on digital public administration and interoperability in Europe - Publications Office of the EU \(europa.eu\)](#);

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financial or legal solutions to the electronic invoicing in public procurement and the legality control will be one of the key factors for a successful implementation eProcurement<sup>50</sup>. Better interoperability among platforms will also ensure a better access of SMEs to public procurement. Companies need to be able to receive information on relevant procurement procedures regardless of the platform the contracting authority uses.

End-to-end digitization and interoperability of the various e-procurement solutions and the "search and find" of tenders on a central platform or via interconnected platforms are important success factors for a better process. It is also important that existing standards are used in that context and, if necessary, that these are expanded.

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**Suggestion 3: Place an emphasis on the needs of SMEs and small contracting authorities**

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**Description:** As already stressed with respect to the ESPD and the interoperability of platforms, the challenges identified are even more exacerbated for SMEs and small contracting authorities, as is the case in other policy areas, since by definition they have fewer resources to devote to the transition to eProcurement. The vast majority of the Hubs reported that they had to either hire staff with high levels of professionalisation and specific skills or undertake specific training of staff in order to be able to use eProcurement. For many consulted authorities and businesses, the dematerialised procedure required the hiring and training of qualified staff to set up and monitor contracts. Likewise, in some cases it was also necessary to hire qualified IT staff to overcome dysfunctions encountered on the various platforms.

The need to facilitate the response of suppliers and include all SMEs in the process has been stressed with some stakeholders identifying the encouragement and facilitation of SME's access to eProcurement as the most important task related to the implementation of eProcurement. Consulted stakeholders emphasise the risk of seeing operators who are not equipped/trained avoiding concluding public contracts<sup>51</sup>.

It is also stressed that eProcurement processes must enable procurement authorities, including the small ones, offering them concrete tools to facilitate assessment and control of tenderers<sup>52</sup>.

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<sup>50</sup> North Rhine-Westphalia is currently working with the states of Bremen and Rhineland-Palatinate as well as the German federal government (BMi) and KoSIT (German Peppol authority) as part of the cooperative project "Digitization of procurement - cooperative project for standards-based digitization of the public purchasing and procurement process". The project aims at finding a solution to the problems related to the uniform standards-based digitization of public procurement and the implementation of parts of the OZG (German federal law for online access). The cooperation project has a holistic approach to understanding public procurement, taking into account all relevant steps of the process, in order to complete the digital supply chain for public administration. Concretely, the project aims to develop concepts and standards for electronic invoicing (XInvoice) and to analyse specialist domains of public procurement. Another goal is to achieve an efficient and digital prequalification process that is central and user-centered, allowing the integration of company accounts, and their nationwide use for multiple tendering procedures. Moreover, it aims at establishing a standard-based mediation service based on the specifications of the EU implementing regulation on electronic awards. The target vision here is to enable improved access to tenders for interested bidders and to create a process free of media discontinuity;

<sup>51</sup> RegHub consultation on eProcurement, 2021;

<sup>52</sup> Input submitted by ETUC;

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In a survey on barriers to companies participating in public procurement, more than 20% of small enterprises say that there are excessive documentation requirements. If such barriers discourage smaller companies from bidding for public contracts, the contracting authority may miss the benefits from competition and the innovative ideas it entails<sup>53</sup>.

The lack of eProcurement tools (i.e. the necessary infrastructure) is a barrier to the use of eProcurement and financial incentives for the development of appropriate e-tools can improve the implementation of eProcurement. Other evidence submitted by members of the platform indicates that some SMEs do not even have a computer; others have difficulties to log in or they are even located in a region where there is no internet access<sup>54</sup>.

It is worth noting that among the measures that can facilitate the use of eProcurement, almost half of the Hubs identify the need to pay attention to the geographical scope of policy measures and adapt European and national measures for eProcurement at subnational level to better reach local SMEs.

**Expected benefits:** According to the European Commission, the use of electronic tools in public procurement can create new business opportunities by improving the access of enterprises, including small and medium-sized enterprises (SMEs), to public procurement<sup>55</sup>. Likewise, a survey shows that eProcurement is among the main success factors and conditions for measures to effectively support SMEs' participation in public procurement<sup>56</sup>.

In other words, while public administrations and big companies go digital, not addressing the difficulties SMEs and small contracting authorities face in accessing and implementing eProcurement equates to creating additional barriers to their access to public procurement markets.

