



**MAPS**

Methodology for Assessing  
Procurement Systems

# ASSESSMENT OF NORWAY'S PUBLIC PROCUREMENT SYSTEM

2018

*Testing the new methodology*





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Procurement Systems

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TESTING THE NEW METHODOLOGY





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## Executive summary

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Norway's public procurement system is characterised by its high degree of decentralisation and its link to the rules of the European Union. In addition, as all Norwegian institutions, public procurement follows the logic of a trust-based system that places high emphasis on the abilities of individual procurers with a high degree of responsibility.

Overall, Norway has a very well-functioning public procurement system that generally delivers value for money across all levels of government for all citizens. Yet, some challenges exist, and the main ones are related to the operation of public procurement in a decentralised way and the systematic collection and use of public procurement data. Capacity (both in terms of numbers and skills) plays an important role in this context as well. For example, smaller contracting entities, either at central level or in the periphery of the national system, struggle with human resources and capacity issues.

The implications of the recent public procurement reform, carried out in 2016, but effective from January 2017, have yet to be fully understood. This reform is the most comprehensive in several years. It mainly aimed at achieving simplification and at increasing the strategic use of public procurement, besides transposing the 2014 EU Directives. In particular, the higher thresholds and the creation of a central purchasing body are substantial changes that promise to have larger effects on Norway's public procurement system.

The analysis was based on the revised Methodology for Assessing Procurement Systems (MAPS 2016). MAPS consists of 14 indicators that cover all elements of a public procurement system. These indicators are grouped into four pillars: I. Legal, Regulatory, and Policy Framework; II. Institutional Framework and Management Capacity; III. Procurement Operations and Market Practices; IV. Accountability, Integrity and Transparency of the Public Procurement System.

### Summary of potential areas for improvement

- Encourage the development of interoperable electronic procurement systems with functionalities for the entire procurement cycle, and promote their use across all governmental levels.
- Invest in data gathering and performance monitoring: beyond increased functionality to manage public procurement processes electronically, systematically gather and analyse the data that is created by the electronic systems by developing a performance monitoring framework.
- Build on the good potential of the Norwegian system for effective use of strategic public procurement to address societal challenges and take additional measures to ensure that the fullest potential is achieved across the board, in all contracting authorities across all governmental levels, including state-owned enterprises and municipalities.
- Monitor the implications of the recent public procurement legal reform, especially the effects of the increased thresholds for SMEs. For doing so, advanced data collection and increased use of electronic procurement will be instrumental.
- Monitor the performance of the central purchasing body (Statens innkjopssenter) with a view to optimise the existing institutional arrangements.



- Increase the offer of professionalization activities by Difi for use by contracting authorities, with a particular emphasis on strategic use. Providing the offer could encourage entities to work towards improving the capacity of their public procurement workforce.
- Fine-tune the appeals and audit framework: equip KOFA with increased capacity and authority, and promote performance-based audits.



# Introduction

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This report details the findings of an assessment of Norway's public procurement system using the revised Methodology for Assessing Procurement Systems (MAPS 2016). The assessment was conducted by the Norwegian Agency for Public Management and eGovernment (Difi) and the OECD, with expert peer review from GIZ.

The primary objective of the assessment was to conduct a thorough, external assessment of the Norwegian public procurement system that reveals strengths and weaknesses, benchmarking the Norwegian system with international good practices and standards. The findings of the assessment will be used to improve and reform public procurement in Norway. The Ministry of Trade, Industry and Fisheries is working on a Whitepaper on public procurement, and the MAPS report will provide input to this work.

In addition, this MAPS assessment was conducted as a testing exercise in support of the revision of the MAPS: Norway is one of the first OECD countries to be assessed using the MAPS, and one of three countries that will be assessed using – for the first time – the revised indicator framework. The new methodology has never been applied in practice. The first assessments therefore served to identify any areas that need improvement before a final version of the revised MAPS will be issued.

This assessment also served to exploring resource-efficient approaches to conducting assessments with the revised MAPS, optimising time for research and formulation of results, as well as their presentation. The following report aims at providing a succinct overview over the findings.

This assessment was launched in January 2017. The fact finding meetings were conducted on 7-9 March 2017. The annex provides an overview of stakeholders that were interviewed during this mission. The assessment assessed availability of all quantitative indicators in the MAPS, with mixed results as detailed in the respective indicators below. A survey with companies will be conducted to address survey-based quantitative assessment criteria (5(d), 10(a), 10(b), 13(c), 14(c), 14(d)). This survey is forthcoming.

Steps to validate and publish this assessment will be determined in accordance with Difi calendar and priorities. This report will be shared with the stakeholders that provided information prior to any external publication. A validation workshop with the stakeholders has been organised for September 2017.





# Country Context

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## Political Situation and Society of Norway

With a population of just over 5.2 million<sup>1</sup> (with a decreasing growth rate of 1.1%), Norway is one of the three Scandinavian countries, comprising the western portion of the Scandinavian Peninsula.

A constitutional monarchy with a parliamentary system, Norway follows the principle of separation of powers into legislative, executive and judicial power. The executive power is dependent on the support of the legislature. The king is the Head of State and the constitution grants him executive powers, even if these are exercised by the government (executive).

Norway became an independent nation in 1814, but only formally seceded from Sweden in 1905. Norway had been part of unions with Denmark and Sweden respectively since 1380. The Norwegian constitution was adopted on 17 May, 1814, assigning legislative, budgetary and supervisory power to the *Storting* (parliament). Every four years, Norwegian citizens 18 and older elect 169 representatives as members of parliament. The 169 seats are selected from 19 constituencies, corresponding to the 19 counties of Norway. The electoral system is based on the principles of direct election and proportional representation.

Norway's Government is formed based on the results of the parliamentary elections and appointed by the king. The Norwegian government must have the backing of the parliament to be able to govern. The government is responsible for proposing new laws, proposing the state budget and for implementing policies.

The government is composed of ministers and led by the prime minister. Ministers are appointed for different areas of governmental administration and manage these, delegating work and responsibilities to independent agencies called *directorates*.

Following long tradition, local governments in Norway enjoy a large degree of autonomy vis-à-vis central government and state authorities. The 19 counties consist of 428 municipalities, varying in size and population (ranging from 201 per municipality to more than 666,000 people). Local government was introduced in 1837 with the *Formannskapsloven* (a law pertaining to local government). As in national politics, political parties play an important role in local politics. In addition, there is the *Sametinget (Sami Parliament)*, which promotes the language and the interests of the Sami population (indigenous people in Norway).

The judicial power is administered by the courts. The Supreme Court and lower courts of law are the judicial power, pronouncing judgements in disputes between citizens and between the authorities and citizens.

The government (at the time of the assessment) was appointed by King Harald V on 16 October 2013. It is led by Prime Minister Erna Solberg, and represents the Conservative Party (C) and the Progress Party (PrP).<sup>2</sup>

Levels of crime are generally low: On a daily basis, on average approx. 1,000 offenses are reported nationwide (64,5 per 1,000 inhabitants).

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<sup>1</sup> Statistics Norway: <https://www.ssb.no/en/befolkning/nokkeltall/population>

<sup>2</sup> Elections took place on 11 September 2017. The new government now also includes and the Liberal Party of Norway (Venstre).



Levels of corruption (i.e., the general perception about corruption and the actual occurrence of corruption cases in the judicial system) are quite low, as evidenced by Transparency International's Perceptions of Corruption Index and the Global Corruption Barometer. Norway ranked 6<sup>th</sup> of 176 countries, with a score of 85 out of 100<sup>3</sup>. In general, the legal and institutional framework in Norway is characterised by a high degree of transparency, accountability and integrity. Norway has ratified all relevant international anti-corruption conventions. Its standards of implementation and enforcement of anti-corruption legislation are considered very high by the OECD Anti-Bribery Working Group. However, there are some isolated cases, principally in municipalities, of procurement officials abusing their positions in public procurement processes.

## Economic situation

Norway's GDP per capita is 73,175 USD<sup>4</sup>, with an increasing projected growth rate (1.4 %) <sup>5</sup>. General government debt is 38.8 % of GDP<sup>6</sup>. Norway has a high average household net adjusted disposable income per capita (221.8 %), but ranks below the OECD average for household net financial wealth<sup>7</sup>. Tax on personal income is equal to 10.4 % of GDP<sup>8</sup> while income inequalities are low<sup>9</sup>.

Main economic activities are oil and gas extraction (including services), manufacturing, construction, information and communication, wholesale and retail trade, transport activities and professional, scientific and technical activities<sup>10</sup>.

Norway is one of the world's leading petroleum exporters, despite a declining trend in recent years. Oil production in 2015 was approximately 50% of its peak in 2000. Annual gas production, however, more than doubled over the same time period. While Norway's petroleum activities account for 18% of the country's GDP and 39% of total export revenues, it employs only 2% of the workforce. (In comparison, public sector employs 30% of the workforce)<sup>11</sup>.

Management of Norway's petroleum resources lies with the government, and is subject to extensive regulation including some state-ownership in Norwegian energy companies. Through the Government Pension Fund Global, Norway saves state revenue from petroleum sector activities. As of May 2017 the fund was valued at over US\$ 900 billion<sup>12</sup>. To help balance the state budget the

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<sup>3</sup> [http://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](http://www.transparency.org/news/feature/corruption_perceptions_index_2016)

<sup>4</sup> Statistics Norway, <https://www.ssb.no/befolkning/artikler-og-publikasjoner/attachment/274437?ts=1567e828450>

<sup>5</sup> OECD data Real GDP forecast, Annual growth rate, 2018

<sup>6</sup> OECD data 2015

<sup>7</sup> However, this figure only provides a partial account of total wealth as it excludes items such as the value of people's homes

<sup>8</sup> OECD data 2015

<sup>9</sup> OECD data: 0.25 Gini coefficient where income inequality, 0 = complete equality, 1 = complete inequality, latest available year 2013

<sup>10</sup> <http://www.ssb.no/217894/bruttonasjonalprodukt.bruttoprodukt-etter-hovedn%C3%A6ring-i-basisverdi.millioner-kroner>

<sup>11</sup> Statistics Norway; <https://www.ssb.no/befolkning/artikler-og-publikasjoner/attachment/274437?ts=1567e828450>

<sup>12</sup> <https://www.nbim.no/en/>



Government allows itself to use up to 3% of the fund's value, which corresponds to the fund's annual expected real rate of return<sup>13</sup>.

Norway is a contracting party to the Agreement on the European Economic Area (EEA), according to which Norway is obliged to implement most of the EU legislation relevant to the internal market. The EU is Norway's most important trade partner, accounting for slightly less than 80% of Norway's exports and 60% of imports.<sup>14</sup>

In 2015, Norway's work force accounted for 50% of the population (2.8 million); women accounted for 47% of the total work force. The differentials in pay between men and women are still relevant, on average women's average monthly pay equals 86% of men's. As of early 2016, the unemployment rate in Norway was 5.2% for men and 4% for women<sup>15</sup>. Growth of employment is highest in the health, business services, education and real estate sectors.

According to the OECD Economic forecast for Norway (November 2016)<sup>16</sup>, Norway's economy will continue to grow at a stronger pace until 2018, with the decrease of petroleum-related investments slowing.

In addition, the OECD Economic Survey (2016) found that Norway has very high material living standards; the country also received high marks on other aspects of well-being, due to the country's wealth from natural resources, good policy making, and inclusive and egalitarian social values.<sup>17 18</sup>



<sup>13</sup> [https://www.regjeringen.no/no/tema/okonomi-og-budsjett/norsk\\_ekonomi/bruk-av-oljepenger-/id449281/](https://www.regjeringen.no/no/tema/okonomi-og-budsjett/norsk_ekonomi/bruk-av-oljepenger-/id449281/); [https://www.regjeringen.no/no/tema/okonomi-og-budsjett/norsk\\_ekonomi/bruk-av-oljepenger-/retningslinjer-for-bruk-av-oljepenger-ha/id450468/](https://www.regjeringen.no/no/tema/okonomi-og-budsjett/norsk_ekonomi/bruk-av-oljepenger-/retningslinjer-for-bruk-av-oljepenger-ha/id450468/)

<sup>14</sup> Statistics Norway, <https://www.ssb.no/befolkning/artikler-og-publikasjoner/attachment/274437?ts=1567e828450>

<sup>15</sup> Statistics Norway, <https://www.ssb.no/befolkning/artikler-og-publikasjoner/attachment/274437?ts=1567e828450>

<sup>16</sup> <http://www.oecd.org/economy/norway-economic-forecast-summary.htm>

<sup>17</sup> <http://www.oecd.org/eco/surveys/Norway-2016-overview.pdf>

<sup>18</sup> <http://www.oecd.org/norway/Better-Life-Initiative-country-note-Norway.pdf>



## Geostrategic situation

Norway's total area (385,252 square kilometres) consists of mainland Norway, the island Jan Mayen and the archipelago of Svalbard. The Antarctic Peter I Island and the sub-Antarctic Bouvet Island are dependent territories, while the country lays claim to the Antarctica region "Queen Maud Land".

As mentioned above, Norway maintains close links with the EU through its membership in the European Free Trade Association (EFTA) and as a contracting party to the EEA Agreement. In addition to economic and trade liberalisation, this also implies free movement of persons. Norway is a part of the Schengen Area. Currently more than 11.000 EU legal acts have been incorporated into the EEA Agreement, including the 2014 EU Directives on public procurement.<sup>19</sup>

## The Norwegian Public Procurement System

Public purchases of goods services and works amounted to about NOK 501 billion (approximately EUR 52.5 billion) in 2016<sup>20</sup>. Compared to 2015, this represents an increase of about 4.8 percent (or NOK 23 billion.<sup>21</sup> Public procurement constitutes approximately 16 % of GDP in Norway<sup>22</sup>, which compares to the OECD average of 12% of GDP. Procurements over EU-thresholds were estimated to be around NOK 80 billion (17%) in 2015. Central government, excluding defence, accounted for approximately NOK 206 billion (EUR 22 billion); local government accounted for approximately NOK 193 billion (EUR 20.2 billion).

In 2015, the largest share of central government procurement expenditure is building, construction and real estate (including cleaning services, energy consumption and security services, with 54%). The second largest is professional services (including consulting, but excluding ICT consulting). The third is ICT (including computers, networks, licenses, ICT consultants and services)<sup>23</sup>.

In relative numbers, in 2015, general government procurement accounted for 28.39% of total general government expenditure, with the share being approximately 27% to 28% for the last decade; 13.85% of GDP (2015); 56.74 % at central level, 43.26 % at sub-central level (2015)<sup>24</sup>.

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<sup>19</sup> ["Directory of European Union legislation - EUR-Lex"](#). *Eur-lex.europa.eu*. 2016-05-19. Retrieved 2016-06-03.

<sup>20</sup> <https://www.ssb.no/en/offentlig-sektor/statistikker/offinnkj>

<sup>21</sup> <https://www.ssb.no/en/offentlig-sektor/artikler-og-publikasjoner/public-purchases-exceeded-nok-500-billion>

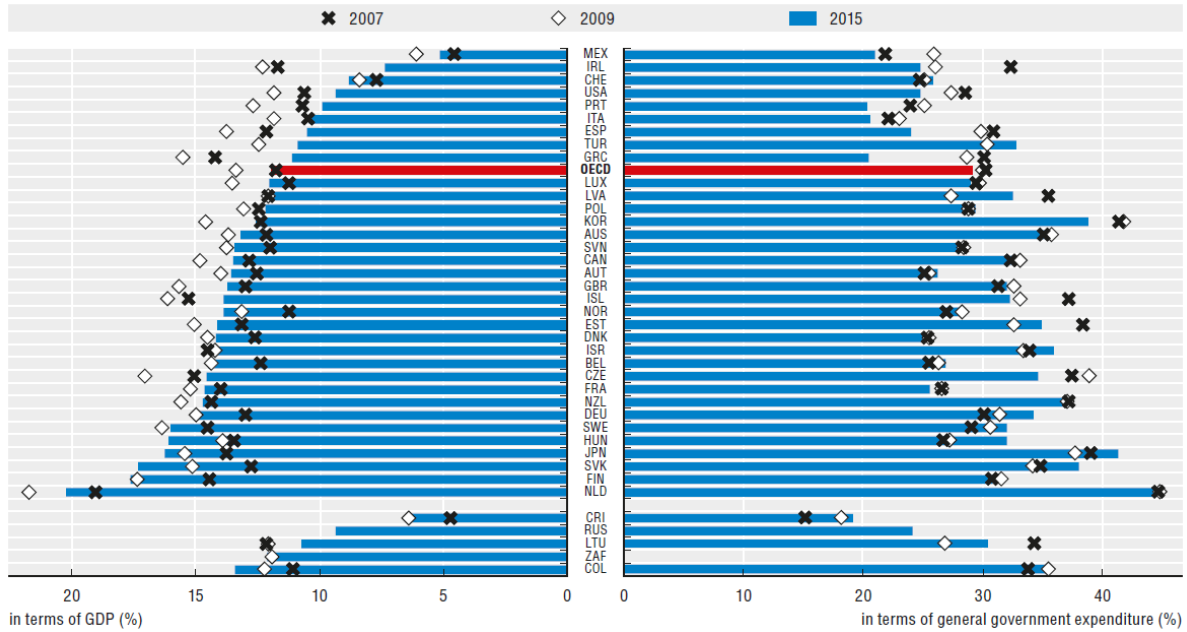
<sup>22</sup> <https://www.ssb.no/en/offentlig-sektor/artikler-og-publikasjoner/public-purchases-exceeded-nok-500-billion>

<sup>23</sup> <https://www.difi.no/rapporter-og-statistikk/nokkeltall-og-statistikk/innkjop#4332>

<sup>24</sup> Government at a Glance in <http://stats.oecd.org>

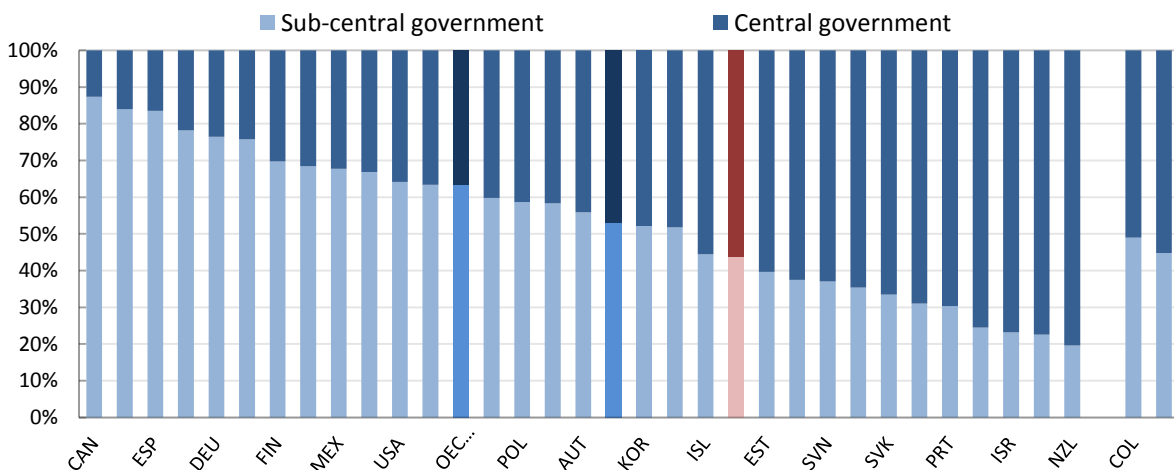


General government procurement spending  
as a percentage of GDP and total government expenditures,  
2007, 2009 and 2015<sup>25</sup>



Source: OECD national accounts Statistics (database). Data for Australia are based on a combination of Government finance statistics and national accounts data provided by the Australian Bureau of Statistics. <http://dx.doi.org/10.1787/888933533131>

Share of general government procurement by level of government,  
excluding social security funds (2013)<sup>26</sup>.



Norwegian public procurement entities at central level are ministries, national agencies, directories and the County Governor's offices. At sub central level public procuring entities are 428

<sup>25</sup> OECD (2017), Government at a Glance 2017, OECD Publishing, Paris. [http://dx.doi.org/10.1787/gov\\_glance-2017-en](http://dx.doi.org/10.1787/gov_glance-2017-en)

<sup>26</sup> OECD (2015), Government at a Glance 2015, OECD Publishing, Paris. [http://dx.doi.org/10.1787/gov\\_glance-2015-en](http://dx.doi.org/10.1787/gov_glance-2015-en). Source: OECD National Accounts Statistics (database).



municipalities, as well as county councils and municipal enterprises, and bodies governed by public law. Utilities sectors cover the electricity sector, the transport sector, airports, ports and water supply.

As a member of the EEA, Norway is obliged to implement EU law on public procurement and to ensure its uniform interpretation. Consequently, Norwegian legislation shall be interpreted and applied in accordance with EU law and EEA law, including case law from the ECJ and the EFTA court. Norway is a party to GPA (the WTO Government procurement agreement).<sup>27</sup>

As mentioned above, levels of corruption in Norway are low. This is also true for public procurement specifically. However, some cases of corruption have been exposed at municipal level involving procurement officials being prosecuted for financial crimes and corruption in procurements<sup>28</sup>. The Office of the Auditor General has found breaches of the public procurement legislative framework, pointing out the lack of competencies in procurement, deficient internal control, insufficient anchoring in management and poor planning<sup>29</sup>. Companies report that bribery is almost never needed in Norway to win procurement contracts and that procurement officials are very unlikely to show favouritism when awarding contracts. Some companies, primarily from the transport, hospitality and construction industries, claim to know about illegal practices such as price-fixing and collusion activities within their industry.<sup>30</sup>

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<sup>27</sup> [https://www.wto.org/english/tratop\\_e/gproc\\_e/memobs\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm)

<sup>28</sup> <https://www.nrk.no/norge/24-domt-for-kommunal-korrupsjon-1.10848559>

<sup>29</sup> <https://www.difi.no/sites/difino/files/kl.-10.30.-per-kristian-foss.pdf>

<sup>30</sup> <http://www.business-anti-corruption.org/country-profiles/europe-central-asia/norway/public-procurement.aspx>



# Synthesis of findings

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Norway's public procurement system is characterised by its high degree of decentralisation and its link to the rules of the European Union. In addition, as all Norwegian institutions, public procurement follows the logic of a trust-based system that places high emphasis on the abilities of individual procurers with a high degree of responsibility.

