

# EU-funded large-scale infrastructure: deficient project preparation and procurement processes?

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Budgetary Affairs





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**

**POLICY DEPARTMENT D: BUDGETARY AFFAIRS**

# **EU-funded large-scale infrastructure: deficient project preparation and procurement processes?**

## **STUDY**

### **Abstract**

This study aims to develop a better understanding of the regulatory framework and experience with the preparation and procurement of large-scale infrastructure projects (over EUR 50 million) under the European Regional Development Fund, the Cohesion Fund, the European Fund for Strategic Investments, and the Connecting Europe Facility. The study recommends (i) collecting data on Member State capacities for preparing projects and conducting public procurement; (ii) collecting data on the performance of the recent European Commission initiatives - voluntary ex-ante assessment of large-scale infrastructure (2017) the professionalisation of public procurement (2017) and additional guidance on procurement of European Union-funded large-scale infrastructure (2018); (iii) enhancing the consistency of data in the procurement database 'Tenders Electronic Daily'; (iv) and strengthening the involvement of relevant stakeholders in the preparation and procurement of large-scale infrastructure projects.

IP/D/ALL/FWC/2015-001/LOT2/C4

25/09/2018

PE 621.789

EN

This document was requested by the European Parliament's Committee on Budgetary Control. It designated its Member Mr Marco Valli to follow the study.

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## **LINGUISTIC VERSIONS**

Original: EN

Translation of the Executive Summary: DE, FR

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Manuscript completed in September 2018.

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## CONTENTS

CONTENTS	3
LIST OF ABBREVIATIONS	4
LIST OF TABLES	5
LIST OF FIGURES	5
EXECUTIVE SUMMARY	6
ZUSAMMENFASSUNG	9
SYNTHÈSE	13
1 INTRODUCTION	17
1.1 Objectives and Scope	17
1.2 Methodology and Implementation Schedule of the Study	19
1.3 Structure of the Study	22
2 KEY ISSUES AND EXISTING INSIGHTS	23
2.1 Key issues	23
2.2 Existing insights	26
3 PREPARATION OF EU-FUNDED LARGE-SCALE INFRASTRUCTURE	32
3.1 Introducing the three funds with regard to project preparation	33
3.2 Case study findings – project preparation	40
4 PROCUREMENT OF EU-FUNDED LARGE-SCALE INFRASTRUCTURE	44
4.1 Policy and regulatory framework	45
4.2 The specific issue of ‘single bidders’	50
4.3 Introducing the three funds with regard to procurement issues	61
4.4 Case study findings – public procurement	62
5 RECOMMENDATIONS	67
ANNEX 1 STAKEHOLDER CONSULTATIONS	69
ANNEX 2 BIBLIOGRAPHY	70

## LIST OF ABBREVIATIONS

<b>CEF</b>	Connecting Europe Facility
<b>CF</b>	Cohesion Fund
<b>CPR</b>	Common Provisions Regulation
<b>CSO</b>	Civil Society Organisation
<b>CY</b>	Cyprus
<b>CZ</b>	Czech Republic
<b>DG REGIO</b>	Directorate General Regional and Urban Policy of the European Commission
<b>EC</b>	European Commission
<b>ECA</b>	European Court of Auditors
<b>EFSI</b>	European Fund for Strategic Investments
<b>EIB</b>	European Investment Bank
<b>EP</b>	European Parliament
<b>ERDF</b>	European Regional Development Fund
<b>ES</b>	Spain
<b>ESIF</b>	European Structural and Investment Funds
<b>EU</b>	European Union
<b>EUR</b>	EURO
<b>GR</b>	Greece
<b>FR</b>	France
<b>INEA</b>	Innovation and Networks Executive Agency
<b>IT</b>	Italy
<b>MA</b>	Managing Authority
<b>MS</b>	Member State
<b>OLAF</b>	European Anti-Fraud Office
<b>RO</b>	Romania
<b>TFEU</b>	Treaty on the Functioning of the European Union

## LIST OF TABLES

Table 1: Expected content	18
Table 2: Case study work	20
Table 3: Study milestones	22
Table 4: EU-level initiatives	47
Table 5: 2018 European Semester reporting	49
Table 6: Explanation of fields	51
Table 7: Percent of TED CANs missing values from three specific fields	51
Table 8: Distribution of single-bid contracts by value of contract	54

## LIST OF FIGURES

Figure 1 - Single Market Scoreboard .....	25
Figure 2 – MS allocations to the theme of ‘network infrastructures in transport and energy (% of total budget allocated by MS for Network Infrastructure in Transport and Energy, %) .....	26
Figure 3 – EC reporting on irregularities affecting Cohesion Policy and Fisheries (2016).....	29
Figure 4 – OLAF reporting on irregularities affecting the ESIF (2013-2017).....	31
Figure 5 - Major Project application process .....	34
Figure 6 - CEF application process.....	37
Figure 7 - EFSI application process.....	39
Figure 8 - Number of CANs per year .....	51
Figure 9 - Single-bid contracts in the EU as % of total contract values.....	52
Figure 10 - Value of contracts awarded (%) by number of offers – EU-related contracts only.....	53
Figure 11 - Single-bid contracts only, by contract value band (EU-related).....	55
Figure 12 - Single-bid contracts in Poland as % of total contract values .....	55
Figure 13 - Poland - single-bid contracts only, by contract value band (EU-related) .....	56
Figure 14 - Single-bid contracts in Hungary as % of total contract values .....	57
Figure 15 - Hungary - single-bid contracts only, by contract value band (EU-related) .....	58
Figure 16 - Single-bid contracts in Denmark as % of total contract values .....	59
Figure 17 - Summary of single-bid contracting (EU, HU, PL, DK) 2009-2017 .....	61

## EXECUTIVE SUMMARY

The European Parliament's (EP) Directorate for Budgetary Affairs contracted Blomeyer & Sanz on 22 January 2018 to conduct this study during the months of January to June 2018<sup>1</sup>. The study aimed to develop a better understanding of the regulatory framework and practices relating to the preparation and procurement of large-scale infrastructure funded by the European Union (EU). This executive summary presents the main findings and recommendations.

### Introduction

This study aims to develop a better understanding of the regulatory framework and practical experience with the preparation and procurement of large-scale infrastructure projects (worth over EUR 50 million) under the European Regional Development Fund (ERDF), the Cohesion Fund (CF), the European Fund for Strategic Investments (EFSI), and the Connecting Europe Facility (CEF). The study was conducted on the basis of desk research, stakeholder consultations and case studies (four Member State case studies and four project case studies).

### Key issues and existing insights

- EC calculations show that public procurement represents 14% of EU GDP; 50% of the European Structural and Investment Funds (ESIF) are spent through public procurement. According to the Single Market Scoreboard (2017) 13 Member States (MS) count more unsatisfactory than average/satisfactory ratings against nine indicators measuring performance in public procurement.
- In the current programming period 2014-2020, the EU funds large-scale infrastructure projects with a total of circa EUR 120 billion. The CEF supports infrastructure investments worth over 30 billion; the EFSI budget comprises a guarantee of EUR 16 billion from the EU budget, complemented by EUR 5 billion from the capital of the European Investment Bank (EIB), aiming to mobilise EUR 315 billion by mid-2018, and EUR 500 billion by end-2020. Under the ESIF theme of 'network infrastructures in transport and energy' total funding amounts to EUR 71.3 billion, including EUR 32.5 billion under the ERDF and EUR 38.8 billion under the CF.
- The European Court of Auditors (ECA, 2017) notes the adequate protection of the EU budget in the area of Cohesion Policy by the European Commission (EC); however, earlier reports (2016) note (i) weaknesses in EC monitoring of infrastructure projects (explained by data gaps), (ii) weaknesses in project preparation by project promoters (explained by poor ex ante assessment), (iii) deficiencies in implementation (administrative delays), and (iv) weaknesses caused by capacity constraints. The EC (2018) confirms the successful implementation of the CEF, explained inter alia, by centralised management, but also points to remaining obstacles, e.g. obtaining permits, a problem already identified in 2016. The EC (2017) also identified MS capacity constraints to affect project preparation. Finally, reporting by the European Anti-Fraud Office confirms the prominence of fraudulent public procurement with regard to irregularities affecting the Structural Funds.

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<sup>1</sup> The research team included José Papí, Roderick Ackermann, Margarita Sanz and Roland Blomeyer.



### **Findings – preparation of EU-funded large-scale infrastructure**

- The regulatory framework for the preparation of EU-funded large-scale infrastructure under the ERDF/CF, CEF and EFSI funding instruments foresees different roles for the EC/EIB and the MS. In general terms, the MS prepare the project applications in line with the EU-level regulatory framework, and the EC/EIB is tasked with the verification of compliance with regulatory requirements. The EC/EIB have established various mechanisms to support the MS, most notably via the provision of independent expertise to assess the quality of applications. Concerning the ERDF/CF funds, EC feedback suggests that MS capacity constraints continue to affect project preparation. Other EU-level feedback coincides with regard to the CEF instrument, noting that poor project preparation is often indicated by frequent contract amendments.
- The country case studies in Spain (ES), the Czech Republic (CZ), Greece (GR), and Romania (RO) confirm capacity constraints within relevant MS authorities (e.g. Managing Authorities), most notably lack of funding to attract qualified staff and provide capacity building. MS feedback also points to a perceived complexity of the process of preparing projects.
- The project case studies in Italy/France (IT/FR, rail), Cyprus (CY, port), The Netherlands (NL, road) and Spain (ES, metro) indicate efforts regarding the areas of feasibility/ex ante evaluation, impact assessment, socio-economic analysis and cost-benefit analysis. However, improvements appear possible with regard to the consideration of environmental issues. Experience also confirms the need to ensure that assessments are not only conducted separately for different individual segments of the infrastructure, but rather cover the wider infrastructure projects to allow stakeholders to develop a comprehensive understanding of the proposed investment. Moreover, experience also points to room for improvement with regard to the transparency of the preparation process and the involvement of relevant stakeholders, most notably the affected population.

### **Findings – procurement of EU-funded large-scale infrastructure**

- Different EC assessments (2017) have identified several constraints affecting public procurement, and the EC has launched a series of initiatives addressing these constraints, most notably via the facility for voluntary ex-ante assessment of large-scale infrastructure (2017), the professionalisation of public procurement (2017), and additional guidance on procurement of EU-funded large-scale infrastructure (2018). These measures have been introduced rather recently and / or are in the process of being operationalised, and case study feedback did not provide any insights into first experience with these measures.
- Looking specifically at the funding instruments covered by this study (CEF, EFSI, ERDF/CF), EU level feedback suggests adequate monitoring of procurement activities by the MS, and adequate instruments to enforce compliance. EIB feedback underlines the need for additional capacity development in the MS, and suggests that the MS can make more use of existing EU-level support. Feedback on the ESIF indicates a need to enhance data collection/storage by the MS to allow for ex-post verifications of compliance.
- The phenomenon of 'single bidders' (contracts relating to EU funds that are awarded on the basis of a single offer) accounts for approximately 9% of all contracts (by value)

from 2009 to 2017. For the EU overall, single bidders account for 12%. Where contracts relate to EU-funded projects, those involving single bids are the least common. Analysis of single-bid contracts relating to EU-funded projects over the same period indicates they have been distributed 52% to supplies, 33% to works, and 15% to services by value. Where single-bid contracts relate to EU funding, approximately 87% of funds have been awarded through contracts of up to EUR 200 million. The analysis of the entire downloaded TED dataset covering all Member States from 2009 to 2017 suggests that the accessibility of the data has improved significantly in recent years, but there are still gaps and errors that could be due to different approaches, lack of understanding, or carelessness when the data was entered, and this constrains analysis.

- The country case studies (CZ, ES, GR, RO) suggest a series of problematic issues, including frequent changes in the regulatory framework on public procurement, limited coordination between relevant MS authorities, capacity constraints, exclusive attention to price to the detriment of quality, artificial splitting of project budgets to allow to bypass open tenders, and corruption.
- The project case studies (IT/FR rail, CY port, NL road, ES metro) indicate that the EC/EIB's involvement in tender procedures was largely limited to drawing attention to the need for compliance. However, the EC/EIB only have a limited role in the actual procurement process as this falls under the competence of the MS. The project case studies provided only limited insight into the EC/EIB's role in monitoring procurement. However, it appears that there might be room for strengthening this role, implying additional resources for the EIB/EC. The project case studies also failed to provide comprehensive insights into the transparency of procurement procedures, however, where information was available, transparency was adequate.

## **Recommendations**

- Collect data on MS capacities for preparing projects and conducting public procurement, to facilitate the setting of concrete targets for capacity development in the concerned MS.
- Collect data on the performance of recent EC initiatives, i.e. the voluntary ex-ante assessment of large-scale infrastructure (2017), the professionalisation of public procurement (2017) and additional guidance on procurement of EU-funded large-scale infrastructure (2018); and verify the extent to which the MS make use of existing EC capacity development offers, e.g. in the form of the TAIEX PEER 2 PEER programme, specific training on public procurement for ESIF authorities, or the publications and tools of the EIB's European PPP Expertise centre (EPEC).
- Address inconsistencies and gaps in TED data.
- Strengthen the involvement of relevant stakeholders in the preparation and procurement of large-scale infrastructure projects, considering whether this can be anchored more strongly in the regulatory framework for the different funding instruments, and in addition strengthen the dissemination of findings from existing initiatives such as the 'Transparency Pacts'.

## ZUSAMMENFASSUNG

Die Direktion Haushaltsangelegenheiten des Europäischen Parlaments (EP) hat Blomeyer&Sanz am 22. Januar 2018 beauftragt, die vorliegende Studie während der Monate Januar bis Juni 2018 durchzuführen<sup>2</sup>. Ziel der Studie war es, ein besseres Verständnis des Rechtsrahmens und der Verfahren in Zusammenhang mit der Vorbereitung und Auftragsvergabe von Infrastrukturgroßvorhaben zu entwickeln, die von der Europäischen Union (EU) finanziert werden. In dieser Zusammenfassung werden die wesentlichen Erkenntnisse und Empfehlungen dargelegt.

### Einleitung

Mit der Studie soll ein besseres Verständnis des Rechtsrahmens und der praktischen Erfahrungen im Zusammenhang mit der Vorbereitung und Auftragsvergabe von Infrastrukturgroßvorhaben (im Wert von über 50 Mio. EUR) im Rahmen des Europäischen Fonds für die regionale Entwicklung (EFRE), des Kohäsionsfonds, des Europäischen Fonds für strategische Investitionen (EFSI) und der Fazilität „Connecting Europe“ ermöglicht werden. Die Studie stützt sich auf Sekundärforschung, Konsultationen der Interessengruppen und Fallstudien (vier Fallstudien zu Mitgliedstaaten und vier Projektfallstudien).

### Wichtige Themen und bestehende Erkenntnisse

- Berechnungen der Kommission zeigen, dass öffentliche Aufträge 14 % des BIP der EU ausmachen; 50 % der Europäischen Struktur- und Investitionsfonds (ESI-Fonds) werden über öffentliche Aufträge ausgegeben. Dem Binnenmarktanzeiger (2017) zufolge werden in 13 Mitgliedstaaten (MS) die anhand von neun Indikatoren gemessene Leistung bei der Auftragsvergabe eher als unbefriedigend denn als durchschnittlich bzw. zufriedenstellend bewertet.
- Im derzeitigen Programmplanungszeitraum 2014-2020 fördert die EU Infrastrukturgroßvorhaben mit einer Gesamtsumme von etwa 120 Mrd. EUR. Mit der Fazilität „Connecting Europe“ werden Infrastrukturinvestitionen im Wert von über 30 Mrd. EUR unterstützt; der Haushalt des EFSI umfasst eine Garantie in Höhe von 16 Mrd. EUR aus dem EU-Haushalt, ergänzt durch 5 Mrd. EUR aus dem Kapital der Europäischen Investitionsbank (EIB), mit der bis Mitte 2018 315 Mrd. EUR und bis Ende 2020 500 Mrd. EUR bereitgestellt werden sollen. Die Gesamtfinanzierung unter dem thematischen Ziel der ESI-Fonds „Netzinfrastrukturen im Bereich Verkehr und Energie“ beläuft sich auf 71,3 Mrd. EUR, einschließlich 32,5 Mrd. EUR im Rahmen des EFRE und 38,8 Mrd. EUR im Rahmen des Kohäsionsfonds.
- Der Europäische Rechnungshof (EuRH, 2017) stellt einen angemessenen Schutz des EU-Haushalts im Bereich der Kohäsionspolitik durch die Kommission fest; in früheren Berichten (2016) werden jedoch (i) Mängel bei der Überwachung von Infrastrukturvorhaben durch die Kommission (aufgrund von Datenlücken), (ii) Schwächen bei der Projektvorbereitung durch Projektträger (aufgrund einer unzureichenden Ex-ante-Bewertung), (iii) Mängel bei der

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<sup>2</sup> Zum Forschungsteam gehörten José Papí, Roderick Ackermann, Margarita Sanz und Roland Blomeyer.

Umsetzung (verwaltungsbedingte Verzögerungen) und (iv) Mängel aufgrund von Kapazitätsengpässen festgestellt. Die Kommission (2018) bestätigt die erfolgreiche Durchführung der Fazilität „Connecting Europe“, unter anderem erläutert durch die zentrale Verwaltung, weist aber auch auf weiterhin bestehende Hindernisse hin, z. B. die Beschaffung von Genehmigungen – ein Problem, das bereits 2016 erkannt wurde. Die Kommission (2017) hat ferner Kapazitätsengpässe in den MS festgestellt, die sich auf die Projektvorbereitung auswirken. Zudem bestätigen Berichte des Europäischen Amts für Betrugsbekämpfung, dass es im Zusammenhang mit Unregelmäßigkeiten bei den Strukturfonds in großen Umfang zu betrügerischer Auftragsvergabe kommt.

### **Erkenntnisse – Vorbereitung EU-finanzierter Infrastrukturgroßvorhaben**

- Der Rechtsrahmen für die Vorbereitung EU-finanzierter Infrastrukturgroßvorhaben im Rahmen der Förderinstrumente des EFRE bzw. des Kohäsionsfonds, der Fazilität „Connecting Europe“ und des EFSI sieht für die Kommission bzw. die EIB und die MS unterschiedliche Rollen vor. Im Allgemeinen bereitet der MS die Projektanträge gemäß dem Rechtsrahmen auf EU-Ebene vor, die Kommission bzw. die EIB sind mit der Überprüfung der Einhaltung der Vorschriften beauftragt. Die Kommission bzw. die EIB haben verschiedene Mechanismen zur Unterstützung der Mitgliedstaaten eingerichtet, zumeist über die Bereitstellung von unabhängigem Fachwissen zur Bewertung der Qualität der Anträge. Im Hinblick auf den EFRE bzw. den Kohäsionsfonds geht aus den Rückmeldungen der Kommission hervor, dass Kapazitätsengpässe in den MS die Projektvorbereitung weiterhin beeinträchtigen. In anderen Rückmeldungen auf EU-Ebene wird im Hinblick auf das Instrument der Fazilität „Connecting Europe“ übereinstimmend festgestellt, dass eine unzureichende Projektvorbereitung häufig in zahlreichen Vertragsänderungen zum Ausdruck kommt.
- Die Länderfallstudien in Spanien (ES), der Tschechischen Republik (CZ), Griechenland (GR) und Rumänien (RO) bestätigen Kapazitätsengpässe in einschlägigen Behörden der MS (z. B. Verwaltungsbehörden), vor allem fehlende Mittel, um qualifizierte Mitarbeiter anzuziehen und den Aufbau von Kapazitäten zu ermöglichen. Rückmeldungen aus den MS zeigen auch, dass das Verfahren der Projektvorbereitung als kompliziert wahrgenommen wird.
- Die Projektfallstudien in Italien/Frankreich (IT/FR, Eisenbahn), Zypern (CY, Hafen), den Niederlanden (NL, Straße) und Spanien (ES, U-Bahn) zeigen, dass Anstrengungen in den Bereichen Machbarkeit bzw. Ex-ante-Bewertung, Folgenabschätzung, sozioökonomische Untersuchung und Kosten-Nutzen-Analyse unternommen werden. Verbesserungen scheinen jedoch im Hinblick auf die Berücksichtigung von Umweltfragen möglich zu sein. Erfahrungen bestätigen auch, dass die Bewertungen nicht nur getrennt für einzelne Segmente der Infrastruktur durchgeführt werden dürfen, sondern die Infrastrukturprojekte im weiteren Sinne abdecken müssen, damit die Interessengruppen ein umfassendes Verständnis für die vorgeschlagenen Investitionen entwickeln. Die Erfahrungen zeigen überdies, dass im Hinblick auf die Transparenz des Vorbereitungsprozesses und die Beteiligung einschlägiger Interessengruppen, vor allem der betroffenen Bevölkerung, Verbesserungen möglich sind.