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#### **Suggestion 4: Addressing missing links with respect to eSignature**

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**Description:** The benefits of eProcurement are reduced as long as the process is not fully equipped (especially as long as there is no obligation to use electronic signatures<sup>57</sup>). Each missing element causes load breaks that weigh on the procedure<sup>58</sup>.

Electronic signatures are still difficult to implement. Since it is not a legal obligation<sup>59</sup>, local authorities or economic operators do not always buy the appropriate signature certificates. These

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<sup>53</sup> *Evaluering af udbudsloven, op. cit;*

<sup>54</sup> *How to facilitate public procurement for SMEs, op. cit;*

<sup>55</sup> [Digital procurement | Internal Market, Industry, Entrepreneurship and SMEs \(europa.eu\)](https://ec.europa.eu/economy_finance/en/digital-procurement-internal-market-industry-entrepreneurship-and-smes);

<sup>56</sup> Analysis of the SMEs' participation in public procurement and the measures to support it, accessible at <https://op.europa.eu/en/publication-detail/-/publication/eec8227c-ecc4-11ea-b3c6-01aa75ed71a1/language-en/format-PDF/source-search>;

<sup>57</sup> An electronic signature is a data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign, where the signatory is a natural person. Like its handwritten counterpart in the offline world, an electronic signature can be used, for instance, to electronically indicate that the signatory has written the document, agreed with the content of the document, or that the signatory was present as a witness: [eSignature \(europa.eu\)](https://ec.europa.eu/economy_finance/en/e-signature);

<sup>58</sup> RegHub consultation on eProcurement, 2021;

<sup>59</sup> ANNEX IV of Directive 2014/24/EU does not require an eSignature. Art. 22 (6) (c) of the Directive 2014/24/EU foresees the possibility to ask for it depending on the level of security required for the electronic

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represent a cost, which companies must incur without any certainty of winning the contract. This poses difficulties in the strict application of e-procurement. In concrete terms, the absence of a consequent use of eSignature breaks the dematerialisation - chain and forces the re-materialisation of certain market documents. In addition, politicians are not yet fully aware of the electronic signature, and some consider handwritten signatures to be simpler and faster<sup>60</sup>.

Likewise, many companies have arrangements for signature, which cannot be implemented in binding tools and, as a result, they have to sign by hand and scan the respective documents before sending them electronically. Moreover, the fact that electronic signatures are different from country to country is a particular challenge for cross-border procurement<sup>61</sup>.

In light of this, it has been even suggested by some stakeholders that the electronic signature should be included compulsorily in the e-procurement process in order to gain in efficiency, ensure a unified procedure and avoid load breaks in order to return to paper in the middle of the procedure before returning again to the dematerialised process<sup>62</sup>.

A more holistic approach on this issue can also be taken as there are countries where strong identification of users is already used in tendering systems and in the national procurement notification service. After this, in the signing stages, the process goes to the contracting authorities' document management systems and/or contract management systems, most of which are already ready for electronic signature. An electronic signature is also used. Where such conditions are in place it seems that introducing a compulsory use of eSignature is not a solution and may impose additional burdens in countries where the need for eSignature has been resolved in another way.

With respect to the cross-border recognition of eSignature, any progress has to be assessed in the context of the eIDAS Regulation<sup>63</sup>.

**Expected benefits:** Addressing security and integrity issues and thus the acceptance of electronic signatures, including in a cross-border context, will further reduce administrative burden for economic operators, as they will not be required to print and scan the necessary documents before uploading them on the eProcurement platform. It will also allow public authorities and economic operators to operate securely in the digital world and build trust in online interactions within public authorities and between them and citizens, securely being able to also verify the identity of the economic entity and its authenticity. However, the use of eSignatures should not be a universal obligation but keep some room for manoeuvre for authorities since it may impose additional burdens in countries where the need for eSignature has been resolved in another way. This is because of the varying levels of security required for the electronic means of communication in the various stages of a given specific procurement procedure.