Overall, Norway has a well-functioning public procurement system that generally delivers value for money across all levels of government for all citizens. Yet, some challenges exist, and the main ones are related to the decentralised operation of public procurement in a decentralised way and the systematic collection and use of public procurement data. Capacity is an important factor in this context as well, for example, smaller contracting entities, either at central level or in the periphery of the national system struggle with human resources and capacity issues.

The implications of the recent public procurement reform, in 2016, but effective from January 2017, have yet to be fully understood. This reform is the most comprehensive in several years. It mainly aimed at achieving simplification and at increasing the strategic use of public procurement, besides transposing the 2014 EU Directives. In particular, the higher thresholds and the creation of a central purchasing body are substantial changes that promise to have larger effects on Norway's public procurement system.

The following sections detail the findings of an assessment that was conducted based on the Methodology for Assessing Procurement Systems (MAPS.) MAPS consists of 14 indicators that cover all elements of a public procurement system. These indicators are grouped into four pillars: I. Legal, Regulatory, and Policy Framework; II. Institutional Framework and Management Capacity; III. Procurement Operations and Market Practices; IV. Accountability, Integrity and Transparency of the Public Procurement System.

## Pillar I: Legal, Regulatory, and Policy Framework

Pillar I covers the legal and regulatory framework, including implementing guidance and applicability of general public procurement principles in specialised legislation.

Most importantly, Norway's legal system is based on the EU rules on public procurement, especially the 2014 EU Directives (2014/23/EU, 2014/24/EU and 2014/25/EU). Although not an EU member, Norway adheres to these rules in accordance with its obligations as party to the Agreement on the European Economic Area (EEA). Norway implemented these directives in legislation entering into force in January 2017. In addition to a general public procurement act and regulation, Norway has specific regulations for utilities, concessions and the procurement of defence and security-related items. Through these laws and regulations, Norway generally complies with the standards set in the indicators of Pillar I, which concern the legal framework (indicator 1), regulations and tools in support of the legal framework (indicator 2), and secondary policy objectives and international obligations (indicator 3).

The assessment found that all elements of a public procurement system are covered by Norway's laws and regulations, as described by indicator 1 in particular. Overall, the Norwegian system provides ample room for the strategic role of public procurement. The legal and regulatory framework allows for use of secondary policy objectives and use of electronic means. Public procurement is based on principles, but contracting authorities on all levels (central or de-central)



can draw on guidance provided by the Ministry of Trade, Industry and Fisheries, in charge of public procurement legislation and policy, and the Norwegian Agency for Public Management and eGovernment (Difi), the agency in charge of implementing public procurement policies, and the Ministry of Trade, Industry and Fisheries, in charge of public procurement policy. In this context, it is noteworthy to mention that Norway's system is organised in a decentralised way. Contracting authorities on different levels have authority to conduct their own procurement. The level ranges from the central level, which generally refers to institutions of national reach such as ministries or agencies, to the municipal level.

The recent public procurement reform, which was adopted in 2016, and effective from the beginning of 2017, resulted in some changes that will have a large impact on procurement practices, but whose effects have yet to materialise. One of these aspects is the increased thresholds. Thresholds have been augmented across the board for all types of procurement. For the example of goods and services procured at central level, the new national threshold is set at NOK 1.1 million (excluding VAT), which corresponds to approximately EUR 120,000. Only public procurements above this amount and below the EU thresholds starting at EUR 135,000 and ranging as high as EUR 750,000 for certain specific contracts have to be published on the nation-wide public procurement platform Doffin (doffin.no). In Norway's regulations, this range corresponds to the range of NOK 1.75 million to NOK 6.3 million. Previously, the threshold for these contracts was at NOK 500,000 (approximately EUR 54,000). That means that the threshold more than doubled with the reform. These thresholds are not extraordinarily high compared to other countries: Australia, for example, has a threshold for open tenders of AUD 200 000 (approximately EUR 153,000) for contracts from 1 July 2017 onwards (currently AUD 80,000).<sup>31</sup> The United States have a threshold of USD 191,000 (approximately EUR 174,000) for federal purchases of goods and services.<sup>32</sup> Nevertheless, Norway's increased thresholds have implications in the specific Norwegian context since most public procurement is conducted below the threshold of NOK 1.1 million. However, for the large number of small- and medium-sized enterprises in Norway, Doffin's centralised platform serves as the main source of information about procurement opportunities.

Several stakeholders expressed concern with regards to the raised thresholds and the effects of this change. However, there is a possibility to voluntarily publish procurement opportunities on Doffin even below the threshold. However, it remains to be seen whether contracting authorities make full use of this possibility or not. In addition, it remains to be seen whether publication on Doffin is actually the crucial link to secure SME's participation in public tenders, or whether they are reached by other means, for example direct consultation. While officially administrative reasons were given for the reform, almost all stakeholders seemed to be concerned about this step and its apparently hasty way of introduction. It will be crucial to monitor the performance-aspects of these legal changes supported by adequate data collection (see also pillar II below.)

Another area of challenges relates to more complex public procurement processes that the law allows for, as well as more risk-prone processes. This includes for example implementing strategic public procurement in the entire system, or safeguarding integrity in high-risk environments. Feedback from various stakeholders points to capacity-related hurdles that have to be overcome to reach the full potential of using public procurement in a strategic way. The biggest challenges are faced by municipalities, not only because of capacity gaps in terms of numbers, but also in terms of expertise – including knowledge about the legal system (see also pillar II.)

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<sup>31</sup> <https://www.finance.gov.au/procurement/procurement-policy-and-guidance/commonwealth-procurement-rules/procurement-method/>

<sup>32</sup> <https://ustr.gov/sites/default/files/2015-31503.pdf>





## Pillar II: Institutional Framework and Management Capacity

Pillar II assesses the institutions and management systems handling public procurement. The indicators in this pillar evaluate the integration of the procurement processes with the general public financial management of Norway, how well the regulatory function and procuring entities are working, whether information systems support public procurement and whether the public procurement system has mechanisms to improve itself. There are no serious shortcomings related to the indicators in Pillar II (indicators 4 to 8). However, challenges and potential for improvement were identified with regards to indicator 7 (“Public procurement is embedded in an effective information system”), and indicator 8 (“The public procurement system has a strong capacity to develop and improve”), as detailed below.

The Ministry for Trade, Industry and Fisheries is in charge of public procurement policy. The Norwegian Agency for Public Management and eGovernment (Difi) supports the implementation of the public procurement rules and provides guidance with regards to public procurement (see indicator 5b for a detailed list of allocation of competencies.) Formal line oversight over Difi lies with the Ministry of Local Government and Modernisation (KMD). Ample evidence indicates that the guidance and role of Difi and the Ministry for Trade, Industry and Fisheries generally meets the needs of contracting authorities and other stakeholders to conduct good public procurement. Both organisations have a high regard within the Norwegian government and external stakeholders, operating their mandates with independence.

Difi also hosts the central purchasing body (Statens Innkjøpscenter), created in 2016 to centralise the procurement of certain categories of goods and services for government agencies and state entities, chosen on the criteria of high volumes of spending and ease of standardisation. At the moment, the central purchasing body is in its implementation and consolidation phase. The CPB is a unit within Difi and is financed by the state budget. Different models for the institutional arrangement, organizational structure and placement of CPBs can be found in OECD and non-OECD countries, with countries usually making the decision based on feasibility studies and business plans, also analysing the advantages and disadvantages of each model.

In the concrete case of Norway, a major advantage from the institutional proximity between Difi and the CPB relates to the close collaboration that this proximity encourages. By following Difi’s guidance and applying Difi’s tools and templates, it is easier for the CPB to achieve its goals and align them with the pursuit of sustainability and other societal goals promoted by the agency and the government. On the other hand, it is important to ensure that the institutional proximity do not hinder the decision making process on the part of Difi or the CPB.

The outcomes, benefits and objectives of the current institutional location of Norway’s CPB should be closely assessed after the CPB has been fully operational for a period of time to consolidate its competencies. Currently, the operation of the CPB for the first trial period of 4 years is entirely financed through the (national) State budget, as it happens in several other OECD countries, which creates the conditions for an adequate implementation and monitoring of the CPB development. In addition, given the current arrangement, there is no potential conflict of interest as regards the CPB’s daily operations, since Difi has no regulatory oversight or normative and regulatory functions. This situation will also require adequate monitoring.

As mentioned in connection with analysis around Pillar I, the Norwegian system is characterised by its decentralisation. Procuring entities are located at all levels of government, from the central to municipality level. The exact number of total contracting authorities is not known,



similarly to many other countries, OECD and non-members. To illustrate, there are 16 ministries, 63 directorates (including agencies) and 29 executive agencies at central level, all with their own procuring functions, at sub-central level there are 428 municipalities, most often with several separate procurement functions within the same municipality<sup>33</sup>. Due to the decentralised nature of the system there are no accurate statistics on the number of contracting authorities available.

Contracting authorities' dedicated budget allocations for public procurements build on the general budget process. For the central level, the Norwegian central government prepares a budget that includes budgets for the central agencies and directorates and seeks approval of the parliament. Budgets are prepared annually, with parliamentary approval usually granted in December of the preceding year. The Norwegian Government Agency for Financial Management (DFØ) manages more than 70% of the invoicing of central agencies. While statistics about the entirety of the invoicing practices related to public procurement are not available, data on the processes managed by DFØ indicate that approximately 50% of invoices managed by DFØ are paid on due date.

Several web-based platforms are operated by Norway's public procurement institutions to manage public procurement processes and provide guidance on public procurement. *Anskaffelser.no* is an information portal that provides guidance material. Doffin is the national procurement portal; its main service is the publication of procurement opportunities. Several agencies operate their own independent systems. Doffin has registered around 3,300 active buyers. In general, Norway's electronic procurement and information systems can be considered advanced. However, due to the decentralised nature of the Norwegian public procurement system, data from Doffin provides only limited insights. With regards to strategic monitoring of procurement processes, first elements have been developed. Difi provides guidance for contracting authorities to self-assess whether they meet their public procurement objectives. Key-performance indicators are being developed. However, these aspects do not include a systematic monitoring framework that uses evidence gathered from day-to-day procurement activities.

Opportunities for professional development and capacity building with regards to public procurement are provided both by Difi, by non-governmental federations such as NIMA (Norwegian Association of Purchasing and Logistics), KS (the interest group of Norwegian municipalities with a forum for public procurement), or NHO (Confederation of Norwegian Enterprises), and by private providers. Difi offers guidance and support on capacity building in public procurement, such as role descriptions and trainings. However, the task of defining roles and career tracks, as well as hiring public officials in charge of public procurement, lies with the contracting entity, and efforts vary from one entity to the next.

Norway's main challenges with regards to the operation of public procurement relate to decentralisation and the systematic collection and use of public procurement data. Capacity plays an important role in this context as well.

First, given the high independence of contracting authorities, the central level has limited power to influence public procurement outcomes on a local level, be it in the agencies or on the municipal level. The high level of independence has positive aspects, such as a high level of discretion that allows for context-specific public procurement management. Above the national threshold and below the EU/EEA threshold, contracting authorities are obliged to publish tender opportunities nationally, on Doffin. At the same time, decentralisation also poses challenges, related

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<sup>33</sup> <http://www.nsd.uib.no/polsys/data/forvaltning/antallforvaltningsenhet?t=20&t=31&t=32&t=33&t=35&t=41&t=42&t=43&t=44&t=45&t=46&t=47&t=50&t=51&fra=2017&til=2017&d=1&m=1>



to all aspects of public procurement management: Electronic systems might not be aligned and therefore, comprehensive data collection at a central level is difficult, not to speak of systematic analysis at a central level. Contracting authorities, irrespective of their governmental level, are not obliged to submit data to the central level. Aggregation of needs (and associated benefits) has to be balanced with individual independence. This means that aggregation and centralisation are not a default option, but rather a novelty that has to be negotiated and promoted. Regarding capacity and professionalization, contracting entities are free to organise their public procurement function as they see fit. Influence by central bodies like Difi is based on voluntary uptake of Difi's guidance and advice. Consequently, high standards of strategic procurement are achieved by individual contracting authorities, whereas not all contracting authorities meet the same high level of implementation of strategic public procurement. The reasons should be explored, and can inform possible solutions such as efforts to increase awareness or to develop capacity.

Second, despite the above-mentioned challenges related to data gathering, there are avenues that are still unexplored to reap the full potential of systematic monitoring of public procurement processes. Improving systems for electronic procurement are an important aspect: offering all functionalities across the entire procurement cycle can offer incentives to contracting authorities for using them. In addition, the systems to analyse procurement data in a systematic way are still to be built. Several of the quantitative indicators (see in particular pillar III) that would provide the basis for such an evidence-based monitoring of performance and identification of areas for improvement are unavailable. In addition, a comprehensive monitoring framework could identify potential for savings, and will be instrumental in determining the effects of some of the recent legislative changes, such as thresholds.

Third, capacity – both in terms of the number of public procurement officers as well as in terms of knowledge and skills – is a challenge in some contracting authorities. As a general tendency, higher capacity is usually found at the central level rather than in small or decentral agencies such as municipalities.

## Pillar III: Procurement Operations and Market Practices

Indicators in Pillar III assessed the effectiveness and efficiency of Norway's public procurement operations, as well as the ability of the private sector to deliver on public procurement needs. Norway meets most of the assessment criteria in the two indicators of this pillar (indicators 9 and 10), but challenges remain with regards to the most advanced aspects, such as extensive data analysis to track performance at the level of contracting authorities.

According to interviews with contracting authorities, all steps of the public procurement process, documentation, evaluation and contract management appear to be of generally high standards. Needs and market analyses form the basis for public procurements and the clear definition of strategies, desired outcomes and concrete requirements. It is common practice to include sustainability criteria. Standard documents, developed by Difi, support the contracting authorities in managing complex procedures. There is close follow up on contracts; suppliers confirmed that generally, contracting authorities comply with the rules and regulations and uphold smooth management of public procurement processes. The level of performance varies across government levels and from contracting authority to contracting authority, with some authorities managing even complex cases in efficient and effective processes, while smaller, less experienced entities report challenges to meet the same, high standard. Several authorities gather performance-related statistics, but statistics are not available across the board or of such a quality that statements



about the overall performance of the system with regards to key-performance indicators could be made.

Norway's societal culture of open dialogue across flat hierarchies favours this practice also with regards to governance and coordination of initiatives. On public procurement, the assessment found ample evidence of dialogue between public institutions and suppliers or their organisations. The private sector seems to be well organised in federations like NHO, who are very active in promoting the interests of suppliers in campaigns and in government-led fora. Generally, the private sector has the capacity to respond to procurement opportunities, and the conditions (in terms of clarity of requirements and evaluation, as well as timeliness of payments and general fairness) encourage companies to seek public procurement opportunities. Several contracting authorities have adopted sector-specific management practices, such as risk management or specific risk-based follow up on contract implementation or legal compliance.

Challenges in this pillar III relate to the diversity of practice in the Norwegian contracting authorities. The assessment identified several excellent examples of effective and efficient public procurement management. At the same time, stakeholders report examples of how some contracting authorities are not able to deliver efficiency and effectiveness in the same way: areas of vulnerability include the thorough planning and needs analysis; complex evaluation and award criteria that make effective use of sustainability criteria and do not only rely on price; as well as collection of statistics and performance indicators. These advanced ways of handling public procurement could be promoted by additional guidance. In addition, as described in the assessment synthesis of pillar II, some of the aspects (in particular the collection of performance indicators) hinges on the creation of the appropriate institutions or systems.

With regards to the private sector, stakeholders highlighted the importance of maintaining the access of SMEs to public procurement opportunities. Capacity to respond to a tender appeared to be lowest on the part of SMEs, which is why targeted measures in this area are important. Opportunities are on the one hand related to the knowledge and skills by SMEs to respond to opportunities, i.e. to raise awareness, offer training or other forms of guidance and support for SMEs. On the other hand, contracting authorities can be encouraged and guided to enhance their strategic planning so that SMEs can easier participate.

## Pillar IV: Accountability, Integrity and Transparency of the Public Procurement System

Indicators in pillar IV serve to assess the integrity, anti-corruption and transparency of Norway's public procurement system. This includes an analysis of the Norwegian control and audit framework with regards to public procurement, as well as of the appeals and remedies system. Norway has a reputation of high standards with regards to anti-corruption and transparency efforts. In general, Norway complies with the aspirational standards set out with regards to transparency and civil society engagement (indicator 11), control systems (indicator 12), appeals mechanisms (indicator 13) and anti-corruption measures (indicator 14).

Similar to other areas of policy making, public procurement is generally open to the involvement of stakeholders. The recent public procurement legal reform included consultations with concerned parties. Norway's Freedom of Information Act ensures a high degree of transparency. Most public institutions charged with aspects of the public procurement process publish information



in a freely accessible way online. There is evidence of citizens participating in the procurement process, in particular in the planning stages.

The Office of Auditor General is tasked with auditing also public procurement processes; this institution is able to fulfil its tasks with independence and sufficient resources. Not all institutions are audited on an annual basis, but a system of risk-based audits and follow-up to tip offs appear to maintain a sound auditing system for public procurement.

Appeals and remedies are handled by regular courts as well as by the Norwegian complaints board for public procurement, KOFA, and the EFTA Surveillance Authority in Brussels. Following first complaints directly with the contracting authority, suppliers can lodge a complaint with the courts or KOFA. KOFA issues advisory opinions that target the resolution of a controversial issue; KOFA can only issue binding decisions with regards to illegal direct awards, the others being voluntarily adopted by the contracting authorities and bidders. Courts can issue binding decisions on all type of complaints and also automatically halt procurement processes. Both KOFA and the courts seem to generally function with efficiency and effectiveness and enjoy high respect on the part of both suppliers and contracting authorities. Exceptions include capacity constraints with KOFA: on the one hand, KOFA's value added lies in its opinions with an advisory character, given that KOFA cannot issue binding decisions. On the other hand, available staff for the review of complaints is limited so that a thorough analysis for an advisory opinion beyond the immediate conflict at hand is often not possible in given timeframes. Instead, KOFA narrowly focuses on the specific issue of concern and the specific case, instead of providing an advisory opinion that includes a more substantive reasoning and considers the entire case, as opposed to the mere outcome, such as how to avoid similar situations in the future or clarifications related to the implementation of public procurement rules in general based on the practical cases at hand.

Norway's anti-corruption measures are generally of a high standard: the law includes definitions of illegal practices as corresponding sanctions. Corruption is prosecuted duly, as evidenced by corruption cases that have been uncovered by media and brought to conclusion in the courts. In fact, formal investigations of corruption-related offenses have followed up on work by civil society and the media. Norway has a culture that encourages reporting of wrong-doing; however, as in many countries, whistle-blowers have faced marginalisation in the past.

Norway's challenges with regards to integrity, transparency and accountability in the area of public procurement consist of maintaining the high standards that have been implemented to date. This includes to maintain or develop (where it does not exist) structured, repeated training on integrity for all contracting authorities across levels. Stakeholders reported that in instances of lower capacity and competition, favouritism can occur.

Several aspects of a strong integrity system could benefit from strengthening: Specifications with regards to cool-off periods concern only politicians and employees at central level. The Act on disclosure, quarantine prohibited practices for politicians and state employees (*Lov om informasjonsplikt, karantene og saksforbud for politikere, embetsmenn og tjenestemenn* or "Karanteneoven", "karantene" meaning cool off or standstill period in Norwegian; LOV-2015-06-19-70) for politicians and central government level employees regulates the situation of state officials and employees of government agencies at central level who transition to work outside central government level (including regional and local level government) or who start a business. According to the act in these situations a cool-off period or prohibition to handle certain cases/matters may be imposed on the employee. Provisions to this effect need to be included in the work contract, and depend on the responsibilities and duties assigned to the post and access to strategic information.



The Act provides direct provisions for top level management positions in the ministries or government agencies at central level. Media and integrity watch dogs claim that corruption cases in the past in Norway could have been averted by observing a stricter cooling-off period. Performance audits, i.e. an audit asking whether procurement processes are conducted with economy, efficiency and effectiveness, should be more frequently conducted, and should feed into data collected on Doffin. The system to protect whistle-blowers would benefit from efforts to strengthen it: anonymous ways to report wrongdoing should be established and widely promoted.

As evidenced by feedback from suppliers and contracting authorities, KOFA seems to require lengthy timeframes to come to a decision on complaints, and contracting authorities in few instances seem to have speculated on this delay as it deters suppliers from lodging a complaint with KOFA. More capacity could address this challenge; more capacity could also contribute to more substantive and more targeted opinions provided by KOFA.

Stakeholders, from contracting authorities as well as civil society organisations, reported struggles to balance the right to information as ensured by Norway's Freedom of Information Act, with the right of suppliers to keep business secrets confidential. In some cases, documents made accessible under a request for freedom of information seem to black-out extreme amounts of supposedly confidential information when the circumstances suggest that not all of these blacked-out paragraphs refer to actual business secrets. In other cases, contracting authorities have lacked expertise or capacity to adequately review procurement documents to determine the right level of access (balancing Freedom of Information requirements against obligations for confidentiality.)

