



**July 2016**

***CREATING A GOOD LOCAL ECONOMY THROUGH PROCUREMENT***

Post Meeting Briefing Note 1 prepared by

**Matthew Jackson**

Presented to

**Procure network partners and URBACT**



---

## **1 POST MEETING BRIEFING NOTE 1 – RESPONDING TO EUROPEAN AND NATIONAL LEVEL LAW**

### **1.1 Introduction to the theme and meeting**

The first transnational meeting of the Procure network took place in [Lublin, Poland](http://lublin.eu/en/lublin/news/)<sup>1</sup> on Tuesday 28<sup>th</sup> and Wednesday 29<sup>th</sup> June 2016. The focus was upon European and National level law around public procurement and generally what cities can do around innovative procurement in both process and practice terms. The meeting looked to address six key questions (these have been previously identified by the partners during the baseline stage):

- What is the content of the new EU Procurement Directives?
- What are the expectations of national procurement law in each city?
- How can EU, national, and local level requirements be balanced?
- How can corruption be recognised and limited?
- What are the regulations around engaging SMEs?
- What scope is there for innovation in procurement?

To answer the questions, the thematic element of the meeting was split into two parts. First, there was a 'Masterclass' on EU Procurement Directives which looked to cover questions 1, 5, and 6. Second, there were three 'Deep Dive Workshops' on: national procurement law commonalities and differences (questions 2 and 3); being innovative in procurement: what are we allowed to do (question 6); and addressing barriers in procurement: a focus on recognising and addressing corruption (question 4).

This 'post workshop briefing note' reflects upon these thematic elements, together with detailing the core learning for each partner in relation to the theme of the meeting, the relevance to their Integrated Action Plan, and what they are going to do at the local level before the next transnational meeting in Nagykálló and Satu Mare in September 2016.

### **1.2 Introducing URBACT (Phase 2, the Procure network and our objectives and activities over the next two years)**

Following a welcome from the Deputy Mayor of the City of Lublin, Krzysztof Komorski; Matthew Jackson (Lead Expert) and Tamar Reay (Lead Partner Coordinator) introduced the first session. This focused on introducing the second phase of the URBACT Programme, the members of the Procure network, our learning from Phase 1, our objectives, and the content of our thematic workshops and Integrated Action Plan focused workshops.

### **1.3 Masterclass on European Procurement regulations**

Matija Matokovic, a Policy Officer from DG Grow at the European Commission provided a Masterclass on the EU Procurement Directives. The conversation focused around two themes: 'public procurement legislative framework reform – overview and highlights' and 'public procurement of innovation – policy and regulation'. There are three new Directives for public procurement around public contracts, utilities, and concessions with the Directives framed by five objectives and trade-offs (Matija talked about the content of each of these in turn):

---

<sup>1</sup> <http://lublin.eu/en/lublin/news/>

---

- 
- ❑ **Simplification and flexibility** which focuses upon making the process of procurement simpler and enabling more negotiations;
  - ❑ **E-procurement** which is seen as a 'game-changer' and is linked to wider EU policy agendas around digitalisation;
  - ❑ **Better access** to opportunities which focuses upon Small to Medium Sized Enterprises (SMEs) and cross border procurements;
  - ❑ **Strategic Procurement** which includes the development of the European Single Procurement Document (ESPD) which places greater emphasis in the procurement process upon innovation and addressing social and environmental issues;
  - ❑ **Governance** which focuses on the professionalisation of the process of procurement and adopting sound procedures.

Following the Masterclass, there was an opportunity for questions and answers and then the partners were asked to discuss in groups: What difference will/are the EU Procurement Directives making to your city? The key themes from the conversation were:

- ❑ Embedding quality and innovation and social considerations into the procurement decision is difficult and scoring can often be seen as subjective. Partners suggested that there is a need for a qualitative methodology to score innovation in particular;
  - ❑ Partners also suggested that understanding innovation was not just important for procurers but also potential suppliers. There is a need for businesses to understand innovation and particularly what they need to detail in tender documents;
  - ❑ There is a need for training for national governments and municipalities and other anchor institutions around aspects of the new Directives, notably around innovation and e-procurement;
  - ❑ With regards to e-procurement, there is also an identified issue with engaging small enterprises and getting businesses to register for e-procurement (which they will have to do). There was a particular concern that E-solutions are for bigger companies and not smaller ones, with a lack of experience ruling out the smaller ones;
  - ❑ The partners felt that on the whole the new Directives offer the opportunity to do procurement differently and not just be price-based. The ESPD is warmly welcomed overall as is less bureaucracy and shorter processes;
  - ❑ The greater accessibility for SMEs (through the possibility to divide contracts into lots) was seen as welcome; partners however recognised that there was a challenge in positioning smaller companies to enable them to tender in the first place;
  - ❑ Partners felt that the Directives gave their cities greater flexibility in the procurement process, notably around: the unification of documents, protection for sub-contractors, dividing of contracts into lots, and more transparency. Not all partners' countries have had the EU Procurement
-

---

Directives transposed into national law yet, but for those which have not, partners are following the principles.

## 1.4 Deep dive workshops

Following lunch, there were three deep dive workshops. Each workshop followed the same format, with a short presentation on the area of focus and then discussions in groups or individual cities.

### 1.4.1 Workshop 1 - National procurement law commonalities and differences

Matthew Jackson presented the findings from the baseline study around national procurement law. This focused on discussing who already had the new EU Procurement Directives transposed and some of the commonalities and differences around national level law around procurement. It was clear that for some countries that cost remained the overarching principle for public procurement; whereas for others supplementary legislation had been adopted at the national level to account for innovation, social and environmental considerations.

The partners then discussed in groups two questions: 'How has national level law around procurement changed in your countries since the last transnational partner meeting?' and 'What are the three key challenges that you/your local stakeholders have in your cities with national level law around procurement?' The key themes from the conversation around change since the baseline study were:

- ❑ The changes have created uncertainty around what it is possible to do/not do since the legislation came into force on 1<sup>st</sup> June 2016 (The Netherlands);
  - ❑ For countries where the law is not yet fully enacted, not much has changed on a practical level to date (Czech Republic);
  - ❑ It has created pioneers in public procurement as the new Public Procurement Act has been in force since 1<sup>st</sup> November 2015 (Hungary);
  - ❑ Four new laws have come into force in Romania – classical, concessions, appeals, and sectoral. These provide the rules for application but the forms are not yet published. The biggest opportunity is the change to internal rules – 60% based on price, which is simpler. However the thresholds have not changed (Romania);
  - ❑ In the case of Spain, the situation regarding the transposition of European Directives, is as follows: the dissolution of Parliament in October 2015 due to the general elections, to take place on December 20, made it impossible to go through the parliamentary process of incorporating Directives to the new legislation, having completed its complex administrative processing at the beginning of 2015. In March 2016, the State's Administrative Contracts Consultation Board issued a recommendation with the declared intention to facilitate the contracting authorities the application from April 18, 2016 of those aspects of the Community directive in matter of public procurement that will have direct effect thereafter (Spain);
  - ❑ There is a new code of conduct covering environmental and social aspects. On the one hand with regards to pre-commercial procurement, it tries to
-

---

speed up the process. On the other, the new conduct presents consequences for regional policies, creating conflict between them and results in minimum environmental criteria (Italy);

- ❑ The new Directives have already been transposed in the UK. There is no other new national law (United Kingdom);
- ❑ The new Directives are awaiting transposition into national law (Croatia);
- ❑ In Poland, the new Directives have been adopted by Parliament and are about to be signed by the President's Office. In the new Polish policy, the price component in weighted tender evaluation criteria will be limited to 60% (Poland).