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means of communication in the various stages of the specific procurement procedure. That level shall be proportionate to the risks attached;

<sup>60</sup> RegHub consultation on eProcurement, 2021;

<sup>61</sup> *Ibid*;

<sup>62</sup> *Ibid*;

<sup>63</sup> [eSignature \(europa.eu\)](https://eur-lex.europa.eu/eli/reg/2014/913/oj);

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**Suggestion 5: More targeted efforts to enhance technical capacity to support the transition to eProcurement**

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**Description:** From the RegHub consultation on eProcurement it transpires that the most prominent *obstacle limiting the use of eProcurement* is the lack of trained staff (lack of technical expertise – relevant knowledge and skills of the staff) on the side of both contracting authorities and companies. The second most commonly identified obstacle is the lack of familiarity with the systems of other EU Member States<sup>64</sup>. This difficulty has already been highlighted in the hubs' responses regarding barriers to cross-border procurement. Among other barriers to the use of eProcurement, the Hubs mainly identify the lack of access to training, the additional bureaucracy and costs to regulate, certify and monitor the platforms and the lack of eProcurement tools. The issue of infrastructure remains a key one, as partners do not always have sufficient digital flow for public procurement to function properly<sup>65</sup>.

Among the *measures that can facilitate the use of eProcurement*, the two most appropriate measures identified by the Hubs are i) joint training actions to support the professional skills and knowledge needed for eProcurement and ii) further training of staff by national authorities. On the same subject, in the third place the Hubs identify financial incentives for the development of appropriate electronic tools, a lower diversity of tools used by national eProcurement systems, and joint actions (seminars, workshops, project groups, working visits, expert groups).

It has been argued that, beyond the technical difficulties, faced when using e-procurement "business" software, - which is solved within organisations by hiring and training, - it is the generally low level of operators' IT skills that is problematic. They face challenges even for very simple functions such as naming files, managing downloads, understanding electronic signature formats, using shortcuts to save time, etc. It has been also stressed that even without digitalisation, public procurement is already complex due to the risk and complexity of legislation, and that small suppliers do not have the time to cope with all the challenges.

It has been also argued that, in relation to IT projects in particular, it is important to simplify the intermediate procurement steps so as to reduce the time between conceiving the idea and signing the contract<sup>66</sup>.

Consequently, larger suppliers have a comparative advantage, and competition is reduced. In light of this, the need for legal and procedural simplification as well as capacity building and improved user-friendliness is highlighted<sup>67</sup>.

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<sup>64</sup> This finding transpires also in other analyses, see <https://op.europa.eu/en/publication-detail/-/publication/c7fcd46a-b84d-11eb-8aca-01aa75ed71a1>;

<sup>65</sup> RegHub consultation on eProcurement, 2021;

<sup>66</sup> Input submitted by Greece, Secretariat General for Digital Governance and Simplification of Procedures, Ministry of Digital Governance;

<sup>67</sup> RegHub consultation on eProcurement 2021 and input submitted by ETUC;

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This point mirrors the findings of the RegHub consultation on the implementation of the public procurement Directives<sup>68</sup> where stakeholders identified the complexity of the legal framework as a key barrier to the use of strategic procurement criteria.

In a similar vein, evidence submitted by members of the platform points to the need to pay particular attention to the adequate use of clear and verifiable selection criteria, specifically in relation to the different kind and quality of intellectual services and in an effort to facilitate access of SMEs<sup>69</sup>, but also to the need to ensure the respect of social and environmental standards along with fundamental social rights. Likewise, in the context of digital and green transitions, contracting authorities may apply additional qualitative selection criteria with a view to promote sustainable procurement<sup>70</sup>.

Attention is also drawn to the risk of prioritising security to the detriment of speed and efficiency in the process. Others noted that they needed external technical assistance to train their own staff on the national platform<sup>71</sup>.

Likewise, as it had been pointed out in the context of the RegHub consultation on the implementation of the Public Procurement Directives, the introduction of eProcurement has advantages for large firms but SMEs in particular still have weak digital literacy and the available portals are not always optimal and user-friendly. Thus, the lack of or insufficient technical skills cannot be remedied by the mere development of novel electronic tools<sup>72</sup>.