## Areas for improvement and possible avenues

The following tables constitute an indicator-by-indicator analysis of the gaps, with a view to identifying possible solutions. Indicators that concern priority areas are marked bold with an asterisk (\*). These indicators concern areas that have a lower level of compliance with the assessment criteria; most of them are also highlighted as they represent areas of strategic importance as they are linked to improvements in other areas. These areas are marked yellow in the overview matrix at the end of this chapter.



*Indicator 1. The public procurement framework achieves the agreed principles and complies with applicable obligations*

<i>Sub-indicator</i>	<i>Gap</i>	<i>Possible solution</i>
<b>1(I) – Public procurement principles in specialized legislation</b>	While procurement principles generally apply across the board and are reflected in specialised legislation and associated implementation guidelines (e.g. sector-specific legislation or public-private-partnerships), state-owned enterprises are not subject to legal requirements on sustainable public procurement. However, state-owned enterprises seem to largely conduct public procurement sustainably in practice.	Norway could explore whether it would be feasible to extend the existing legal requirements or the associated guidelines regarding sustainable public procurement also to state-owned enterprises.

*Indicator 3. The legal framework reflects the country's secondary policy objectives and international obligations*

<i>Sub-indicator</i>	<i>Gap</i>	<i>Possible solution</i>
<b>3(a) – Sustainable Public Procurement (SPP)</b>	While there are many excellent examples of how Norwegian contracting authorities use the full potential of strategic public procurement, this is not the case across the board. Especially smaller contracting authorities with lower capacity struggle to implement a more complex tender design. Considerations like sustainability are often not taken into account in all stages of the procurement cycle (i.e., when selecting bidders, preparing tender documents, specifications, contract clauses and requirements, selection criteria, award criteria, etc.) – not necessarily because of a lack of awareness, but rather because of a lack of knowledge and fear of litigation.	As strategic public procurement is a complex and advanced aspect of public procurement, additional guidance could facilitate the implementation of SPP. Municipalities in particular might benefit from specialised support, be it guidance that aim at enhancing the knowledge about SPP or capacity building efforts that focus on increasing staff available to implement SPP. The solution to this indicator is closely linked to indicator 9(a) – planning.

*(\*) Mandatory, quantitative indicator*



*Indicator 4. The public procurement system is mainstreamed and well integrated into the public financial management system*

<i>Sub-indicator</i>	<i>Gap</i>	<i>Possible solution</i>
<b>4(b) – Financial procedures and the procurement cycle</b>	Information on timely payments is not available across the board. Limited information is available based on the accounts handled by the Norwegian Government Agency for Financial Management, DFØ (Direktoratet for økonomistyring).	Solutions to this shortcoming are closely related to the actions proposed in indicator 7 and 8, which relate to the development of Norway’s electronic information systems and data capabilities. As part of these measures, electronic invoicing should be expanded to the largest number of contracting authorities possible. In addition, as far as possible in the decentralised Norwegian system, records of these electronic invoicing processes should be gathered in a central space to allow for overarching analysis. In doing so, it will be important to organise the information in such a way that analysis is facilitated (i.e., standardise categories, allow for disaggregated views, isolation of invoicing status vis a vis other transactions that do not correspond to invoices, among others.)

*Indicator 5. The country has an institution in charge of the normative/regulatory function*

<i>Sub-indicator</i>	<i>Gap</i>	<i>Possible solution</i>
<b>5(c) Organisation, funding, staffing, and level of independence and authority</b>	<p>In terms of the administrative structure, the function of a central purchasing body within Difi warrants a note.</p> <p>Difi also hosts the central purchasing body (Statens Innkjøpssenter), created in 2016 to centralise the procurement of certain categories of goods and services for government agencies and state entities, chosen on the criteria of high volumes of spending and ease of standardisation. At the moment, the central purchasing body is in its implementation and consolidation phase. The CPB is a unit within Difi and is financed by the State budget. Different models for the institutional arrangement, organizational structure and placement of CPBs can be found in OECD and non-OECD countries, with countries usually making the decision based on feasibility studies and business plans, also analysing the advantages</p>	<p>The outcomes, benefits and objectives of the current institutional location of Norway’s CPB should be closely assessed after the CPB has been fully operational for a period of time to consolidate its competencies. Currently, the operation of the CPB for the first trial period of 4 years is entirely financed through the (national) State budget, as it happens in several other OECD countries, which creates the conditions for an adequate implementation and monitoring of the CPB development. In addition, given the current arrangement, there is no potential conflict of interest as regards the CPB’s daily operations, since Difi has no regulatory oversight or normative and regulatory functions. This situation will also require adequate monitoring.</p>





and disadvantages of each model.

In the concrete case of Norway, a major advantage from the institutional proximity between Difi and the CPB relates to the close collaboration that this proximity encourages. By following Difi's guidance and applying Difi's tools and templates, it is easier for the CPB to achieve its goals and align them with the pursuit of sustainability and other societal goals promoted by the agency and the government. On the other hand, it is important to ensure that the institutional proximity do not hinder the decision making process on the part of Difi or the CPB.

*Indicator 6. Procuring entities and their mandates are clearly defined*

<i>Sub-indicator</i>	<i>Gap</i>	<i>Possible solution</i>
<b>6(a) Definition, responsibilities and formal powers of procuring entities</b>	No complete information is available at a central database on the number of procuring entities with designated, specialized procurement function as a share of the total number of procuring entities. According to Norwegian authorities, this is due to the decentralised nature of the Norwegian system. There is information about purchasing units on the central level, but not about the units in the counties or municipalities. Some of these decentralised units cooperate and consolidate their purchases on a regional level, while others have more than one unit in charge of procuring.	A solution to this gap is politically sensitive, given the high level of autonomy enjoyed by the sub-national levels. At the same time, Difi and / or the Ministry of Trade, Industry and Fisheries could attempt to at least approximate the number of contracting entities at sub-national level, for example through surveys with the authorities, county governments or municipalities. Furthermore, in order to enhance the understanding of aspects influencing performance etc. of contracting entities which could constitute relevant information to design reform initiatives, it should be endeavoured to collect also entity-specific information during that endeavour. Issues covered in MAPS could constitute guidance here.



Indicator 7. Public procurement is embedded in an effective information system

Sub-indicator	Gap	Possible solution
<p><b>7(a) – Publication of public procurement information supported by information technology (*)</b></p>	<p>As a whole, Norway has a functioning e-procurement system and some requirements to publish information. However, both the legal requirements on what to publish, as well as the functionality provided by the current system, Doffin, remain behind the aspirations set in sub-indicator 7(a).</p> <p>No systematic quantitative information is available regarding the share of contract for which key information is collected electronically (such as invitation to bid, contract awards including information on purpose, suppliers, value, and amendments, as well as details on the contract implementation, such as milestones, completion and payment.) For contracts above the national thresholds, this information could be gathered in Doffin; information about procurements below the thresholds are not captured at all. In addition, decentral agencies can use their own e-procurement systems.</p> <p>Journalists discovered that the number of contract award notices (after conclusion of the contract) on Doffin is substantially lower than the number of tender notices (e.g., in 2016 there were only about 3,500 awards against 12,300 tenders.) The most likely explanation seems to be that Doffin is selected as a publication portal for relatively fewer procedures. In general, information on payments, awards decisions, evaluation reports and the final version of the contract are not published (as it is not required by the legal framework.)</p>	<p>All gaps described in sub-indicators 7(a) to (c) can be addressed with the following interlinked measures (therefore, we describe them together for all sub-indicators.) The key component is to increase the de-facto coverage of the e-procurement system. Only with increased availability of information, certain other tasks can be conducted. The measures described below take into account that there is limited ability on the central level to determine how decentral units handle e-procurement. An overarching task in this context would be to also reconsider how the overall reliance on the market can be balanced with a need to increase standards.</p> <p>The coverage of the e-procurement system can be increased by the following means:</p> <ul style="list-style-type: none"> <li>- Legal requirements to publish certain information could be increased, and incentives for compliance or sanctions for non-compliance could be provided. Incentives can include ensuring that the administration have access to user-friendly systems to gather data, to reward outstanding performance related to data gathering, etc. In addition, Difi could be granted with the mandate to ask for and collect data. In doing so, Difi could specify what data should be collected, why this is useful and what the data will be used for. This approach can include definition of lower thresholds for the mandatory use of e-procurement systems. An increased understanding of data gathering mechanisms with the administration could increase motivation to comply with data</li> </ul>



**7(b) – Use of e-Procurement (\*)**

There is room for improvement with regards to the use of e-procurement in Norway – both in terms of the purpose for which e-procurement systems are used throughout the procurement cycle, as well as in terms of the number of contracting authorities that use e-procurement. Not all functions of the e-procurement system are used regularly (such as e-submission, contract management, etc.) In addition, decentral units struggle to use e-procurement as diligently as central agencies. This seems to be due to capacity, lack of technical implementation of electronic solutions, as well as skills of the procurement staff.

In addition, Norway’s decentralised system represents challenges for data collection, as data is not fed back into a centralised database for overarching analysis.

No data is available for all procurement procedures on the value of e-procurement procedures as a share of the total procurement value.

No information is available regarding the share of bids submitted online and the share of bids submitted online by micro, small and medium-sized enterprises (in % of all bids).

collection requirements.

- Interoperability should be one of the key targets when considering changes, given the diversity in systems and high level of autonomy of decentralised units. Central purchasing units could be incentivised (through any viable mechanism) to implement e-procurement systems that comply with a minimum need of interoperability with a central system.

- Functionality in the e-procurement systems used by contracting authorities (notably Doffin) needs to be developed accordingly. That means that Doffin, or other decentral databases, should aim for appropriate technical capabilities (such as secure spaces, categories, etc.) to handle the entire procurement process electronically.

- To capture procurements on all levels in Norway, a functional and integrated e-procurement system, capable of collecting information also about the below the thresholds procedures in an automated way, should be available on a central level. The challenge at hand is to gather and present information about public procurement in a coherent way. The Norwegian approach is to standardise the information content and the way it is transported to the central repository. For the moment this approach did not solve all the problems related to availability, coherence of and access to information. Market solutions for e-procurement systems are available, but coherent, comparable collection of information might be facilitated by ensuring that the technical solutions that are actually taken up by each agency are compatible with the needs at central level to standardise and analyse information (even if only for internal use, like statistical analysis but also e.g. in terms of eligibility of bidders.). Difi should develop a proper monitoring mechanism for evaluating how the relevant parties, including contracting authorities and the market, respond to the targets set in connection with the national e-Procurement implementation strategy.

**7(c) – Strategies to manage procurement data (\*)**

The system has limited functionality to manage data for the procurement process. Analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements is only partially possible.

While Norway’s e-procurement system is quite advanced, the data collected through the system does not allow for complex analysis, such as trends, levels of participation, efficiency and economy of procurement and compliance with requirements. Decentralisation makes it difficult to collect the information; not all information is required to be published on Doffin, so that data is located in a decentralised database and not fed into Doffin. While larger contracting authorities use analytics, smaller agencies do not have



the skills, technical capabilities or capacity to conduct the same level of analysis. In addition, the reliability of information in the database remains unclear: audits are carried out, but not routinely, and they remain limited to financial information.

Only partial information is available regarding the total number and value of contracts and the total value of contracts awarded through competitive methods in most recent fiscal year

- Develop a strategy to manage data in a coherent way throughout the system, ensuring that the information stored and gathered in this system is amenable to feed a performance management framework (see indicator 8). This information system should be promoted across the system; compliance and participation should be followed up, providing a wide access to data.

- Offer additional training on the e-procurement system, to increase uptake and ensure compliant publication of information.

*Indicator 8. The public procurement system has a strong capacity to develop and improve*

<i>Sub-indicator</i>	<i>Gap</i>	<i>Possible solution</i>
<b>8(a) Training, advice and assistance</b>	Difi provides guidance to procuring entities, suppliers, and the public, and contracting entities can contact Difi. However, there is no <i>designated</i> advisory service or help desk function.	In the context of a general discrepancy between the capacity in different contracting authorities, the provision of a dedicated help-desk or advisory service could be instrumental.
<b>8(b) Recognition of procurement as a profession (*)</b>	Norway's public service does not formally recognize procurement as a profession.  Due to the combination of decentralisation and a lack of centralised requirements with regards to qualifications or certification, the level of professionalization in terms of job description and career progression remains largely at the discretion of the individual contracting authority. Conversations with representatives from municipalities and suppliers highlighted a great need for professionalization, particularly at the decentral level. While central agencies often perform well, municipalities face constraints in capacity and professionalism. There is no overarching strategy or consistent requirements that are valid across all levels of government when it comes to qualifications, capabilities, capacity and certification, professional development or training, the evaluation of staff performance, etc.	Norway could formalise and systematise its approach to professionalization. The central level, for example Difi, could provide additional guidance, templates, training, and other measures that support professionalization of the procurement function <i>at all levels</i> , without limiting the independence of the decentral levels of government.  Academic programmes about procurement could be improved, by providing master programmes, or including modules specifically on public procurement in existing master courses or establishing agreements or partnerships (double degree master programs) with other European Universities.



<p><b>8(c) Monitoring performance to improve the system</b> (* )</p>	<p>While there are efforts to monitor performance, these activities remain limited to the individual efforts of the contracting authority. There is no systematic monitoring and no overarching framework to track concrete indicators of performance. The monitoring does not take into account economic impact.</p>	<p>Difi can build on existing initial efforts related to performance monitoring of public procurement processes and capture lessons learned that could serve a more overarching approach. On the basis of these lessons, Difi could develop a performance monitoring framework, including key performance indicators, to identify areas for improvement. This aspect is closely linked to the measures described with regards to indicator 7, and in fact any monitoring framework is most efficient when it builds on evidence from a well-functioning information system. Such a monitoring framework can also serve to follow the impact of Norway’s recent reforms; in particular larger changes such as the increased thresholds (refer to indicator 1).</p>
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*Indicator 9. Public procurement practices achieve stated objectives*

<i>Sub-indicator</i>	<i>Gap</i>	<i>Possible solution</i>
<p><b>9(a) Planning</b> (* )</p>	<p>As mentioned with regards to other indicators, it will be Norway’s challenge to distribute good procurement practices across the board. While there are many excellent examples of good performance management, this is not the case in all units on all levels and in all cases. This finding holds true for all three sub-indicators, with regards to planning, selection and contracting, and contract management. The large discretion of sub-national contracting authorities allows for creativity, but can also result in opportunities for deviations from the best possible process with regards to the entire procurement process that have to be managed.</p>	<p>As mentioned with regards to other indicators, the largest challenge is to broaden efforts for more performance-oriented procurement management and disseminate the good practices throughout the entire system. Measures have to target the entire public procurement cycle, and are closely related to efforts to strengthen the information base through electronic means. The main obstacle in this indicator relates to the fact that there is no reliable data describing the performance of the system.</p>
<p><b>9(b) Selection and contracting</b> (* )</p>	<p>As mentioned with regards to other indicators, it will be Norway’s challenge to distribute good procurement practices across the board. While there are many excellent examples of good performance management, this is not the case in all units on all levels and in all cases. This finding holds true for all three sub-indicators, with regards to planning, selection and contracting, and contract management. The large discretion of sub-national contracting authorities allows for creativity, but can also result in opportunities for deviations from the best possible process with regards to the entire procurement process that have to be managed.</p>	<p>As mentioned with regards to other indicators, the largest challenge is to broaden efforts for more performance-oriented procurement management and disseminate the good practices throughout the entire system. Measures have to target the entire public procurement cycle, and are closely related to efforts to strengthen the information base through electronic means. The main obstacle in this indicator relates to the fact that there is no reliable data describing the performance of the system.</p>
<p><b>9(c) Contract management</b> (* )</p>	<p>Systematic performance management and analysis based on quantitative evidence remains an exception in the entire system. Especially smaller contracting authorities and among them smaller municipalities in particular face capacity obstacles – both in terms of numbers and skills – to achieve the same high standard of strategic public procurement as larger and more centralised</p>	<p>With regards to all phases of the procurement cycle (i.e., sub-indicators 9(a), (b) and (c)) Norway could increase capacity building efforts for all types of contracting authorities, with a specific emphasis on decentral institutions. This could include training on needs analysis and definition, strategic public procurement, selection and contract management.</p> <p>In addition, evidence-based decision making could be supported by improving the information systems that contracting authorities on all levels can draw upon, for example by providing technical</p>



contracting authorities.

The review of a sample of procurement cases has been explored but was ultimately considered unfeasible on the basis of the effort needed to retrieve a sufficient number of cases from decentralised agencies. The mandatory indicator to substantiate sub-indicator 9(c) assessment criterion (g) was not available (share of contracts with complete and accurate records and databases.)

solutions that can be implemented on all levels and are linked to the central level. These technical solutions should provide for functionalities to conduct quantitative performance monitoring, as described by the quantitative assessment criteria in sub-indicators 9(b) and (c).

*Indicator 10. The public procurement market is fully functional*

Sub-indicator	Gap	Possible solution
<p><b>10(b) Private sector's organisation and access to the public procurement market</b></p> <p>(*)</p>	<p>Overall, Norway's system is open and provides sufficient access. However, stakeholders raised points on access, particularly access of SMEs that should be prioritised in reform efforts.</p> <p>Interviewees expressed concerns about the newly introduced thresholds, which mean that fewer procurement procedures will be required to be published centrally. Industry representatives fear that as a consequence, SMEs will have fewer opportunities to bid because only very complex (and therefore high-value) opportunities will be publicly announced.</p> <p>While several contracting authorities adapt tender design to facilitate access for SMEs, this does not seem to be a practice across the board. Aside from adapting on the part of the contracting authority, there does not seem to be sufficient support for suppliers in the form of capacity development, as highlighted by interviewees. SMEs in particular often lack sufficient knowledge about processes to successfully participate in tendering opportunities.</p>	<p>Three measures could be taken to improve access for suppliers, in particular SMEs. These measures should be pursued in an overall effort to strengthen strategic use of public procurement in Norway.</p> <p>1) The effects of the increased thresholds should be closely followed with support from evidence-based monitoring. This should build on an increased system to gather data, such as improved e-procurement systems. The results of this monitoring could confirm or refute the fear voiced by industry associations and civil society. Depending on the outcome of this monitoring, additional changes to the threshold system can be deliberated</p> <p>2) As mentioned with regards to indicator 9, one of Norway's main challenges is to increase the uptake of good procurement practices and strategic use of public procurement across the board and on all levels. This is particularly important with regards to access of SMEs. Less advanced contracting authorities could learn from those institutions that are already successfully practicing strategic procurement, e.g. by dividing bids into smaller lots. This increase in capacity can take different forms, depending on the context, and range from</p>



twinning arrangements between contracting authorities to training for individual procurement officers in key positions.

3) Capacity building could also focus on the suppliers to an even larger extent. Difi and the Ministry for Trade, Industry and Fisheries could explore additional opportunities for increasing the capacity of suppliers to successfully respond to tenders. Measures could be training or technical assistance building upon already existing initiatives.

*Indicator 11. Transparency and civil society engagement foster integrity in public procurement*

<i>Sub-indicator</i>	<i>Gap</i>	<i>Possible solution</i>
<b>11(b) Adequate and timely access to information by the public</b>	Overall, the Norwegian system is characterised by a relatively high level of transparency. While they do not pose a concrete hurdle to a well-functioning procurement system, two points were cause for (moderate) criticism and should be monitored to not allow them to further deteriorate: Stakeholders cited challenges with regards to the correct application of the exception to keep business secrets confidential. Particularly smaller contracting authorities face challenges to determine what constitutes a business secret and what is overly secretive. In addition, the increase of the threshold has been an issue of concern with civil society watchdogs, as it results in a far lower number of public procurement cases that will be required to be published on Doffin, and therefore subject of public scrutiny.	With regards to the proper identification of business secrets, Difi and / or the Ministry for Trade, Industry and Fisheries could explore further support on this specific issue as part of general efforts to increase the capacity of decentral and smaller contracting entities. Training in responding to Freedom of Information-requests could be one response, as well as a help-desk function that can provide guidance on specific cases, or actual support in terms of human resources.  As mentioned as part of indicator 10, it may be crucial for Norway to monitor the practical impact of the increased thresholds. This should also include a focus on the aspects that hinge on overall transparency, such as levels of corruption or fraud.