## **Erkenntnisse – Auftragsvergabe für EU-finanzierte Infrastruktur Großvorhaben**

- In mehreren Bewertungen der Kommission (2017) wurden Schwächen bei der öffentlichen Auftragsvergabe festgestellt. Die Kommission hat eine Reihe von Initiativen zur Behebung dieser Mängel eingeleitet, insbesondere über die Fazilität für die freiwillige Ex-ante-Bewertung von Infrastruktur Großvorhaben (2017), die Professionalisierung der öffentlichen Auftragsvergabe (2017) und ergänzende Leitlinien zur Auftragsvergabe bei EU-finanzierten Infrastruktur Großvorhaben (2018). Diese Maßnahmen wurden erst kürzlich ergriffen bzw. werden derzeit durchgeführt, und Rückmeldungen zu Fallstudien enthielten keine Erkenntnisse im Hinblick auf erste Erfahrungen mit diesen Maßnahmen.
- Was insbesondere die in dieser Studie untersuchten Förderinstrumente (CEF, EFSI, EFRE/Kohäsionsfonds) angeht, so zeigen Rückmeldungen auf EU-Ebene eine angemessene Überwachung der Vergabetätigkeiten durch die MS und geeignete Instrumente zur Durchsetzung der Vorschriften. In den Rückmeldungen der EIB wird die Notwendigkeit einer zusätzlichen Entwicklung von Kapazitäten in den MS betont und darauf hingewiesen, dass die MS die auf EU-Ebene bestehende Unterstützung besser nutzen können. Rückmeldungen zum ESIF zeigen, dass die Erfassung bzw. Speicherung von Daten durch die MS verbessert werden muss, um Ex-post-Überprüfungen der Einhaltung zu ermöglichen.
- Das Phänomen der „Einzelbieter“ (Aufträge im Zusammenhang mit EU-Mitteln, die auf der Grundlage eines einzigen Angebots vergeben werden) hat einen Anteil von etwa 9 % an allen Aufträgen (gemessen am Wert) zwischen 2009 und 2017. In der EU insgesamt haben Einzelbieter einen Anteil von 12 %. Bei Verträgen, die sich auf EU-finanzierte Vorhaben beziehen, sind solche mit Einzelgeboten am seltensten. Eine Untersuchung der auf der Grundlage eines einzigen Angebots vergebenen Aufträge für EU-finanzierte Vorhaben im gleichen Zeitraum zeigt, dass sie gemessen am Wert zu 52 % auf Lieferungen, zu 33 % auf Bauaufträge und zu 15 % auf Dienstleistungen entfallen. Beziehen sich auf der Grundlage eines einzigen Angebots vergebene Aufträge auf EU-Mittel, wurden etwa 87 % der Mittel über Aufträge im Wert von bis zu 200 Mio. EUR vergeben. Eine Untersuchung des gesamten heruntergeladenen TED-Datensatzes für alle Mitgliedstaaten zwischen 2009 und 2017 zeigt, dass sich die Zugänglichkeit der Daten in den letzten Jahren deutlich verbessert hat, aber weiterhin Mängel und Fehler bestehen, die durch unterschiedliche Ansätze, fehlendes Verständnis oder Nachlässigkeit bei der Eingabe der Daten begründet sein könnten, wodurch die Untersuchung eingeschränkt wird.
- Die Länderfallstudien (CZ, ES, GR, RO) machen deutlich, dass eine Reihe von Problemen besteht, darunter häufige Änderungen des Rechtsrahmens zur öffentlichen Auftragsvergabe, geringe Abstimmung zwischen einschlägigen Behörden der MS, Kapazitätsengpässe, ausschließliche Berücksichtigung des Preises zulasten der Qualität, künstliche Aufteilung der Projektmittel, um offene Ausschreibungsverfahren zu umgehen, und Korruption.
- Die Projektfallstudien (IT/FR Eisenbahn, CY Hafen, NL Straße, ES U-Bahn) zeigen, dass die Beteiligung der Kommission bzw. der EIB an Ausschreibungsverfahren größtenteils darauf

beschränkt war, auf die Notwendigkeit der Einhaltung von Vorschriften hinzuweisen. Die Kommission bzw. die EIB spielen bei eigentlichen Vergabeverfahren jedoch nur eine geringe Rolle, da dies in die Zuständigkeit der MS fällt. Die Projektfallstudien boten nur einen begrenzten Einblick in die Rolle der Kommission bzw. der EIB bei der Überwachung der Vergabe. Die Stärkung dieser Rolle scheint jedoch möglich zu sein, was zusätzliche Mittel für die Kommission bzw. die EIB erfordert. Die Projektfallstudien lieferten auch keine umfassenden Erkenntnisse zur Transparenz der Vergabeverfahren; sofern Informationen vorlagen, war die Transparenz jedoch angemessen.

## **Empfehlungen**

- Erhebung von Daten zu den Fähigkeiten der MS, Projekte vorzubereiten und die öffentliche Auftragsvergabe durchzuführen, um die Festlegung konkreter Ziele für die Entwicklung von Kapazitäten in den betreffenden MS zu erleichtern.
- Erhebung von Daten zur Leistung der jüngsten Initiativen der Kommission, d. h. die freiwillige Ex-ante-Bewertung von Infrastrukturgroßvorhaben (2017), die Professionalisierung der öffentlichen Auftragsvergabe (2017) und zusätzliche Leitlinien zur Auftragsvergabe bei EU-finanzierten Infrastrukturgroßvorhaben (2018); Überprüfung, inwieweit die MS die bestehenden Angebote der Kommission zum Aufbau von Kapazitäten nutzen, z. B. in Form des PEER 2 PEER-Programms des TAIEX, gezielter Schulungen zur öffentlichen Auftragsvergabe für Verwaltungsbehörden der ESI-Fonds oder Veröffentlichungen und Instrumente des Europäischen PPP-Kompetenzzentrums der EIB (EPEC).
- Beseitigung von Unstimmigkeiten und Lücken in den TED-Daten.
- Stärkung der Beteiligung von einschlägigen Interessengruppen an der Vorbereitung und Vergabe von Infrastrukturgroßvorhaben, Überlegungen dazu, ob dies stärker im Rechtsrahmen zu den verschiedenen Förderinstrumenten verankert werden kann, sowie stärkere Verbreitung der Erkenntnisse aus bestehenden Initiativen wie den „Transparenzpakten“.

## SYNTHÈSE

La direction des affaires budgétaires du Parlement européen a commandé, le 22 janvier 2018, à la société Blomeyer & Sanz la réalisation de la présente étude entre janvier et juin 2018<sup>3</sup>. L'objectif de cette étude était de mieux cerner le cadre réglementaire et les pratiques qui entourent la préparation et la passation des marchés publics des grands projets d'infrastructure financés par l'Union européenne. Cette synthèse présente les principales conclusions et recommandations de l'étude.

### Introduction

La présente étude vise à mieux cerner le cadre réglementaire et l'expérience pratique qui entourent la préparation et la passation des marchés des grands projets d'infrastructure (d'un montant supérieur à 50 millions d'euros) financés au titre du Fonds européen de développement régional (FEDER), du Fonds de cohésion (FC), du Fonds européen pour les investissements stratégiques (EFSI) et du mécanisme pour l'interconnexion en Europe (MIE). Elle s'appuie sur des recherches documentaires, sur des consultations menées auprès de parties prenantes et sur des études de cas (quatre études de cas d'États membres et quatre études de cas de projets).

### Questions clés et état des lieux

- Selon les calculs de la Commission européenne, les marchés publics représentent 14 % du produit intérieur brut de l'Union européenne, et la moitié des Fonds structurels et d'investissement européens (Fonds ESI) est dépensée dans le cadre de marchés publics. D'après le tableau d'affichage du marché unique (2017), treize États membres ont davantage de notes insatisfaisantes que de notes moyennes ou satisfaisantes pour neuf indicateurs mesurant l'exécution des marchés publics.
- Au cours de la période de programmation actuelle (2014-2020), l'Union européenne finance de grands projets d'infrastructure pour un montant total d'environ 120 milliards d'euros. Le MIE soutient l'investissement dans les infrastructures pour un montant de plus de 30 milliards d'euros, et le budget de l'EFSI comporte une garantie de 16 milliards d'euros provenant du budget de l'Union, complétée par 5 milliards d'euros provenant du capital de la Banque européenne d'investissement (BEI), qui vise à mobiliser 315 milliards d'euros d'ici la mi-2018 et 500 milliards d'euros d'ici fin 2020. Le montant total des financements au titre de l'objectif thématique «Infrastructures de réseaux dans les transports et l'énergie» des Fonds ESI s'élève à 71,3 milliards d'euros, dont 32,5 milliards au titre du FEDER et 38,8 milliards au titre du FC.
- La Cour des comptes européenne a relevé en 2017 que la Commission européenne préserve adéquatement le budget de l'Union dans le domaine de la politique de cohésion. Néanmoins, des rapports antérieurs (2016) avaient épingle : i) des faiblesses dans le suivi des projets d'infrastructure par la Commission (dus à un manque de données); ii) des lacunes dans la préparation des projets par leurs promoteurs (en raison de l'insuffisance des évaluations ex ante); iii) des déficiences dans la mise en œuvre (retards administratifs); iv) des faiblesses

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<sup>3</sup> L'équipe de chercheurs était composée de José Papí, Roderick Ackermann, Margarita Sanz et Roland Blomeyer.



engendrées par des contraintes de capacité. En 2018, la Commission a confirmé la réussite de la mise en œuvre du MIE, qui peut s'expliquer, entre autres, par la centralisation de la gestion, mais a également souligné la persistance d'obstacles, par exemple pour l'obtention des permis, un problème qui avait déjà été constaté en 2016. En 2017, la Commission avait également constaté que les contraintes de capacité des États membres avaient une incidence négative sur la préparation des projets. Enfin, un rapport de l'Office européen de lutte antifraude est venu confirmer le degré important de fraude dans les marchés publics en ce qui concerne l'utilisation des Fonds structurels, laquelle est entachée d'irrégularités.

### **Conclusions – préparation des grands projets d'infrastructure financés par l'Union européenne**

- Le cadre réglementaire relatif à la préparation des grands projets d'infrastructure financés par l'Union européenne au titre d'instruments tels que le FEDER, le FC, le MIE et l'EFSI assigne différents rôles à la Commission, à la BEI et aux États membres. De façon générale, les États membres préparent les dossiers de candidature des projets conformément au cadre réglementaire européen, et la Commission ou la BEI est chargée de vérifier le respect des exigences réglementaires. La Commission et la BEI ont mis en place différents mécanismes de soutien aux États membres, principalement en mettant à leur disposition des experts indépendants pour évaluer la qualité des demandes. Concernant les fonds du FEDER et du FC, des commentaires de la Commission indiquent que les contraintes de capacité des États membres continuent de nuire à la préparation des projets. D'autres commentaires au niveau européen vont dans le même sens en ce qui concerne le MIE, précisant que des modifications répétées des contrats sont fréquemment le signe d'une mauvaise préparation des projets.
- Les études de cas de pays menées en République tchèque, en Grèce, en Espagne et en Roumanie confirment les contraintes de capacité auxquelles sont soumises les autorités compétentes des États membres (par exemple les autorités de gestion), la principale étant le manque de fonds pour attirer du personnel qualifié et renforcer les capacités. Les retours d'information des États membres indiquent également que la procédure de préparation des projets est perçue comme étant complexe.
- Les études de cas de projets menées en Espagne (métro), en France et en Italie (transport ferroviaire), à Chypre (port) et aux Pays-Bas (route) montrent que des efforts sont consentis dans les domaines des évaluations de faisabilité et des évaluations ex ante, de l'analyse d'impact, de l'analyse socio-économique et de l'analyse coûts-avantages. Néanmoins, des améliorations semblent possibles en ce qui concerne l'attention accordée aux questions environnementales. L'expérience confirme également la nécessité de veiller à ce que les évaluations ne soient pas seulement conduites de façon séparée pour chaque segment de l'infrastructure concernée, mais plutôt pour l'infrastructure dans son ensemble, afin de permettre aux parties prenantes de parvenir à une compréhension approfondie de l'investissement proposé. Par ailleurs, l'expérience indique également qu'une marge de progression existe s'agissant de la transparence de la procédure de préparation et de la participation des parties prenantes, notamment des populations concernées par les projets.



## **Conclusions – passation des marchés publics de grands projets d'infrastructure financés par l'Union européenne**

- Différentes évaluations de la Commission (2017) ont recensé plusieurs contraintes qui nuisent à la passation de marchés publics et la Commission a lancé une série d'initiatives visant à remédier à ces contraintes, notamment au moyen du mécanisme d'évaluation ex ante volontaire des grands projets d'infrastructure (2017), de la professionnalisation de la passation des marchés publics (2017) et d'orientations supplémentaires concernant la passation des marchés publics de grands projets d'infrastructure financés par l'Union (2018). Ces mesures ont été introduites assez récemment ou sont en cours de mise en place et les informations issues des études de cas n'ont pas permis de tirer de conclusions des premières expériences d'application de ces mesures.
- En ce qui concerne plus particulièrement les instruments de financement couverts par la présente étude (MIE, EFSI, FEDER, FC), les commentaires formulés à l'échelle de l'Union indiquent que les États membres effectuent un suivi approprié des activités en matière de marchés publics et que les instruments garantissant le respect des exigences sont adéquats. La BEI souligne la nécessité d'un renforcement supplémentaire des capacités dans les États membres et propose que ces derniers recourent davantage au soutien existant à l'échelle de l'Union. Les retours d'informations concernant les Fonds ESI indiquent la nécessité d'améliorer la collecte et le stockage des données dans les États membres afin de permettre une vérification ex post de la conformité.
- Le phénomène des «soumissionnaires uniques» (contrats liés à des fonds de l'Union accordés sur la base d'une seule offre) a représenté environ 9 % de l'ensemble des contrats (en valeur) entre 2009 et 2017, les soumissionnaires uniques ayant constitué 12 % des soumissionnaires de l'ensemble de l'Union. Les contrats à soumissionnaire unique ont été les moins fréquents parmi les contrats liés à des projets financés par l'Union. L'analyse des contrats à soumissionnaire unique liés à des projets financés par l'Union au cours de la même période indique que, en valeur, 52 % d'entre eux ont porté sur des fournitures, 33 % sur des travaux et 15 % sur des services. Environ 87 % des fonds octroyés dans le cadre de contrats à soumissionnaire unique liés à un financement de l'Union l'ont été au moyen de contrats d'un montant inférieur ou égal à 200 millions d'euros. L'analyse de l'intégralité du jeu de données de TED (Tenders Electronic Daily) téléchargées couvrant l'ensemble des États membres entre 2009 et 2017 indique que l'accessibilité des données s'est significativement améliorée ces dernières années mais qu'il existe encore des lacunes et des erreurs qui pourraient être dues à des approches différentes, au manque de compréhension ou à la négligence dans la saisie des données, ce qui limite les possibilités d'analyse.
- Les études de cas de pays (République tchèque, Espagne, Grèce, Roumanie) indiquent qu'il existe une série de questions problématiques, dont des modifications fréquentes du cadre réglementaire applicable aux marchés publics, une coordination insuffisante entre les autorités compétentes des États membres, des contraintes de capacité, une attention accordée

exclusivement au prix au détriment de la qualité, une segmentation artificielle des budgets alloués aux projets afin d'éviter les procédures d'appel d'offres ouvertes, ainsi que la corruption.

- Les études de cas de projets (transport ferroviaire en France et en Italie, port à Chypre, route aux Pays-Bas, métro en Espagne) indiquent que la participation de la Commission ou de la BEI aux procédures d'appel d'offres s'est largement bornée à attirer l'attention sur l'exigence de conformité. Le rôle de la Commission et de la BEI est cependant limité dans la procédure de passation de marchés proprement dite, celle-ci relevant de la compétence des États membres. Les études de cas n'ont donné qu'une idée restreinte du rôle qui est celui de la Commission ou de la BEI dans le suivi des marchés publics. Leur rôle pourrait être renforcé, ce qui supposerait une augmentation des ressources de la BEI et de la Commission. Les études de cas n'ont pas non plus fourni d'aperçu général quant à la transparence des procédures de passation de marchés, mais lorsque des informations étaient disponibles, la transparence s'est avérée adéquate.

### **Recommandations**

- Collecter des données concernant les capacités des États membres à préparer des projets et à conduire des procédures de passation de marchés publics afin de faciliter l'établissement d'objectifs concrets de renforcement des capacités dans les États membres concernés.
- Collecter des données sur les résultats des récentes initiatives de la Commission, à savoir l'évaluation ex ante volontaire des grands projets d'infrastructure (2017), la professionnalisation de la passation des marchés publics (2017) et les orientations supplémentaires concernant la passation des marchés publics de grands travaux d'infrastructure financés par l'Union (2018), et vérifier dans quelle mesure les États membres recourent à l'aide proposée par la Commission en matière de renforcement des capacités, par exemple sous la forme du programme TAIEX PEER 2 PEER, de la formation spécifique en matière de passation de marchés publics pour les autorités chargées de la gestion des Fonds ESI, ou des publications et outils du Centre européen d'expertise en matière de partenariat public-privé de la BEI.
- Remédier aux incohérences et aux lacunes dans les données de TED.
- Renforcer la participation des parties prenantes dans la préparation des projets et la passation des marchés publics de grands travaux d'infrastructure, en envisageant la possibilité d'ancrer ces procédures plus fermement dans le cadre réglementaire pour les différents instruments de financement, ainsi que renforcer la diffusion des résultats des initiatives existantes, telles que les «pactes de transparence».

## 1 INTRODUCTION

The European Parliament's (EP) Directorate for Budgetary Affairs contracted Blomeyer & Sanz on 22 January 2018 to conduct this study during the months of January to June 2018<sup>4</sup>. This report is based on our understanding of the EP Specifications, a kick-off discussion with the EP on 21 February 2018, desk research, interviews with relevant representatives at the level of the European Union (EU), and case studies. Moreover, the EP provided feedback on a draft version of this report in June 2018. This introduction presents the research objectives and scope (section 1.1), the methodology and implementation schedule (1.2), and the report structure (1.3).

### 1.1 OBJECTIVES AND SCOPE

#### 1.1.1 Objectives

The EP's Specifications for this study note three overall objectives, detailing the interest in better understanding the preparation and procurement of large-scale infrastructure interventions funded by the European Union (EU):

- **Preparation of projects:** *'assess if the major large-scale infrastructure projects are well planned, cost-efficient and providing sustainable results'*
- **Procurement:** *'identify weaknesses of the current public procurement processes, systems and legislation, (...) analyse more in detail the ex-ante evaluation, the organisation of call for tenders and the cost benefit analysis undertaken by the European Commission when selecting the projects'*
- **Recommendations:** *'Recommendations (...) with the aim of ensuring a more transparent, efficient and accountable public procurement.'*

The Specifications then note a series of detailed questions that are reproduced in Table 1 below.

#### 1.1.2 Scope

The Specifications limit the scope of the study by:

- Referring to four different funding instruments, namely the **European Regional Development Fund** (ERDF), the **Cohesion Fund** (CF) (the ERDF and the CF are two of the instruments deployed under the European Structural and Investment Funds, ESIF), the **European Fund for Strategic Investments** (EFSI), and the **Connecting Europe Facility** (CEF);
- Noting infrastructure in the thematic areas of **transport, environment, energy, culture, education and ICT**;
- Noting a project value of over **EUR 50 million**;
- Finally, the kick-off meeting with the EP provided further detail on the scope, namely, the study should identify both, **poor and good practices**, with a strong focus on the thematic areas of **transport and energy**.

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<sup>4</sup> The research team included José Papí, Roderick Ackermann, Margarita Sanz and Roland Blomeyer.

**Table 1: Expected content**

OVERALL QUESTION	SUB-QUESTION	ELEMENTS TO BE ADDRESSED
I) Overview of EU public procurement legislation and policies, with a focus on large-scale infrastructure projects, including new initiatives and mechanisms e.g. voluntary ex-ante assessment mechanisms, contract registers etc.		
II) Description and analysis of the selection process of large-scale infrastructure projects for funding, by the European Commission (EC)	Analyse the following aspects in the selection process:	<p>1. Ex-ante evaluation: who is in charge for the ex-ante evaluation? Is it independent? What are the stakeholders involved? Is the local population involved in the ex-ante evaluation of the project? What are the criteria for a positive ex-ante evaluation? What kind of environmental and social criteria are considered?</p> <p>2. Call for tenders: is the EC directly involved in the call for tenders? What kind of monitoring activities the EC provides? What kind of ex-ante controls are set from the EC to respect the rules? What is the kind of controls for subcontractors?</p> <p>3. Cost-benefit analysis: who is in charge for ex-ante and ex-post cost-benefit analysis?</p> <p>4. What are the economic, social and environmental criteria that the EIB uses to finance such kind of projects? What kind of control the EC undertakes on the EIB large-scale project financing?</p>
	Analyse how Member States assess and select projects to be applied to the EC for financial support.	
	3-4 case studies on the implementation of infrastructure projects in different MS, with focus on:	<p>1. Assessing whether the public procurement rules have been correctly applied on these projects, by the EC and the MS involved</p> <p>2. Assessing the application of the economic, environmental and energy assessments prior to the commencement of the projects</p> <p>3. Providing a review of the local government/citizens' organisations support and complaints/petitions on these projects</p> <p>4. Assessing whether the overall cost-benefit analysis for these projects proves correct so far, and estimate the future outcome.</p>
III) Weaknesses of current public procurement processes applied for the selection and management of large-scale infrastructure projects		
IV) Recommendations on the improvement of the public procurement processes for major large-scale infrastructure projects		

## 1.2 METHODOLOGY AND IMPLEMENTATION SCHEDULE OF THE STUDY

### 1.2.1 Methodology

Several research tools were deployed to answer the questions (Table 1), based on both the Specifications and the feedback provided during the kick-off meeting with the EP on 21 February 2018:

- **Desk research** included a review of relevant documentation by the EU institutions, civil society organisations and other stakeholders on the policy and regulatory framework on the preparation and procurement of large-scale infrastructure supported with EU funds.
- **Stakeholder interviews** were conducted with representatives of relevant EU institutions (European Commission (EC) and European Investment Bank (EIB))<sup>5</sup>. The interviews aimed to establish further insights into the policy and regulatory framework on the preparation and procurement of large-scale infrastructure supported with EU funds. Here, the authors wish to thank the institutions for the very effective provision of relevant information during the months March to May 2018.
- **Case studies** aimed to illustrate the practice of preparing and procuring large-scale infrastructure. The study includes two types of case studies, namely (a) case studies looking at the policy and regulatory-level experience of selected Member States (MS), and (b) case studies on specific infrastructure projects.
  - a) The **country case studies** were selected on the basis of the Single Market Scoreboard data confirming that the MS has experienced or is experiencing relevant procurement issues (see Figure 1 below, identifying comparative weaknesses for the Czech Republic (CZ), Spain (ES), Greece (GR) and Romania (RO)).
  - b) The **infrastructure case studies** were selected with a view to covering the different funding instruments and themes, and ensuring some extent of geographical balance. This substantiated the need to focus on 'exemplary' cases, rather than a representative sample, because of the study's specific interest in system failures and best practices<sup>6</sup>. Table 2 below shows the selected cases.

<sup>5</sup> The following stakeholders were interviewed: EC Directorates General (DG): Regional and Urban Policy; Mobility and Transport; INEA; EIB.

<sup>6</sup> On the selection methodology, see Yin, R. K. (1981) 'The case study as a Serious Research Strategy' in *Knowledge: Creation, Diffusion, Utilization*, Vol. 3, 97-114 (Thousand Oaks: SAGE)

**Table 2: Case study work**

EU MEMBER STATES	PROJECT	FUNDING INSTRUMENT	EU CONTRIBUTION (EUR MILLION)
France / Italy	Cross Border Section of the New Lyon-Turin Rail Link - Mont Cenis Base Tunnel	CEF	814
Netherlands	A6 Almere Motorway PPP	EFSI	79
Cyprus	Primary Road Connecting the New Limassol Port with the Limassol-Pafos Motorway – Vertical Road	CF	90
Spain	Modernisation and Renewal programme of Metro de Madrid's Line 5	EIB	48 <sup>7</sup>

The following paragraphs provide brief outlines of the four projects:

- Lyon-Turin rail tunnel (IT/FR rail):** This project aims to link Lyon to Turin via rail through the construction of a new 57 km long tunnel in the Alps. For this project, the access routes are managed at the national level by Réseau Ferré de France in France and Rete Ferroviaria Italiana in Italy, and the international section of 65 km between Saint-Jean-de-Maurienne and Susa is managed by Tunnel Euralpin Lyon-Turin (TELT), a company owned to 50% by the French Ministry of Economy and Finance and to 50% by the Ferrovie dello Stato italiane. According to the funding keys decided in 2012<sup>8</sup>, the EU will fund about 40%, Italy 35% and France 25% of the international section. The project dates back to the 1990s and was declared a priority project in 1994 by Trans-European Transport Networks. The management of the international section was initially managed by Alpetunnel until 2001 and then by Lyon Turin Ferroviare from 2001 to 2007 when TELT was created. In the remaining text, we will refer to this project as 'IT/FR rail'.
- A6 Motorway (NL road):** The EIB provided some EUR 80 million guaranteed under the EFSI fund for the widening and improvement of the A6 motorway near the city of Almere in the Netherlands (the 'A6 Project')<sup>9</sup>. The project was commissioned by the Dutch Ministry of Infrastructure and the Environment (*Rijkswaterstaat*) and has a total worth of EUR 300 million<sup>10</sup>. The motivation behind the A6 Project is the growth of the town of Almere with 45,000-60,000 more houses than originally foreseen in the urban planning prepared in the 1980s<sup>11</sup>. In addition to this, traffic north of Amsterdam is gradually growing. The expansion of the motorway's network includes additional lanes as well as measures to improve energy sufficiency and liveability of the surrounding areas. In the remaining text, we will refer to this project as 'NL road'.