It is also suggested that more flexible and agile tools are needed, which would enable modifications to be made and immediately implemented at no cost every time there are legislative changes<sup>73</sup>. It can be inferred that this suggestion shows the effort and the time-consuming adaptations that legislative changes trigger for relevant parties on the ground. In light of this, other members suggest that it is not feasible to devise such tools and therefore, sufficient transition periods should be allowed for system providers to adapt to changes<sup>74</sup>. It is worth noting that in the context of the RegHub consultation on eProcurement, almost 42% replied that they needed to hire staff with high level of professionalization and specific skills, and 48% that they needed to undertake specific training of staff because of the transition to eProcurement. Only 7% of the stakeholders consulted replied that neither was needed. Those findings mirror the findings of the 2019 RegHub consultation on the implementation of the Public Procurement Directives which looked at how contracting authorities and businesses dealt with the changes brought about by the Directives in practical terms<sup>75</sup>.

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<sup>68</sup> <https://cor.europa.eu/en/engage/Documents/RegHub/report-consultation-01-public-procurement.pdf>;

<sup>69</sup> Input submitted to the platform by EESC;

<sup>70</sup> Input submitted to the platform by ETUC;

<sup>71</sup> RegHub consultation on eProcurement, 2021;

<sup>72</sup> RegHub consultation on the Implementation of the public procurement Directives, 2019;

<sup>73</sup> RegHub consultation on eProcurement, 2021;

<sup>74</sup> Input submitted to the platform by Finland;

<sup>75</sup> Taking into account the extensive changes introduced by the 2014 Directives, the 2019 RegHub consultation on the implementation of the Public Procurement Directives also looked at how contracting authorities and businesses dealt with the change in practical terms, i.e. whether they had to recruit new staff or train their staff or whether they had to take other initiatives in order to align their systems and procedures to the new rules. Half of the respondents to the regional hubs consultation said that they needed to recruit new staff, a vast majority (94%) said that training courses were needed and very few (15%) responded that neither was needed.



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On the part of the bidders, it is noted that the introduction of electronic systems for awarding contracts is associated with a high expenditure of time and personnel (problems with recruitment and turnover of trained staff) and that, depending on the market segment, the immediate benefits are not fully apparent to market participants. This potentially reduces the acceptance and use of electronic systems<sup>76</sup>.

Specific measures and financial incentives for training actions and for the development of appropriate IT tools, where not existing, addressed to both public authorities and economic operators - and especially SMEs and small contracting authorities -, would help address the above challenges.

Ideally, however, eProcurement systems should be built in a way that no specific training is needed for SMEs and the burden of training and support must be on the system providers.

**Expected benefits:** It can be inferred from the above that continuous and targeted training and coordinated actions involving all levels of government (local, regional, national and European) along with the private sector - in particular SMEs - could act as a catalyst towards a better implementation of eProcurement through enhanced technical capacity.

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#### **Suggestion 6: Improve the user-friendliness of eCertis**

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**Description:** Although great efforts have been put into the preparation of eCertis, which is undoubtedly a very effective tool, concerns raised in the context of the RegHub consultation on eProcurement and in the evidence submitted by members of the platform indicate that eCertis only provides (sometimes insufficient) information about the existence of national databases in Member States rather than fulfilling its objective.

It has been also noted that some stakeholders have negative experience with eCertis because the site is difficult to consult and it proves time consuming to find the necessary information. In addition, it is difficult to understand which certificate can be equivalent and how to obtain it within a short period of time (including the additional checks required by national law in the procedure for awarding a contract). In general, there is still much room for improvement on eCertis. Others stress also that it is not user-friendly due to its complexity and due to language barriers when collecting documents during the procurement procedure<sup>77</sup>.

It is suggested that the focus should be put on developing a tool that would provide assistance to contracting authorities when verifying data (especially) by a foreign tenderer in national databases in other Member States. eCertis should at least be upgraded (or a separate tool provided) in a way that a contracting authority could directly gather information by those national databases regarding fulfilment of exclusion ground or selection criteria in question (i.e. providing information on the reality and confirmation of data and information provided in a bid)<sup>78</sup>. It has to be taken into account, however, that in some Member States national laws can

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<sup>76</sup> RegHub consultation on eProcurement, 2021;

<sup>77</sup> RegHub consultation on eProcurement, 2021;

<sup>78</sup> Input submitted to the platform by Slovenia;

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prevent contracting authorities from gathering information from national databases regarding fulfilment of exclusion ground or selection criteria in question<sup>79</sup>.

**Expected benefits:** A more user-friendly tool will reduce administrative burden both for public authorities and economic operators and facilitate cross-border procurement.

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<sup>79</sup> Input submitted by the Netherlands;

## ABSTENTIONS

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- 1 Member State