Indicator 12. The country has effective control and audit systems

Sub-indicator	Gap	Possible solution
<p><b>12(b) Coordination of controls and audits of public procurement</b> (* )</p>	<p>Norway's control and audit system seems to be generally functioning. However, one overarching observation is that the work and structure of the institutions in charge of audit do not seem to be shaped or targeted to the specific challenges of public procurement.</p> <p>Norway's control and audit system does not seem to provide specific standards, procedures or guidance related to audits specifically of public procurement. All activities are handled as part of the general auditing framework. It remained unclear to what extent audits are systematised and conducted routinely and annually; audits appear to be conducted based on risk analyses and tip-offs.</p> <p>As in other areas of governance, there is a high independence of contracting authorities on all levels. Large and medium entities are required to assess the need for an internal audit function, but there is not necessarily a requirement to establish such a control function. Audits external to the public sector are possible (e.g. through auditing firms), but it remained unclear to what extent these are used.</p> <p>Performance audits are not conducted on a routine basis.</p>	<p>Difi, in cooperation with the Office of the Auditor General, could develop standards for public procurement-related audits (as indicated in sub-indicator 12(b).) This should include more thorough follow up and guidance for authorities on the sub-national level.</p> <p>In addition, the Office of the Auditor General should explore to what extent procurement audits can be systematised and offered in a standardised and routine manner.</p> <p>The possibility of performance audits should be explored.</p>
<p><b>12(d) Qualification and training to conduct procurement audits</b></p>	<p>The Norwegian system does not seem to provide for an established program to train internal and external auditors to ensure that they are qualified to conduct high quality <u>procurement</u> audits, as there do not seem to be specialised procurement audits.</p>	<p>In collaboration with the Office of the Auditor General, Difi could develop trainings for auditors, sensibilising them for the challenges and risks associated with the public procurement process. In doing so, the specific needs of authorities on the sub-national level should be taken into account. The training could be extended to public procurement officials to allow for a more productive collaboration on the working level.</p>





Indicator 13. Procurement appeals mechanisms are effective and efficient

Sub-indicator	Gap	Possible solution
<p><b>13(a) Process for challenges and appeals (*)</b></p>	<p>KOFA’s decisions are only partially binding: following a period of time where none of its decisions were binding (starting in 2012), since 2016, KOFA’s decisions about illegal direct awards are binding again. All other decisions, however, are not binding. Generally, suppliers rely on KOFA.</p> <p>During the period in which the decisions on illegal direct award were not binding, reliance on KOFA decreased and suppliers opted more frequently for the courts as a means to pursue their challenge. Suppliers stated that this had an effect on the uptake of KOFA as appeals mechanism of choice. However, the complaint fee was raised at the same time, which was likely to impact the case load of KOFA decisions as well: the fee was raised from NOK 860 (approx. EUR 92) to NOK 8000 (approx. EUR 852) for advisory decisions; a new fee of NOK 1000 (approx. EUR 107) was introduced for decisions on illegal direct awards (previously, there had been no fee for this latter type of decision.)</p> <p>Given that the fee introduced for illegal direct awards was relatively small compared to the increase for advisory decisions (NOK 1,000 or 16% vs. NOK 7,140 or 800%), there is an indication that the decrease of appeals to KOFA might be in part related to the status of KOFA’s decisions (binding or not binding).</p>	<p>While KOFA’s decisions are generally respected and complied with, making its decisions binding would equip KOFA with a more authoritative standing. Specific sanctioning powers could be provided.</p>
<p><b>13(b) Independence and capacity of the appeals body</b></p>	<p>According to feedback by the institution and suppliers, KOFA faced situations of overwhelming case load and was not able to follow up as intended to all cases, due to resource and staffing constraints. However, these constraints did not seem to represent grave hurdles to the suppliers’ rights to challenge procurement decisions.</p>	<p>Funding and staffing of KOFA could be increased. Aside from reducing the turnaround time per case, the increase in capacity could also strengthen the advisory aspects of KOFA’s role.</p>



Indicator 14. The country has ethics and anticorruption measures in place

<i>Sub-indicator</i>	<i>Gap</i>	<i>Possible solution</i>
<b>14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties</b>	The Norwegian legal and regulatory framework does not include a specification on a cool off period. While stakeholders also confirmed that there have not been many instances in which a post-public employment resulted in integrity breaches, interview partners raised one recent case in which a cool-off period might have made a difference (purchase of helicopters; public official joined the private sector immediately after his term in the public sector.)	Norway could explore whether legal specifications on a cool off-period could have a positive impact with regards to increasing integrity. This analysis could include an analysis of any post-public positions that high-level public servants held in recent years and whether those were related to their previous public sector tasks.
<b>14(d) – Anti-corruption framework and integrity training</b>	<p>Anti-corruption training is available; however, the generally trusting environment might result in a situation where basic corruption risks might be overlooked. Feedback from counterparts suggested that favouritism might be more widespread than thought simply because close-knit, small communities on local level and low awareness about corruption issues result in close connections between suppliers and public procurers.</p> <p>Training measures related to corruption and the code of conduct could be made more systematic across all levels.</p>	<p>As with previous indicators, Norway could explore the issue of increased anti-corruption training in a preventive spirit (see also recommendations provided as part of indicator 8.)</p> <p>As mentioned, there are challenges related to maintaining the same high standards of public procurement performance on all levels of government. This is also the case with regards to anti-corruption: It could be worthwhile to engage on the topic of integrity at the local level specifically, to ensure that the low levels of corruption are maintained in the future and on all levels.</p>
<b>14(f) – Secure mechanism for reporting prohibited practices or unethical behaviour</b>	Whistleblowing is addressed in the recent Act on working environment (Arbeidsmiljøloven, LOV-2017-06-16-42, chapter 2A). Provisions include the right to whistle blow (§ 2 A-1.), protection of retaliation after whistleblowing (§ 2 A-	Norway could explore whether a reporting mechanism (also) for public procurement could be feasible to facilitate reporting. For example, a dedicated (electronic) mailbox or phone number for reporting suspicions of corruption with



2.), duties for entities to set out procedures for whistleblowing (§ 2 A-3.) and the duty to secure whistleblower's anonymity (§ 2 A-4.).

While the Norwegian system was perceived as very open to critique and potentially whistleblowing, there have usually not been formal mechanisms to report corruption or similar wrongdoing with regards to public procurement anonymously. However, informal opportunities to report are abundant and used frequently. The police is usually very open and directly accepts tip-offs. At the same time, counterparts reported that recent corruption scandals were associated with negative outcomes for the whistle-blowers who highlighted the wrongdoing in the first place.

regards to procurement could provide a low-cost possibility to further ensure integrity. In cases where entities already have such mechanisms they could be promoted more prominently.



## Summary of recommendations

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The proposed solutions in the tables above are often interlinked. They can be summarised in the following key recommendations:

- Encourage the development of interoperable electronic procurement systems with functionalities for the entire procurement cycle, and promote their use across all governmental levels.
- Invest in data gathering and performance monitoring: beyond increased functionality to manage public procurement processes electronically, systematically gather and analyse the data that is created by the electronic systems by developing a performance monitoring framework.
- Build on the good potential of the Norwegian system for effective use of strategic public procurement to address societal challenges and take additional measures to ensure that the fullest potential is achieved across the board, in all contracting authorities across all governmental levels, including state-owned enterprises and municipalities.
- Monitor the implications of the recent public procurement legal reform, especially the effects of the increased thresholds for SMEs. For doing so, advanced data collection and increased use of electronic procurement will be instrumental.
- Monitor the performance of the central purchasing body (Statens innkjøpsenter) with a view to optimise the existing institutional arrangements.
- Increase the offer of professionalization activities by Difi for use by contracting authorities, with a particular emphasis on strategic use. Providing the offer could encourage entities to work towards improving the capacity of their public procurement workforce.
- Fine-tune the appeals and audit framework: equip KOFA with increased capacity and authority, and promote performance-based audits.



## Overview of compliance with the MAPS indicators

Serious gaps identified    Priority areas for improvement    Overall compliance

Pillar I		Pillar II		Pillar III		Pillar IV	
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	1(a) – Scope of application and coverage of the legal and regulatory framework	4. The public procurement system is mainstreamed and well integrated into the public financial management system.	4(a) – Procurement planning and the budget cycle	9. Public procurement practices achieve stated objectives.	9(a) – Planning	11. Transparency and civil society engagement foster integrity in public procurement.	11(a) – Enabling environment for public consultation and monitoring
	1(b) – Procurement methods		4(b) – Financial procedures and the procurement cycle		9(b) – Selection and contracting		11(b) – Adequate and timely access to information by the public
	1(c) – Advertising rules and time limits	5. The country has an institution in charge of the normative/regulatory function.	5(a) – Status and legal basis of the normative/regulatory institution function		9(c) – Contract management		11(c) – Direct engagement of civil society
	1(d) – Rules on participation		5(b) – Responsibilities of the normative/regulatory function	10. The public procurement market is fully functional.	10(a) – Dialogue and partnerships between public and private sector	12. The country has effective control and audit systems.	12(a) – Legal framework, organisation and procedures of the control system
	1(e) – Procurement documentation and technical specifications		5(c) – Organisation, funding, staffing, and level of independence and authority		10(b) – Private sector's organisation and access to the public procurement market		12(b) – Coordination of controls and audits of public procurement
	1(f) – Evaluation and award criteria		5(d) – Avoiding conflict of interest		10(c) – Key sectors and sector strategies		12(c) – Enforcement and follow-up on findings and recommendations
	1(g) – Submission, receipt, and opening of tenders	6. Procuring entities and their mandates are clearly defined.	6(a) – Definition, responsibilities and formal powers of procuring entities				12(d) – Qualification and training to conduct procurement audits



	1(h) – Right to challenge and appeal		6(c) – Centralized procurement body
	1(i) – Contract management	7. Public procurement is embedded in an effective information system.	7(a) – Publication of public procurement information supported by information technology
	1(j) – Electronic Procurement (e-Procurement)		7(b) – Use of e-Procurement
	1(k) – Norms for safekeeping of records, documents and electronic data.		7(c) – Strategies to manage procurement data
	1(l) – Public procurement principles in specialized legislation	8. The public procurement system has a strong capacity to develop and improve.	8(a) – Training, advice and assistance
2. Implementing regulations and tools support the legal framework.	2(a) – Implementing regulations to define processes and procedures		8(b) – Recognition of procurement as a profession
	2(b) – Model procurement documents for goods, works, and services		8(c) – Monitoring performance to improve the system
	2(c) – Standard contract conditions		
	2(d) – User's guide or manual for procuring entities		
3. The legal framework reflects the country's secondary policy objectives and international obligations	3(a) – Sustainable Public Procurement (SPP)		
	3(b) – Obligations deriving from international agreements		

13. Procurement appeals mechanisms are effective and efficient.	13(a) – Process for challenges and appeals
	13(b) – Independence and capacity of the appeals body
	13(c) – Decisions of the appeals body
14. The country has ethics and anticorruption measures in place.	14(a) – Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties
	14(b) – Provisions on prohibited practices in procurement documents
	14(c) – Effective sanctions and enforcement systems
	14(d) – Anti-corruption framework and integrity training
	14(e) – Stakeholder support to strengthen integrity in procurement
	14(f) – Secure mechanism for reporting prohibited practices or unethical behaviour
	14(g) – Codes of conduct/codes of ethics and financial disclosure rules



# Detailed Findings of the Assessment: Indicator-by-Indicator Analysis

## Pillar I: Legal, Regulatory, and Policy Framework

Indicator	Qualitative/Quantitative assessment	Gap analysis
<p><b>1. The public procurement framework achieves the agreed principles and complies with applicable obligations</b></p>	<p>The Norwegian legal and regulatory framework for public procurement follows the EU directives. That said, the system generally meets the assessment criteria set out under indicator one. Detailed findings are as follows:</p> <p>1(a) Scope of application and coverage of the legal and regulatory framework</p> <p>The Norwegian legal and regulatory body of norms on public procurement is recorded, organized hierarchically and precedence is clearly established. In accordance with its obligations under the Agreement on the European Economic Area, Norway has implemented the relevant procurement directives (2014/23/EU, 2014/24/EU and 2014/25/EU) by law and regulations: the Public Procurement Act (LOV-2016-06-17-73), the Public Procurement Regulation (FOR-2016-08-12-974) (for the public sector); the Utilities Regulation (FOR-2016-08-12-975); the Regulation on Concessions Procurement (FOR-2016-08-12-976) and the Defence and Security Regulation (FOR-2013-10-04-1185). The Act sets out the general principles applicable, and the Regulations set out the more detailed rules for each sector.</p> <p>The body of norms covers goods, works, and services. Current laws, regulations, and policies are published and easily accessible to the public at no cost through internet, inter alia via <a href="http://www.lovdato.no">www.lovdato.no</a> and the website of the Government.</p> <hr/> <p>1(b) – Procurement methods</p> <p>The 2016 legal reform to implement the EU directives resulted in an update regarding the available procurement methods, which is generally considered useful by the contracting authorities. Now, in accordance with EU rules, the Norwegian legal framework provides for procurement methods unambiguously established at an appropriate hierarchical level along with the associated conditions under which each method may be used. The procurement methods prescribed comprise competitive and less competitive procurement procedures and provide an appropriate range of options to ensure value for money, fairness, transparency, proportionality, and integrity.</p>	



The revised public procurement law “Lov om offentlige anskaffelser”, which entered into effect in January 2017, includes explicit reference to the basic principles of competition, equal treatment, transparency, proportionality and accountability that apply to all procurements. All stakeholders agreed that transparency is covered by these principles.

Fractioning of contracts in order to avoid application of the procurement rules or otherwise limit competition is prohibited. Appropriate standards for competitive procedures are specified.

#### 1(c) – Advertising rules and time limits

The national system requires procurement opportunities to be publicly advertised unless the restriction of procurement opportunities is explicitly justified. In line with EU directives, it is mandatory to publish tenders that are above the EU threshold on the EU platform Tenders Electronic Daily (TED), as well as on a national platform, Doffin (doffin.no). Publication of procurement opportunities on Doffin is required for contracts with an estimated value equal to or above national thresholds (the national threshold is lower than the EU threshold). Additionally, publication on Doffin is also possible for lower value tenders. Content of notices should include sufficient information to enable potential bidders to determine their ability and interest in bidding. Doffin requires the contracting authorities to fill in certain information relevant for the tenders as well as allowing for documents being uploaded. Templates for contracts are available from Difi’s website [anskaffelser.no](http://anskaffelser.no). [Anskaffelser.no](http://anskaffelser.no) also provides other useful templates for documents in the procurement process for contracting authorities. Doffin and [anskaffelser.no](http://anskaffelser.no) are accessible at no cost and without any other barriers. Following the same rules, local authorities and municipalities use these websites, as well as their own websites for publication of tenders.

According to the feedback provided by supplier associations, the procedures for publication of opportunities to bid provides sufficient time to submit a response, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames are in line with EU rules (bidders have at least 30 days to submit bid from publication of tender).

For procurements below NOK 1.1 million, the requirement to publish on Doffin does not apply. However, it is possible to publish on Doffin voluntarily and Doffin has forms for this purpose. Contracts in this category can also be published on the contracting authority’s own web site; the contracting authority has to ensure sufficient competition, but can decide on its own how to achieve this. It is the responsibility of the contracting authority to ensure that this requirement is met, and





guidance is provided on [anskaffelser.no](http://anskaffelser.no) on alternative ways to do this. Securing sufficient competition by adequate publication of tenders is followed up on as part of the general audit process.<sup>34</sup>

#### 1(d) – Rules on participation

The participation of interested parties is fairly guaranteed and based on qualification in accordance with rules on eligibility and exclusions. Moreover, the Norwegian legal framework ensures that there are no barriers to participation in the public procurement market.

With regards to debarment, the Norwegian legal and regulatory framework follows the EU directives, which prescribes exclusion in cases of criminal convictions. In addition, some contracting authorities, such as the City of Oslo, have own lists of underperforming companies for internal use.

Procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract are detailed, in compliance with the EU Directives.

#### 1(e) – Procurement documentation and technical specifications

In accordance with EU rules, the Norwegian legal and regulatory framework details minimum content of procurement documents so that relevant and sufficient information is available to enable the submission of responsive tenders/bids/proposals and to establish the basis for a transparent evaluation and award process. In line with the EU Directives, Norwegian rules (e.g. FOA § 15-1) require that technical specifications shall be formulated in terms of performance or functional requirements, or by reference to technical specifications and national standards transposing European standards, requiring recognition of equivalent standards.

#### 1(f) – Evaluation and award criteria

With regards to evaluation and award criteria, the Norwegian legal framework follows the EU rules including the obligation to specify award criteria, attributes like price, non-price aspects and life cycle costs, specifications for consulting services, the relative weighting which it gives to each of the criteria chosen, and process (FOA § 18-1).

<sup>34</sup> <https://www.anskaffelser.no/verktoy/oversikt-minimumsfrister-kunngjoring-over-og-under-eos-terskelverdier>



#### 1(g) – Submission, receipt, and opening of tenders

The opening of tenders normally proceeds immediately following the closing date for bid submission after the deadline for submission of tenders and records of proceedings for bid openings are retained and available for review. Contracting authorities shall ensure that the integrity of data and the confidentiality of tenders are preserved and shall examine the content of tenders only after the time limit set for submitting them has expired. (FOA § 22-3). In line with the EU Directives, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders (FOA § 7-3 and 7-4). The modality of submitting tenders and receipt by the government is well defined to avoid unnecessary rejection of tenders.

#### 1(h) – Right to challenge and appeal

In general, the right to challenge and appeal with regards to public procurement in Norway is fulfilled by the general courts system and the complaints board, KOFA. In addition, the EFTA Surveillance Authority in Brussels is in charge of complaints as well.

Generally, the ordinary courts have been dedicated as the national review mechanism for the EU / EEA remedies directives. While the courts can issue binding decisions, KOFA's decisions are considered as advisory opinions and are not legally binding.

With these three bodies taken together, participants in procurement proceedings have a possibility to challenge decisions or actions taken by the procuring entity (see also indicator 13 for a detailed description of the roles of the different bodies.)

The rules regarding the appeals mechanism are established in the acts and regulation with regards to the different bodies. The powers of KOFA (Klagenemda for offentlige anskaffelser) are regulated in regulation FOR-2002-11-15-1288. Anskaffelsesloven (LOV-2016-06-17-73) refers to the courts as the appeals body for public procurement contracts (§ 8.). The regulation contains provisions on authority over suspension of proceedings, remedies, link to judicial review, definitions of the matters that are subject to review, timeframes, and rules on publication of the results of a challenge.

The Norwegian Government has re-introduced a competency of KOFA to issue binding penalties for illegal direct procurement in 2016. From 2012 to 2016, KOFA decisions with regards to illegal direct awards had not been binding.



#### 1(i) – Contract management

As far as contract management is concerned, functions for undertaking contract management are defined and responsibilities are clearly assigned. Anskaffelsesforskriften (FOR-2016-08-12-974, § 19-1 and § 8-12) refers to how the contracting authority can decide contract terms, and that balanced contract standards should be used where available, as the main rule. It also provides provisions for what changes the contracting authority is allowed to make to the contract. The contracting authority should as a main rule use negotiated and balanced standard contracts where such are available. A number of standard contracts are available from Difi's website [anskaffelser.no](http://anskaffelser.no). Control procedures are not completely centralized. Conditions for contract amendments are defined in line with the EU Directives; they ensure economy and do not arbitrarily limit competition (FOA § 8-12., § 11-2; § 19-1, § 28-1 flwg.)

#### 1(j) – Electronic Procurement (e-Procurement)

The Norwegian legal framework permits the use of electronic methods and instruments for public procurement, and specifies the use and obligations related to using e-procurement systems, as required by EU directives.

#### 1(k) – Norms for safekeeping of records, documents and electronic data.

The national framework establishes a comprehensive list of procurement records and documents related to transactions, including contract management. There is a requirement for contracting authorities to keep documentation (FOA § 7-1), including a requirement to have a procurement protocol (see also FOA § 10-5 and § 25-5.) The rules explicitly list what information the protocol should include, such as the contracting authority's name and address, description of what is being procured and estimated contract value, reasons for exempting the requirement of using e-procurement tools to receive the bids, name of suppliers submitting bids, reasons for exempting the notification of engaging in market dialogue, the name of the suppliers that the contracting authority had dialogue with and why these suppliers were chosen, etc. Norway's document retention policy foresees that public documents are stored in the national archive (the Norwegian Archives Act LOV-1992-12-04-126). This policy is compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and with the audit cycles. Norway has security protocols to protect electronic and physical records; these are specified in the archives act.



	<p>1(l) – Public procurement principles in specialized legislation</p> <p>Public procurement principles apply across specialized legislation governing the procurement by entities operating in specific sectors. However, rules regarding strategic public procurement are not applicable for State-owned enterprises. Norway’s general public procurement principles and laws apply to the selection and contracting of Public Private Partnerships including concessions, even if there is no specific legislation on PPPs. Responsibilities for developing policies and supporting the implementation of PPPs including concessions are clearly assigned to the Ministry of Industry, Trade and Fisheries. Generally, Norway applies EU rules related to the procurement and state-owned enterprises.</p>	<p>State-owned enterprises follow their own regulations and practices when it comes to strategic public procurement, as they are not subject to the general procurement framework.</p>
<p><b>2. Implementing regulations and tools support the legal framework</b></p>	<p>All guidance, tools, regulations or other implementation support is available at a central website, <a href="http://anskaffelser.no">anskaffelser.no</a>. This website is managed by Difi.</p> <p>2(a) – Implementing regulations to define processes and procedures</p> <p>There are regulations that supplement and detail the provisions of the procurement law. They do not contradict the law. The regulations are clear, comprehensive, and consolidated as a set of regulations and are readily available via <a href="http://anskaffelser.no">anskaffelser.no</a>.</p> <p>Responsibility for maintenance of the regulations is clearly established and lies with the Ministry of Trade, Industry and Fisheries. The regulations are updated periodically, for example recently in the context of the latest reform to implement the 2014 EU Directives.</p> <p>2(b) – Model procurement documents for goods, works, and services</p> <p>Model documents are available for a broad range of purchases. These model documents may contain standard clauses or templates aligned with the legal framework. The material is freely accessible on <a href="http://anskaffelser.no">anskaffelser.no</a>. Difi is tasked with updating the documents as necessary; the documents are currently being updated to reflect the latest legal changes.</p> <p>2(c) – Standard contract conditions</p> <p>The model documents also contain standard contract conditions for the most common types of contracts. According to feedback provided by suppliers, the content of the standard contract conditions is generally consistent with internationally accepted practice.</p> <p>2(d) – User’s guide or manual for procuring entities</p>	<p>Some contracting authorities expressed an interest in improved guidance from Difi, especially regarding model documents, templates and guidelines.</p>



Difi has developed comprehensive procurement manuals and guidelines detailing procedures with the aim of ensuring the correct implementation of procurement regulations and laws. Difi is tasked with the maintenance of these guidance materials.