<sup>7</sup> <http://www.eib.org/projects/loan/loan/20120181>

<sup>8</sup> <http://www.telt-sas.com/en/home-en/>

<sup>9</sup> <https://bezoekerscentrum.rijkswaterstaat.nl/SchipholAmsterdamAlmere/wat-en-waarom-a6/#.WrpYPJNuZeY>

<sup>10</sup> <https://www.rijkswaterstaat.nl/english>

<sup>11</sup> <https://bezoekerscentrum.rijkswaterstaat.nl/SchipholAmsterdamAlmere/wat-en-waarom-a6/#.WrpZh5NuZeb>

- **Vertical Road providing better connections to Limassol Port, part of the TEN-T network (CY port):** This project is financed and developed to improve connections between the port of Limassol and the motorway network of Cyprus, and to ease congestion and pollution in the area<sup>12</sup>. It also includes a drainage system for rainwater, as this was considered necessary for the drainage of rainwater resulting from the road as assessed by the corresponding Environmental Impact Assessment. The project was split into four contracts, and received funds from the CF, the 'Trans-European Networks-Transport' programme (now CEF) and the EIB. In the remaining text, we will refer to this project as 'CY port'.
- **Modernisation and renewal programme of Line 5 of Madrid's metro (ES metro):** The 'Modernisation and Renewal Programme' of Line 5 of Madrid's metro had the following key objectives: Improving transport capacity; Improving traffic safety; and Improving operational management to address eventual incidents/accidents. The Programme was financed partly with funds from the EIB through its project: "MADRID URBAN TRANSPORT INFRASTRUCTURE 2015-2017". The intervention focused on the following areas:
  - Signalling, Protection Systems and Automatic Driving;
  - Mobile Material;
  - Energy Systems;
  - Communications Systems;
  - Ventilation Systems.

The total cost of the project was EUR 58.2 million.

In the remaining text, we will refer to this project as 'ES metro'.

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<sup>12</sup> European Commission (undated), "Providing better links to Cyprus's key port", [http://ec.europa.eu/regional\\_policy/en/projects/cyprus/providing-better-links-to-cypruss-key-port](http://ec.europa.eu/regional_policy/en/projects/cyprus/providing-better-links-to-cypruss-key-port)

### 1.2.2 Implementation schedule

The study commenced on 22 January 2018 and was completed on 15 June 2018. Table 3 presents the study's milestones, consisting of reports and their deadlines, and exchanges with the EP.

**Table 3: Study milestones**

DATE	REPORTS	MEETINGS
22 January 2018		Order Form
21 February 2018		Kick-off discussion with the EP
26 April 2018	Interim report	
15 June 2018	Final report (draft)	
25 June 2018	EP comments on the draft	
15 August	Final report	
11 October 2018		Presentation to the EP

### 1.3 STRUCTURE OF THE STUDY

The study takes the following structure:

- **Chapter 1** – Introduction;
- **Chapter 2** – Key issues and existing insights;
- **Chapter 3** – Preparation of EU-funded large-scale infrastructure;
- **Chapter 4** – Procurement of EU-funded large-scale infrastructure;
- **Chapter 5** – Recommendations.



## 2 KEY ISSUES AND EXISTING INSIGHTS

### KEY FINDINGS

- EC calculations show that public procurement represents 14% of the EU's Gross Domestic Product; 50% of the ESIF are spent through public procurement. According to the Single Market Scoreboard (2017) 13 MS count more unsatisfactory than average/satisfactory ratings against nine indicators measuring performance in public procurement.
- In the current programming period 2014-2020, the EU funds large-scale infrastructure with a total of circa EUR 120 billion. The CEF supports infrastructure investments worth over 30 billion; The EFSI budget comprises a guarantee of EUR 16 billion from the EU budget, complemented by EUR 5 billion from the EIB's capital, aiming to mobilise EUR 315 billion by mid-2018, and EUR 500 billion by end-2020. Under the ESIF theme of 'network infrastructures in transport and energy' total funding amounts to EUR 71.3 billion, including EUR 32.5 billion under the ERDF, and EUR 38.8 billion under the CF.
- The European Court of Auditors (ECA, 2017) notes the EC's adequate protection of the EU budget in the area of Cohesion Policy. However, earlier reports (2016) note (i) weaknesses in the EC's monitoring of infrastructure projects (explained by data gaps), (ii) weaknesses in project preparation by project promoters (explained by poor ex ante assessment), (iii) deficiencies in implementation by project promoters (administrative delays), and (iv) weaknesses caused by capacity constraints. The EC (2018) confirms the successful implementation of the CEF, explained inter alia, by centralised management, but also points to remaining obstacles, e.g. obtaining permits, a problem already identified in 2016. The EC (2017) also identified MS capacity constraints to affect project preparation. Finally, reporting by the European Anti-Fraud Office confirms the prominence of fraudulent public procurement with regard to irregularities affecting the Structural Funds.

This chapter sets the context by noting a series of key issues concerning EU-funded large-scale infrastructure projects (2.1). Moreover, the chapter briefly presents existing insights on this topic (2.2).

### 2.1 KEY ISSUES

#### 2.1.1 Public procurement

To underline the importance of this study, this section briefly notes key issues with regard to public procurement.

Public procurement 'represents around 14% of EU GDP, with public authorities spending over EUR 2 trillion of European taxpayers' money every year'<sup>13</sup>. In this context, the EC estimated a possible efficiency gain and related savings of EUR 200 billion per year<sup>14</sup>.

Public procurement is of specific relevance to EU funding, e.g. the EC estimates that some 50% of the ESIF are spent through public procurement<sup>15</sup>.

In 2015, the European Court of Auditors (ECA) published a report on public procurement in the area of the EU's cohesion expenditure<sup>16</sup>. The ECA acknowledged efforts but concluded 'there is still a long way to go and efforts need to be intensified'. The ECA identified errors related to public procurement in 40% of the projects for which public procurement was audited. The most important errors resulted from lack of fair competition and contracts not being awarded to the best bidders. The ECA recommended that further action be taken to address the lack of analysis of the errors occurring in procurement.

Moreover, in 2017, the Single Market Scoreboard calculated MS performance in public procurement by using data for nine indicators and measures, including 'One Bidder', 'No Calls for Bids', 'Publication Rate', 'Cooperative Procurement', 'Award Criteria', 'Decision Speed', 'Missing Values', 'Missing Calls for Bids', 'Missing Registration Numbers'<sup>17</sup>. The following figure shows the assessment of MS performance as reported by the Single Market Scoreboard, differentiating between unsatisfactory, average and satisfactory performance. As shown in the following figure, the MS with the lowest performance include:

- The Czech Republic (7 scores of unsatisfactory, 1 average and 1 satisfactory);
- Spain (7 scores of unsatisfactory, 2 satisfactory);
- Greece (6 scores of unsatisfactory, 1 average and 2 satisfactory);
- Cyprus, Romania and Slovakia (each 6 scores of unsatisfactory, 3 satisfactory).

Figure 1 presents Single Market Scoreboard data on public procurement.

<sup>13</sup> EC (2017), EC Communication 'Helping investment through a voluntary ex-ante assessment of the procurement aspects for large infrastructure projects', p.1.

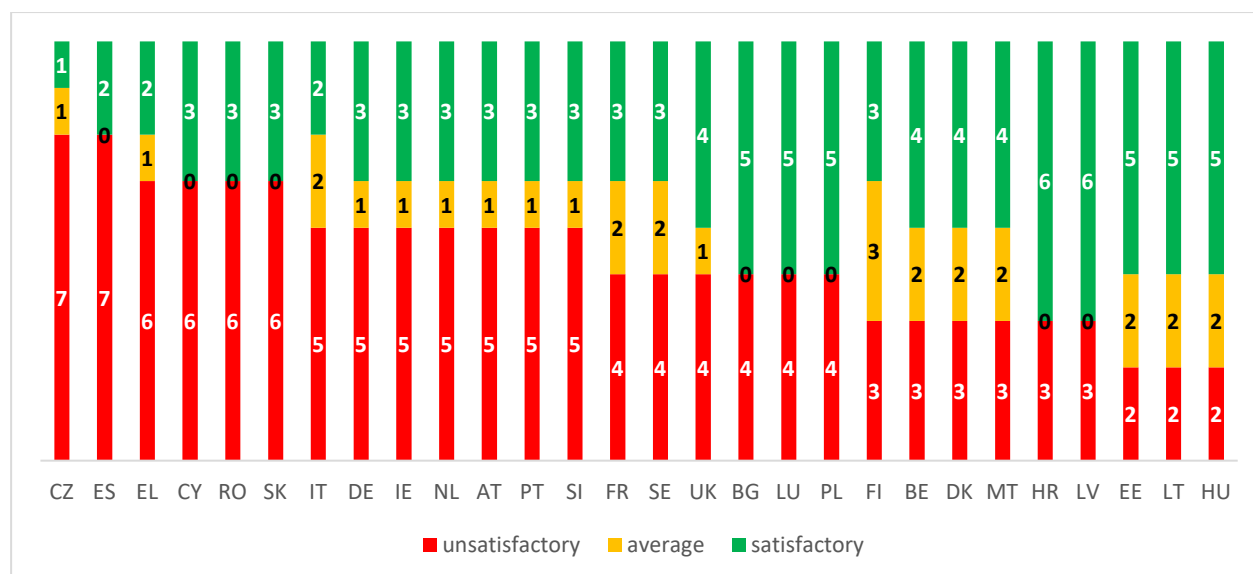
<sup>14</sup> EC (2017), EC Communication 'Making public procurement work in and for Europe', p.2.

<sup>15</sup> EC (2017), EC Communication 'Making public procurement work in and for Europe', p.2.

<sup>16</sup> ECA (2015).

<sup>17</sup> EC (2017) Single Market Scoreboard. Performance per Policy Area. Public Procurement (reporting period 01/2016-12/2016), see

[http://ec.europa.eu/internal\\_market/scoreboard/performance\\_per\\_policy\\_area/public\\_procurement/index\\_en.htm#maincontentSec3](http://ec.europa.eu/internal_market/scoreboard/performance_per_policy_area/public_procurement/index_en.htm#maincontentSec3) (last accessed on 7 February 2017).

**Figure 1 - Single Market Scoreboard**

### 2.1.2 Volume of infrastructure funding

This section notes the volume of EU funding for large-scale infrastructure, in total some EUR 120 billion in the current programming period 2014-2020.

#### 2.1.2.1 CEF

The CEF (2014-2020) supports infrastructure investments in the areas of energy (EUR 5.35 billion), telecom (EUR 1.04 billion) and transport (EUR 24.05 billion)<sup>18</sup>. The CEF website does not provide a breakdown of these figures per MS.

#### 2.1.2.2 EFSI

The EFSI budget comprises a guarantee of EUR 16 billion from the EU budget, complemented by EUR billion from the EIB's capital<sup>19</sup>. The EFSI aims to mobilise EUR 315 billion by mid-2018, and EUR 500 billion by end-2020<sup>20</sup>. The EFSI website does not provide a breakdown of these figures per MS; note also that individual EFSI projects can involve several MS.

#### 2.1.2.3 ESIF

The ESIF englobes the ERDF and the CF. Total funding for Cohesion policy (2014-2020) amounts to EUR 351.8 billion<sup>21</sup>. Under the theme of 'network infrastructures in transport and energy' total funding amounts to EUR 71.3 billion, including EUR 32.5 billion under the ERDF and EUR 38.8 billion under the CF<sup>22</sup>. The following figure shows the breakdown of this funding per MS<sup>23</sup>.

<sup>18</sup> <https://ec.europa.eu/inea/en/connecting-europe-facility> (last accessed on 15 March 2018).

<sup>19</sup> <http://www.eib.org/efsi/what-is-efsi/index.htm> (last accessed on 15 March 2018).

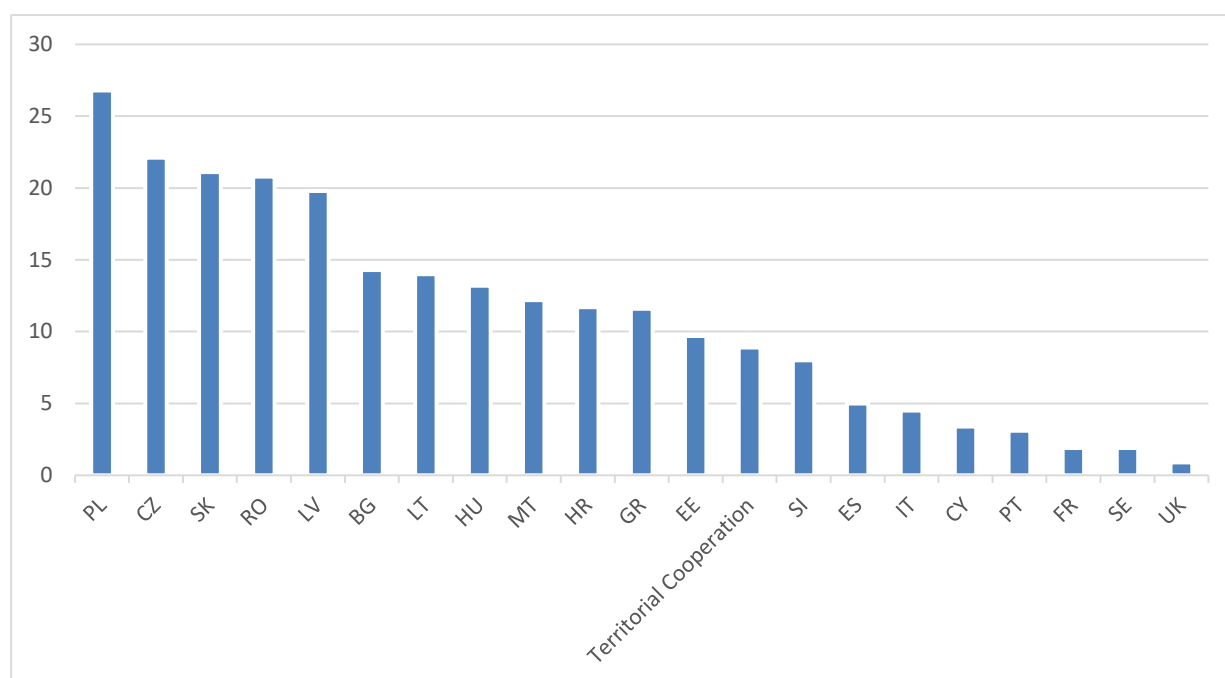
<sup>20</sup> EC (2017a)

<sup>21</sup> [http://ec.europa.eu/regional\\_policy/en/funding/available-budget/](http://ec.europa.eu/regional_policy/en/funding/available-budget/) (last accessed on 15 March 2018).

<sup>22</sup> <https://cohesiondata.ec.europa.eu/themes/7> (last accessed on 15 March 2018).

<sup>23</sup> <https://cohesiondata.ec.europa.eu/themes/7> (last accessed on 1 August 2018).

**Figure 2 – MS allocations to the theme of ‘network infrastructures in transport and energy (% of total budget allocated by MS for Network Infrastructure in Transport and Energy, %)**



## 2.2 EXISTING INSIGHTS

This section presents some of the existing insights on the preparation and procurement of large-scale infrastructure supported by EU funding. This includes relevant reporting by the European Court of Auditors (ECA), the European Commission (EC), and the European Anti-Fraud Office (OLAF).

### 2.2.1 ECA

- ECA (2017a) *'Audit Brief, The European Fund for Strategic Investments (EFSI)'*: This publication does not identify any specific issues related to the preparation/selection and procurement of infrastructure funded under the EFSI.
- ECA (2017b) *'Special Report, Protecting the EU budget from irregular spending: The Commission made increasing use of preventive measures and financial corrections in Cohesion during the 2007-2013 period'*: This publication confirms the EC's adequate use of preventive measures and financial corrections to protect the EU budget in the area of Cohesion policy. No specific reference is made to major projects.
- ECA (2016a) *'Special Report, Maritime transport in the EU: in troubled waters — much ineffective and unsustainable investment'*: This report discusses investments in maritime infrastructure under the CF, ERDF and CEF, noting a volume of EU funds for maritime transport projects in 2000-2013 of EUR 6.8 billion (EUR 3.8 billion in 2007-2013). For 2014-2020 the report notes earmarking of EUR 900 million for maritime transport infrastructure, and earmarking of EUR 2 billion for ports under the ERDF and CF. The audit focuses on the strategy level, efficient and effective implementation and state aid/customs. The audit notes EC weaknesses in

monitoring the implementation of projects, e.g. there is a lack of data on port capacities. The audit also suggests weaknesses at the stage of preparing the project applications, e.g. deficient feasibility studies, ex ante assessments and cost benefit analysis. Indeed, according to the ECA this has resulted in *'unused and underused infrastructures, delays and cost overruns, and unsustainable investments because of funding of similar infrastructures in neighbouring ports'* (ECA 2016: 32), with *'high risks of waste of the amounts invested'* (ECA 2016: 33). Weaknesses are also identified with regard to administrative procedures causing delays, and again this could suggest weak ex ante assessment.

- ECA (2016b) *'Special Report, Rail freight transport in the EU: still not on the right track'*: The report notes funding of EUR 28 billion for rail infrastructure in 2007-2013 (EUR 23.5 billion of ESIF and EUR 4.5 billion of funding under the 'Trans-European Networks – Transport' programme (TEN-T) and its follow-up programme, the CEF). The report focuses on EU/Member State measures to prioritise the development of this mode of transport. However, there are also a few references to project implementation issues, e.g. implementation delays are explained with lack of administrative capacity.

### 2.2.2 EC

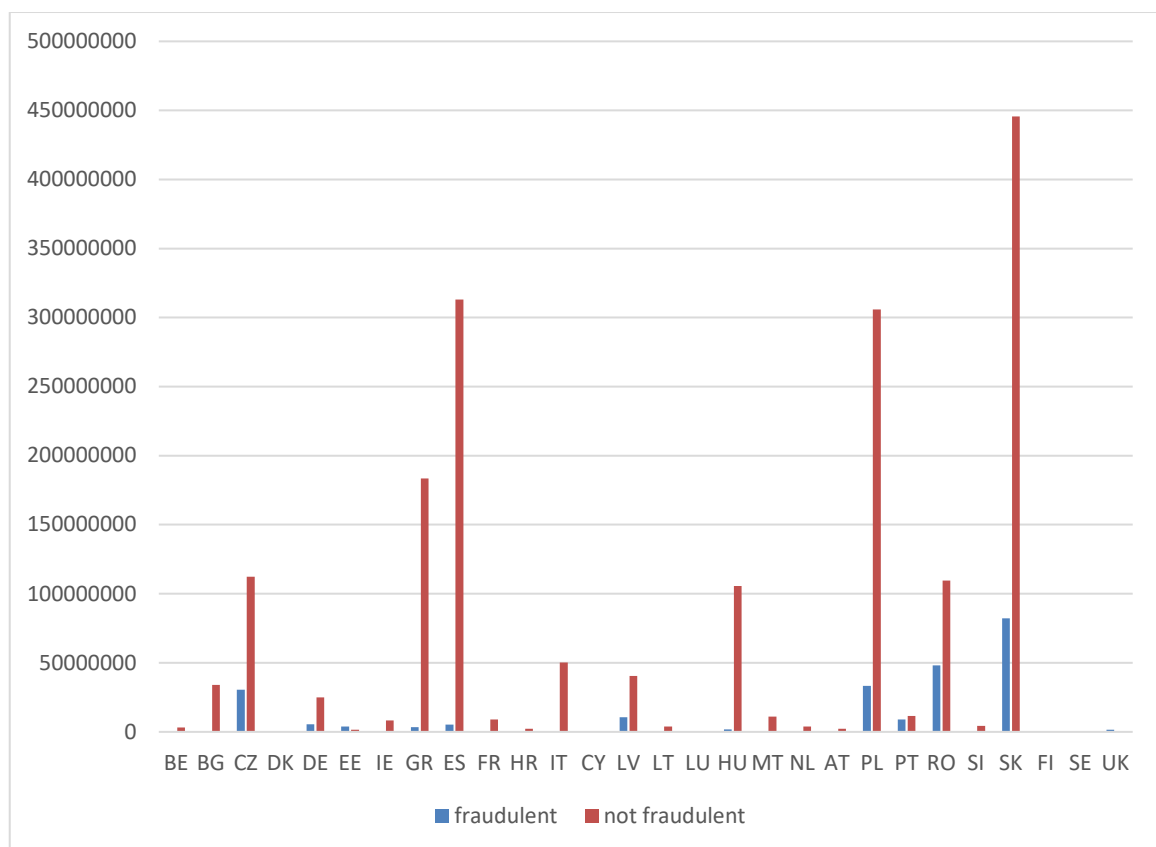
- EC (2018a) *'Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the mid-term evaluation of the Connecting Europe Facility'*: The EC notes the overall satisfactory implementation of the CEF, explained inter alia by EC-centralised management: 'The direct management of CEF grants has proved very efficient, with a strong project pipeline and a competitive selection process, a focus on EU policy objectives, coordinated implementation and the full involvement of Member States. The INEA executive agency has a very good track record on the financial management of the CEF and on optimising the budget, particularly thanks to its flexibility in quickly re-directing money unspent by certain actions to financing new ones.' (EC 2018a: 14).
- EC (2018b) *'Commission Staff Working Document accompanying the document Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the mid-term evaluation of the Connecting Europe Facility'*: This is the document supporting EC (2018a), and includes the detailed results of the stakeholder consultations conducted in the framework of the evaluation. This shows very high approval ratings of the central management of CEF (77% of consultation respondents consider central management fully or very relevant in the area of transport, 81% for energy and 96% for telecommunications). Similarly, there are high approval ratings for technical assistance for project preparation and delivery (63% of consultation respondents consider technical assistance fully or very relevant in the area of transport, 39% for energy and 88% for telecommunications). Finally, there is interesting stakeholder feedback on obstacles in the implementation of CEF, the five most important ones being:
  - Transport: 'Lack of available EU budget' (79%), 'Lack of available budget for the national funding/from the beneficiaries' (66%), 'Obstacles in delivering complex (cross-border)