With regard to challenges around national level law around procurement, the following emerged from the discussions:

- ❑ There is a need for training at the local and regional level to respond;
- ❑ There is still potential for corruption;
- ❑ There is a lack of harmonisation around procurement policy across Europe and at national and local levels;
- ❑ Raising supplier awareness through greater engagement with SMEs is important;
- ❑ Building the capacity of SMEs to bid for procurement opportunities is key;
- ❑ There is a big challenge around the use of appropriate non price criteria such as environmental and social criteria;
- ❑ Access to information (e.g. IT systems) is important;
- ❑ Maintenance of communications with 'island' markets is an issue (specific to Candelaria);
- ❑ Introducing innovative processes with local suppliers and labels is challenging;
- ❑ Internal capacity in procurement functions could cause issues;
- ❑ There is an ambiguity in law, e.g. what does 'grave misconduct' really mean;
- ❑ Overcoming the uncertainty and a focus on innovative partnerships is important (particularly for The Netherlands);
- ❑ Preparing stakeholders for and using the ESPD as this currently is not in force;
- ❑ Making the administration easier for tenderers is important;
- ❑ The lack of guidelines/best practices to follow is creating uncertainty;
- ❑ Confidence in suppliers to be innovative is lacking;
- ❑ Creating a shared vision on public procurement is important.

#### **1.4.2 Workshop 2 - Being innovative in procurement: what are we allowed to do?**

Matthew Jackson presented the means through which cities can be innovative in procurement. These were highlighted and discussed in more detail in the pre meeting briefing note and are based around Matthew's experience of working with cities in the UK and across Europe around innovation in procurement.

The partners were then asked to look at the cards with the means of being innovative in procurement on them and detail: which they were already doing; which they had thought about; and which they had not thought about. The tables below details the finding for each mean (this supplements discussions already undertaken in the baseline study but with a broader set of means):

---

**Table 1: Means of being innovative**

Mean	Done	Thought About	Not Done
Link procurement to wider corporate priorities	Preston, Almelo, Metropolitan City of Bologna, Nagyálló, Prague 9, Koszalin	Candelaria, Lublin	Satu Mare, Albacete, Koprivnica
Reflect community need	Koszalin, Preston, Lublin, Almelo, Albacete, Metropolitan City of Bologna, Nagyálló, Candelaria	Koprivnica	Satu Mare, Prague 9
Develop procurement strategies with a common narrative	Preston, Almelo, Albacete, Metropolitan City of Bologna	Prague 9, Nagyálló, Koszalin, Koprivnica	Satu Mare, Lublin, Candelaria,
Develop accessible portals	Prague 9, Preston, Candelaria, Koprivnica	Koszalin, Satu Mare, Lublin, Almelo, Albacete, Nagyálló	Metropolitan City of Bologna
Package contracts to make them more accessible	Satu Mare, Preston, Lublin, Albacete, Candelaria	Koszalin, Almelo, Nagyálló	Prague 9, Metropolitan City of Bologna, Koprivnica
Streamline procurement documentation	Preston, Lublin, Almelo, Albacete, Metropolitan City of Bologna, Nagyálló, Candelaria, Koprivnica	Prague 9, Satu Mare	Koszalin
Use social and environmental criteria	Preston, Almelo, Metropolitan City of Bologna, Nagyálló, Koprivnica	Prague 9, Koszalin, Satu Mare, Lublin, Albacete, Candelaria	
Work with local business to test markets	Preston, Lublin	Prague 9, Almelo, Nagyálló	Koszalin, Satu Mare, Albacete, Metropolitan City of Bologna, Candelaria, Koprivnica

Mean	Done	Thought About	Not Done
Engagement work with business networks	Koszalin, Preston, Lublin, Almelo, Metropolitan City of Bologna, Nagykálló	Prague 9, Albacete, Candelaria, Koprivnica	Satu Mare
Capacity building of social economy organisations	Lublin, Almelo	Prague 9, Preston, Metropolitan City of Bologna, Candelaria	Koszalin, Satu Mare, Albacete, Nagykálló, Koprivnica
Embed apprenticeships, labour and social clauses	Almelo	Preston, Albacete, Metropolitan City of Bologna, Nagykálló, Candelaria	Prague 9, Satu Mare, Lublin, Candelaria, Koprivnica
Developing supplier networks	Preston	Prague 9, Lublin, Almelo, Albacete, Metropolitan City of Bologna, Nagykálló, Koprivnica	Satu Mare, Candelaria, Koszalin
Continuous spend analysis and outcomes monitoring	Koszalin, Preston, Lublin, Metropolitan City of Bologna, Koprivnica, Candelaria, Prague 9	Almelo, Nagykálló	Satu Mare, Albacete

Of the means of being innovative in procurement which partners were already doing, they were then asked to select up to three which they could put on the 'giving' board. These were means where partners could share practice and learning with other partners. The means detailed for 'giving' by each partner is highlighted in table 2.