**3. The legal framework reflects the country's secondary policy objectives and international obligations**

**3(a) – Sustainable Public Procurement (SPP)**

Norway is implementing SPP in support of broader national policy objectives. The legal and regulatory framework mandates the consideration of sustainability criteria (i.e. economic, environmental, and social criteria) in public procurement. As part of the new public procurement law, Norway made it mandatory for contracting authorities to consider secondary policy objectives in public procurement processes. Some contracting authorities, for example the City of Oslo, have their own strategies or specific policies. The criteria used by these contracting authorities take into account strategic procurement in the broader sense, beyond green public procurement. Often, successful implementation of sustainable public procurement hinges on the individual skills and motivation of procurement officers. In addition, Norway is making efforts to develop a better system in order to implement the access of SMEs and a strategy for implementing sustainable procurement at the municipality level as well. Overall, based on the feedback provided by different stakeholders, the legal provisions appear to be consistent with primary objectives of public procurement and ensure value for money.

**3(b) – Obligations deriving from international agreements**

As Norway follows the EU directives on public procurement, international agreements are implemented accordingly. Therefore, public procurement-related obligations deriving from binding international agreements are clearly established and consistently adopted in laws and regulations and reflected in procurement policies.

As strategic public procurement is a complex and advanced aspect of public procurement, additional guidance could facilitate the implementation of SPP. Municipalities in particular might benefit from specialised support, be it guidance that aim at enhancing the knowledge about SPP or capacity building efforts that focus on increasing staff available to implement SPP.



## Pillar II: Institutional Framework and Management Capacity

Indicator	Qualitative/Quantitative assessment	Gap analysis
<p><b>4. The public procurement system is mainstreamed and well integrated into the public financial management system</b></p>	<p>4(a) – Procurement planning and the budget cycle</p> <p>The legal and regulatory framework, financial procedures and systems foresee annual procurement plans that are prepared in support of the budget planning and budget formulation process. They also contribute to multiyear planning. The government presents a budget proposal to parliament in October in the year preceding the one the budget will apply (fiscal year). Parliament discusses the budget proposal and approves the final budget, usually in December. The approved budget is often referred to as the balanced budget. Budget funds are committed and appropriated timely and cover the full amount of the contract. A revised budget is presented to Parliament in the first half of May of the fiscal year; the Parliament usually discusses the revised budget in mid-June. Towards the end of the budget year, the Parliament submits the revised budget and makes the final adjustments. National accounts are submitted the following spring, usually in late April.</p> <p>There is a feedback mechanism for certification of budget execution including information on the completion of major contracts. In addition, Norway has established a system to assure the quality of major public investments (called quality assurance scheme or “QA scheme”. The QA scheme comprises two external reviews in an investment project’s planning process:</p> <p>QA1 (Norwegian “KS1”): Quality assurance of choice of concept before Cabinet decision to start a pre-project</p> <p>QA2 (“KS2”): Quality assurance of the management base and cost estimates before the project is submitted to Parliament for approval and funding.<sup>35</sup></p> <p>4(b) – Financial procedures and the procurement cycle</p> <p>No solicitation of tenders/proposals takes place without verification of the</p>	<p>Information on timely payments is not available across the board.</p>

<sup>35</sup> See <https://www.regjeringen.no/no/tema/okonomi-og-budsjett/statlig-okonomistyring/ekstern-kvalitetssikring2/id2523818/>; <http://www.ntnu.edu/concept/qa-scheme>



availability of funds. According to feedback from suppliers and contracting authorities, contracts refer to the invoicing and payment procedures. The Norwegian Government Agency for Financial Management, DFØ (Direktoratet for økonomistyring), provides additional information and serves as a contact point for potential questions by bidders.

DFØ's routines for accounting customers are set up to make sure invoices are paid timely. For instance the payment files containing invoices are transferred to the banks between 30 and 7 days ahead of due date. These routines are now being standardized to increase efficiency and timely payments even more.

The use of the Doffin notification service and the use of the eCommerce format (EHF) for electronic invoicing is mandatory and is therefore used extensively today (see also indicator 7).

DFØ offers accounting services to central level contracting agencies. Timely payment of public procurement invoices as such is not tracked in Norway. However, DFØ's electronic accounting system provides first elements towards tracking timely payments, for DFØ's customers. According to reports by the Ministry of Finance, DFØ has 72% of all Norwegian central level contracting authorities as clients. In 2016, DFØ registered 1,186,026 "invoicing transactions" for 189 contracting authorities. Note that a considerable share of these "invoicing transactions" represents transactions that are strictly not corresponding to invoices and payments to suppliers in public procurement (e.g., grants, benefits for individuals, and others.) Of these transactions, 76% were conducted on time. DFØ estimates that excluding non-public procurement related transactions could account for a difference of 10-15 percentage points in the share of timely payments.

**5. The country has an institution in charge of the normative/regulatory function**

Competence for handling normative and regulatory functions with regards to public procurement in Norway lie mainly with two institutions: the Ministry of Trade, Industry and Fisheries, and Difi. The broad distinction is that the Ministry is in charge of issues related to the body of laws and regulations, and Difi is tasked with providing support in their implementation. Detailed findings are as follows:

In terms of the administrative structure and conflict of interest as a result of the hierarchy and governmental power structure, the function of a central purchasing body within Difi warrants a note.

Difi also hosts the central purchasing body



#### 5(a) – Status and legal basis of the normative/regulatory institution function

The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities to enable Difi and the Ministry of Trade, Industry and Fisheries to function effectively. This is done by the Public Procurement Act and Difi's "mandate letter" (tildelingsbrevet) provided to Difi from the Ministry of Local Government and Modernisation<sup>36</sup>. The normative/regulatory functions are clearly assigned to the Ministry of Trade, Industry and Fisheries. The Ministry of Defence handles procurement in relation to defence. The specific tasks that are considered normative/regulatory functions are assessed in sub-indicator 5(b).

The Agency for Public Management and e-Government (Difi), established in 2008, is tasked with improving the efficiency of the Norwegian public administration. According to Difi's mission statement, the aim is to emphasise the "values of excellence, efficiency, user-orientation, transparency and democracy." Difi provides guidance to other bodies within the Norwegian government.

#### 5(b) – Responsibilities of the normative/regulatory function

Functions are clearly assigned without creating gaps or overlaps in responsibility. The MAPS provides a set of concrete functions that generally constitute the abstract idea of a normative / regulatory function. These functions are divided as follows, according to the Public Procurement Act and Difi's "mandate letter" (tildelingsbrevet) provided to Difi from the Ministry of Local Government and Modernisation<sup>37</sup>:

Difi provides guidance to procuring entities;

The Ministry drafts procurement policies;

The Ministry proposes changes and drafts amendments to the legal and

(Statens Innkjøpscenter), created in 2016 to centralise the procurement of certain categories of goods and services for government agencies and state entities, chosen on the criteria of high volumes of spending and ease of standardisation. At the moment, the central purchasing body is in its implementation and consolidation phase. The CPB is a unit within Difi and is financed by the State budget. Different models for the institutional arrangement, organizational structure and placement of CPBs can be found in OECD and non-OECD countries, with countries usually making the decision based on feasibility studies and business plans, also analysing the advantages and disadvantages of each model.

In the concrete case of Norway, a major advantage from the institutional proximity between Difi and the CPB relates to the close collaboration that this proximity encourages. By following Difi's guidance and applying Difi's tools and templates, it is easier for the CPB to achieve its goals and align them with the pursuit of sustainability and other societal goals promoted by the agency and the government. On the other hand, it is important to ensure that the institutional proximity do not hinder the decision making process on the part of Difi or the CPB.

<sup>36</sup> [https://www.difi.no/sites/difino/files/tildelingsbrev\\_difi\\_2017.pdf](https://www.difi.no/sites/difino/files/tildelingsbrev_difi_2017.pdf)

<sup>37</sup> [https://www.difi.no/sites/difino/files/tildelingsbrev\\_difi\\_2017.pdf](https://www.difi.no/sites/difino/files/tildelingsbrev_difi_2017.pdf)





regulatory framework;

Difi monitors public procurement (to a limited extent, with a focus on statistics. This function is not specifically mentioned in Difi's mandate letter. However, the mandate letter assigns Difi the responsibility of having the overview of, knowledge of the state of play, and needs for development and change in public sector, which seems to translate into a monitoring role for Difi.)

Difi provides procurement information;

Difi manages statistical databases;

The Ministry reports on procurement to other parts of government;

Difi develops and supports the implementation of initiatives for improvements of the public procurement system with close interaction with the Ministry

Difi provides implementation tools and documents to support training and capacity development for the procurement workforce including integrity training programs. However, training is largely handled in a decentralised manner, and several of the larger contracting authorities offer training when it comes to integrity. Training is based on the decentralization principle, it is the responsibility of each unit to seek and get knowledge in order to fulfil their obligations in the legislation.

Difi supports the professionalization of the procurement function;

Difi designs and manages different training tools and materials available online in addition to offering courses and seminars in a variety of public procurement topics. Difi is responsible for running Doffin

5(c) – Organisation, funding, staffing, and level of independence and authority

Both Difi and the Ministry, as well as their leadership have a high level and authoritative standing in Government. The regulatory framework secures financing to ensure the function's independence and proper staffing. Based on previous spending, Difi proposes a budget to the Ministry, which is then

The outcomes, benefits and objectives of the current institutional location of Norway's CPB should be closely assessed after the CPB has been fully operational for a period of time to consolidate its competencies. Currently, the operation of the CPB for the first trial period of 4 years is entirely financed through the (national) State budget, as it happens in several other OECD countries, which creates the conditions for an adequate implementation and monitoring of the CPB development. In addition, given the current arrangement, there is no potential conflict of interest as regards the CPB's daily operations, since Difi has no regulatory oversight or normative and regulatory functions. This situation will also require adequate monitoring.

(See also indicator 6(b) below.)



presented to parliament.

Difi's internal organization, authority and staffing are sufficient and consistent with the responsibilities. According to feedback from representatives in Difi and the Ministry, the organisations can act independently within a clearly defined set of expectations. Norwegian agencies are in general very independent from the Ministries in charge of regulation. Agencies are independent and act according to the legislation. Difi's director general is appointed by the government, but generally, changes in the party in government do not translate into changes of personnel at Difi.

#### 5(d) – Avoiding conflict of interest

Both Difi and the Ministry for Trade, Industry and Fisheries appear free from conflict of interest.

Conflict of interest in individual procurement process is covered by the Public Administration Act and the Norwegian Municipality Act according to the level of government. According to this act, as regards market dialogue it is the responsibility of the contracting authority to ensure that a supplier that has assisted as an advisor, e.g. to the contracting authority at the preparatory stage of the competition, does not have an unfair advantage restricting competition in the upcoming procurement process.

The assessment criteria to indicator 5(d) included the following recommended quantitative indicator:

- Perception that the normative / regulatory institution is free from conflicts of interest (in % of responses).

Several related questions were included in a survey with suppliers (see annex for detailed responses in English.) The following responses were obtained:

66.7 % of the responding suppliers think that based on their own experiences, contracting authorities have taken ethical decisions to handle conflict of



interest well or very well.

75.4% of the responding suppliers have not experienced a situation where a public authority or its employees faced a conflict of interest. 24.6% of the suppliers have experienced such a situation. In these cases, the conflict of interest related mostly to a public official's family or personal relations (30.1%).

In general, 81.7% of responding suppliers perceive the reputation of the bodies in charge of public procurement (the Ministry of Trade, Industry and Fisheries and Difi) as free from conflict of interest or see only minor conflicts.

**6. Procuring entities and their mandates are clearly defined**

6(a) – Definition, responsibilities and formal powers of procuring entities

In Norway's decentralised system, all public institutions are authorised to conduct procurements. Norway's public procurement law specifically mentions all public institutions that are subject to the national public procurement law. Usually in larger contracting authorities the procurement function is delivered by a designated, specialized procurement function with a dedicated management structure, capacity and capability. In smaller entities, particularly in small municipalities, the procurement function can be fulfilled by individual officials without a larger unit in charge of procurement. Each public entity is responsible for its own procurement. In addition to the challenges presented by decentralisation, the recently introduced possibility to use central purchasing creates some "grey areas" where some transitional arrangements (responsibilities) have yet to be defined. In fact, contracting authorities on the central level are obliged to use the centralised framework agreements.

Due to the decentralised nature of the Norwegian system, there is no comprehensive information available about the share of procuring entities with a designated, specialized procurement function in terms of the total number of procuring entities. Difi has knowledge about the existence of the following

Challenges that might arise in the future include the role of the central purchasing body (please see indicator 5 for additional details.)

Regarding the availability of quantitative information:

- No information is available on the number of procuring entities with designated, specialized procurement function (in % of total number of procuring entities).



institutions at central level that each have the authorisation to procure (i.e., there are 312 procuring entities on central level):<sup>38</sup>

16 ministries

63 directorates

29 executive agencies with separate authorisations to procure

4 investment management agencies/firms

67 Other ordinary administrative bodies

4 financing institutions

33 Fully state-owned corporations (heleide statsaksjeselskap)

7 Special statute company

7 State-owned enterprises (statsforetak)

13 State-owned limited liability company (divested; majority)

7 Health organisations

2 Church legal entity

47 State-linked foundations (established by central ministries; in Norwegian referred to as sentralstiftelser)

13 Statutory Foundations (established by central entities below ministry-level; in Norwegian referred to as randsonestiftelser)

In addition, on decentral level, there are 426 municipalities and 19 counties (with a current push to consolidate governmental units and reduce this number.) Some of these decentral units consolidate procurement on a regional level, while others have more than one unit in charge of procuring.

#### 6(b) – Centralized procurement body

Norway established a centralized procurement function (a central purchasing body in the meaning of the EU procurement directives) in charge of consolidated procurement, framework agreements, or specialized procurement in January 2016. It is a unit within Difi called *Statens Innkjøpscenter*, the

<sup>38</sup> <http://www.nsd.uib.no/polsys/data/forvaltning/antallforvaltningsenhet?t=20&t=31&t=32&t=33&t=35&t=41&t=42&t=43&t=44&t=45&t=46&t=47&t=50&t=51&fra=2017&til=2017&d=1&m=1>



Government Procurement Centre. The head of the centralised procurement function is appointed by Difi's director. This central purchasing body is tasked with procuring goods and/or services that meet three requirements: 1) large volume required, measured in NOK and/or entities; 2) the needs of the different requiring units are similar; 3) specifications can be generalised across the board ("standard" or "off the shelf"), with little need for individual adjustment. The central purchasing body's annual expenditure was NOK 12.5 million in 2017.

The central purchasing body is created by a Royal Decree whereby Difi is given a power of attorney from the Ministry of Local Government and Modernisation (FOR-2017-01-13-21) to enter into and manage joint agreements on the purchase of goods and services for and on behalf of Government agencies in the civil sector. Difi is clearly defined in terms of its legal status, funding, responsibilities, and decision-making powers. Accountability for decisions is precisely defined. The body and the head of the body have a high level and authoritative standing in Government. The centralized procurement body's internal organization and staffing are sufficient and consistent with responsibilities.

For the relationship between the CPB and other procurement-related functions, see findings for indicator 5.

**7. Public procurement is embedded in an effective information system**

Doffin is the central portal in Norway that serves to publish and handle procurement information; it also offers certain e-procurement functions. The findings of the different aspects of the Norwegian information system with regards to public procurement are detailed below:

7(a) – Publication of public procurement information supported by information technology

Overall, the Norwegian system is set up in a way that provides and guarantees easily accessible information on procurement. Through the portals anskaffelser.no and Doffin information on procurement is easily accessible in media of wide circulation and availability (see pillar I). According to feedback from users, overall, information is relevant, timely and complete and helpful to

The newspaper Kommunal Rapport matched the notices about procurement opportunities on Doffin with the notices about contract awards in 2016. The journalists found that while 12,318 tenders were announced with a unique Doffin ID, only 3,507 awards with a unique Doffin ID were published on Doffin. This result can



interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance. Difi's website [anskaffelser.no](http://anskaffelser.no) with guidance on implementation available online, and Doffin for the publication of procurement opportunities are kept up-to-date and are easily accessible to all interested parties at no cost.

Either Doffin or [anskaffelser.no](http://anskaffelser.no) provides for the publication of the following elements as stated in the indicator:

Procurement plans – prior information notice

Advertisements or notices of public contracts; above the national threshold is mandatory and below the EU threshold is optional. As a main rule, all contracts above NOK 1.1 million (EUR 124 000) (VAT excluded) must be published. There is an obligation to publish information on contract awards; however, the compliance rate seems unclear.

Guidance for contracting authorities on the implementation of public procurement

Guidance to suppliers on how to participate in public tenders

Links to rules and regulations and other information that is relevant to promote competition and transparency.

The full set of bidding documents are published, which includes standard contract documents. Information is published in an open and structured machine-readable format, using identifiers and classifications. Responsibility for the management and operation of the system is clearly defined and lies with Difi.

In addition, it is part of every procuring entity's responsibilities to provide potential bidders with necessary information. This is particularly the case if the procurement opportunity is below national threshold and not published on Doffin.

According to FOA § 21-4, contracting authorities can create a "buyer account" on their webpage or in Doffin to publish procurements, including planned procurements. Difi recommends this practice in their guidance for innovation

(theoretically) be explained by the following:

- not all award notices are published on Doffin,
- the majority of tenders does not result in an award (which is unlikely in practice)

Information on payments, awards decisions, evaluation reports and the final version of the contract are not published for all procurement cases (as it is not required by the legal framework.)

Regarding the availability of quantitative indicators:

- The e-procurement system can provide a list of published procurement plans, but there is no information available on the total number of required procurement plans as a reference. Functionality on Doffin could be adapted to facilitate the publishing of annual or multi-annual procurement plans and expand the use of Doffin for this purpose.

- No information was available detailing key procurement information as published along the procurement cycle (in % of total number of contracts):

- Invitation to bid (in % of total number of contracts)

- Contract awards (purpose, supplier, value, variations/ amendments)



procurement as it has several benefits, e.g. to give advance information to the market and allow companies to prepare. This stimulates competition, especially for innovation needs. As for multi-annual procurement plans, these are not always available given that budgets are prepared for one year at a time.

In Norway, the expansion of e-procurement is embedded in a general strategy to increase eGovernment, according to a 2015 study by the EU. This study found that efforts focus mostly on provision of information, and less on actual citizen participation and consultation.<sup>39</sup>

***Regarding quantitative indicators to substantiate the assessment:***

Annual procurement statistics are available from Statistics Norway.

While open contracting (i.e., far-reaching transparency in public procurement) has not been implemented in Norway, bidding documents, including full contract documents and technical specifications are available on Doffin. Evaluation reports, the supplier's bid and other details related to implementation are usually not disclosed in accordance with national regulations.

All information published through Doffin is published in open data format.

There are no timeframes or deadlines related to the publication of appeals, be it for the contracting authority itself, for courts (ideally, a judgment should be rendered within six months in all cases, not specifically for public procurement cases), for KOFA (the average case will be handled within 3-4 months), or the EFTA Surveillance Authority.

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**7(b) – Use of e-Procurement**

In Norway, e-procurement is widely used; it has been progressively implemented at all levels of government, with higher uptake at central, large contracting authorities, and lower uptake at smaller and decentral authorities. Generally, procurement officials have the capacity to plan, develop and manage

- Details related to contract implementation (milestones, completion, and payment)

There is room for improvement with regards to the use of e-procurement in Norway – both in terms of the purpose for which e-procurement systems are used throughout the procurement cycle, as well as in terms of the number of contracting authorities that use e-procurement.

<sup>39</sup> [https://joinup.ec.europa.eu/sites/default/files/ckeditor\\_files/files/eGovernment%20in%20Norway%20-%20February%202016%20-%202013\\_0\\_v1\\_00.pdf](https://joinup.ec.europa.eu/sites/default/files/ckeditor_files/files/eGovernment%20in%20Norway%20-%20February%202016%20-%202013_0_v1_00.pdf)



e-Procurement systems. Guidance on the use is available from Difi for all procurement officials. In big procurement entities procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.

Norway has a generally high level of digitalisation, following a strategy to increase the digitalisation of the public administration. With regards to public procurement, use of electronic means varies in different phases of the procurement cycle. Generally, the early stages (like planning and publication of opportunities) are associated with a higher use of electronic means than the later stages. Doffin has registered 3,238 active buyers. 360 contracting authorities and municipalities use e-catalogues. There is considerable e-submission, and e-invoicing has the highest maturity of e-procurement of the different procurement phases, according to Difi.

In areas where e-procurement has not been fully implemented by contracting authorities, contracting authorities have access to tools to assess their readiness and maturity and receive Difi's advice on which parts of the procurement process they should implement e-procurement solutions to achieve better outcomes.

An analysis by Capgemini found a rapid increase of e-procurement between 2010 and 2014. The number of contracting authorities that use e-procurement increased from 58 in 2010 to 288 in October 2014. In 2014, these 288 users conducted 700,000 procedure electronically, valued at over NOK 10 billion (EUR 1.2 billion).<sup>40</sup>

***Regarding quantitative indicators to substantiate the assessment:***

Uptake of e-Procurement:

Number of e-procurement procedures as a share of total number of procedures: As a share of the notices published on Doffin, 28% were published through an eTendering system in 2016. This represents an increase: in 2015, 18% were published in this way.

Not all functions of the e-procurement system are used regularly (such as e-submission, contract management, etc.) In addition, decentral units struggle to use e-procurement as diligently as central agencies. This seems to be due to capacity, lack of technical implementation of electronic solutions, as well as skills of the procurement staff.