- infrastructures on time' (51%), 'Obstacles relating to the granting of permits/regulation' (44%) 'Administrative burden' (42%);
- Energy: 'Obstacles in delivering complex (cross-border) infrastructures on time' (65%), 'Obstacles relating to the granting of permits/regulation' (56%), 'Lack of available budget for the national funding/from the beneficiaries' (47%), 'Administrative burden' (35%), 'Obstacles relating to the granting of financing' (35%);
  - Telecommunications: 'Lack of available budget for the national funding/from the beneficiaries' (63%), 'Obstacles in improving compatibility between the different systems used in each sector in order to achieve interoperability' (56%), 'Obstacles in reflecting changes in the technological development and innovation' (56%), 'Obstacles in delivering complex (cross-border) infrastructures on time' (50%), 'Lack of involvement/investment from the private sector (e.g. public-private partnerships, etc.)' (50%).
- EC (2017a) *'2016 Annual Activity Report, DG Regional and Urban Policy'*: DG Regio notes that in 2007-2013 some MS experienced capacity issues 'to plan and develop major infrastructure projects' (EC 2017: 17). For 2014-2020, DG Regio notes the programming of more than 500 major projects. However, in 2016, only 76 project applications were submitted, and this is explained by 'delays in setting up programme systems, ambitious planning for major projects, transfer of a number of mature projects under the umbrella of other funding instruments in order to benefit from national allocations, phasing of ongoing 2007-2013 major projects' (EC 2017: 32). In 2016, 46 applications had been dealt with (42 adopted and 4 withdrawn/non-admissible) and 30 were still under appraisal. DG Regio highlights the reduced approval time, from 224 calendar days in 2007-2013 down to 100 calendar days in 2014-2020. Finally, DG Regio notes the ongoing audit of major projects by the EC's Internal Audit Service (expected to be completed in 2017).
  - EC (2017b) *'2016 Annual Activity Report Annexes, DG Regional and Urban Policy'*: DG Regio specifies a total of 550 foreseen major projects with the target of 220 projects submitted in 2016 (in fact only 76 projects were submitted).
  - EC (2017c) *'2016 Annual Activity Report, DG Mobility & Transport'*: DG Move notes implementation of the CEF on track, with CEF grants of EUR 19.4 billion for 452 projects by end 2016, and explains this with EC-centralised management: 'The quick absorption of CEF funds can be explained by the fact that the funds are centrally managed by the Commission, through regular competitive calls, accompanied by a range of communication activities at EU and Member States level. Moreover, the deadline set for 31 December 2016 for Cohesion Member States to absorb their national allocations under the cohesion envelope provided a strong incentive for them to take up most of their allocations before national compartments are to be pooled into a common envelope for all Cohesion Member States' (EC 2017c: 25). DG Move explains that project selection comprises two phases: (1) an assessment by external experts, and (2) an EC-internal assessment. With regard to EFSI, DG Move notes total funding of EUR 3.64 billion for 25 transport projects. DG Move also notes an audit of CEF in 2016 by the

EC's Internal Audit Service with recommendations for more effective supervision arrangements. Finally, a mid-term evaluation of CEF was launched in 2016, expected to be completed in 2017.

- EC (2017d) *'Report from the Commission to the European Parliament and the Council, Protection of the European Union's financial interests – Fight against fraud, 2016 Annual Report'*: The EC confirms that public procurement remains the single most important concern with regard to irregularities, noting that 'over the last five years, 20% of all reported irregularities have been related to breaches of public procurement rules, accounting for 30% of all reported irregular financial amounts' (p. 32). The report's annex provides an overview of fraudulent irregularities per MS, however, there is no differentiated reporting by type of funding instrument (i.e. for the CEF or EDF), since data is reported for the category 'Cohesion Policy & Fisheries'.

**Figure 3 – EC reporting on irregularities affecting Cohesion Policy and Fisheries (2016)<sup>24</sup>**



- EC (2016a) *'2015 Annual Activity Report, DG Regional and Urban Policy'*: DG Region notes that the Czech Republic and Slovakia resolved issues concerning an incorrect transposition of the Directive on Environmental Impact Assessment that affected the transport sector, with the subsequent adoption of pending major projects. Moreover, DG Region confirms that the ex-post evaluation of 2007-2013 funding for the environment and transport sectors found the financial

<sup>24</sup> 'financial impact as % of payments' for 'detected fraudulent and non-fraudulent irregularities', OLAF (2018), 'The OLAF report 2017', p. 41

analysis for the preparation of major projects of 'reasonable good quality' (EC 2016a: 18). In 2015, DG Regio dealt mainly with requests for (modifications of) major projects for 2007-2013.

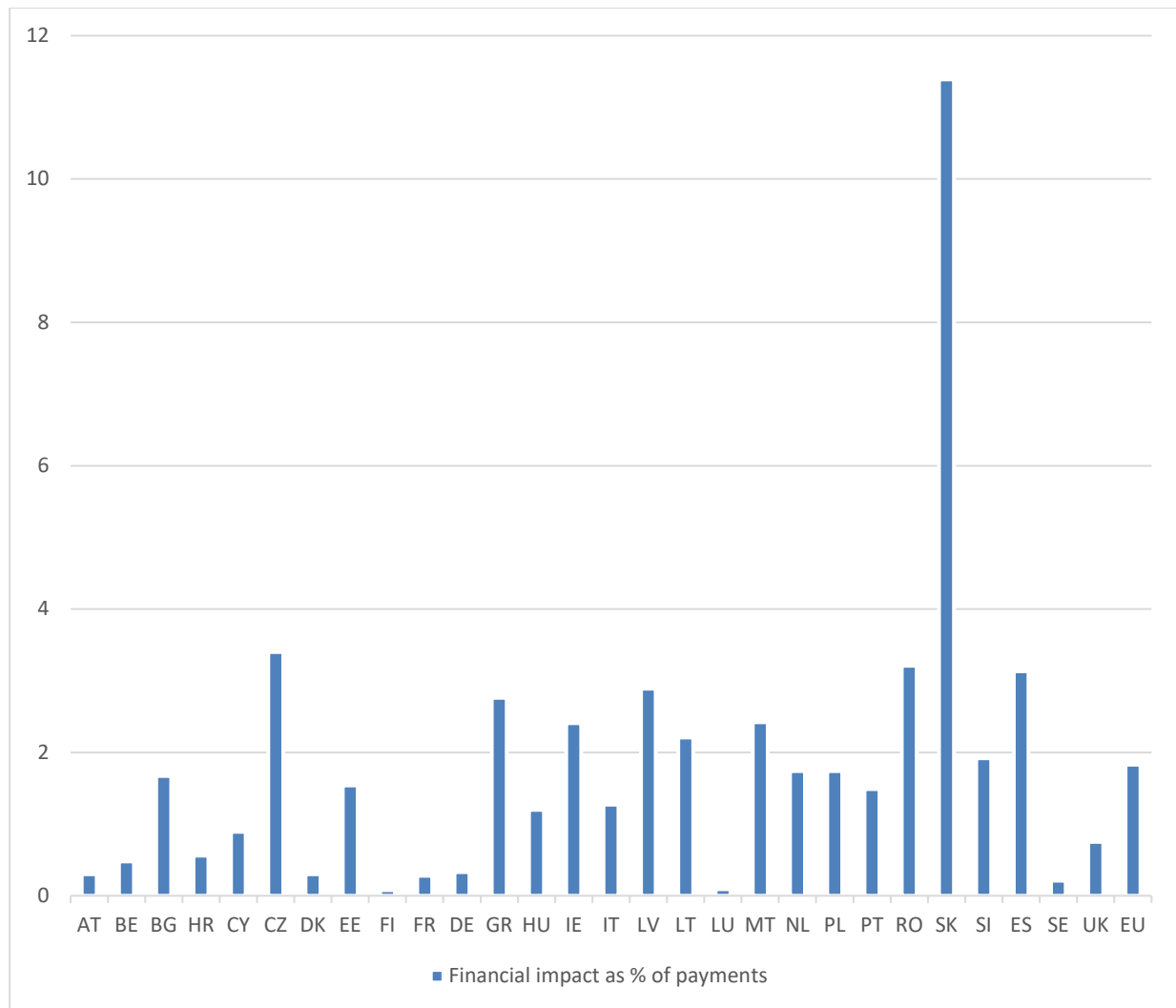
- EC (2016b) '*Study on permitting & facilitating the preparation of TEN-T core network projects*' Final Report, December 2016: This study focused on the TEN-T projects (precursor to CEF), and more specifically on delays caused by the need for project promoters to obtain permits, and other delays during project preparation. The study issued five recommendations, including: 'Close monitoring of the TEN-E experience', 'Careful exploration of legislative instrument' (regulatory intervention to address differences in permit requirements across different Member States), 'Maximise efficiencies with regard to technical assistance' (drawing on the experience with the JASPERS initiative, and 'Integration with ongoing Commission initiatives to support and promote efficient project preparation and approval procedures for large, strategic infrastructure investments'.

### 2.2.3 OLAF

- OLAF (2018) '*The OLAF report 2017*': The area of the 'Structural Funds' counts the largest number of ongoing investigations, i.e. 73 out of a total of 362 investigations in 2017 (20.2%), 69 in 2016 (20.1%), 104 in 2015 (26.1%) and 111 in 2014 (23.4%). The report does not provide a further breakdown by type of fund. However, the report provides selected examples for specific countries. To illustrate fraud involving the Structural Funds, the report provides an example from fraudulent public procurement affecting ERDF support for road construction in Romania, and with a financial damage of EUR 21 million. Further examples relate to ESIF support for lighting projects in Hungary, again involving public procurement irregularities, and resulting in the recommendation to recover EUR 43.7 million. Further examples in the area of the ESIF relate to irregular investments under a risk capital fund supported by the ERDF in Germany. Finally, the report provides data on irregularities and financial impact with regard to the ESIF and Agriculture funding in the period 2013-2017, broken down per MS, however, this data does not differentiate by type of fund, e.g. there is no specific data for the ERDF. The following figure shows the data for the 'financial impact as % of payments' for 'detected fraudulent and non-fraudulent irregularities'.
- OLAF (2017) '*The OLAF report 2016*': This report also highlights the importance of fraudulent public procurement with regard to the Structural Funds, this time providing examples from Croatia (fraudulent public procurement affecting a project on inland waterways, with a recommendation for recovery of EUR 1.2 million), the Czech Republic and Slovakia (public procurement of medical equipment), Hungary (public procurement in the transport sector, with a recommendation for recovering EUR 228 million).
- OLAF (2016) '*The OLAF report 2015*': This report is structured somewhat differently from the more recent report. Notwithstanding, the importance of fraudulent public procurement is emphasized, this time with an example of fraudulent public procurement affecting the European Agricultural Fund for Rural Development in Bulgaria.



**Figure 4 – OLAF reporting on irregularities affecting the ESIF (2013-2017)<sup>25</sup>**



<sup>25</sup> 'financial impact as % of payments' for 'detected fraudulent and non-fraudulent irregularities', OLAF (2018), 'The OLAF report 2017', p. 41

### 3 PREPARATION OF EU-FUNDED LARGE-SCALE INFRASTRUCTURE

#### KEY FINDINGS

- The regulatory framework for the preparation of EU-funded large-scale infrastructure under the ERDF/CF, CEF and EFSI funding instruments foresees different roles for the EC/EIB and the MS; in general terms, the MS prepare the project applications in line with an EU-level regulatory framework and the EC/EIB is tasked with the verification of compliance with regulatory requirements. The EC/EIB have established various mechanisms to support the MS, most notably via the provision of independent expertise to assess the quality of applications. Concerning the ERDF/CF funds, EC feedback suggests that MS capacity constraints continue to affect project preparation. Other EU level feedback coincides with regard to the CEF instrument, noting that poor project preparation is often indicated by frequent contract amendments.
- The country case studies (CZ, ES, GR, RO) confirm capacity constraints within relevant MS authorities (e.g. the Managing Authorities), most notably lack of funding to attract qualified staff and to provide the corresponding staff capacity building. MS feedback also points to a perceived complexity of the process of preparing projects.
- The project case studies (IT/FR rail, CY port, NL road, ES metro) indicate efforts regarding the areas of feasibility, ex ante evaluation, impact assessment, socio-economic analysis, and cost-benefit analysis. However, improvements appear possible with regard to the consideration of environmental issues. Experience also confirms the need to ensure that assessments are not only conducted separately for different individual segments of the infrastructure, but rather cover the wider infrastructure to allow stakeholders to develop a comprehensive understanding of the proposed investment. Finally, experience also points to room for improvement with regard to the transparency of the preparation process, and the involvement of relevant stakeholders, most notably the affected population.

This section addresses the Specifications' interest in '*Description and the analysis of the selection process of large-scale infrastructure projects for funding, by the European Commission*' and '*Analyse how Member States assess and select projects to be applied to the European Commission for financial support*'. These two aspects, the role of the EC and the MS in project preparation and selection will be reviewed on the basis of desk research and case study work.

The chapter first introduces the different funding instruments, ERDF/CF, CEF and EFSI with regard to aspects concerning project preparation (section 3.1) and then presents feedback from the case study work (section 3.2).

### 3.1 INTRODUCING THE THREE FUNDS WITH REGARD TO PROJECT PREPARATION

#### 3.1.1 ERDF/CF

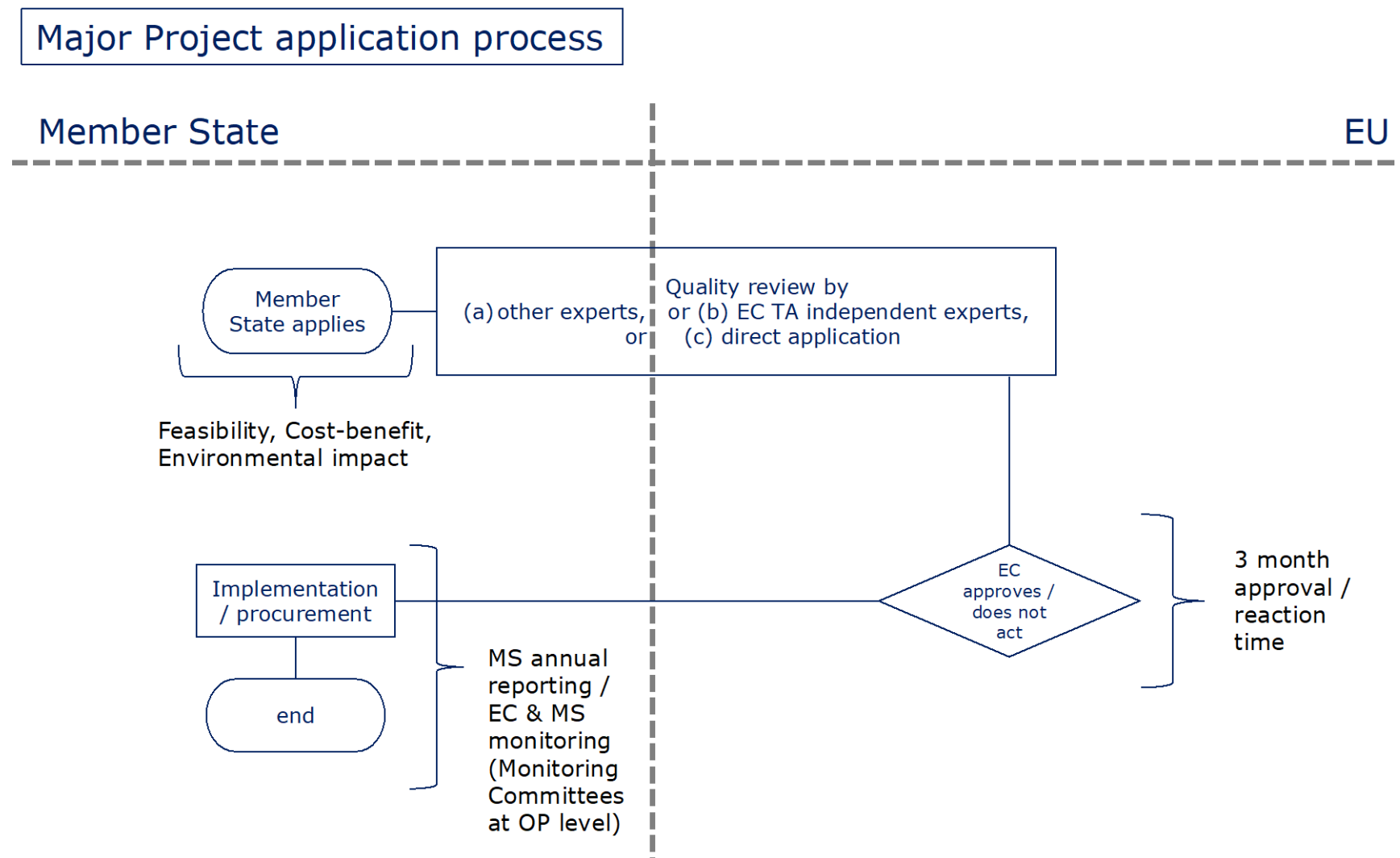
This section reviews the preparation and selection of large-scale infrastructure under the ERDF/CF. Note that this focuses on ‘major projects’ in line with the Common Provisions Regulation (CPR)<sup>26</sup>. The CPR (article 100) defines major projects as *‘an operation comprising a series of works, activities or services intended in itself to accomplish an indivisible task of a precise economic or technical nature which has clearly identified goals and for which the total eligible cost exceeds EUR 50 000 000 and in the case of operations contributing to the thematic objective under point (7) of the first paragraph of Article 9 where the total eligible cost exceeds EUR 75 000 000’*.

The figure below presents a flow chart for the preparation and selection of large-scale infrastructure under the ERDF/CF, showing the role of the MS and of the EC with regard to project preparation and implementation.

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<sup>26</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006

Figure 5 - Major Project application process



The MS role in the context of preparing major projects comprises the preparation of an application, including inter alia:

- The outcome of feasibility studies (article 101(d), CPR);
- A cost-benefit analysis (article 101(e), CPR) in line with EC requirements;<sup>27</sup>
- The environmental impact analysis (article 101(f), CPR).

In line with article 101 (CPR), 'At the initiative of a Member State, the information in points (a) to (i) of the first paragraph may be assessed by independent experts supported by technical assistance of the Commission or, in agreement with the Commission, by other independent experts ("quality review"). In other cases, the Member State shall submit to the Commission the information set out in points (a) to (i) of the first paragraph as soon as it is available'. In case the independent expert appraisal is positive, the MS can select the major project and notifies the EC (article 102.1 CPR). If the EC does not act within three months of the notification, the major project is deemed approved (article 102.1 CPR).

Where the MS proposes to make use of 'other independent experts', EC approval needs to be sought, and the EC needs to take a decision on agreement within three months (article 22.2 EC Delegated Regulation 480/2014).

The EC's role in the context of preparing major projects comprises:

- In cases where the MS did not make use of the independent experts for the review, the EC reviews the application, in line with EC requirements, and takes a decision within three months of notification (article 102.2, CPR).<sup>28</sup>
- Note that a somewhat modified procedure applies for 'major projects subject to phased implementation', i.e. 'the second or subsequent phase of a major project under the previous programming period' (article 103.1, CPR). In this case independent expert review is not required, and the MS can directly proceed with notification to the EC, and article 102.2, CPR applies.

The MS and EC together, in the Monitoring Committees, are tasked with examining 'the implementation of major projects' (article 110.1(d), CPR).

The MS report annually on the 'progress in preparation and implementation of major projects' (article 111.3(b), CPR).

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<sup>27</sup> The EC requirements for the cost-benefit analysis are set out in Commission Implementing Regulation (EU) 2015/207 of 20 January 2015 laying down detailed rules implementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards the models for the progress report, submission of the information on a major project, the joint action plan, the implementation reports for the Investment for growth and jobs goal, the management declaration, the audit strategy, the audit opinion and the annual control report and the methodology for carrying out the cost-benefit analysis and pursuant to Regulation (EU) No 1299/2013 of the European Parliament and of the Council as regards the model for the implementation reports for the European territorial cooperation goal.

<sup>28</sup> Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund.

The EC Implementing Regulation 2015/207 (Annex II) sets out the detail on the applications for major projects, including the cost-benefit analysis, an economic analysis, a financial analysis and a risk assessment. EC Implementing Regulation 2015/207 (Annex III) also specifies the methodology for the cost-benefit analysis. Note that the application for major projects needs to include details on procurement (e.g. Section H.2.3 'Public procurement'). Moreover, public procurement is considered in the framework of the risk analysis conducted in conjunction with the cost-benefit analysis. Finally, progress reporting on major projects needs to include information on procurement (Table 12).