**Table 2: Means for giving**

City	Mean 1	Mean 2	Mean 3
Preston	Packaging contracts	Continuous spend analysis & outcome monitoring	Business network engagement
Almelo	Develop procurement strategy with common narrative	Link to wider corporate priorities	Reflect community need
Lublin	Reflect community need	Packaging of contracts	Capacity building of social economy organisations
Koszalin	Engagement with business networks	Reflect community need	Continuous spend analysis & outcome monitoring
Albacete	Develop procurement strategies with a common narrative	Reflect community need	Streamline procurement documentation
Metropolitan City of Bologna	Engagement work with business networks	Use of social and environmental criteria	Capacity building of social economy organisations
Koprivnica	Develop accessible portals	Continuous spend analysis & monitoring outcomes	Use of social and environmental criteria
Nagykálló	Use of social and environmental criteria	Reflect community need	Streamline procurement documentation
Candelaria	Reflect community need	Package contracts into lots to make them more accessible	Continuous spend analysis & outcome monitoring
Satu Mare	Package contracts into lots to make them more accessible		
Prague 9	Continuous spend analysis & outcome monitoring	Link procurement to wider corporate priorities	

The partners were then asked to select up to two means of being innovative in procurement to place on the 'taking' board. These were means which partners felt they would like more information about. Table 3 details the means which each city felt they would like to take and the name of the city they would like to take further information and learning from.

**Table 3: Means for taking**

City	Mean 1	Mean 2
Preston	Building capacity of social economy organisations (Lublin and Metropolitan City of Bologna)	
Almelo	Spend analysis & outcome monitoring (Koszalin)	Packaging of contracts (Lublin)
Lublin	Engagement with business networks (Preston)	Use of social and environmental criteria (Koprivnica)
Koszalin	Use of social and environmental criteria (Metropolitan City of Bologna)	Packaging of contracts into lots (Preston)
Albacete	Use of social and environmental criteria (Nagykálló)	Spend analysis & outcome monitoring (Koszalin)
Metropolitan City of Bologna	Engagement with business networks (Koszalin)	Reflect community need (Albacete)
Koprivnica	Engagement with business networks (Preston)	
Nagykálló	Spend analysis & outcome monitoring (Koszalin and Preston)	
Candelaria	Use of social and environmental criteria (Nagykálló)	
Satu Mare	Use of social and environmental criteria (Nagykálló)	Engagement with business networks (Preston)
Prague 9	Reflect community need (Almelo)	

---

### 1.4.3 Workshop 3 - Addressing barriers in procurement: a focus on recognising and addressing corruption

The third workshop focused upon addressing barriers in procurement and particularly the issue of recognising and addressing corruption. The partners were asked particularly to discuss in groups the question: 'What concerns do you have around the potential for corruption in your country? Provide examples where possible of ways to address it'. The key themes from the conversation were:

- ❑ The process of procurement can be seen as an opportunity to steer investments which can be challenging;
- ❑ There are a number of 'cultural' concerns around corruption, e.g. financing political establishment; personal enrichment;
- ❑ Procurement can sometimes operate under a shadow of corruption, especially when inviting companies/organisations to tender;
- ❑ Procurement can sometimes be undertaken with a lack of transparency, e.g. sometimes there are informal networks which leads to discussions which are not transparent;
- ❑ Partners reflected that where there is money, there is potential for corruption.

Partners reflected on a number of ways in which to address corruption:

- ❑ Ensure there is transparency in the process;
  - ❑ Employ anti-corruption officers;
  - ❑ Ensure the justice system works properly, e.g. protects whistle-blowers;
  - ❑ Provide training for public procurers to be able to identify potential corruption and address it;
  - ❑ Provide proper contracts' supervision.
-