Regarding the availability of quantitative indicators:

No data is available for all procurement procedures on the value of e-procurement procedures as a share of the total procurement value.

No information is available regarding the share of bids submitted online and the share of bids submitted online by micro, small and medium-sized enterprises (in % of all bids)

<sup>40</sup> [https://www.capgemini.com/resource-file-access/resource/pdf/ss\\_eprocurement\\_takes\\_off\\_in\\_the\\_norwegian\\_public\\_sector\\_1.pdf](https://www.capgemini.com/resource-file-access/resource/pdf/ss_eprocurement_takes_off_in_the_norwegian_public_sector_1.pdf)





Value of e-procurement procedures as a share of the total value of procedures: No data is available for all procurement procedures. However, Difi conducted the following estimates: NOK 10,466,495,000 (excluding VAT) was bought through 986,713 e-orders in 2016 (an increase of 18% since 2015). Difi assumes that approximately NOK 60 billion is spent through framework agreements annually in Norway; if the assumption holds that a majority of the e-orders are placed as part of a framework agreement, approximately 17% of ordering procedures are conducted electronically.

#### 7(c) – Strategies to manage procurement data

Norway collects data on the procurement of goods, works and services with support from e-Procurement portals such as Doffin. The information is collected by Difi and published by Statistics Norway, detailing an overview over public procurement spending, accounting figures and ordering information from the contracting authorities registered in Doffin. The system has limited functionality to manage data for the procurement process. Analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements is only partially possible. Analysis of information is routinely carried out, published and fed back into the system. Audits confirm that the system has a high reliability, according to information provided by Difi.

#### ***Regarding quantitative indicators to substantiate the assessment:***

- Public procurement accounted for 28 % of government expenditure and 15% of GDP in 2015.

While Norway's e-procurement system is quite advanced, the data collected through the system does not allow for complex analysis, such as trends, levels of participation, efficiency and economy of procurement and compliance with requirements. Decentralisation makes it difficult to collect the information; not all information is required to be published on Doffin, so that data is located in a decentralised database and not fed into Doffin. While larger contracting authorities use analytics, smaller agencies do not have the skills, technical capabilities or capacity to conduct the same level of analysis. In addition, the reliability of information in the database remains unclear: audits are carried out, but not routinely, and they remain limited to financial information.

Regarding the availability of quantitative indicators:

- Only partial information is available regarding the total number and value of contracts and the total value of contracts awarded through competitive methods in most recent fiscal year



**8. The public procurement system has a strong capacity to develop and improve**

8(a) – Training, advice and assistance

Public procurement officials in Norway can participate in substantive training programs of suitable quality and content for the needs of the system; results of the trainings are evaluated and adjusted. Staff is evaluated depending on the human resource practices of the contracting authority in question. Difi can be contacted for guidance and support. However, there is no designated advisory service or help desk function to resolve questions by procuring entities, suppliers, and the public.

The Norwegian system provides for integrated measures aimed at developing the capacities of key actors involved in public procurement. Training programs, guidelines templates, statistics, courses, seminars and learning arenas that cover all the needs of the system are in place. The market for training programmes is shared with other operators such as NIMA as well as commercial operators like TIM.

NIMA (Norwegian Association of Purchasing and Logistics) is the oldest national non-profit institution involved in the procurement area. It aims at developing competence, providing courses and programmes both for the public and private sector. NIMA has developed a four-stage programme on procurement activity. The first stage is about needs identification. A second stage concerns analytics, focusing on the supply market, spend analysis and capital. The third stage is dedicated to the legal area and the negotiation process, while the fourth stage deals with sourcing and strategic activities.

KS's programs aims at certifying buyers from municipalities, in cooperation with the lawyers of COES. The purpose is to train buyers so that they can operate in the EU market. Oslo municipality

Norway could formalise and systematise its approach to professionalization. Due to decentralisation, the level of professionalization in terms of job description and career progression remains largely at the discretion of the individual contracting authority. The central level, for example Difi, could provide guidance, templates, training, and other measures that support professionalization of the procurement function at all levels, without limiting the independence of the decentral levels of government. There does not seem to be an overarching strategy that takes this into account.

Conversations with representatives from municipalities and suppliers highlighted a great need for professionalization, particularly at the decentral level. While central agencies often perform well, municipalities face constraints in capacity and professionalism. There are no consistent requirements that are valid across all levels of government when it comes to the evaluation of staff performance, professional development or training.

There is no designated advisory service or help desk function to resolve questions by procuring entities, suppliers, and the public.

Academic education about procurement should be improved, filling the gap between the political top level and the research and consulting level. At the moment, new PhD and master programs are being developed.

While there are efforts to monitor performance, these activities remain limited to the individual efforts of the contracting authority. There is no systematic monitoring and



organise their own certification course.<sup>41</sup>

In addition, Difi currently prepares the Procurement Academy (“Anskaffelsesakademiet”) in collaboration with KS, industry representation NHO, universities and other academic institutions. The goal is to identify issues and themes to be dealt with in a “syllabus” or “curriculum” for different levels of training in public procurement, i.e. from certification of purchasing officers, to academic degrees.<sup>42</sup>

So far, the collaboration has created the possibility to take a purchaser certification (“Innkjøpskortet”), issued to those who pass a test which is organised by Norsk Test with help and input from Difi and interested parties.<sup>43</sup>

#### 8(b) – Recognition of procurement as a profession

Norway’s public service does not formally recognize procurement as a profession. However, larger contracting authorities often have a chief procurement officer, with a clear job description and role. Qualifications and professional certifications are provided, for instance through NIMA’s four-stage programme. Many contracting authorities evaluate staff performance and also provide opportunities for professional development and training with regards to public procurement. Appointments and promotion appear to be competitive in most contracting authorities and based on qualifications and professional certification. Staff performance is evaluated on a regular and consistent basis and staff development and adequate training is provided.

no overarching framework to track concrete indicators of performance. The monitoring does not take into account economic impact.

<sup>41</sup> <http://www.ks.no/kalender/ks-sertifiseringskurs-offentlige-anskaffelser-2017/>

<sup>42</sup> <https://www.anskaffelser.no/nyhet/2016-01-07/bli-med-pavirke-fremtidig-master-i-offentlige-anskaffelser;> <https://www.difi.no/blogg/2016/02/er-du-kompetent-er-omstilling-enklere>

<sup>43</sup> [http://www.norsktest.no/innkjop-info/;](http://www.norsktest.no/innkjop-info/) <http://static.datakortet.no/fup/Innkjopskortet.pdf>



#### 8(c) – Monitoring performance to improve the system

To an extent, Norway applies a performance measurement system that focuses on outcomes of procurement processes versus set targets. There are limited evaluations of the performance of public procurement systems and processes on the contracting authority level. The information is used to support strategic policy making on procurement. Strategic plans including results frameworks are in place and used to improve the system. DIFI has a clear responsibility for helping the contracting authorities and its tasks with regards to effectiveness. Difi developed a self-assessment tool for contracting authorities. Currently, there is a goal to develop Key Performance Indicators and build up statistics.



## Pillar III: Procurement Operations and Market Practices

Indicator	Qualitative/Quantitative assessment	Gap analysis
<p><b>9. Public procurement practices achieve stated objectives</b></p>	<p>9(a) – Planning</p> <p>Generally, contracting authorities conduct needs analyses and research on market changes to identify optimal procurement strategies. Requirements and desired outcomes of contracts are clearly defined and sustainability criteria are used in a balanced manner according to national priorities. In doing so, some contracting authorities are more advanced than others. For example, the City of Oslo emphasises the planning phase in its management as well as sustainability considerations. Statsbygg introduced category management in the fall of 2016. According to the representatives of the municipalities (KS), municipalities have lower capacity and focus mainly on legal compliance to avoid appeals.</p> <p>OECD reports confirm this feedback (OECD, 2011).</p> <hr/> <p>9(b) – Selection and contracting</p> <p>Pre-qualification procedures are widely used specially in complex procurements to ensure only qualified and eligible participants are included in the competitive process. Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors. In the City of Oslo for example, contracting strategies involve a discussion with experts and suppliers around the city in order to discuss needs and opportunities.</p> <p>Based on ample feedback from suppliers and the media, procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal</p>	<p>As mentioned with regards to other indicators, it will be Norway’s challenge to distribute good procurement practices across the board. While there are many excellent examples of good performance management, this is not the case in all units on all levels and in all cases. This finding holds with regards to all three sub-indicators, with regards to planning, selection and contracting, and contract management. The large discretion results in opportunities for deviations from the best possible process with regards to the entire procurement process.</p> <p>Systematic performance management and analysis based on quantitative evidence remains an exception.</p> <p>According to feedback from various stakeholders including KS, especially smaller contracting authorities and among them smaller municipalities in particular face capacity obstacles – both in terms of numbers and skills – to achieve the same high standard of strategic public procurement as larger and more centralised contracting authorities.</p> <p>The review of a sample of procurement cases has been explored but was ultimately considered unfeasible on the basis of the effort needed to retrieve a sufficient number of cases from decentralised agencies. The following quantitative indicators are unavailable as such:</p> <p>9b)</p> <p>Average time to procure goods, works, and services (Number of</p>



framework. In principle, bid submission, receipt and opening is clearly described in the procurement documents and complied with allowing bidders or their representative to attend bid openings, and civil society to monitor, as prescribed. Tenders are kept confidential until the procurement is finalised. Contract awards are announced as prescribed.

Contract clauses and conditions include sustainability considerations, providing incentives for exceeding defined performance levels and disincentives for poor performance. The selection and award process is carried out effectively, efficiently and in a transparent way. The qualification and evaluation of tenders is based on objective criteria. Based on the evaluation criteria, the contracting authority has a wide discretion in evaluating the tenders; the evaluation must comply with the underlying principles of the procurement regime. The legislation explicitly states that equal treatment, non-discrimination, transparency and proportionality are fundamental requirements and are relevant for the interpretation of the legislation. These general requirements largely correspond with the principles in the EU Directives on public procurement.

#### 9(c) – Contract management

The contracting authorities generally carry out inspection, quality control, and supervision of works and final acceptance of products.

Invoices are examined and payments are processed as stipulated in the contract. Contract amendments are reviewed, issued and published in a timely manner. Opportunities for direct involvement of relevant external stakeholders in public procurement are utilized.

Procurement statistics are available for some contracting authorities, including state owned enterprises; systems to measure and improve procurement practices are available accordingly. Where available, the records are shared and accessible.

days between advertisement/solicitation and contract signature for all procurement method used)

Average number (and %) of bids that are responsive (for each procurement method used); Share of processes that have been conducted in full compliance with publication requirements (in %)

Number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined timeframes)

#### 9c)

Share of contracts with complete and accurate records and databases (in %)

Time overruns (in %; and average delay in days)

Quality control measures and final acceptance carried out as stipulated in the contract (in %)

Contract amendments (in % of total number of contracts; average increase of contract value in %)

Percentage of contracts with direct involvement of civil society: Planning phase; Bid/Proposal opening;

Evaluation and contract award, as permitted; Contract implementation



Regarding the degree of diligence with which these aspects are implemented, findings differ from one institution to the other. Quite advanced, risk-based contract management and inspection systems have been implemented by several institutions, such as the City of Oslo or the central purchasing body for the Norwegian hospitals (Sykehusinnkjøp), the latter of which inspect according to a risk analysis. Statsbygg and the City of Oslo collect data to systematically analyse performance for example.

**10. The public procurement market is fully functional**

10(a) – Dialogue and partnerships between public and private sector

Norway's government encourages open dialogue with the private sector and has several established and formal mechanisms for open dialogue through associations or other means including a transparent and consultative process when formulating changes to the public procurement system. In general, Norway's legal framework supports exchanges between public and private sectors. The more important role in maintaining this dialogue, however, was attributed by interviewees to the open culture in Norway that creates expectations of a collaborative and fair conduct between contracting authorities and suppliers. Much of procurement planning is aimed at developing market dialogue in different fields and with different suppliers. Difi and the Ministry for Trade, Industry and Fisheries work with industry organisations, such as NHO, to organise regular exchanges. For some industries, annual meetings are organised to discuss the future of certain markets and the development of suppliers.

Guidance and capacity building for suppliers are available from [anskaffelser.no](http://anskaffelser.no); focusing on general guidance on how to participate in public contracts. Difi also hosted several courses for suppliers immediately after the online guidance became available. Stakeholders such as NHO also offer guidance on public procurement to suppliers on their website and through legal

Interviewees noted that there is room for improvement in the capacity development offers for suppliers, particularly for SMEs.

Industry organisations noted that the frequent use of price-only criteria discouraged companies to bid.

In general, interviewees expressed concerns about the newly introduced thresholds, which mean that fewer cases will be required to be published centrally. Industry representatives fear that as a consequence, SMEs will have fewer opportunities to bid because only very complex (and therefore high-value) opportunities will be publicly announced.



services available to members. In addition, law firms offer several courses on topics related to public procurement. In general, there are programs to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace. However, interviews on both the public and private side noted that the engagement could be expanded, particularly mobilising micro and small businesses (SMEs) and start-up companies.

The assessment criteria to indicator 10(a) included the following recommended quantitative indicator:

- Perception of openness and effectiveness in engaging with the private sector (in % of responses).

Several related questions were included in a survey with suppliers (see annex for detailed responses in English.) The following responses were obtained:

- 30% of responding suppliers have participated in training or information sessions related to public procurement. These sessions have been organised mostly by business or industry associations (44.8%) or the public sector (29.6%).

Websites of potential clients are a source for information in order to prepare for a bid for 44.7% of the suppliers. The information website provided by Difi (anskaffelser.no) is a source for 44.3% of the suppliers.

Suppliers state that on average, they have rarely participated in engagement meetings organised by contracting authorities.

72% of responding suppliers feel that their company had no or only a limited opportunity to provide input or make suggestions in an upcoming tender process.

Based on their experience, 56.8% of suppliers stated that their





interactions with contracting authorities with regards to public procurement (in general or with regards to a concrete process) were effective/constructive or very effective/constructive. 31.8% of suppliers stated that their interaction was not effective or constructive.

10(b) – Private sector’s organisation and access to the public procurement market

In general, Norway’s companies are competitive, well organized, willing and able to participate in the competition for public procurement contracts. There are no major systemic constraints inhibiting private sector access to the public procurement market.

Challenges can be observed with regards to specific industries or higher levels of complexity, due to the fairly small size of the Norwegian market. Some larger projects cannot be delivered by Norwegian companies alone (e.g., complex infrastructure projects such as longer roads to remote areas.) In these cases, contracting authorities respond by structuring tenders in a way that smaller, regional companies are allowed to bid only for the part of the road in “their” region. Other contracting authorities (such as Avinor or NSB) aim at increasing their supplier base by way of supplier dialogues with new firms.

The assessment criteria to indicator 10(b) included the following recommended quantitative indicator:

- Perception of firms on the appropriateness of conditions in the public procurement market (in % of responses).

Several related questions were included in a survey with suppliers (see annex for detailed responses in English.) The following responses were obtained:

Responding suppliers stated that several conditions in the public



procurement market were met to the following extent:

<b>Condition</b>	<b>Share of suppliers responding that this condition is met</b>
Access to financing	26.0%
Procurement methods that are proportionate to the risk and value in question, including rules that are simple and flexible	34.2%
Contracting provisions that help distributing risk fairly (specifically those risks associated with contract performance)	32.6%
Fair payment provisions	40.7%
Effective mechanism for appeals and dispute resolution	17.8%
Division of contracts into lots	27.6%
Other	8.5%

#### 10(c) – Key sectors and sector strategies

Contracting authorities identify key sectors associated with the public procurement market Risks associated with certain sectors and opportunities to influence sector markets are assessed and sector market participants are engaged with regards to addressing these. For example, a recent issue related to social dumping (i.e., hiring foreign workers and paying extremely low wages). Several contracting authorities mentioned this as an area of concern and



target of higher risk. For example, the City of Oslo, conducts risk-based checks of their cleaning service providers. The industry organisation NHO conducts specific awareness raising and provides information with regards to high-risk sectors, such as cleaning, construction, and others. According to NHO, companies in the health sector respond to their risk by following special measures, such as higher staff counts or more frequent inspections. The risks associated with social dumping and labour crime in public contracts receives high attentions from politicians.



## Pillar IV: Accountability, Integrity and Transparency of the Public Procurement System

Indicator	Qualitative/Quantitative assessment	Gap analysis
<p><b>11. Transparency and civil society engagement foster integrity in public procurement</b></p>	<p>11(a) – Enabling environment for public consultation and monitoring</p> <p>The Norwegian system provides for a transparent and consultative process followed when formulating changes to the public procurement system. One example where this worked well includes the formulation of the recent reform to the public procurement law that entered into force in January 2017. Programs are in place to build the capacities of relevant stakeholders to understand, monitor, and improve public procurement. A web site (<a href="http://anskaffelser.com">anskaffelser.com</a>) has been set up where guidance material is available for all phases of the procurement process. Difi also cooperates with private providers of training courses on the subject for public bodies around the country. Moreover, Norwegian government takes into account the input, comments, and feedback received from civil society.</p> <p>11(b) – Adequate and timely access to information by the public</p> <p>In general, the Norwegian information requirements in combination with actual practices ensure that all stakeholders have adequate and timely degree of information and transparency as a precondition for effective participation. The Freedom of Information Act contains rules concerning the public's access to public documents, including, <i>inter alia</i>, procurement documents and the suppliers' offer. Until the award decision has been made, no information regarding participating suppliers or their tenders may be disclosed by the contracting authority. Thereafter, anyone requesting access to documents related to a public procurement shall be provided access, with certain exceptions, such as for commercially</p>	<p>According to the Norwegian Press Association, further improvements are needed in order to overcome information gaps in Norwegian public procurement processes, such as: the explicit clarification and strict definition of what information is to be considered as trade secrets; an increased awareness and knowledge in government about the consequences of access to information in the area of procurement transactions, including prices; an increased public availability (good quality ICT systems) of all documents related to the procurement process; tender documents, award criteria and awarding procedures, contacts, volumes, contracting authorities should enter in and make available in Doffin, all information related to the awarding of the contracts (considered as not being sufficiently done today), the more the information is available, the more it will be used to check the market, not only by the press but also by other suppliers, so it will contribute to better competition.</p>



sensitive information, which shall not be disclosed [see also indicator 14]. Stakeholders cited challenges with regards to the correct application of the exception to keep business secrets confidential. Particularly smaller contracting authorities face challenges to determine what constitutes a business secret and what is overly secretive. In addition, the increase of the threshold has been an issue of concern with civil society watchdogs, as it results in a far lower number of public procurement cases that will be required to be published on Doffin, and therefore subject of public scrutiny.

11(c) – Direct engagement of civil society

Norway’s legal and regulatory and policy framework enables citizen to participate during the different phases of a procurement process. There is ample evidence for direct participation of citizens in procurement processes through consultation, observation, and monitoring. According to feedback from contracting authorities, industry organisations and civil society organisations, the largest opportunity for involvement are during the planning phase and the proposal opening. Less interaction is observed during the later phases of three procurement cycle, evaluation and contract award and contract monitoring. However, all stakeholders noted that individual citizens as well as media and CSOs made use of opportunities for involvement, particular of the rights associated with the Freedom of Information Act.

**12. The country has effective control audit systems**

12(a) – Legal framework, organisation and procedures of the control system

Norwegian laws and regulations establish a comprehensive control framework including internal controls, external and internal audits that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation. These

Norway’s control and audit system does not seem to provide dedicated rules or guidance related to public procurement audits specifically. However, as described as part of the findings, in the central government, the Office of the Auditor General of Norway does perform audits of procurement activities as part of their performance audits. All activities are handled as part of the general auditing framework. It



aspects are covered in the Regulation for Financial Management in Central Government (“Statens økonomireglement”). There is no separate body responsible for overseeing public procurements as an auditor, and auditing differs according to the governmental level. According to the Regulations for Financial Management in Central Government, all government entities are tasked with establishing systems and routines to ensure efficient and responsible procurement, including methods and measures to prevent, detect and correct deviations and deficiencies.

The Office of the Auditor General (OAG) is the control body to the Storting and corresponds to the central level. Through auditing, monitoring and guidance, the OAG is tasked with the responsibility to ensure that central government revenues are collected as intended. The second part of their responsibility is to ensure that central government resources and assets are used and managed in a financially sound manner and in accordance with the decisions and intentions of the Storting. OAG is tasked with auditing, monitoring and advising all state economic activities, performing financial audits, performance audits (26 % of the auditing activities) and corporate control. The head of the institutions, the Auditor General, is independent vis-à-vis the rest of the Norwegian administration. The auditor general reports auditing and monitoring results to parliament. All reports from OAG are easily accessible in the public domain through its home pages, from where they may be downloaded. In addition there are annual reports, strategy plans, and results of the annual user survey, which are sent to a selection of all audited enterprises. On the OAG website there is also an updated overview of which reports have been recently submitted to the Storting, and thus no longer exempt from the public domain.

An assessment to evaluate the need for internal audit is

remained unclear to what extent audits are systematised and conducted routinely and annually; audits appear to be conducted based on risk analyses and tip-offs.

As in other areas of governance, there is a high independence of contracting authorities on all levels. Audits external to the public sector are possible (e.g. through auditing firms), but it remained unclear to what extent these are used.