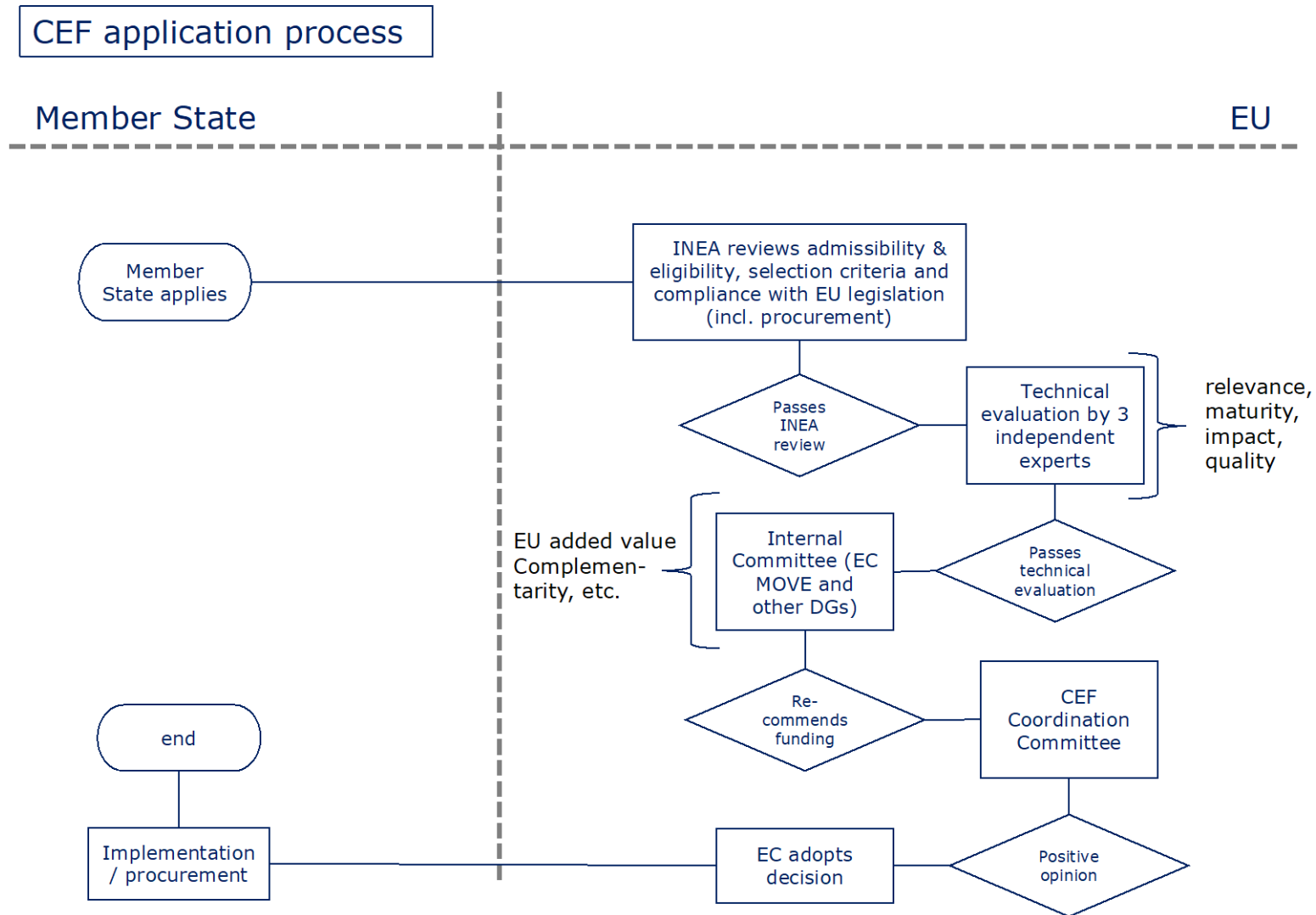
The EC Delegated Regulation 480/2014 sets out the requirements for the quality review of major projects by the independent experts' (articles 22-23, and Annex II on the criteria for quality review). Annex II requires the independent experts to review the cost-benefit analysis (article 5, Annex II, EC Delegated Regulation 480/2014), however, it is not clear if this specifically implies a review of the risk analysis conducted in conjunction with the cost-benefit analysis (Annex II does not specifically refer to public procurement).

EC feedback suggests no major issues with regard to the preparation of large-scale infrastructure projects under the ERDF/CF, recognising, however, that MS capacity constraints continue to affect the timely preparation of large-scale infrastructure projects.

### **3.1.2 CEF**

The figure below presents a flow chart for the preparation and selection of large-scale infrastructure under the CEF, again showing the respective roles of the MS and the EC.

Figure 6 - CEF application process



Regulation (EU) 1316/2013 governs the preparation and application process for the CEF<sup>29</sup>;

- 'Projects of common interest' are identified in Regulations 1315/2013 (for transport), 347/2013 'or in a Regulation on guidelines for trans-European networks in the area of telecommunications infrastructure'.
- The MS or other bodies endorsed by the MS submit proposals (article 9, Regulation 1315/2013).
- The MS undertake technical monitoring and financial control in close cooperation with the EC. The MS can ask the EC to participate in on-the-spot checks and inspections. The MS report annually on progress, and on this basis the EC provides information to the public (article 22, Regulation 1315/2013).
- Finally, the EC can audit projects (article 24, Regulation 1315/2013).

The EC established the Innovation and Networks Executive Agency (INEA) to support the EC with the delivery of the CEF<sup>30</sup>. INEA started activities in 2014, following up on the former Trans-European Transport Network Executive Agency (established in 2006).

EU level feedback emphasises that all applications must include a thorough cost-benefit analysis following four pre-defined criteria (relevance, maturity, impact, quality). EC feedback also suggests that poor project preparation is often indicated by frequent contract amendments and/or budget increases. INEA confirms that it is adequately resourced to monitor project preparation. Finally, stakeholder feedback also points to language issues, i.e. projects involving different MS involve negotiations that at time require the support by interpreters. This is reported to have caused difficulties in the past, e.g. for the case study project IT/FR rail.

### **3.1.3 EFSI**

The figure below presents a flow chart for the preparation and selection of large-scale infrastructure under the EFSI, showing the respective roles of the MS and the EIB.

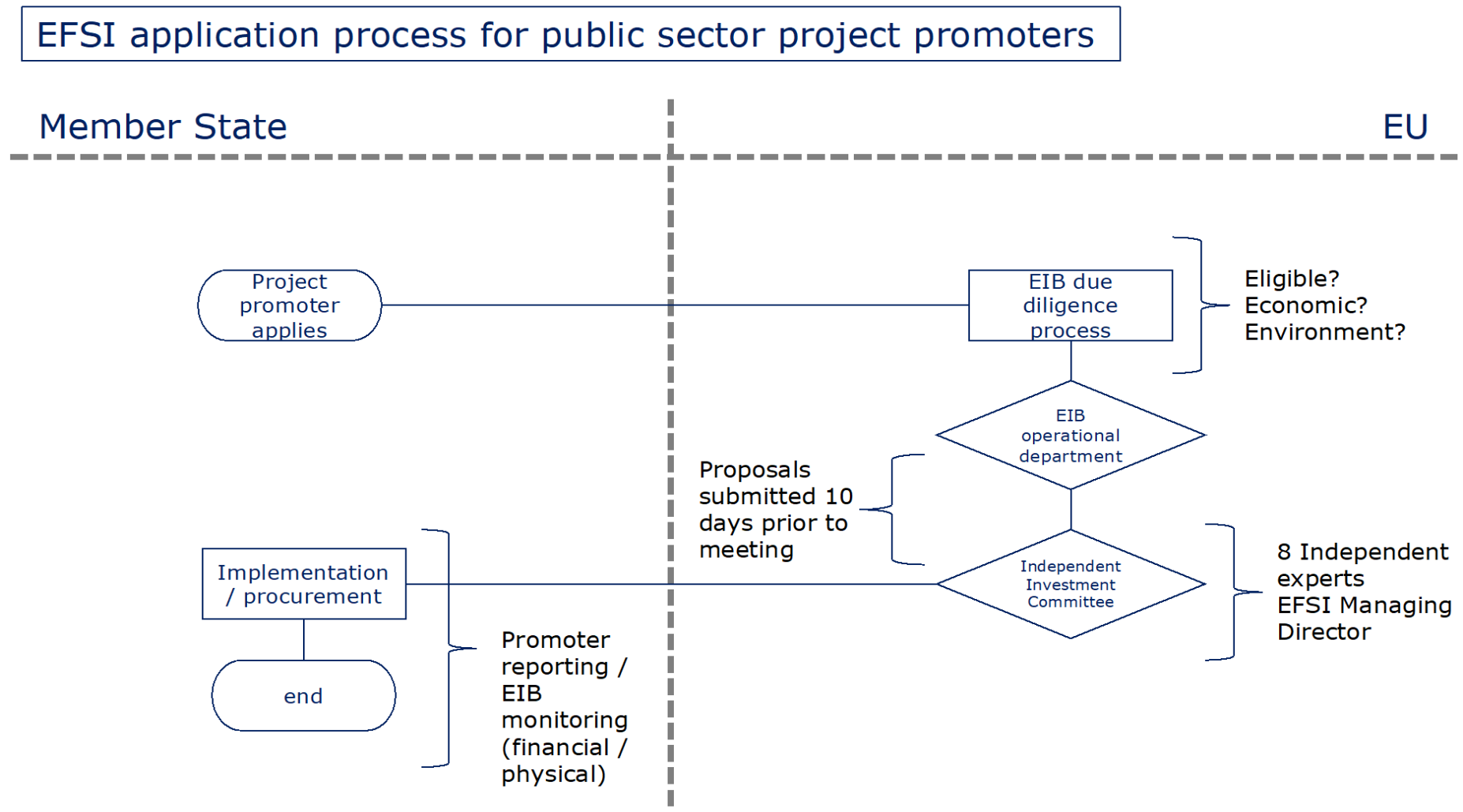
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<sup>29</sup> Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010

<sup>30</sup> Commission Implementing Decision of 23 December 2013 establishing the Innovation and Networks Executive Agency and repealing Decision 2007/60/EC as amended by Decision 2008/593/EC



Figure 7 - EFSI application process



Regulation 2015/2017 of the European Parliament and of the Council<sup>31</sup>, as amended by Regulation 2017/2396 of the European Parliament and of the Council<sup>32</sup> established the EFSI and governs the fund's implementation. The regulation stipulates the conclusion of an agreement between the EC and the EIB regarding the latter's management of the fund (article 1.2).

The EIB operates a 'Steering Board' for the wider strategic orientation of EFSI, counting five members, three of which are appointed by the EC, one by the EIB, and one by the EP (non-voting member), (article 4.2(b)). Moreover, the EIB reports on the fund (article 4.2(f)) and conducts evaluations (article 4.2(g)). Interestingly, the regulation provides for the Steering Board to consult with a wide range of stakeholders, including 'the relevant social partners and representatives of civil society' (article 7.3)<sup>33</sup>. The regulation also provides for an 'Investment Committee' (article 7.7), tasked with reviewing project proposals. Article 16 requires the EIB to report every six months to the EC (article 16.1), and once a year to the EP (article 16.2).

### 3.2 CASE STUDY FINDINGS – PROJECT PREPARATION

Looking first at the findings from the four country case studies (CZ, ES, GR, RO), a series of important constraints with regard to the preparation of large-scale infrastructure projects are noted, including:

- For CZ and RO, Managing Authority (MA) **capacity constraints to evaluate project applications** are noted. For example, in RO, the lack of funds to attract the necessary expertise contributes to difficulties in properly evaluating project applications. Moreover, the MAs do not wish to take risks regarding the selection criteria and tend to be very strict, causing problems for some beneficiaries. More specifically, the MAs acknowledged capacity constraints to conduct cost benefit analysis (RO) or any type of ex ante control (ES). In general terms, the key issue is limited funding to attract qualified staff (RO and CZ), and limited funding to ensure staff training (RO and CZ), exacerbated by the fact that there are no specific capacity requirements and / or certification or accreditation in place for MA staff (usually civil servants) to work on the preparation of large-scale infrastructure projects.
- Feedback from the country case studies also points to the **complexity of the project application process and the regulatory requirements** causing difficulties, with some MS stakeholders complaining about a perceived excessive complexity of procedures (RO), and the limited transparency of project selection processes (GR). In RO, stakeholders noted concerns over their communication with the National Agency for Public Procurement (ANAP). The ANAP can, usually, only be contacted in writing, and this was considered to render the

<sup>31</sup> Regulation (EU) 2015/2017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments

<sup>32</sup> Regulation (EU) 2017/2396 of the European Parliament and of the Council of 13 December 2017 amending Regulations (EU) No 1316/2013 and (EU) 2015/1017 as regards the extension of the duration of the European Fund for Strategic Investments as well as the introduction of technical enhancements for that Fund and the European Investment Advisory Hub

<sup>33</sup> In 2017, the EIB organised a consultation event, addressing the requirement under article 7.3. See <http://www.eib.org/attachments/general/events/efsi-stakeholders-consultation-summary-report-en.pdf>. The event included 'over 25 participants'

communication cumbersome, discouraging applicants and project promoters from asking questions or sending queries. These communication issues also affect the dialogue between the contracting authorities and ANAP, with lengthy delays in ANAP responses on legislative changes. For example, stakeholders observed that a series of relevant legal changes entered into force on 1 January 2018, however, the corresponding guidance was only provided in March 2018.

- Whilst not related to the preparation of large-scale infrastructure projects, some of the country case studies also pointed to **serious capacity constraints amongst project promoters in terms of delivering the proposed interventions** (RO and CZ). For example, in RO, feedback indicated that project promoters lacked capacity to implement the proposed projects, and this was explained with (a) the lack of management capacity to deliver the proposed investment, (b) overestimated capacity to implement the project (e.g. the value of the investment is higher than the annual turnover of the company), and (c) incorrectly assessed budget (e.g. proposed prices do not correspond to market prices). In CZ, stakeholders also emphasised the need for strengthening administrative capacity, most notably at the local level where the public procurement staff lacks expertise.
- Finally, the ECA Annual Report 2016 states that *'nearly all key infrastructure projects in the three audited Member States (Lithuania, Slovakia and Bulgaria) **had experienced delays**'* (see ECA Annual report 2016, page 101). In 2012, the ECA audited 27 projects related to transport infrastructure in seaports and found out that *'11 projects had been finished on time; 12 had experienced an average construction delay of 26 months and the remaining four, totalling 70,8 % of the amounts audited, had not been completed'* (see ECA Special report 4/2012 page 14). The same report points out that part of the projects representing half of the amounts audited by the ECA would need considerable further investment before been put into use. In the area of rail transport infrastructures, the ECA Special Report 8/2016 refers to significant delays in the implementation of the projects, e.g. two projects audited in Spain experienced delays in the construction of the infrastructure of over 3 years; significant delays found out in Polish projects are due to a lack of administrative capacity of the infrastructure manager.

The section now turns to the findings from the project case studies (IT/FR rail, CY port, ES metro and NL road):

- The four projects were subject to **ex-ante evaluation**, for example, for the project ES metro, the promoter prepared exhaustive information for the EIB's review, including information on the investment, on procurement, environmental aspects, employment and technology (expectations of job creation) and economic analysis (demand, operating costs of the lines in service and of the competing modes). Similarly, an independent firm prepared an exhaustive Environmental Impact Assessment for CY port, and the loan agreement with the EIB was signed in March 2011, three months after the approval and publication of the Environmental Impact Assessment.

- In three of the projects (IT/FR rail, NL road and ES metro), the ex-ante evaluation comprised a **consideration of environmental aspects** (this information was not available for CY port). Notwithstanding, for IT/FR rail, on the IT side, the consideration of environmental aspects only took place in 2007, and not at the outset of project preparations (the EC actually recommended additional analysis looking at geological and hydrogeological aspects in 2006). For NL road, the relevant authorities prepared an environmental and social assessment, looking at a series of environmental criteria (soil, groundwater, surface water, fauna and flora, archaeology, landscape, noise, social, biodiversity, climate change mitigation, environmental sustainability), and related input had a direct effect on route decisions.
- For all four projects, **impact assessments were conducted**, however, a series of limitations were reported for IT/FR rail. In IT, the project met with opposition because several impact assessments and cost benefit analyses were undertaken on different sections of the project, making it difficult to obtain an overall picture of project impact. The fragmentation of the analyses does not allow to have a good understanding of the global environmental impact. The main criticisms on the IT side included: the lack of public consultation and dialogue, the potential increase in noise pollution in the valley, the traffic estimates deemed not convincing, and the uncertainties related to the project's hydrogeological and environmental risks.
- Looking at **socio-economic analysis**, again this is available for all four projects. However, for IT/FR rail the analysis was conducted separately for the two sides of the border. Indeed, IT conducted this in the late 1990s, whilst FR conducted first analyses in the early 1990s. FR requires a 'Declaration of Public Utility' for this type of project, and in this context, an ex-ante evaluation was prepared in April 2006, including a summary of the project and the rules applying to it, a study on the works necessary to construct the tunnel, an assessment of the costs, an impact assessment in seven chapters, a socio-economic analysis and a summary of the development perspectives. The socio-economic analysis is required by French law, however, the French law does not require the socio-economic analysis to cover the common Italian and French part, i.e. the actual tunnel. Nevertheless, the socio-economic analysis covers both the tunnel and the French part of the works, whilst the impact assessment only measures impacts in FR. Additional ex-ante evaluations were conducted regarding the works on the FR access to the Lyon-Turin tunnel.
- With regard to **cost-benefit analysis, positive assessments** are available for three projects. For NL road, the EIB conducted their own cost-benefit analysis, and estimated that the economic rate of return of the project was excellent. Indeed, the main economic benefits of the project are expected to stem from time savings due to the network capacity added by the project, smoother traffic flows and more reliable travel times. Turning to the **transparency of the cost-benefit analysis**, this was considered weak for IT/FR rail, whilst there was limited information for CY port and ES metro. However, transparency was assessed positively for NL road. Indeed, on the participation platform of the Dutch Government, all relevant documents can be found in relation to the steps taken from the initial project notification to the final decisions, and for each step, the public was able to provide input.

- The **ex-ante evaluations were considered independent** for NL road and ES metro, whilst this information was not available for IT/FR rail and CY port. For ES metro, two types of ex-ante evaluation were conducted: the first relates to annual user surveys (e.g. in 2015, 10,156 personal interviews with a structured questionnaire for travelers over 16 years of age, with a random selection system maintaining quota control by sex, age and nationality); the second relates to technical studies (reliability, obsolescence, etc.) carried out internally by relevant departments of the project promoter that are independent from the contracting department.
- **Relevant stakeholders were involved in the ex-ante evaluation process** in NL road and ES metro, whilst the involvement was weak for IT/FR rail, and this information was not available for CY port. For IT/FR rail, the local population and other external stakeholders did not participate at the outset of the process. In 2006, with the goal to actively involve the local population in decision making, the Italian government established the Turin-Lyon Observatory with members including representatives from different ministries, the Piemonte region, the metropolitan area of Turin and different local authorities. For ES metro, the participation of interest groups to define alternative mobility measures during the period of closure of the line (for undertaking the works) can be highlighted, with several meetings held with the neighbourhood associations in the affected city districts.
- The **involvement of the local population in the ex-ante evaluation** was reported as adequate for NL road and ES metro, but weak for IT/FR rail, and this information was not available for CY port. In IT, opponents to the intervention mainly complained over the lack of information about the project, the lack of public consultations, and voiced environmental concerns regarding the choice of the route. Opposition was stronger in IT among NGOs and the local population than in FR. In IT, civil society organisations noted that they were not involved in project preparation despite of their willingness (e.g. they did not have the possibility to participate in the Observatory activities, and to contribute to the environmental impact evaluations). For ES metro, the opinion of the users was taken into account from the very beginning of the planning of the project.

## 4 PROCUREMENT OF EU-FUNDED LARGE-SCALE INFRASTRUCTURE

### KEY FINDINGS

- Different EC assessments (2017) have identified the constraints affecting public procurement, and the EC has launched a series of initiatives targeting these constraints, most notably via the facility for voluntary ex-ante assessment of large-scale infrastructure (2017), the professionalisation of public procurement (2017), and additional guidance on procurement of EU-funded large-scale infrastructure (2018). These measures have been introduced rather recently/are in the process of being operationalised, and case study feedback did not provide any insights into first experience with these measures.
- Looking specifically at the funds covered by this study (CEF, EFSI, ERDF/CF), EU level feedback confirms the adequate monitoring of MS procurement activities, and adequate instruments to enforce compliance. Feedback underlines the need for additional capacity development in the MS, and suggests that the MS can make more use of existing EU-level support. Feedback on the ESIF indicates a need to enhance data collection / storage by the MS to allow for ex-post verifications of compliance.
- The phenomenon of ‘single bidders’ (contracts relating to EU funds that are awarded on the basis of a single offer), accounts for approximately 9% of all contracts (by value) from 2009 to 2017. For the EU overall, single bidders account for 12%. The analysis, for the same period, of single-big contracts suggests that they have been distributed evenly between works, services, and supplies. The analysis of the value of the single-bid contract awards relating to EU-funded project indicates that approximately 87% of funds awarded relate to contracts up to EUR 200 million. The analysis of TED data related to three countries (DK, HU, PL) suggests that there are still gaps and errors that could be due to carelessness or lack of understanding when the data was entered.
- The country case studies (CZ, ES, GR, RO) suggest a series of issues, including frequent changes in the regulatory framework on public procurement, limited coordination between relevant MS authorities, capacity constraints, exclusive attention to price to the detriment of quality, artificial splitting of project budgets to allow to bypass open tenders, and corruption.
- The project case studies (IT/FR rail, CY port, NL road and ES metro) indicate that the EC/EIB’s involvement in tender procedures was largely limited to drawing attention to the need for compliance, however the EC/EIB only have a limited role in the actual procurement process as this falls under the competence of the MS. The project case studies provided only limited insight into the EC/EIB’s role in monitoring procurement, however, it appears that there might be room for strengthening this role, implying additional resources for the EIB/EC. The project case studies also failed to provide comprehensive insights into the transparency of procurement procedures, however, where information was available, transparency was adequate.

This section addresses the Specifications' interest in *'Overview of EU public procurement legislation and policies, with a focus on large-scale infrastructure projects, including new initiatives and mechanisms e.g. voluntary ex-ante assessment mechanisms, contract registers etc.'*. This section first presents the policy and regulatory framework, including an introduction to the policy and regulatory framework (4.1), discusses the issue of 'single bidders' (4.2), then introduces the three EU funding instruments with regard to public procurement (4.3), and finally, presents case study feedback on the experience with public procurement (4.4).

## 4.1 POLICY AND REGULATORY FRAMEWORK

### 4.1.1 Introduction to the policy and regulatory framework

Further to substantial legal reforms in 2014 (see section 3.2), in October 2017, the EC published new guidelines concerning public procurement<sup>34</sup>. These guidelines highlight six principles for public procurement: Ensuring wider uptake of strategic public procurement; Professionalising public buyers; Improving access to procurement markets; Increasing transparency, integrity and better data; Boosting the digital transformation of procurement; and Cooperating to procure together.

Along this strategy, the EC also published a Communication (2017), aiming to help 'public authorities manage large procurement projects, irrespective of whether they are funded by the EU or not, as efficiently as possible, so as to optimise value for taxpayers, deliver high-quality infrastructure, and maximise jobs and growth'<sup>35</sup>. The need for adequate public procurement procedures is especially important for large-scale infrastructure projects, since the EC itself notes that 'many large-scale infrastructure projects are not executed according to plan. Budgets are frequently not respected and overspent. Planning and implementation often take considerably longer than initially foreseen'<sup>36</sup>.

The EC notes that 'procurement is still often carried out without the necessary skills, technical knowledge or full procedural understanding'<sup>37</sup>, and identifies several factors contributing to this, most notably: Uncertainty as to the level and means of financing; Incomplete or superficial evaluation of needs; Changing economic and political conditions; the complexity and length of the procedure for public procurement; and the varying Member State capacities in this area<sup>38</sup>. The 2017 Communication on public procurement follows the recommendations of the Communication of the Commission on 'Upgrading the Single Market: more opportunities for people and business', that identified several actions to be taken by the EC in 2017 and 2018, e.g. to introduce a voluntary ex ante assessment mechanism for large infrastructure projects, and initiatives for better governance of public procurement through the establishment of contract registers, improved data collection and a networking of review bodies<sup>39</sup>.