There are no requirements related to formal qualifications for auditors conducting audits related to procurement. The Norwegian system does not seem to provide for an established program to train internal and external auditors to ensure that they are qualified to conduct high quality procurement audits, as there do not seem to be specialised procurement audits.



mandatory for those institutions at central level that have revenues or expenditures of more than NOK 300 million (approximately EUR 32 million), as stated in circular R-117 by the Ministry of Finance. Once conducted, the assessments have to be shared with the OAG. Since 2016, when the first deadline for these assessments was set, 61 agencies conducted the assessment. 22 agencies will introduce internal audits by 2018 (covering 64% of total expenditure at central level.)

At local government level (“kommuner”) the auditing function is performed by the Municipal Auditor’s Office (“Kommunerevisjonen”). Municipalities and entities at the regional level are required to conduct internal audits as adequate.

#### 12(b) – Coordination of controls and audits of public procurement

Norway has written procedures that state requirements for internal controls as conducted by the OAG, as well as written standards and procedures for conducting procurement audits (both on compliance and performance) to facilitate coordinated and mutually reinforcing auditing. The OAG’s website details the general process for conducting the audits. According to its website, OAG conducts a materiality and risk assessment of each ministry every year; depending on outcomes, audit areas are selected. As a consequence of this risk-based approach, not all institutions or ministries seem to be audited every year. Results of the analysis, including comments of the audited institution, are submitted to parliament.

Internal or external audits are carried out frequently, as



evidenced by the provision of reports on OAG's website and the reports of OAG to the Norwegian parliament.<sup>44</sup> The reporting lines between OAG, the institutions it monitors and the parliament are clear and reliable.

12(c) – Enforcement and follow-up on findings and recommendations

Recommendations are responded to or implemented within the timeframes established in the law. There are systems in place to follow up on the implementation or enforcement of the audit recommendations. The follow up of the recommendations in the audit are followed up by oversight through the Norwegian parliament. The timeframe for implementing the recommendations is three years, with another follow-up document to the parliament to detail the implementation.

12(d) – Qualification and training to conduct procurement audits

The selection and hiring of auditors in general (not related to procurement) appears to follow the same transparent manner of Norway's public sector in general. The OAG is responsible to train its own staff with regards to the subjects of the audits they conduct.

**13. Procurement appeals mechanisms are effective and efficient**

In general, the appeals function with regards to public procurement in Norway is fulfilled by the Norwegian ordinary courts; and in addition by the complaints board, KOFA, as a voluntary mechanism for dispute resolution. In addition, the EFTA Surveillance Authority in Brussels is in charge of complaints.

Generally, the ordinary courts have been dedicated as the national review mechanism for the EU/ EEA remedies directives.

While KOFA enjoys a good reputation and contracting authorities and suppliers generally respect KOFA's decisions, an area for possible improvements could be to make appeals decisions binding in all cases, not just cases of illegal direct awarding. During the period in which the decisions on illegal direct award were not binding, reliance on KOFA decreased and suppliers opted more frequently for the courts as a means to pursue their challenge. Suppliers stated that this had an

<sup>44</sup> <https://www.riksrevisjonen.no/en/Reports/Pages/Reports.aspx>





While the courts issue binding decisions, KOFA's decisions in appeals cases are advisory opinions and are not legally binding (as opposed to the binding decisions in the case of illegal direct awards).

#### 13(a) – Process for challenges and appeals

Decisions are rendered on the basis of available evidence submitted by the parties. The first review of a complaint by a supplier is usually carried out by the procurement entity, as confirmed by contracting authorities. However, this practice is not provided for in legislation. Some contracting authorities have a policy of granting the complainant a new possibility to bring the case to a complaint body (preferably KOFA) if it upholds its decision. At the central level, the supplier can take up the matter directly with the entity concerned, but may bring the issue before a district court of justice or to KOFA.

The courts issue binding decisions that can be appealed. Courts have the power to intervene in procurement cases and to suspend or set aside a decision made by the contracting entity; courts also have the power to award damages. KOFA's decisions are only partially binding: following a period of time where none of its decisions were binding (starting in 2012), since 2016, KOFA's decisions about illegal direct awards are binding again. All other decisions, however, are not binding.<sup>45</sup> KOFA may impose administrative penalties in the case of illegal direct awards of contract in breach of the procurement rules, of up to 15 per cent of the contract value. Such decisions are binding and could be appealed to the ordinary courts.

Within six months after the contract has been entered into for

effect on the uptake of KOFA as appeals mechanism of choice.

However, the complaint fee was raised at the same time, which was likely to impact the case load of KOFA decisions as well: the fee was raised from NOK 860 (approx. EUR 92) to NOK 8000 (approx. EUR 852) for advisory decisions; a new fee of NOK 1000 (approx. EUR 107) was introduced for decisions on illegal direct awards (previously, there had been no fee for this latter type of decision.)

Given that the fee introduced for illegal direct awards was relatively small compared to the increase for advisory decisions (NOK 1,000 or 16% vs. NOK 7,140 or 800%), there is an indication that the decrease of appeals to KOFA might be in part related to the status of KOFA's decisions (binding or not binding).

According to feedback by the institution and suppliers, KOFA faced situations of overwhelming case load and was not able to follow up as intended to all cases, due to resource and staffing constraints.

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<sup>45</sup> One exception are appeals to the chair of the KOFA board in the case of summary decisions taken by the secretariat to reject complaints as unfounded or unfit for review by the board, for example, because of the need to hear witnesses.



matters related to infringements of the Act, Regulation and Utilities Regulation, or within two years after the contract has been entered into force if it is held to be an illegal direct award. Complaints to KOFA must be filed within 6 months after signing the contract. In cases where it is alleged that there has been made an illegal direct award of contract the time limit for submission of a claim is 2 years. These timeframes specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process. Statistics show that on average, “priority cases” took two months (62 days) to be completed in 2016; other cases took four months (114 days). Priority cases are cases in which the contracting authority is willing to halt procedures while KOFA deliberates the case. As illegal direct award cases are quite demanding, case handling time is expected to increase.

Complaints can be directly lodged with the courts. In accordance with the EU remedies directive, challenges related to ineffectiveness, contract duration or the imposition of administrative fines have to be lodged within two years from the time the contract entered in force. The limitation period is 30 days if the contracting authority has either informed the tenderers of the conclusion of the contract, or published a contract award notice and waited 10 days before signing the contract. Claims for damages are subject to a three-year general limitation period. Interim measures cannot be awarded when the contract has been signed.

Norwegian appeals procedures are only available and legally binding on members of the GPA/EEA/EFTA and EFTA free trade agreements.

According to a KOFA evaluation of 2006, KOFA is considered (by the majority of the people surveyed as part of the evaluation) as a well-functioning enforcement scheme in line with the



intentions underlying its establishment/creation. KOFA enjoys high authority and its advisory opinions are generally respected by both parties.

#### 13(b) – Independence and capacity of the appeals body

The bodies in charge of appeals, KOFA and the courts, are not involved in any capacity in procurement transactions or in the process leading to contract award decisions. Complaints can be filed after paying a fee of NOK 8000 for advisory decisions. Complaints regarding illegal direct awards have a filing fee of NOK 1000. According to feedback from suppliers and other stakeholders, these fees do not represent an obstacle to access by concerned parties. KOFA and the courts follow procedures for submission and resolution of complaints that are clearly defined and publicly available on the respective websites of the institutions. Complaints with KOFA must be lodged formally, in writing, and drafted in Norwegian. The procedure for reviewing cases consists of a written exchange of pleadings, without oral hearings that are part of the procedures in ordinary courts. There are, however, no oral proceedings. KOFA does not have legal authority to suspend procurement proceedings; however, KOFA always asks contracting authorities to suspend proceedings. If the contracting authority suspends the procedure, KOFA will prioritise the case and handle it in an expedited manner. KOFA can impose fines with regards to illegal direct awards. Otherwise, only the courts can impose binding remedies and only in cases brought before the court a suspension of proceedings is automatic during the standstill period. Both KOFA and the courts issue decisions within the timeframe specified in the law/regulations; KOFA decisions are only binding with regards to illegal direct awards. In other cases, KOFA issues decisions that have advisory character; the courts issue binding decisions in all cases.



### 13(c) – Decisions of the appeals body

According to feedback from suppliers, decisions resulting from the Norwegian appeals system for public procurement are based on information relevant to the case. Decisions by KOFA and the courts are considered balanced and unbiased in consideration of the relevant information. Decisions by the contracting authorities can be brought to ordinary courts for judicial review. In addition, decisions taken by the District court (first instance) may be appealed to the Appeal Court and then to the Supreme Court. Decisions by the appeals system result in remedies that are necessary to correcting the implementation of the process or procedures. It should be noted that complaints only result in an automatic suspension of the procedure during the standstill period if the complaint is brought before an ordinary court. Complaints with KOFA do not result in automatic suspensions. The contracting authority may, however, decide to suspend the procedure pending the outcome of the KOFA's decision. KOFA handles the case in an expedited procedure if the contracting authority confirms that the conclusion of the contract will be suspended. In other cases, it may take between 3 -12 months before a decision from KOFA is obtained.

KOFA does not have the power to award damages but KOFA can consider whether conditions for obtaining damages are fulfilled. Decisions are published on the KOFA website as soon as a decision is rendered. 151 decisions were rendered in 2016. The majority of cases were linked to questions around the award decision process (59 cases), to the incorporation of environmental, human rights or societal considerations (50 cases), and rejection of bids (44 cases). Cases can be linked to several issues.<sup>46</sup>

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<sup>46</sup> <http://www.kofa.no/no/Avgjorte-saker/>



The assessment criteria to indicator 13(c) included the following recommended quantitative indicator:

- Share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses).
- Share of suppliers that perceive appeals decisions as consistent (in % of responses).

Several related questions were included in a survey with suppliers (see annex for detailed responses in English.) The following responses were obtained:

- 66.4% of responding suppliers have trust or great trust in KOFA; 70.2% of suppliers have trust or great trust in the courts' appeals mechanism.

10.8% of responding suppliers have appealed to KOFA; of these, 41.6% were satisfied with the procedure.

4.6% have appealed using the court system; of these, 53.7% are satisfied with the procedure.

In general, 70.7% of responding suppliers say that all or most of the decisions by the challenge and appeals system are taken in accordance with the rule of law and are predictable ("consistency").

**14. The country has ethics and anticorruption measures in place**

In general, Norway is considered a country with very low levels of corruption (e.g., Norway is the 6<sup>th</sup> least corrupt country in the Corruption Perception Index that ranks 175 countries.) Norway's public procurement system is in line with this tradition.

14(a) – Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties

The Norwegian legal and regulatory framework does not include a specification on a "cool off" period (prohibition that active and former public officials intervene in procurement matters for a certain time after leaving office). Interview partners raised a recent case in which a cool-off period might have made a difference (purchase of helicopters; public official joined the private sector immediately after his term in the public sector.)

Norway does not have a formal mechanism for reporting



The Norwegian legal and regulatory framework contains definitions of prohibited practices and the resulting responsibilities and sanctions for the various actors in public procurement. Norway has also implemented international obligations related to anti-corruption.

#### 14(b) – Provisions on prohibited practices in procurement documents

The Norwegian legal and regulatory framework specifies prohibited practices with regards to public procurement and requires that contract documents include standard clauses referring to the legal specifications. Procurement and contract documents include provisions on fraud, corruption and other prohibited practices as specified in the legal and regulatory framework.

#### 14(c) – Effective sanctions and enforcement systems

Norway has a suspension and debarment system which ensures due process. Rules for exclusion of contractors reflect EU laws and prescribe exclusion in case of criminal court sentences. More than 500 corruption-related cases were filed since 2003 and provide evidence for enforcement activity (see sub-indicator 14(g)). Norway's Competition Authority sanctioned bid-rigging in eight cases between 2008 and 2016.

The assessment criteria to indicator 14(c) included the following recommended quantitative indicator:

- Number of firms admitting to unethical practices including making (in % of responses).

Several related questions were included in a survey with

misconduct. However, the police is usually very open and directly accepts tip-offs.

There is not a specific definition of conflict of interest in Norwegian regulations and it can be sanctioned as in the same case of corruption.

While there is no requirement, anti-corruption training is available; however, the generally trusting environment might result in a situation where basic corruption risks might be overlooked. Feedback from counterparts suggested that favouritism might be more widespread than thought simply because close-knit, small communities on local level and low awareness about corruption issues result in close connections between suppliers and public procurers. It might be worthwhile to engage on this topic specifically, to ensure that the low levels of corruption are maintained in the future and on all levels.

Counterparts reported that recent corruption scandals were associated with negative outcomes for the whistle-blowers. While the Norwegian system was perceived as very open to critique and potentially whistleblowing, there were mostly no dedicated mechanisms to report corruption or similar wrongdoing related to public procurement anonymously.

Training measures related to corruption and the code of conduct could be made more systematic across all levels.

The following quantitative assessment criteria were not



suppliers (see annex for detailed responses in English.) The following responses were obtained:

- 33.1% of responding suppliers have paid for dinner for a potential client

20.2% of suppliers have given a gift valued at NOK 500 (approx. EUR 53) or below

#### 14(d) – Anti-corruption framework and integrity training

Norway has a comprehensive anticorruption framework to prevent, detect and penalize corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out. The contracting authorities are tasked with the provision of anti-corruption training to their staff as needed. The majority of the anti-corruption related tasks are delegated to the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime, ØKOKRIM. ØKOKRIM also collects statistics related to corruption, but publishes them in an annual report as opposed to a database.

Special measures are implemented by the contracting authorities to detect and prevent of corruption associated with procurement, under the guidance of ØKOKRIM and Difi. While there is no requirement to do so, basic training on integrity issues with regard to public procurement is provided on a contracting authority or municipality level.

The assessment criteria to indicator 14(d) included the following recommended quantitative indicator:

- Percentage of favourable opinions by the public on the effectiveness of anticorruption measures (in % of responses).

Several related questions were included in a survey with

available:

- Firms/individuals found guilty of fraud and corruption in procurement: Number of firms/individuals prosecuted, convicted; prohibited from participation in future procurements (suspended/debarred)

- Government officials found guilty of fraud and corruption in public procurement: Number of officials prosecuted/convicted.



suppliers (see annex for detailed responses in English.) The following responses were obtained:

- Suppliers consider dedicated reporting channels to report misconduct, as well as training and education about rules related to corruption as most effective. There was only slight variation in the consideration of different ways to address corruption; all were considered, on average, as “somewhat effective.”

14(e) – Stakeholder support to strengthen integrity in procurement

Norway has a tradition of strong and credible civil society organizations that exercise social audit and control. Several civil society organisations are working on anti-corruption issues in Norway, including Transparency International's Norwegian Section, Publish What you Pay and the Tax Justice Network. There is an enabling environment for civil society organizations to have a meaningful role as third party monitor. According to conversations with the organisations, civil society organisations feel like they have a meaningful role as third party monitor. There is evidence that civil society contributes to shape and improve integrity of public procurement. Several journalists have uncovered corruption cases or wrongdoing related to public procurement. Suppliers in Norway actively support integrity and ethical behaviour in public procurement, e.g., through internal compliance measures, according to feedback from industry organisations. The Norwegian industry organisation NHO has developed a compliance training programme that is widely used by Norwegian suppliers.

14(f) – Secure mechanism for reporting prohibited practices or unethical behaviour

The Norwegian system has a system for the public reporting of cases of fraud, corruption or other prohibited practices or





unethical behaviour. So called “whistle-blowers” reporting such wrongdoings are protected by legal provisions in the Working Environment Act since 2007. A major study on the subject from 2010 concluded that whistle-blowers in Norway are rarely penalised and whistleblowing is more effective than is reported in international literature. Other legislative changes that have been made, which are important in terms of anti-corruption, are the Money Laundering Act, the introduction of quarantine regulations for members of government and state employees and tighter procurement regulations.

14(g) – Codes of conduct/codes of ethics and financial disclosure rules

Norway has a code of conduct for government officials, titled “Ethical Guidelines for the Public Service”<sup>47</sup>. It is obligatory, with administrative consequences, and includes particular provisions for those involved in public financial management, including procurement. The purpose of the regulations on financial management is to ensure that: central government funds are used and revenues are generated in accordance with the resolutions and defined expectations of the Storting; that adopted objectives and performance requirements are met; that central government funds are used efficiently; that central government assets are properly managed.

The code defines accountabilities for decision-making and subjects decision makers to specific financial disclosure requirements: Agencies decide how to organise their financial management tasks within the framework of the Regulation on Financial Management in Central Government and applicable provisions, as well as any instructions issued by the superior ministry. The heads of each agency have independent

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<sup>47</sup> <https://www.regjeringen.no/en/dokumenter/Ethical-Guidelines-for-the-Public-Service-2/id88164/>



responsibility for financial management tasks, irrespective of whether some tasks are performed by others.

Regular training programs appear to be offered to ensure sustained awareness and implementation of measures. However, it remained unclear to what extent these trainings are systematic and are repeated to sustain a reliably high compliance.

Nationwide numbers on corruption cases and convictions are not available. According to information gathered by the Oslo Police, 557 corruption-related charges were filed in Norway between 2003 and 2017. In 339 of these cases, corruption was the main offense. An additional 5 to 15% of cases are considered confidential; these are not included in the 557 charges. Note that in some instances, several individual charges relate to the same corruption case (one criminal offense to offer a bribe, and one to receive it, for example.)



## Annex

### Stakeholders interviewed during the fact finding mission

Type of stakeholder	Name of the organisation	Main contact	Position
Institution in charge of the normative/ regulatory function for public procurement	Ministry of Trade, Industry and Fisheries (NFD)	Liv Lunde	Assistant Director General
Institution in charge of the normative/ regulatory function for public procurement	Agency for Public Management and eGovernment (Difi)	Dag Strømsnes and the heads of section	Head of Department
Procuring entities	Difi/ Centre for all of Government Contracts	Dag Strømsnes, Barbro Bottheim and the head of sections	Head of Department
Procuring entities	Statsbygg (Directorate, the Norwegian government's key advisor in construction and property affairs, building commissioner, property manager and property developer)	Bård Sandbæk	Head of Procurement
Procuring entities	Nye veier	Cathrine Murstad	Head of legal/ Lawyer
Procuring entities	NAV (the Norwegian Labour and Welfare Administration)	Hege Brinchmann	Head of Procurement
Procuring entities	Sykehusinnkjøp/ Hospital Procurement	Harald Johnsen	Head of Division
Procuring entities	Statens vegvesen (Norwegian Public Roads Administration)	Gunnar Anders Bru	Head of Section
Procuring entities	Skatteetaten/ Norwegian tax administration	Erlend Leinum	Head of Section
Procuring entities	University of Oslo	Kjetil Sivertsen and Kjell-Gunnar Linde Thomsen	Senior adviser



Procuring entities	Oslo city (municipality of Oslo), UKE, Procurement department	Gro Bergeius Andersen	Head of legal unit
Procuring entities	Municipalities, represented by KS, The Norwegian Association of Local and Regional Authorities (KS)	Kristine Røed Brun	Lawyer
Procuring entities	Fylkeskommunalt innkjøpsforum (FI) /Procurement network for County Authority	Roar Pedersen (Nord-Trøndelag FK)	Head of Procurement
Procuring entities state owned enterprises	Posten (Norway Post)	Petter Andresen	Head of Procurement
Procuring entities state owned enterprises	NSB (NSB Passenger Train Division)	Linda Rønneberg	Head of Procurement
Procuring entities state owned enterprises	Avinor (responsible for 46 state-owned airports, operates control towers, control centres and other technical infrastructure for safe air navigation)	Joachim Jacobsen	Leader operative procurement
Procuring entities state owned enterprises	Statnett (the system operator in the Norwegian energy system/electricity grid, operating about 11 000km of high-voltage power lines and 150 stations)	Ellen Sande	Head of Procurement
Authorities responsible for budgeting and financial procedures	Ministry of Finance	Astri Tverstøl	Deputy Director General
Authorities responsible for budgeting and financial procedures	Direktoratet for økonomistyring (DfØ)/ Norwegian Government Agency for Financial Management	Wibecke Høgsveen	Head of Department
Authorities in charge of internal and external controls and audits	KOFA (Norwegian Complaints Board for Public Procurement)	Jonn Sannes Ramsvik	Deputy Secretariat
Anti-corruption agencies	Transparency International Norway	Guro Slettemark	Secretary General
Anti-corruption agencies	Oslo police, Section for Finance and environment	Rune Skjold	Head of Section
Training institution/ Procurement professional body	Kommunenes innkjøpsforum (KSI)/ Procurement network for municipalities	Tommy Hestem	Head of Procurement, Municipality of Asker
Training institutions	NIMA/ Norwegian Association of Purchasing and Logistics	Svein Egil Hoberg	Director procurement and logistics KPMG



Training institutions	Anskaffelsesakademiet/ Procurement Academy	Tim Torvatn	Associate
	The Norwegian Confederation of Trade Unions (LO)	Marianne Breiland	Advisor
Representatives of private sector; representatives of civil society	NHO (the Confederation of Norwegian Enterprises)	Arnhild Gjønnnes	Lawyer
Representatives of private sector; representatives of civil society	Virke, the Enterprise Federation of Norway	Anita Sundal	Lawyer Industrial Policy/ Leader Industrial Policy
Competition Commission	Konkurransetilsynet (Competition Authority)	Marion Stamnes	Senior Advisor
Research institutions, academia	UiB (University of Bergen)	Halvard Haukeland Fredriksen	Professor
Research institutions, academia	Høgskolen i Molde (Molde University College)	Geir A. Svenning	Head of Department
Research institutions, academia	Norwegian University of Science and Technology (NTNU)	Luitzen de Boer	Professor
Research institutions, academia	Nord University	Jan Ole Similä	Associate Professor
Media	Anbud 365	Lennart Hovland	Journalist
Media	Kapital	Siri Gedde-Dahl	Journalist
Media	Kommunal rapport	Ole Petter Pedersen	News editor