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<sup>34</sup>European Commission, Making Public Procurement work in and for Europe, COM (2017) 572 final

<sup>35</sup>European Commission, Helping investment through a voluntary ex-ante assessment of the procurement aspects for large infrastructure projects COM (2017) 573 final, p.2.

<sup>36</sup>Ibid p. 3

<sup>37</sup>Ibid

<sup>38</sup>Ibid

<sup>39</sup>European Commission, COM (2015) 550, p.21

The current regulatory framework related to public procurement in the EU is part of the **reform introduced in 2014**:

- Directive 2014/25/CE 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.
- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.
- Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

The MS had to transpose these three directives into national law by April 2016. The main purpose of these rules is to **simplify public procurement procedures and to render the rules more flexible**. EC reporting (dated 3 October 2017) notes delays in the transposition of the Directives by the MS ('Several Member States have not yet transposed at least one of the three directives')<sup>40</sup>. The EC also notes remaining issues e.g. '5 % of public contracts published in TED are awarded after negotiation, without a call for tender being published. Between 2006 and 2016, the number of tenders with only one bid has grown from 17 % to 30 %. The average number of offers per tender fell from five to three in the same period. This shows that companies have more difficulties accessing procurement markets, especially across borders. SMEs win only 45 % of the value of public contracts above EU thresholds, clearly below their weight in the economy'<sup>41</sup>.

To address the identified constraints, during the years 2015 to 2017, the EC launched a series of initiatives.

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<sup>40</sup> EC (2017), EC Communication 'Making public procurement work in and for Europe', p.2.

<sup>41</sup> EC (2017), EC Communication 'Making public procurement work in and for Europe', p.5.



**Table 4: EU-level initiatives**

SOURCE	PROPOSED INTERVENTION
EC Communication 'Upgrading the Single Market: more opportunities for people and business' (2015)	<ul style="list-style-type: none"> <li>• Announces the 'voluntary ex ante assessment mechanism of the procurement aspects of certain large-scale infrastructure projects' (see EC Communication on the voluntary ex-ante assessment below);</li> <li>• Promoting the review of procurement decisions; monitoring of procurement;</li> <li>• Transparency and quality of procurement systems, inter alia via enhanced data and contracts registers.</li> </ul>
EC Communication 'Europe investing again Taking stock of the Investment Plan for Europe and next steps' (2016)	<b>Confirms measures on public procurement</b> <ul style="list-style-type: none"> <li>• New EU framework with national transposition by end 2016;</li> <li>• Green public procurement;</li> <li>• Voluntary ex ante assessment.</li> </ul>
EC Communication 'Helping investment through a voluntary ex-ante assessment of the procurement aspects for large infrastructure projects' (2017)	<b>Voluntary ex-ante assessment</b> Relevant MS authorities can ask the EC to assess a project's compatibility with the EU regulatory framework (with a focus on public procurement issues; including CEF and EFSI; Major Projects are not specifically mentioned but do not appear to be excluded, though they might fall under the threshold of EUR 250 million). 3 components: <ul style="list-style-type: none"> <li>• Helpdesk for projects over EUR 250 million (EC to reply within 1 month)</li> <li>• Notification mechanism of planned public procurement for projects over EUR 500 million (EC to reply within 3 months)</li> <li>• Information exchange mechanism</li> </ul>
EC Communication 'Making public procurement work in and for Europe' (2017)	<b>Formulates six strategic priorities</b> <ul style="list-style-type: none"> <li>• Ensuring wider uptake of strategic public procurement;</li> <li>• Professionalising public buyers;</li> <li>• Improving access to procurement markets;</li> <li>• Increasing transparency, integrity and better data;</li> <li>• Boosting the digital transformation of procurement;</li> <li>• Cooperating to procure together.</li> </ul> <p>In this context, the EC commits to deliver 17 specific actions by the end of 2018; whilst all of these actions can be considered relevant to the procurement of large-scale infrastructure, the voluntary ex-ante assessment appears of most direct relevance.</p>

SOURCE	PROPOSED INTERVENTION
EC Recommendation 'Building an architecture for professionalisation of public procurement' (2017)	<b>Recommends that Member States:</b> <ul style="list-style-type: none"> <li>• Put in place professionalisation strategies for public procurement and support relevant actors with delivery;</li> <li>• Establish a competence profile for public procurement professionals, develop corresponding training, and promote corresponding career paths;</li> <li>• Enhance IT systems to support public procurement, promote integrity in public procurement, provide guidelines on legal requirements and support the exchange of good practices.</li> </ul>
EC Public Procurement Guidance for Practitioners on avoiding the most common errors in projects funded by the European Structural and Investment Funds (2018)	<b>Addressed to procurement professionals in contracting authorities</b> <ul style="list-style-type: none"> <li>• Explains changes introduced by Directive 2014/24/EU;</li> <li>• Provides guidance on all practical steps involved in procuring under the ESI.</li> </ul>

Moreover, the EC engaged in substantial capacity development efforts to the benefit of relevant MS authorities. For example, the programme 'TAIEX REGIO PEER 2 PEER' 'is designed to share expertise between bodies that manage funding under the [European Regional Development Fund \(ERDF\)](#) and the [Cohesion Fund](#). It helps public officials involved in the management of these funds to exchange knowledge, good practice and practical solutions to concrete problems thus improving their administrative capacity and ensuring better results for the EU investments'<sup>42</sup>. In the framework of this programme, the EC organises expert missions, study visits and workshops, inter alia in the area of public procurement, and targeting relevant ESIF authorities, including: Managing authorities, Intermediate bodies, Coordinating authorities, Audit authorities, Certifying authorities, Joint secretariats for European territorial cooperation programmes etc<sup>43</sup>. Finally, the EC also provides training for ESIF authorities, with a specific training module focusing on public procurement<sup>44</sup>.

Constraints to public procurement were also addressed in the context of the European Semester. The following table shows the 2018 European Semester country reporting on barriers to investment. This shows that with regard to public procurement, ten MS are considered to face no barriers in the area of public procurement, two MS have made no progress, three have made limited progress and 12 MS some progress with the reform of their public procurement regulatory and policy framework/practices.

**Table 5: 2018 European Semester reporting<sup>45</sup>**

BARRIER	MS
No barrier	BE, DK, EE, IE, FR, LU, MT, NL, FI, UK
Barrier subject to CSR	
No progress	LV, AT
Limited progress	DE, HR, CY
Some progress	BG, CZ, ES, HU, IT, LT, PL, PT, RO, SI, SK, SE
Substantial progress	
Fully addressed	

<sup>42</sup> [http://ec.europa.eu/regional\\_policy/en/policy/how/improving-investment/taix-regio-peer-2-peer/](http://ec.europa.eu/regional_policy/en/policy/how/improving-investment/taix-regio-peer-2-peer/) (last accessed on 3 August 2018).

<sup>43</sup> The EC's TAIEX website allows for searches on past and upcoming events. A search on 3 August 2018 only identified one event focusing on public procurement under the ESIF, namely in Croatia.

<sup>44</sup> [http://ec.europa.eu/regional\\_policy/en/information/legislation/guidance/training/#5](http://ec.europa.eu/regional_policy/en/information/legislation/guidance/training/#5) (last accessed on 3 August 2018).

<sup>45</sup> This draws on the country reports for BE, BG, CZ, DK, DE, EE, IE, ES, FR, HR, CY, HU, IT, LV, LT, LU, MT, NL, AT, PL, PT, RO, SI, SK, FI, SE, UK. There was no report for GR. See [https://ec.europa.eu/info/publications/2018-european-semester-country-reports\\_en](https://ec.europa.eu/info/publications/2018-european-semester-country-reports_en) (last accessed on 5 April 2018).

## 4.2 THE SPECIFIC ISSUE OF 'SINGLE BIDDERS'

This section considers the issue of contracts relating to EU funds that are awarded on the basis of a single offer. For the purposes of this analysis, this phenomenon is referred to as 'single-bid contracting'.

This section starts with an overview of the methodology used. It continues with an overview of the phenomenon at EU level, and then looks in more detail at three case study MS: Poland, Hungary, and Denmark. Finally, brief conclusions and recommendations are presented.

### 4.2.1 Methodology

The three MS have been selected on the following basis: firstly, these are MS that are not covered by other case study work i.e. the aim was to broaden the coverage of the study. Secondly, preliminary research suggested that Poland and Hungary possibly have higher levels of single-bid contracting than some other MS. Denmark is included as an example of a MS that preliminary research suggested has lower levels of single-bid contract awards.

This analysis is based on Tenders Electronic Daily contract data downloaded from the EU Open Data Portal<sup>46</sup>. Contract award notices (CAN) **for the years 2009 to 2017** were downloaded in a single file and imported into a pandas<sup>47</sup> dataframe for cleaning and analysis. The resulting data was exported to a spreadsheet for further analysis. **Unless otherwise stated, all data in this analysis is derived from this source.** In total, the file contains 4,630,484 records. The number of CANs per year are summarised in **Figure 8** below. The structure of the raw data (as downloaded from the EU Open Data Portal) is explained in a DG GROW document<sup>48</sup>.

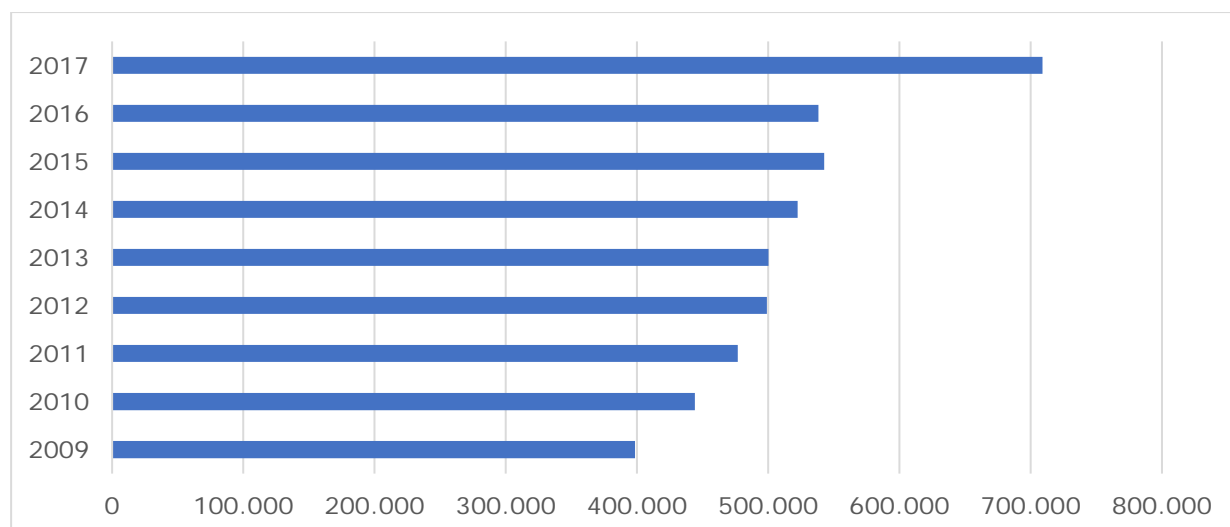
It was intended that the analysis would focus on projects involving funding under the CEF, CF, EFSI and ERDF but this information is not available in the TED dataset. It is only possible to identify whether or not the contract is related to a project and/or programme financed by European Union funds.

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<sup>46</sup> EU Open Data Portal, 'Tenders Electronic Daily (TED) (csv subset) – public procurement notices', <https://data.europa.eu/euodp/en/data/dataset/ted-csv>.

<sup>47</sup> Pandas, <https://pandas.pydata.org>

<sup>48</sup> 'TED CSV open data NOTES & CODEBOOK Version 3.1' (2018-02-23), [http://data.europa.eu/euodp/repository/ec/dg-grow/mapps/TED\(csv\)\\_data\\_information.pdf](http://data.europa.eu/euodp/repository/ec/dg-grow/mapps/TED(csv)_data_information.pdf). Note that the document does not explicitly name DG GROW as the author, but this is inferred from the contact email address.

**Figure 8 - Number of CANs per year**

However, approximately 42% of these records are missing data that is important for this analysis and can therefore not be used. Besides the date and MS, the following fields are important for the present analysis: EU Funds, Amount of Award; Number of Offers Received. These are explained in **Table 6** below.

**Table 6: Explanation of fields**

FIELD NAME USED HERE	FIELD NAME IN TED DATASET	EXPLANATION
EU Funds	B_EU_FUNDS	The contract is related to a project and / or programme financed by European Union funds
Amount of Award	VALUE_EURO_FIN_1	CAN value, in EUR, without VAT. If a value variable is missing, this variable looks for it in all other fields from which it could be
Number of Offers	NUMBER_OFFERS	Number of tenders received

**Table 7** below shows the percentage of entries that are missing values from one or more of these three fields.

**Table 7: Percent of TED CANs missing values from three specific fields**

YEAR	% OF ENTRIES WITH MISSING VALUES			
	ENTRIES MISSING ONE OR MORE ITEMS	ENTRIES MISSING EU FUNDS	ENTRIES MISSING AMOUNT OF AWARD	ENTRIES MISSING NUMBER OF OFFERS
2009	46	24	26	20
2010	46	25	27	20
2011	45	25	27	19
2012	44	23	27	19
2013	45	24	27	18
2014	44	23	27	19
2015	45	23	28	19
2016	38	17	22	17
2017	31	10	13	21

In many cases, the date on which the contract was awarded is not indicated ('DT\_AWARD'). Therefore, the year of publication of the notice ('YEAR') is used instead.

Having removed entries where important (for this analysis) data are missing, dataset was further reduced by removing all entries where the Amount of Award is less than EUR 1,000,000 or greater than EUR 1,000,000,000, i.e. the final data set includes contract with values between EUR 1 million and EUR 1 billion.

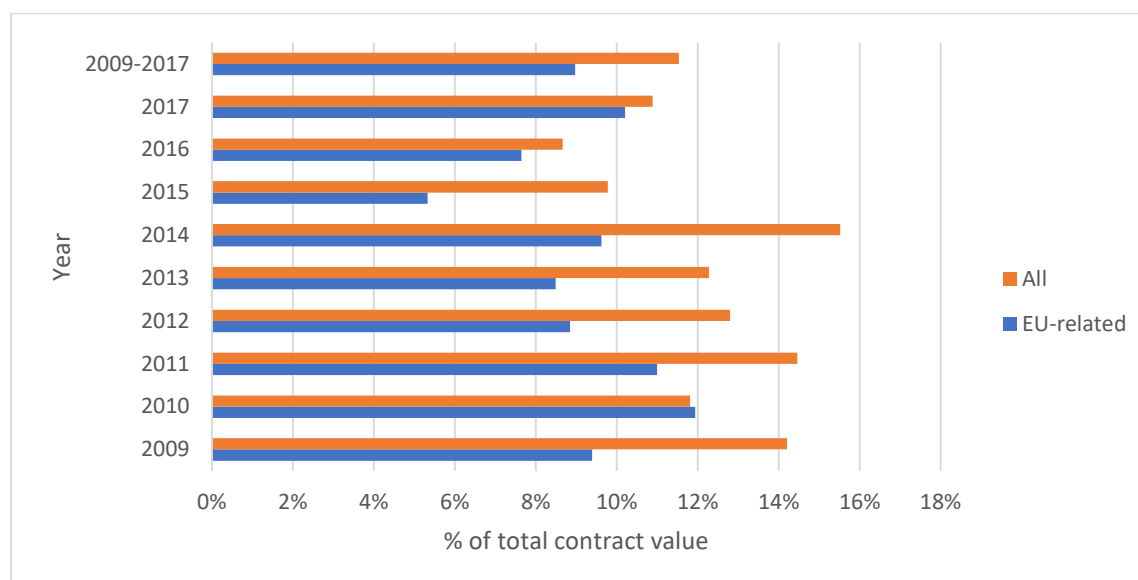
There are 782 entries with values above EUR 1 billion and these have been removed due to doubts about the reliability of the data – the sum of the Amount of Award amounts to EUR 200,003,034,035,733,000,000, and the maximum value given for any one of these 782 CANs is EUR 100,000,000,000,000,000,000.

This left a total of 247,331 records accounting for awards amounting to EUR 3,499,309,750,237.<sup>49</sup> Records for Iceland, Liechtenstein, Norway, and Switzerland were also subsequently removed. The resulting dataset covered all Member States and subsequent filtering for the single country analyses was done after exporting the data to a spreadsheet.

#### 4.2.2 EU overview

In the EU overall, single-bid contracting accounted for approximately 12% of all contracts (by value) from 2009 to 2017 (**Figure 9** below). The figure is slightly less where the contract relates to EU-funded projects (9%), although the figure has fluctuated between approximately 5% and 12%. The phenomenon of single-bid contracting appears to have diminished (with some variations) from 2009 to 2016 but appears to have increased again in 2017.

**Figure 9 - Single-bid contracts in the EU as % of total contract values**

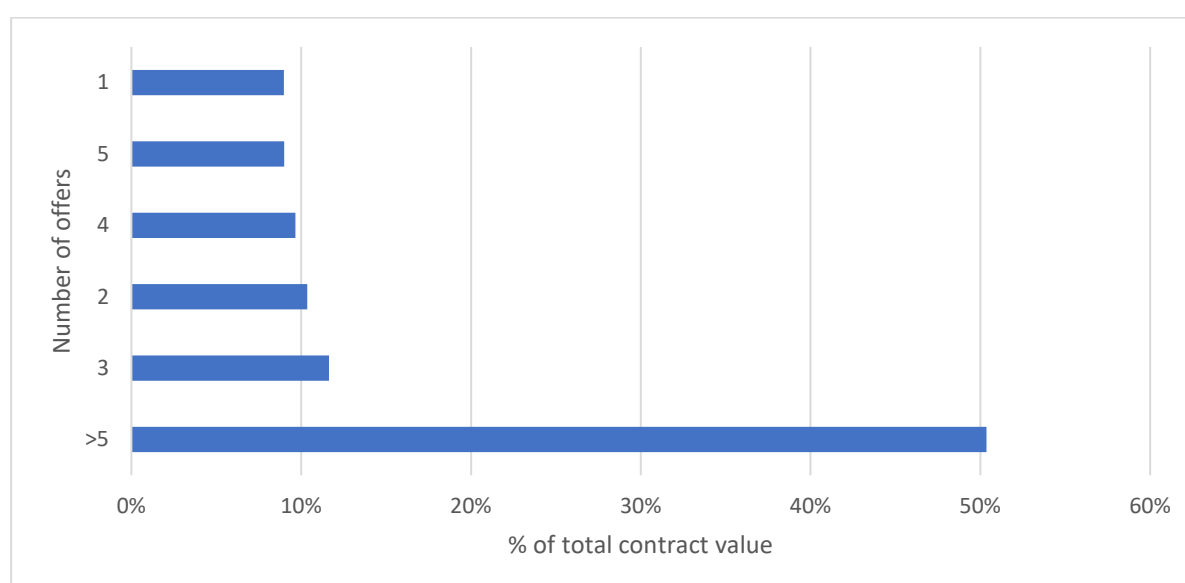


<sup>49</sup> There are 782 entries in the original dataset where the Amount of Award exceeds EUR 1,000,000,000. These have a median value of EUR 2,755,428,193. The maximum value is EUR 100,000,000,000,000,000,000 – the year of the notice is 2017, the contract awarding entity is given as 'Министерство на транспорта' (Ministry of Transport) in Sofia, while the country is given as 'UK'.

**Figure 10** below shows that where contracts relate to EU-funded projects, single-bid contract awards are the least common form of awarding contracts. **In short, there appears to be a lower rate of single-bid contract awards (by value of contract) where the contract relates to EU-funded projects compared with contracts that do not.**

Where contracts relate to EU-funded projects, 50% of contracts (by value) are awarded on the basis of more than five offers where the. The remaining 50% is distributed roughly equally between contracts that received one, two, three, four or five offers (**Figure 10**). The downloaded TED data also indicate a small number of contracts that are awarded on the basis of zero offers (i.e. a '0' is entered in the Number of Offers field (this is different from the many entries where the field has been left blank – all of those entries have been removed from the dataset as part of the cleaning operations).

**Figure 10 - Value of contracts awarded (%) by number of offers – EU-related contracts only**



If we isolate the single-bid contract awards relating to EU-funded projects, we can see that that approximately 22% of these (by value) related to contracts between EUR 1 million and EUR 5 million (see **Table 8**). Approximately 46% of funds awarded through single-bid contracts relate to contracts up to EUR 20 million. 87% relate to contracts up to EUR 200 million. This information is presented graphically in **Figure 11** to facilitate later comparison with individual MS.

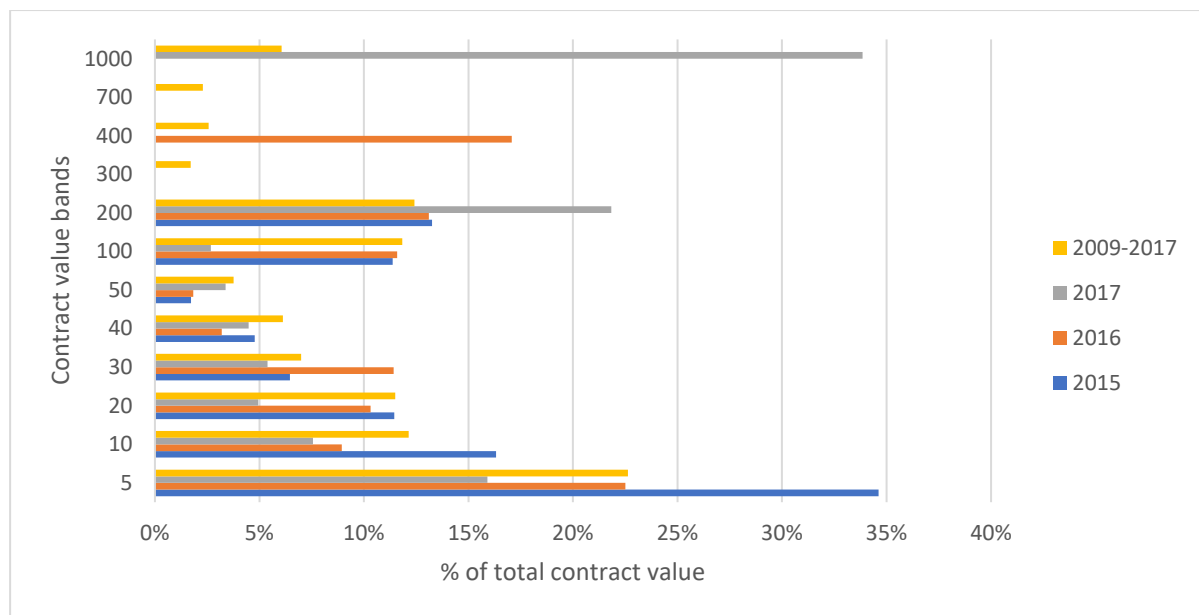
The relatively high figure for contracts between EUR 700 million and EUR 1 billion relates to 19 contracts awarded in France and the UK in 2017 (which accounted for 35%, by value, of single-bid contracts in that year). Analysis of two CANs (one from each MS), indicates that the total value of the procurement (EUR 999,999,999) is given as the value of each of several lots awarded. In other words, the value of the contracts awarded is greatly overstated.

Further analysis of single-bid contracts relating to EU-funded projects indicates that over the period 2009 to 2017, they have been distributed 52% to supplies, 33% to works, and 15% to services by value. However, there were significant fluctuations between years.

**Table 8: Distribution of single-bid contracts by value of contract**

LABEL USED IN CHARTS	CONTRACT VALUE (MILLION EUR)	% OF SINGLE-BID CONTRACT AWARDS BY VALUE
5	1 to <5	23%
10	5 to <10	12%
20	10 to <20	11%
30	20 to <30	7%
40	30 to <40	6%
50	40 to <50	4%
100	50 to <100	12%
200	100 to <200	12%
300	200 to <300	2%
400	300 to <400	3%
500	400 to <500	0%
600	500 to <600	0%
700	600 to <700	2%
800	700 to <800	0.00%
900	800 to <900	0.00%
1000	900 to <1000	6%

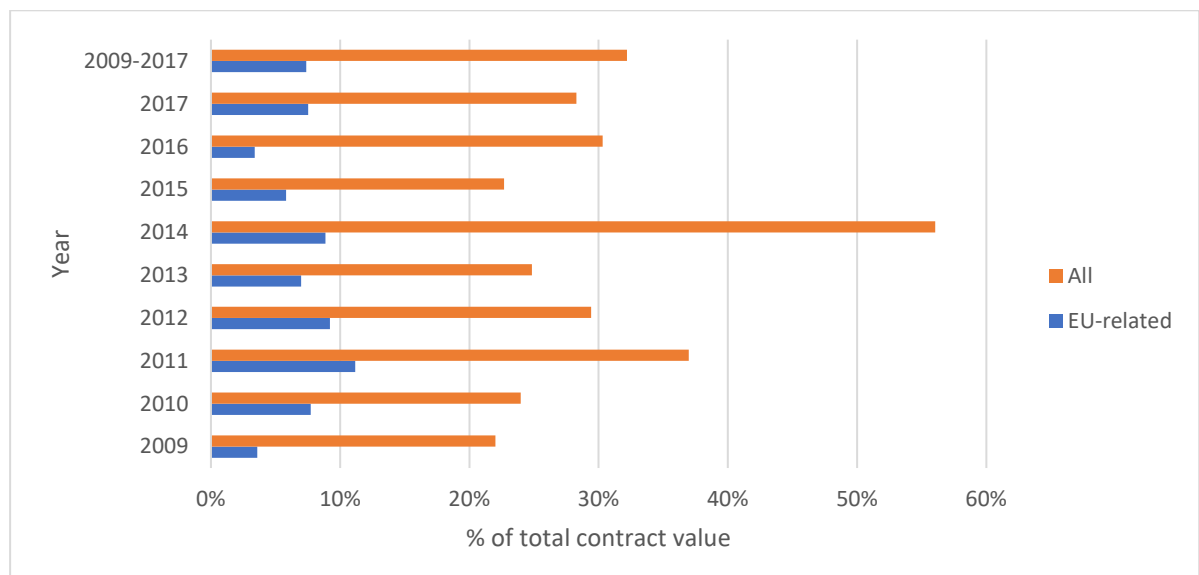


**Figure 11 - Single-bid contracts only, by contract value band (EU-related)**

**Note:** see Table 8 for explanation of contract value bands.

#### 4.2.3 Poland

Single-bid contracting has accounted for approximately 32% of all contracts (by value) in Poland from 2009 to 2017 (**Figure 12**), although the figure in 2014 was approximately 56%. **However, single-bid contracts account for only approximately 7% of contract awards (by value) that relate to EU-funded projects. The figure was 3% and 8% in 2016 and 2017 respectively.**

**Figure 12 - Single-bid contracts in Poland as % of total contract values**

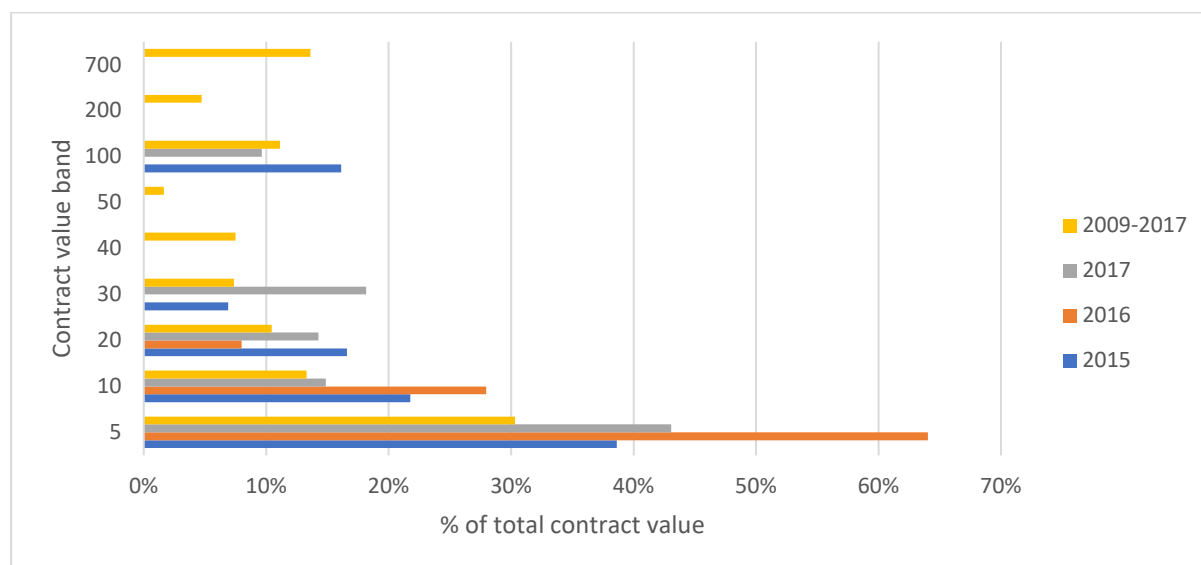
**Figure 13** below focuses on single-bid contracts only (that are related to EU funds) and groups them in contract value bands (i.e. groups them by size of contract). The contract value bands are explained in **Table 8** above. **Figure 13** shows that **between 2009 and 2017, 30% of single-bid contracts (by**

**value) relating to EU-funded projects were in the range of EUR 1 million to EUR 5 million.** In 2016 this reached 63% and then dropped to 43% in 2017.

Single-bid contracts in 2016 in the EUR 1 million to EUR 5 million band were mainly supply contracts (73% by value), followed by service contracts (25%), and works contracts

In 2015, 2016, and 2017 single-bid awards were mainly related to contracts of EUR 30 million or less. Contracts between EUR 50 million and EUR 100 million have also been awarded on the basis of single bids in 2015 and 2017 and previous years.

**Figure 13 - Poland - single-bid contracts only, by contract value band (EU-related)**



**Note:** see Table 8 for explanation of contract value bands.

Overall, supply contracts have accounted for approximately 52% (by value) of all single-bid contracts relating to EU-funded projects, followed by works (33%) and services (15%) although there is significant variability between years.

In a letter to the European Parliament dated 28 June 2018, DG REGIO notes that it has approached managing authorities in Hungary and Poland regarding single-bid contracting<sup>50</sup>. The letter notes that, The response of the Polish authorities to the letter indicated that single-bid contracts relate mainly to areas that are not relevant to EU funding, namely *'services and deliveries'*. Assuming that *'deliveries'* refers to supplies, it could be understood that analysis of the Polish authorities is different from the above analysis. However, the latter refers specifically to contracts involving EU funds, whereas it is understood that the Polish authorities refer to all contracts (with and without EU funding), in which case it is quite possible that the majority of supply and service contracts do not involve EU funding. Moreover, there may be differences in the way that contract information is recorded in national systems compared with information recorded in TED, which would also account for differences in our analysis and the analysis of the Polish authorities. Finally, given the significant constraints encountered

<sup>50</sup> DG REGIO (28 June 2018), letter from the Director General to Mrs. Mrs Ingeborg Grässle.

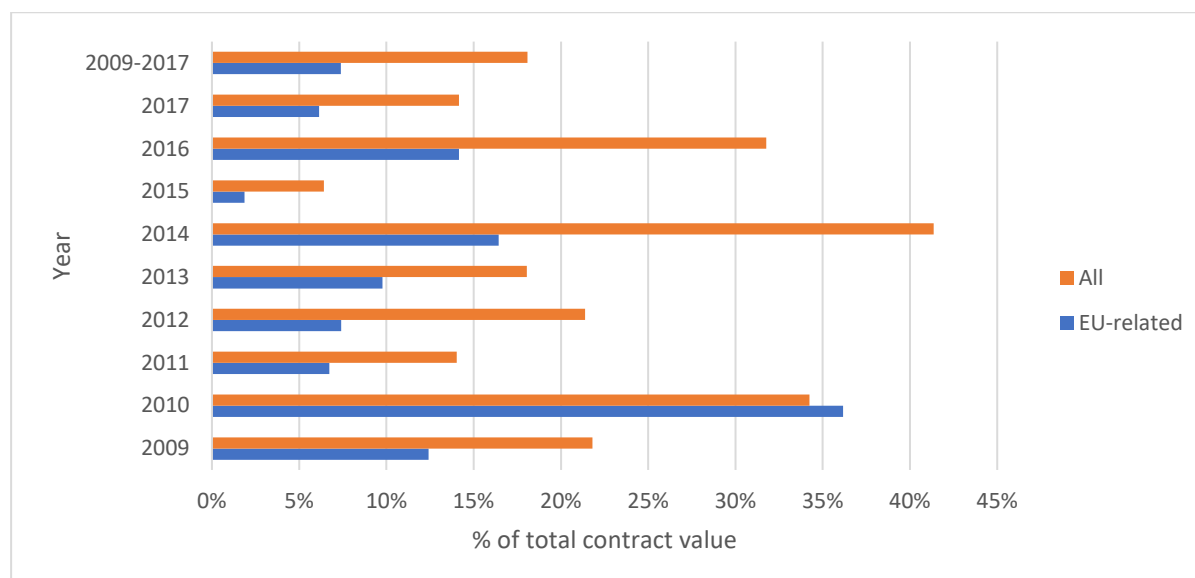
in the analysis of TED data (see 4.2.1 above), it is assumed that the data held on national systems is more accurate and complete.

DG REGIO's letter notes that, according to the response of the Polish authorities, *'one bid does not per se constitute irregularity or fraud and cannot be attributed to any lack of regulations. In the Polish authorities' view, single bidding typically occurs due to other characteristics of the competition dynamics such as the simultaneous opening of a number of tenders, where the bidders have capacity to bid only for a few selected ones.'* DG REGIO's letter further notes that the Polish authorities have taken steps to improve competition, including awareness raising and better access to information.

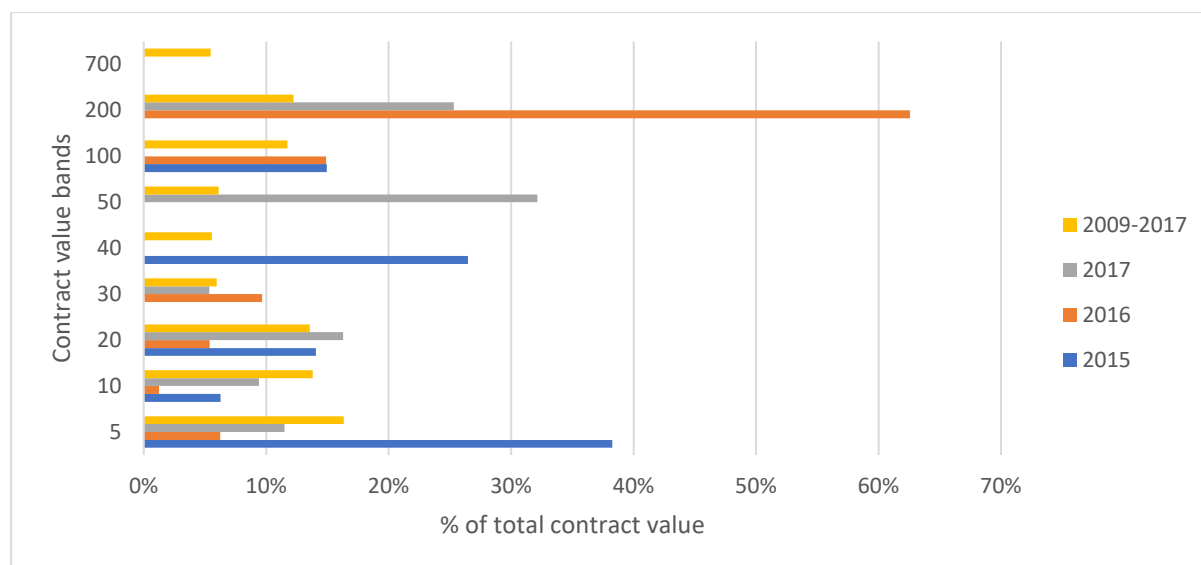
#### 4.2.4 Hungary

Single-bid contracting has accounted for approximately 18% of all contracts (by value) in Hungary from 2009 to 2017 (**Figure 14**). However, single-bid contracts in Hungary account for only approximately 7% of contract awards (by value) where they relate to EU-funded projects. However, there are major variations in both sets of data between years. For example, the percentage of all contracts, by value, (EU-related and not EU-related) awarded on the basis of a single bid was 32% in 2016, 41% in 2014, and 34% in 2010. Considering just the contracts relating to EU-funded projects, the figure was 32% in 2016 and 36% in 2010. This last figure suggests that in 2010, single-bid contracts were common where EU-funded projects were concerned than where they were not concerned.

**Figure 14 - Single-bid contracts in Hungary as % of total contract values**



Unlike Poland and the EU generally, there appears to be no concentration of single-bid contracts in the EUR 1 million to EUR 5 million contract value band. In Hungary, there appears to have been a more even distribution of single-bid contracts across different contract value bands from 2009 to 2017, although there is significant variability between years (**Figure 15** below). For example, in 2016, 63% of all single-bid contracts (by value) in Hungary were in the EUR 100 million to EUR 200 million band, and these relate exclusively to service and supply contracts.

**Figure 15 - Hungary - single-bid contracts only, by contract value band (EU-related)**

**Note:** see Table 8 for explanation of contract value bands.

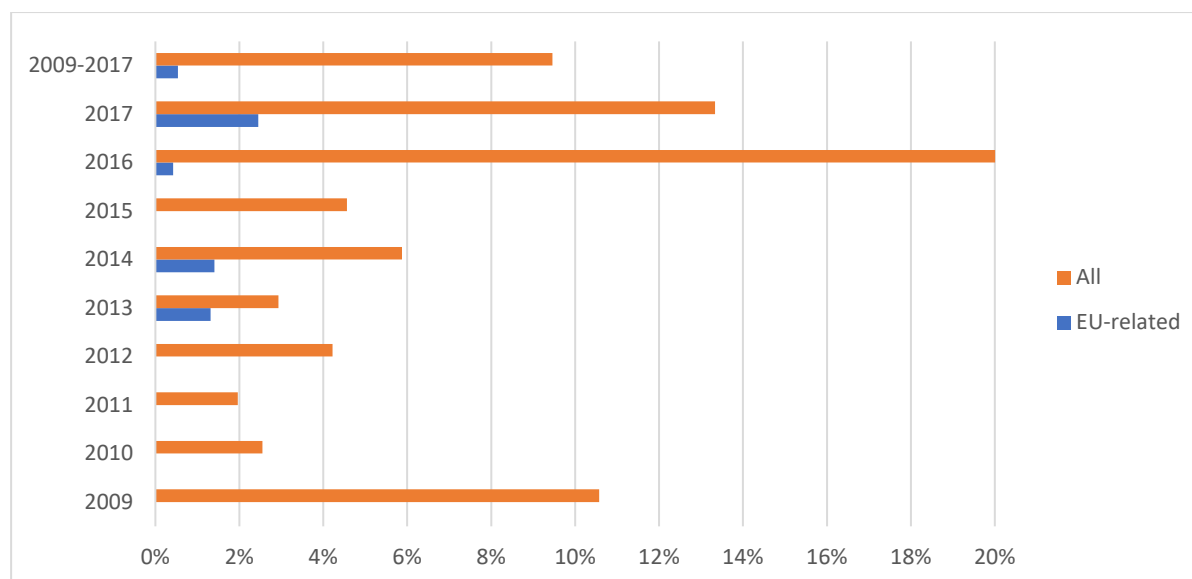
Single-bid contracts in Hungary (related to EU-funded projects) between 2009 and 2017 have been mainly supply related (41% by value), followed by works (34%), and services (25%).

In its letter to the European Parliament, DG REGIO notes the Hungarian authorities point out that Hungary is *'is not among the worst performers in the EU as regards the ratio of single bids and that a number of newly introduced measures are aiming at further improving competition.'*<sup>51</sup>

#### 4.2.5 Denmark

**Figure 16** suggests that single-bid contracting accounts for significantly less funding in Denmark than in Poland or Hungary. The overall rate for 2009-2017 is 9%, compared with 32% in Poland and 18% in Hungary. Where contracts relate to EU-funded projects, the rate for the same period is just 1% in Denmark compared with 7% in Poland and Hungary.

<sup>51</sup> DG REGIO (28 June 2018), letter from the Director General to Mrs. Mrs Ingeborg Gräßle.

**Figure 16 - Single-bid contracts in Denmark as % of total contract values**

Where single-bid contracting has occurred in relation to EU-funded projects (i.e. in 2013, 2014, 2016, and 2017), all such contracts have been in the EUR 1 million to EUR 5 million contract value band, and all have related to service contracts.

#### 4.2.6 Analysis of OLAF reports

In relation to EU Structural Funds, OLAF's 2017 annual report notes that *'One of the main common features of the OLAF cases concluded in 2017 was the collusion between the winner of a tender and either a consultant or the beneficiary of the funding. Conflict of interest also featured prominently in many of OLAF's cases, sometimes involving political figures and large public procurement projects.'*<sup>52</sup> Examples are provided from several countries, and while they do not appear to relate to single-bid contracts, they do illustrate mechanisms by which the number of bids may be limited with or without the involvement of the beneficiary.

In one example, representatives of the beneficiary and the company that designed the technical specifications colluded to establish restrictive criteria in favour of the winning bidder.

Another example identified a conflict of interest whereby a consulting company linked with a contractor also provided services to several beneficiaries and was thus able to influence the content of the technical specifications.

The report also notes that *'Niche markets can be attractive to fraudsters, as they are often highly technical and only a limited number of companies have the required expertise to make viable offers. If the tender procedure is opened to international consortia, it can be very difficult for national authorities to detect and investigate any irregularity or fraud warning signs.'*<sup>53</sup> In one such example, a group of conspirators gained access to the tender specifications and rewrote them in favour of the winning consortium.

<sup>52</sup> OLAF (2018), *The OLAF report 2017*, p14.

<sup>53</sup> Ibid. p16.

While the above examples appear to have involved more than one bidder, it is likely that this type of fraud discourage bidders and therefore limits the number of bids submitted, potentially to just one bid. However, it is not possible to conclude from the available information, to which extent these mechanisms may be contributing to the number and size of single-bid contracts.

OLAF's 2015 and 2016 annual reports do not appear to include additional examples of fraud designed to limit competition at the procurement stage, although it is possible that it investigated additional cases of this nature.

#### 4.2.7 Conclusions and recommendations

**The accessibility and structure of TED data available for download has significantly improved in recent years. However, its usefulness as a tool for analysis of contracting remains limited because much data is missing, and the data that is present includes significant errors. Therefore, the results of the present analysis have to be treated with caution.** It is likely that the picture would look different if the data were complete.

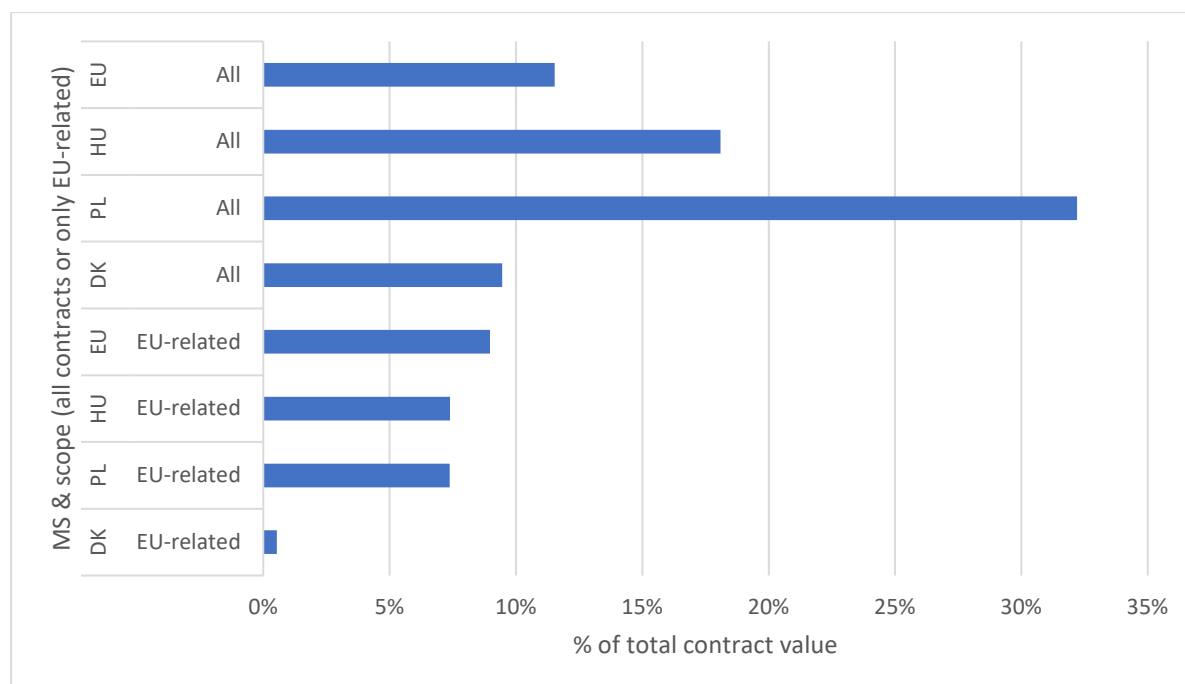
The gaps and errors in the downloaded TED data could be due to carelessness or lack of understanding when the data was entered. It could also be due to some intermediate data processing operation. It is also possible that different institutions have different understandings of how the data should be entered. Finally, it is also possible that it could be due to intentional obfuscation. Further analysis of the entries with missing data would be informative e.g.:

- Does the issue arise mainly in specific MS or institutions?
- Why/ how does it occur?
- What is the value of the contracts involved (where values are provided)?

The Commission provides a useful document describing the data. However, this could be enhanced with further explanation about the purpose and use of certain fields, and the relationships between certain fields, understanding of which is complicated by gaps and inconsistencies in the data.

**Figure 17** (below) provides a side-by-side comparison single-bid contracting in the EU, Hungary, Poland, and Denmark over the period 2009 to 2017. The first four bars cover all contracts (EU-related and not EU-related), while the last four bars cover contracts relating to EU-funded projects. In all four cases (EU, Hungary, Poland, and Denmark), single-bid contracting accounted for a smaller percentage of contracts (by value) where the contracts relate to EU-funded projects. Of the three MS considered here, the level of single-bid contracting was lowest in Denmark, for all contracts, and EU-related contracts. In both cases, the rates for Denmark were lower than the rates for the EU Best wishes,

The overall rates of single-bid contracting in Poland and Hungary were higher than for the EU overall. However, where only EU-related contracts are considered, the rates are lower in both countries than for the EU overall. This indicates that there are other MS that have higher rates of single-bid contracting where EU-related contracts are concerned. This appears to be consistent with information recently provided by the Hungarian authorities to DG REGIO.

**Figure 17 - Summary of single-bid contracting (EU, HU, PL, DK) 2009-2017**

For the EU overall, single-bid contracts have tended to be concentrated at the lower end of the contract values considered in this analysis, i.e. EUR 1 million to EUR 5 million.

### 4.3 INTRODUCING THE THREE FUNDS WITH REGARD TO PROCUREMENT ISSUES

#### 4.3.1 CEF

EU-level feedback suggested that the publication of procurement opportunities in the EU official journal mitigates the risk of bidding being limited to a few national operators. However, the EC has limited room for manoeuvre beyond reminding MS to comply with EU procurement requirements, since the ultimate responsibility for procurement rests with the MS. Notwithstanding, INEA monitors MS procurement during, and after the procurement process is complete, e.g. by requesting additional information. In cases of irregularities, EU support can find itself cancelled. Overall, it appears that in the context of the CEF, the MS comply with relevant procurement requirements. EU-level experience shows that procurement risks can be mitigated by adequate capacities for the preparation of tender specifications, comprising relevant legal, financial and technical/engineering skills. However, the MS often experience resource constraints in this area. In most cases problems with public procurement are explained rather by organisational shortcomings than by intentional irregularities. Moreover, issues over the implementation of the Directives are more likely to appear when confronted with cross-border projects involving several MS. Finally, INEA is adequately resourced to monitor procurement.

#### 4.3.2 EFSI

EU-level feedback suggested that a conclusive assessment of procurement practices (in the context of this study) is constrained by differences in practices between different MS and within MS (e.g. different practices at national, regional and local levels). In more general terms, the experience with EFSI suggests that procurement is likely to benefit from additional capacity development for procurement

experts working in the MS authorities. Commenting on the issue of 'single bidders' it was considered that a small number of bids is not, per se, a problem as long as genuine competition is ensured. Moreover, it was noted that procurement procedures have suffered from the selection process placing too much emphasis on price to the detriment of considering the technical capacity of the bidders, and the long-term financial capacity of bidders to ensure deadlines are met. There also appear to be issues with terms of reference being too prescriptive, and not allowing the bidders to add value by drawing on their experience in responding to terms. Finally, it appears that existing expertise in the form of the 'European PPP Expertise Centre' on public-private partnerships, established in 2008 by the EIB,<sup>54</sup> might be under-used by the MS. In this context, it was also considered that the MS might benefit from an 'EU Procurement Agency', however, it is not clear whether there is sufficient MS support for funding this.

EU-level feedback also suggested that procurement is on the critical path of any large-scale infrastructure project. The importance of having a strong project management team with experienced procurement experts and advisors in place cannot be overstated. The project management team and its advisors should take great care in developing a detailed procurement plan, selecting the appropriate tender procedure(s), and drafting proper tender documents and draft contract(s) prior to the formal start of the procurement procedures. It is important that the tender documents include all the information necessary for a prospective tenderer to prepare a responsive tender. Key issues in the tender documents are the choice of appropriate, objective, proportionate and clear bid evaluation criteria, and contract conditions that outline a balanced allocation of risks between the parties. Any unresolved issues before launching public procurement procedures generate subsequent delays, due to requests for clarifications by the tenderers, the need to publish amendments, difficulties in the evaluation of the tenders, potential complaints, problematic contract management, etc.

#### 4.3.3 ESIF

EC feedback suggests that with regard to the procurement of large-scale infrastructure projects under the ERDF/CF, there are, at times, issues with the storage of information / documentation on completed procurement by the MS, i.e. there are difficulties retrieving relevant documentation after a certain time following the completion of the procurement.

### 4.4 CASE STUDY FINDINGS – PUBLIC PROCUREMENT

Looking first at the findings from the four country case studies, MS feedback confirms a series of remaining constraints:

- **National regulatory frameworks for public procurement remain subject to frequent change** (RO and CZ). For example, the Romanian stakeholders highlighted that the package of laws related to public procurement is subject to regular amendments, and this places additional burden on relevant stakeholders in terms of applying the law. The legal framework on public procurement was amended in December 2017, and changed again during the first six months of 2018. This contributed to uncertainties and was considered to imply risks with

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<sup>54</sup> <http://www.eib.org/epec/> (last accessed on 24 April 2018)



regard to the implementation stage. Moreover, the MS also noted differences in the interpretation of legal requirements by different actors, and this particularly affected MS with a decentralised approach to the delivery of the EU funds (ES, CZ). For example, in CZ, the legislation related to public procurement has been frequently changed and reforms have been introduced without prior consultation of all relevant stakeholders. Moreover, stakeholders in CZ noted the **absence of an independent regulator** to seriously affect the interpretation of legislation and transparency of public procurement processes. Contracting authorities can 'hide' behind the legal provisions by tailoring the interpretation of ambiguous legal provisions to their advantage. Practices such as intentionally pricing tenders just below defined thresholds, thus allowing the contracting authorities to choose their preferred contractor and limit competition are very common and difficult to challenge on legal grounds.<sup>55</sup>

- There is **limited coordination between relevant stakeholders** responsible for different aspects of public procurement at different government levels, and this is exacerbated in some cases by overlapping responsibilities (ES, GR and CZ). For example, in GR the 2015 National Reform Programme identified a lack of transparency and inefficiency as the main problems affecting public procurement, and this was linked to overlapping responsibilities between different authorities, creating a very complex framework for the delivery of EU funding. Similar issues were identified for ES, where the large number and value of public contracts published by the regional and local governments contributed to the limited efficiency of public procurement, exacerbated by the lack of coordination in public procurement between national, regional and local authorities. Some stakeholders considered that more recourse to centralised public procurement would address the coordination issue, however, where this is available, it appears that it is not much used (ES, GR). Finally, the coordination issues were also related to the absence of coherent national-level policy frameworks on public procurement (ES).
- Just as noted above with regard to the preparation of large-scale infrastructure projects, **public procurement is also seriously affected by capacity constraints** (GR, CZ, RO), and several MS stakeholders noted the administrative burden implied in public procurement of EU-funded large-scale infrastructure (GR). For example, in GR delayed decision making affects public procurement, averaging 210 days in 2016, an improvement from the previous year's 270 days. This rate is almost double the EU average of 120 days, with delays often increasing costs for both the applicant and the authority. The issue of delays due to excessive bureaucracy can be illustrated with the example of a port infrastructure in the North Aegean (GR) that launched preparations in 1984 (requesting permits from the national authority of antiquities), but only started with works 22 years later, in 2006<sup>56</sup>. In the CZ, there are capacity constraints due to the absence of legal provisions on employment in the area of public procurement, i.e. there are no

<sup>55</sup> Hetterich, Robert (2016) 'Czech Public Procurement: The Fight Against Corruption'. Post-Communist Reform in the Czech Republic: Progress and Problems. Vol 34. Paper 4.

<sup>56</sup> ECA, 2012, 'Using Structural and Cohesion Funds to co-finance transport Infrastructures in seaports: an effective investment?', [https://www.eca.europa.eu/Lists/ECADocuments/SR12\\_04/SR12\\_04\\_EN.PDF](https://www.eca.europa.eu/Lists/ECADocuments/SR12_04/SR12_04_EN.PDF)

rules on who can become a public procurement official in the CZ. This means that relevant positions are often filled with inexperienced staff<sup>57</sup>. In RO, the current legal framework allows contracting authorities to procure professional services related to procurement and a consultant can be involved at all stages of the process. However, this is constrained by limited funding for the procurement of specialised services.

- Procurement processes are also affected by an **often exclusive emphasis on price-related criteria**, with limited attention to quality (GR).
- Some Member State stakeholders noted remaining issues over the **artificial splitting of project budgets to allow authorities to use direct award procedures** (GR and CZ)<sup>58</sup>. For example, in GR the practice of segmentation of the budget/project to decrease the EU level involvement and allow for a direct award of contracts remains evident in several projects. Indeed, the Patras-Pyrgos road project, suspended in the planning phase for three years, was segmented to allow for more companies to participate in procurement, however, 50% of the works ended up being awarded to a single company. The EP questioned this procurement after discounts of some 50% were observed in all eight segmented parts of the work. Such rates are subject to investigation for being suspiciously low under GR law 2212/2016<sup>59</sup>. Splitting 75 kilometers of road in eight segmented parts (i.e. in eight contracts) bears also the risk of one of the firms experiencing delays that can affect the result as a whole. In this case, four of the eight segments were awarded to a single company. Note that DG Regio identified the issue of artificial splitting specifically for GR in a study on administrative capacity in the MS (2016), but also for ES, IT, Latvia, Malta, Slovenia<sup>60</sup>.
- Member State stakeholders also noted public procurement being affected by **corruption** (RO and CZ). In CZ, corruption is mainly related to false data or public procurement documentation tailored to a specific person or entity, exacerbated by the failure of the criminal code to systematically address corruption in public procurement. In the same context, MS stakeholders noted the limited transparency of public procurement (ES, GR, RO). In CZ, the requirements of transparency and advertising were not fully respected in a project for a motorway construction:

<sup>57</sup> Ibid.

<sup>58</sup> Note that 'artificial splitting' is a well-recognised issue with regard to the procurement of large-scale infrastructure. See for example the judgement of 29 May 2013 of the General Court of the EU on case T-384/10 Spain v Commission, where Spain was found at fault for splitting contracts, thus reducing their value and no longer falling under relevant EU public procurement rules. The EC's decision to apply financial corrections was upheld. EC guidance on public procurement defines 'artificial splitting' as follows: 'The contracting authority must not artificially split larger works/supplies/services into smaller units to avoid the EU thresholds for advertising in the OJEU, national thresholds or to avoid applying certain competitive procedures', and provides the following example: 'For example, if a contracting authority needs to paint a building with 10 rooms, it cannot split the contract into 10 contracts or fewer (for instance 6) and award the contracts without tendering. All those services/supplies or works must be 'pooled' together to create a functional whole. Consequently, in this example the contract value must be the total value of the 10 contracts. The overall value determines whether or not a tender is required to follow Directive 2014/24/EU' EC (2018), Public procurement guidance for practitioners on the avoidance of the most common errors in projects funded by the European Structural and Investment Funds, p. 33-34.

<sup>59</sup> Eleutheria online, 21/03/2018, "EU questions on the Patras-Pyrgos (road)"

<https://www.eleutheriaonline.gr/local/oikonomia/ypodomes/item/150275-antirriseis-apo-e-e-gia-to-patra-pyrgos-symfona-me-erotisi-voulefton-tis-nd>

<sup>60</sup> EC (2016) Stock-taking of administrative capacity, systems and practices across the EU to ensure the compliance and quality of public procurement involving European Structural and Investment (ESI) Funds

the project received EUR 87 million, however, the tender failed to specify the minimum requirements in regard to technical competence. The MS also noted the lack of systematic data collection on irregularities affecting public procurement (ES and CZ). Moreover, the MS noted inefficiencies with regard to the deployment of audit and fraud control mechanisms (RO and ES). Finally, looking specifically at CZ, stakeholders pointed to the issue of anonymously owned firms that compete in public procurement. These anonymous companies have unclear structures and their owners are untraceable. The companies have often connections to the contracting authorities which offer contracts for preferential prices. The final price of the contract is often much higher than if the procedure would have been open and transparent. The anonymously owned firms have been embroiled in several corruption scandals. In 2012, a tender for the construction of a new pavilion in a hospital situated in Mlada Boleslav was won by a firm with one employee and no financial history.

- Finally, MS feedback points to **substantial efforts to address constraints**. The MS have adopted new strategies and enhanced the regulatory framework (RO, ES, GR, CZ). For example, CZ has developed national action plans on green and socially responsible public procurement. Moreover, the MS have simplified and improved existing public procurement systems (ES, GR, CZ). For example, in ES the new public procurement law introduced the two-envelope system, requiring tenderers to submit technical and financial offers in separate envelopes, thus allowing for a more objective evaluation of tenders, since projects are not only assessed for price but also for quality. The MS have also reduced the number of authorities involved in public procurement and addressed the issue of administrative burden (ES and CZ). For example, in 2017, ES adopted a law on public sector contracts to comply with EU rules on public procurement, eliminating the use of the negotiated procedure for low-value contracts without prior publication and requiring the use of a 'simplified open procedure' with reduced procedural requirements and thus limited administrative burden. The MS have also enhanced their capacities by increasing the remuneration of staff dealing with public procurement (RO), and delivering training for public procurement staff (CZ, RO). The MS have established databases to collect data on irregularities affecting public procurement (ES and CZ). Moreover, the MS have established new structures to support public procurement (ES, GR, CZ). For example, in ES the new law on public procurement introduced a new agency (National Evaluation Office, '*Oficina Nacional de Evaluación*') to carry out ex-ante controls of public procurement at the different territorial levels. Similarly, in CZ a working group at national level addresses coordination issues. Finally, the MS have strengthened centralised e-procurement systems (GR and RO).
- Member State feedback (CZ) also suggests that in some cases **sanctions for violating the legislation are insufficient** and do not have a deterrent effect.

Turning now to the findings from the project case studies:

- The **EC/EIB's involvement in the call for tenders** was not required for NL road and ES metro, whilst the involvement was weak for IT/FR rail, and this information was not available for CY port. Feedback from IT suggested that the EC only plays a minor role regarding project

procurement since the MS provide most of the funding and the project promoters manage the calls for tenders autonomously. Similarly, for NL road and ES metro, EU-level feedback suggests that there is no involvement of the EIB in the call for tenders, since project promoters are fully responsible for implementing projects financed by EIB, in particular for all aspects of the procurement process, including drafting of tender documents and awarding contracts through implementing contracts, with the EIB's involvement confined solely to verifying whether the conditions attached to its financing are met. As mentioned in the signed contracts with the promoters *'The Bank will require the promoter to ensure that contracts for the implementation of the project will be tendered in accordance with the relevant applicable EU procurement legislation (Directives 2014 / 24 / EC as well as Directives 89/665 / EEC and 92/13 / EEC) as interpreted by the Court of Justice of the EU, with publication of tender notices in the EU Official Journal, as and when required'*.

- Turning to **EC/EIB monitoring of project-related procurement**, there was limited information for the four projects. For IT/FR rail, some of the IT stakeholders suggested that there might be room for the EC to strengthen its controls of compliance with relevant public procurement rules. In general terms, the EIB does not systematically supervise the procurement process during project implementation, however, the EIB may take further steps, as necessary, to control compliance with applicable EU public procurement law in order to ensure the rational employment of the EIB's funds, protect the soundness of the project and reduce risks.
- Finally, concerning the **transparency of the process and results of public procurement at the national level**, this was confirmed for all four projects (note that this is not in alignment with the general country-level findings of public procurement being affected by constraints to transparency)<sup>61</sup>. For example, for ES metro, 77% of the contracts related to the projects included in the Modernisation and Renewal Programme of Metro de Madrid's Line 5 were carried out by open bidding procedure, and therefore, published on the Online Portal of Public Procurement of the Madrid Regional Government. Only four contracts were tendered without advertising, being awarded to one single contractor, although the award was public, as for the other tenders. This was justified with technical and safety reasons (i.e. the contractor of the signaling renewal contract for the entire metro line was the same one as the contractor owning the signaling technology installed).

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<sup>61</sup> The methodology for assessing transparency consisted of desk research and stakeholder consultations with relevant authorities, Project promoters and the EC / EIB.

## 5 RECOMMENDATIONS

### MAIN RECOMMENDATIONS

We recommend that the concerned actors consider the following four recommendations:

- Collect data on Member State capacities for preparing projects and conducting public procurement, facilitating the setting of concrete targets for capacity development in the concerned MS.
- Collect data on the performance of the recent EC initiatives, namely the voluntary ex-ante assessment of large-scale infrastructure (2017), the professionalisation of public procurement (2017), and additional guidance on procurement of EU-funded large-scale infrastructure (2018)<sup>62</sup>.
- Address inconsistencies and gaps in TED data.
- Strengthen the involvement of relevant stakeholders in the preparation and procurement of large-scale infrastructure projects, considering whether this can be anchored more strongly in the regulatory framework for the different funding instruments, and in addition strengthen the dissemination of findings from existing initiatives such as the 'Transparency Pacts'.

This section addresses the Specifications' interest in *'Recommendations on the improvement of the public procurement processes for major large-scale infrastructure projects'*.

This study points to four main areas requiring additional efforts:

- **Member State capacities for preparing projects and conducting public procurement:** This study clearly points to MS capacity constraints as the single most important cause for weaknesses in the preparation and procurement of large-scale infrastructure. Whilst the EC has addressed this through a series of recent initiatives, this study did not identify any systematic data allowing to quantify this issue in the different MS, and it is therefore recommended to conduct additional research into the extent of capacity constraints in the areas of preparation and public procurement in the different MS, thus identifying adequate 'levels of qualification'/levels of resources, allowing comparisons between MS and target setting for developing capacities.
- **Collect data on the 'performance' of recent EC initiatives,** most notably the facility for voluntary ex-ante assessment of large-scale infrastructure (2017), the professionalisation of public procurement (2017), and additional guidance on procurement of EU-funded large-scale infrastructure (2018). These initiatives have only been launched in 2017/2018, and interviews conducted in the context of the country and project case studies failed to provide much insight into the 'uptake' of these initiatives by the MS. It is therefore recommended that the EC collects data and regularly monitors the performance of the different initiatives. In addition, it might be of interest to verify the extent to which the MS make use of existing EC capacity development offers, e.g. in the form of the TAIEX PEER 2 PEER programme, specific training on public

<sup>62</sup> Note also the recent EC initiative launched in May 2018 'Strengthening good governance and administrative capacity for Cohesion Policy' to be implemented in the course of 2018/2019, and with first funding of EUR 900 million. This initiative specifically includes capacity development on public procurement. Note however that at this stage the initiative will only be deployed in five 'pilot' countries (GR, PL, HR, BG, ES).

procurement for ESIF authorities, or the publications and tools of the EIB's European PPP Expertise centre (EPEC).

- This study finds that single-bid contracting is less common where contracts relate to EU-funded projects, although analysis of the phenomenon is constrained by **inconsistencies and gaps in TED data**, and it is recommended that this issue is addressed.
- **Stakeholder involvement in the preparation/procurement of EU-funded large-scale infrastructure:** Project case study findings point to room for improvement with regard to stakeholder involvement in the preparation and procurement of EU-funded large-scale infrastructure. There might be room for strengthening the requirement for stakeholder involvement in the EU-level regulatory framework for the different funds, i.e. making it mandatory for relevant stakeholders to be consulted in the context of project preparations. There might also be room for further disseminating existing EC initiatives such as the 'Integrity Pacts – Civil Control Mechanism for Safeguarding EU Funds', launched in 2015<sup>63</sup>.

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<sup>63</sup> [http://ec.europa.eu/regional\\_policy/en/policy/how/improving-investment/integrity-pacts/](http://ec.europa.eu/regional_policy/en/policy/how/improving-investment/integrity-pacts/)

## **ANNEX 1 STAKEHOLDER CONSULTATIONS**

The following stakeholders were consulted (in chronological order):

- European Parliament, 21 February 2018
- Unit 1 - Closure and Major Projects, Directorate F — Closure, Major Projects and Programme Implementation III, Directorate General Regional Policy of the European Commission, 13 April
- Unit Project Finance - Baltic Sea and Northern Europe and Central and South Eastern Europe, Operations Directorate, European Investment Bank, 13 April 2018
- Unit C1 Transport: Northern Europe, Austria + MoS and ERTMS, Department C - Connecting Europe Facility, Innovation and Networks Executive Agency, 19 April 2018
- EIB country office (Romania) (The Netherlands), April 2018
- Public procurement expert of Romania, April 2018
- Transparency International Greece, April 2018
- Professor of Economic Sciences University of Athens, April 2018
- Transport Infrastructure, YMEPEERA OP, April 2018
- Transparency International – Czech Republic, April 2018
- Ministry of Infrastructure and Transport (IT), April 2018
- Pro Natura Piemonte, April 2018
- Technical Commission Turin-Lyon (IT), April 2018
- Economist (FR), April 2018
- TELT (FR), April 2018
- Agence de Financement des Infrastructures de Transport Française (FR), April 2018
- Metro of Madrid (CEO and Servicio de Sociedades Participadas), May 2018
- General Directorate of Infrastructures and Services of the Regional Government of Madrid, May 2018



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EC (2017), EC Communication 'Helping investment through a voluntary ex-ante assessment of the procurement aspects for large infrastructure projects' COM (2017) 573 final

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EC (2016) 'Study on permitting & facilitating the preparation of TEN-T core network projects' Final Report, December 2016

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This study aims to develop a better understanding of the regulatory framework and experience with the preparation and procurement of large-scale infrastructure projects (over EUR 50 million) under the European Regional Development Fund, the Cohesion Fund, the European Fund for Strategic Investments, and the Connecting Europe Facility. The study recommends (i) collecting data on Member State capacities for preparing projects and conducting public procurement; (ii) collecting data on the performance of the recent European Commission initiatives - voluntary ex-ante assessment of large-scale infrastructure (2017) the professionalisation of public procurement (2017) and additional guidance on procurement of European Union-funded large-scale infrastructure (2018); (iii) enhancing the consistency of data in the procurement database 'Tenders Electronic Daily'; (iv) and strengthening the involvement of relevant stakeholders in the preparation and procurement of large-scale infrastructure projects.

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## DISCLAIMER

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