## Links to institution websites and existing assessments supporting the findings

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### Pillar I

*Information about the changes in new law*

<https://www.regjeringen.no/no/tema/naringsliv/konkurransopolitikk/offentlige-anskaffelser-/forste-kolonne/nytt-anskaffelsesregelverk/id2518659/>

*Legal guidance to the new law*

<https://www.regjeringen.no/no/tema/naringsliv/konkurransopolitikk/offentlige-anskaffelser-/forste-kolonne/veileder/id2518931/> (Only available in Norwegian)

*The Law on Public Procurement and regulations*

#### **The Law on Public Procurement (the Procurement Law)**

- [Lov 17. juni 2016 nr. 73 om offentlige anskaffelser.](#)  
(Procurement implemented after 1. January 2017)
- [Lov 16. juli 1999 nr. 69 om offentlige anskaffelser.](#)  
(Procurement implemented before 1. January 2017)

#### **Public Procurement Regulations (Forskrift om offentlige anskaffelser (anskaffelsesforskriften))**

- [Forskrift 12. august 2016 nr. 974 om offentlige anskaffelser.](#)  
(Procurement implemented after 1. January 2017)
- [Forskrift 7. april 2006 nr. 402 om offentlige anskaffelser.](#)  
(Procurement implemented before 1. January 2017)

#### **Supply regulations (Forsyningsforskriften)**

- [Forskrift 12. august 2016 nr. 975 om innkjøpsregler i forsyningssektorene.](#)  
(Procurement implemented after 1. January 2017)
- [Forskrift 7. april 2006 nr. 403 om innkjøpsregler i forsyningssektorene \(vann- og energiforsyning, transport og posttjenester\).](#)  
(Procurement implemented before 1. January 2017)

#### **Concession Contract Regulations (Konsesjonskontraktforskriften)**

- [Forskrift 12. august 2016 nr. 976 om konsesjonskontrakter.](#)  
(Procurement implemented after 1. January 2017)

#### **Appeal board Regulations (Klagenemndsforskriften)**

- [Forskrift 15. november 2002 nr. 1288 om klagenemnd for offentlige anskaffelser.](#)
- [Forskrift 12. august 2016 nr. 977 om endring i forskrift om klagenemnd for offentlige anskaffelser.](#)  
(Changes apply to procurement implemented after 1. January 2017)



## Regulations on defence and security procurement (Forskrift om forsvars- og sikkerhetsanskaffelser)

- [Forskrift 4. oktober 2013 nr. 1185 om forsvars- og sikkerhetsanskaffelser.](#)

### More relevant regulations

- [Forskrift 22. desember 2016 nr. 1842 om fastsettelse av tvangsmulkt i medhold av lov om offentlige anskaffelser.](#)
- [Forskrift 17. desember 2016 nr. 1708 om plikt til å stille krav om bruk av lærlinger i offentlige kontrakter.](#)
- [Forskrift 8. februar 2008 nr. 112 om lønns- og arbeidsvilkår i offentlige kontrakter.](#)
- [Forskrift 12. april 1992 nr. 910 om gjennomføring av EØS-avtalens vedlegg XVI punkt 6/Rfo EØF/Euratom nr. 1182/71\) om fastsettelse av regler for frister, datoer og tidspunkter.](#)

### *Database for Public Procurement (Doffin)*

<https://doffin.no/en>

### *The Norwegian Complaints Board for Public Procurement (KOFA)*

<http://www.kofa.no/no/English/>

<http://www.kofa.no/no/English/Case-briefs/>

### *The Courts of Norway*

<https://www.domstol.no/en/Civil-case/>

### *Competition Act enforced by the Competition Authority*

<http://www.konkurransetilsynet.no/en>

[http://www.konkurransetilsynet.no/globalassets/filer/english/fact-sheet/konkurranseloven\\_english.pdf](http://www.konkurransetilsynet.no/globalassets/filer/english/fact-sheet/konkurranseloven_english.pdf)

<http://www.kt.no/nb-NO/publikasjoner/brosjyrar/konkurransetilsynet-2016---2017/>

### *Electronic Procurement*

<https://www.anskaffelser.no/e-procurement>

### *Archives Act*

<https://lovdata.no/dokument/NL/lov/1992-12-04-126>

<http://www.arkivverket.no/eng/Public-Sector>

### *Freedom of Information Act*

<https://lovdata.no/dokument/NL/lov/2006-05-19-16>

### *Electronic Public Records*

<https://oep.no/?lang=en>

### *Economy regulations in State Agencies*

[https://www.regjeringen.no/globalassets/upload/fin/vedlegg/okstyring/reglement\\_for\\_ekonomistyring\\_i\\_staten.pdf](https://www.regjeringen.no/globalassets/upload/fin/vedlegg/okstyring/reglement_for_ekonomistyring_i_staten.pdf)



<https://dfo.no/fagomrader/okonomiregelverket/>

5.3 Procurement (page 79)

*Standard contract conditions*

<https://www.anskaffelser.no/it/statens-standardavtaler/statens-standardavtaler-ssa>

<https://www.standard.no/fagomrader/kontrakter-og-blanketter/kontraktstandarder-bygg-anlegg-og-eiendom/>

<https://www.anskaffelser.no/bygg-anlegg-og-eiendom-bae/temaer-bae/kontrakter>

*Difi's Anskaffelser.no. User's guide for procuring entities*

<https://www.anskaffelser.no/>

*Sustainable Public Procurement*

<https://www.regjeringen.no/no/tema/naringsliv/konkurransopolitikk/offentlige-anskaffelser-/andre-kolonne/samfunnsansvar/id2518748/>

## Pillar II

*National Budget*

<http://www.statsbudsjettet.no/Statsbudsjettet-2017/English/>

*Examples of procurement plans*

There are few examples of procurement plans that are published online. This is one example:

(Bane NOR) <http://www.banenor.no/Marked/Leverandorinfo/Innkjop/Planer-for-fremtidige-anskaffelser/>

*Difi's guidance on public procurement*

[www.anskaffelser.no](http://www.anskaffelser.no)

<https://www.difi.no/rapporter-og-statistikk/nokkeltall-og-statistikk/innkjop>

*Centralized Procurement Body*

<https://www.anskaffelser.no/statens-innkjopscenter>

*Database for Public Procurement (Doffin)*

<https://doffin.no/en>

*Electronic Procurement*

<https://www.anskaffelser.no/e-procurement>

*Procurement Academy*

[https://www.anskaffelser.no/sites/anskaffelser/files/anskaffelsesakademi\\_-\\_difi\\_arbeidsnotat\\_2015.pdf](https://www.anskaffelser.no/sites/anskaffelser/files/anskaffelsesakademi_-_difi_arbeidsnotat_2015.pdf)

*Norwegian Association of Purchasing and Logistics (NIMA)*

<http://www.nima.no/engelsk-side/category759.html>





KS Certification Course Public Procurement 2017

<http://www.ks.no/contentassets/1721102c941e42e58d736fae834f00ed/sertifiseringskurs-2017-invitasjon-med-kv-endringer-.pdf>

## Pillar IV

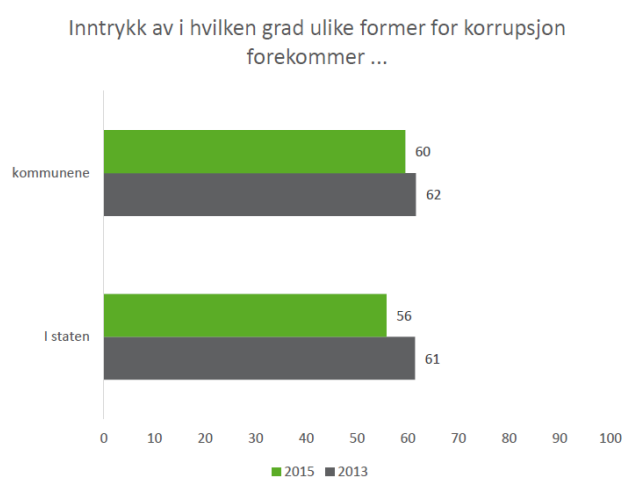
*Citizen survey. Innbyggerundersøkelsen 2015*

[https://www.difi.no/sites/difino/files/difi-rapport\\_2015\\_5\\_innbyggerundersokelsen\\_2015\\_hva\\_mener\\_innbyggerne.pdf](https://www.difi.no/sites/difino/files/difi-rapport_2015_5_innbyggerundersokelsen_2015_hva_mener_innbyggerne.pdf)

Chapter 6.2 (page 22)

<https://www.difi.no/rapporter-og-statistikk/undersokelser/innbyggerundersokelsen-2015/om-undersokelsen/gjesteartikkel-nesten-halve-befolkningen-mener-det-foregar-korrupsjon-i-det-offentlige>

### 2015 citizens' survey – excerpt, English translation of main points



From the 2015 survey: To what extent do you think bribes and favouring family and friends takes place in Norway's public sector? On a scale from 0 to 100, with the higher score meaning a negative situation.

Results show the score 60% in municipal level, and 56% at central level.

*The Office of the Auditor General's report on the annual audit and control for the 2015 budget year*

<https://www.riksrevisjonen.no/en/Reports/Pages/FinancialAudit2015.aspx>

*Guidance on gifts in service. Veileder om gaver i tjenesten*

Source: Ministry of Local Government and Modernisation.

<https://www.regjeringen.no/no/dokumenter/Veileder-om-gaver-i-tjenesten/id757296/>

*Cases of corruption: examples for media reporting*

A) <https://www.nrk.no/norge/24-domt-for-kommunal-korrupsjon-1.10848559>

B) <http://vegnett.no/2016/12/hva-skil-til-for-at-vegvesenet-stenger-ute-en-entreprenor-pa-grunn-av-korrupsjon-og-skattesvik/>



## Information from the Competition Authority

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Link to the Competition Authority's information brochure and checklist relating to illegal bid rigging are here: <http://www.kt.no/nb-NO/publikasjoner/brosjyrar/blir-du-lurt-unnga-anbudssamarbeid-ved-anskaffelser/>

Competition Authority has made the following decisions regarding the Competition Act § 10 (prohibition of anticompetitive agreements between undertakings):

- V2008-18 Håkon Rune / Oslo VVS
- V2008-4 Borregaard Industries Limited
- V2008-5 Brenntag
- V2009-7 Taxi Midt-Norge
- V2009-15 Norges Turbileierforbund
- V2009-17 Gran og Ekran / Grunnarbeid
- V2011-11 Fløysand Tak AS / IcopalTak AS
- V2011-12 Ski Taxi, Follo Taxisentral, Ski Follo Taxidrift
- V2013-3 Veidekke ASA / Veidekke Industri AS / NCC AB / NCC Roads AS
- V2015-25 ES-kjeden SA
- V2015-28 Arro Elektro AS/Arro Holding AS - Caverion Norge AS / Caverion Oyj - Ingeniør Ivar Pettersen AS / Pettersen AS
- V2016-7 - Johny Birkeland Transport AS/Norva 24 AS – Lindum AS

Of these decisions were V2008-18, V2009-7, V2009-17, V2011-11, V2011-12, V2013-3, V2015-28 and V2016-7 illegal bid rigging. These are decisions that are aimed at the cooperative enterprises; it is not the purchaser who is control object or party to the case.

All decisions are available in the public version on the Competition Authority's website via this link: <http://www.kt.no/nb-NO/vedtak-og-avgjorelser/vedtak-og-avgjorelser/?filterByYear=2016>



## Relevant questions corresponding to MAPS indicators with survey-based assessment criteria

### *Sub-indicator 5(d):*

- Perception that the normative/regulatory institution is free from conflicts of interest.

#### **1) Avoiding conflict of interest**

1.1) How would you assess the reputation of the public institutions you worked with as part of public procurement processes?

[4 point scale: 4 no perceived conflicts of interest – 3 minor conflicts – 2 conflicts of interest are obvious - 1 abundant conflict of interest.]

Responses: The question used is phrased like this: Based on own experiences, how would you assess the ethical decisions CAs have made in a procurement process?

1 (Handle conflict of interest very poorly)=7.4%

2 (Handle conflict of interest poorly)=25.9%

3 (Handle conflict of interest well)=54.5%

4 (Handle conflict of interest very well)=12.2%

1.2) In the context of a public procurement procedure, have you / your company ever experienced a situation where a public authority or its employees faced a conflict of interest? [yes / no]

Responses:

Yes=24.6%      No=75.4%

1.3) If yes, what did the conflict of interest relate to? Please choose among the following options:

- Unclear separation of duties between institutions
- Unclear competencies of officials
- An official position is used improperly for private advantage and improper personal gain
- An official's family or other personal relations
- An official's political affinities
- Other: please specify

Responses:

Unclear separation of duties between institutions	11.5%
Unclear competencies of officials	14.2%
An official position is used improperly for private advantage and improper personal gain	11.9%
An official's family or other personal relations	30.1%
An official's political affinities	14.6%
Other: please specify	17.7%



1.4) In general, how do you assess the reputation of the public bodies in charge of setting policies and giving guidance on their implementation regarding public procurement (Ministry of Trade, Industry and Fisheries and Agency for Public Management and eGovernment (Difi))?

[4 point scale: 4 no perceived conflicts of interest – 3 minor conflicts – 2 conflicts of interest are obvious - 1 abundant conflict of interest.]

Responses:

1=5.6% 2=12.8% 3=47.2% 4=34.5%

**Sub-indicator 10(a):**

- Perception of openness and effectiveness in engaging with the private sector.

**2.) Dialogue and partnerships between public and private sector**

2.1) Have you ever participated in any training or information session on public procurement in general? Here, we are thinking about training or information sessions that improve your understanding on how to participate in public procurement –i.e., how to win public tenders and contracts. [yes/ no,] If yes, who organised it?

Yes=30.0%

No=70%

Organizer	Percent
Public sector	29.6
Business/industry association	44.8
Law firm/consultancy firm	22.4
Other	3.2

What is your source to find information/guidance on how to prepare bids for public tenders?

Website Difi's anskaffelser.no	44.3%
My industry association	34.0%
Website of potential/relevant client	44.7%
KOFA	6.0%
Commercial law firms/consultants	26.6%

How often have your company participated in the following types of engagement activities: (1=Never, 2=rarely, 3=sometimes and 4=Often):

Open meeting organised by the CA about a planned contract opportunity where several suppliers are present	Average 2.02
CA-organised one-on-one meeting for the planned contract opportunity	1.93
Open meeting organised by CA about future procurement plans	1.56
Open meeting organised by CA about general supplier and market relations	1.6
Meeting with the CA client during the contract period about performance, status, etc.	2.33



To what extent did you feel your company was given the opportunity to give input/make suggestions for the coming tender process?

Not at all	33.0%
To a limited extent	39.0%
To some extent	24.6%
To a large extent	3.3%

2.2) What is your perception of Norwegian public institutions in general when it comes to communicating with companies like yours:

[4 point scale: 4 very open: public institutions are generally providing advice and necessary information to facilitate effective proposals – 3 open: with sufficient effort, information can be obtained – 2 partially open: public institutions provide limited information upon request – 1 not open at all: public institutions are not assisting suppliers to submit appropriate tenders by providing information, clarification or advice]

Question used: In your opinion, what is most important to make high quality tenders in public sector? (1=not important/relevant, 2=of low importance/relevance, 3=of importance/relevance and 4=of high importance/relevance).

Alternatives “More dialogue and market engagement in general” received score of average 3.12.

“More dialogue with suppliers in the pre-tender phase” received score of average 2.93

“More clear rules and guidelines of how to do supplier/market engagement activities (legally)” received score of average 2.74

Question used: «In your opinion, to what extent are CAs available for information/communication during a tender process?

Not available at all: CAs do not help suppliers to prepare bids by providing information, guidance or advise.	22.6%
Partly available: CAs provide some information when requested to	49.4%
Available: With adequate efforts information is provided by CAs	25.2%
Very available: In general. CAs help suppliers by providing information, guidance and advise that make it easier to prepare bids	2.7%

2.3) Think about the times you interacted one-on-one / individually with public institutions and their representatives with regards to a public contract or public procurement in general. Would you say that efforts to reach out to you were mostly:



[4 point scale: 4 very effective/constructive – 3 effective/constructive – 2 not really effective/constructive – 1 not effective/constructive at all]

1 not effective/constructive at all	11.3%
2 not really effective/constructive	31.8%
3 effective/constructive	49.2%
4 very effective/constructive	7.6%

*Sub-indicator 10(b)*

- Perception of firms on the appropriateness of conditions in the public procurement market

**3.) Good market conditions for the private sector to participate in public procurement**

3.1) In the case of Norway, do you think that the following conditions in the public procurement market are met? Yes/No

Access to financing	26.0%
Procurement methods that are proportionate to the risk and value in question, including rules that are simple and flexible	34.2%
Contracting provisions that help distributing risk fairly (specifically those risks associated with contract performance)	32.6%
Fair payment provisions	40.7%
Effective mechanism for appeals and dispute resolution	17.8%
Division of contracts into lots	27.6%
Other	8.5%

3.2) In your view, what is missing in this list?

[open text field]

3.3) What conditions should be improved, and how? Please specify.

[open text field]

*Sub-indicator 13(c):*

\_ Share of suppliers that perceive the challenge and appeals system as trustworthy.

- Share of suppliers that perceive appeals decisions as consistent

**4.) Decisions of the appeals body**

4.2) Second, we would like to consider your personal experience: Have you ever used the challenge and appeals system in Norway with regards to one of your bids? [yes / no] If yes, are you satisfied with the procedure? [yes / no]

Question phrased: How do you perceive your opportunities to appeal to KOFA?

Responses:

I do not trust the KOFA system=11.7%

I have low trust in the KOFA system=21.9%

I have trust in the KOFA system=51.1%

I have great trust in the KOFA system=15.3%



How do you perceive your opportunities to appeal to the courts' appeals mechanism?

Responses:

- I do not trust the courts' appeals mechanism =9.9%
- I have low trust in the courts' appeals mechanism =19.9%
- I have trust in the courts' appeals mechanism =49.6%
- I have great trust in the courts' appeals mechanism =20.6%

Did you ever appeal to KOFA?

- Yes=10.8%
- No=89.2%

If yes, are you satisfied with the procedure?

- Yes=41.6%
- No=58.4%

Did you ever appeal using the courts' appeals mechanism?

- Yes=4.6%
- No=95.4%

If yes, are you satisfied with the procedure?

- Yes=53.7%
- No=46.3%

4.3) [Regardless of yes or no in the previous question:] What could be improved?

[open text field]

4.4) Generally speaking, how would you assess the consistency of the challenge and appeals decisions taken in Norway with regards to public procurement? [4 point scale: 4 all decisions are taken in accordance with rule of law and are predictable – 3 Most of the decisions are in accordance with rule of law and are predictable – 2 Only a very limited number is in accordance with rule of law and predictable - 1 The decisions do not seem to be in accordance with rule of law and are not predictable.]

4 all decisions are taken in accordance with rule of law and are predictable	6.3%
3 Most of the decisions are in accordance with rule of law and are predictable	64.6%
2 Only a very limited number is in accordance with rule of law and predictable	19.9%
1 The decisions do not seem to be in accordance with rule of law and are not predictable	63.%



*Sub-indicator 14(c):*

- Gifts to secure public contracts: Number of firms admitting to unethical practices including making gifts

**5.) Ethics and integrity frameworks**

5.1) In pursuing new business opportunities with public institutions, have you or your colleagues ever ... [check all that apply]

- given a gift (below NOK 500 value)?
- given a gift (above NOK 500 value)?
- paid for the dinner of potential clients?
- invited potential clients to a trip?
- Other activities: please specify

invited potential clients to a trip?	7.9%
paid for the dinner of potential clients?	33.1%
given a gift (above NOK 500 value)?	2.9%
given a gift (below NOK 500 value)?	20.2%
Other activities: please specify	46.7%

*Sub-indicator 14(d):*

- Percentage of favourable opinions by the public on the effectiveness of anticorruption measures:

5.2) There are many ways to reduce corruption in public procurement. Below, you find a list of possible avenues. In your view, in the Norwegian context, how effective are these measures to reduce corruption in public procurement? Please assign a rating for each measure:

4 very effective, 3 somewhat effective, 2 not really effective, 1 not at all effective

	4 very effective
- providing information and/or training on what constitutes corruption and how to reduce corruption (i.e., the right and the duty to be informed and trained)	Average=3.07
- dedicated reporting channels to report misconduct	Average=3.09
- a code of conduct (ethical guidelines or similar guidance documents) for public and private entities	Average=3.00
- declaration forms for suppliers to affirm their compliance with anti-corruption rules	Average=2.71
- participation of watchdog organisations	Average=2.8
- e-procurement	Average=2.84
- due diligence or risk analysis	Average=2.61
- strong enforcement systems	Average=2.95
- limitations on post-public employment (“revolving door phenomenon”, “cool down phase” for public employees)	Average=2.81
Other (please specify)	

5.3) In your view, what is missing in this list? Do you have any other comments on your selections above? [open text field]





5.4) What would be your top three priorities in order to enhance effective anti-corruption measures in Norway?

[open text field]

### Introductory questions

- Position of the person filling out this survey [open text field]
- Please state the geographic location of your company [please specify: urban / rural].

Region	Percent of responses
South Norway (Including counties Aust-Agder, Vest-Agder)	3,6%
West Norway (Including counties Hordaland, Rogaland, Sogn og Fjordane, Møre og Romsdal)	25,3%
East Norway (Including counties Akershus, Buskerud, Hedmark, Oppland, Oslo, Telemark, Vestfold, Østfold)	46,8%
The middle part of Norway (Including counties Sør-Trøndelag, Nord-Trøndelag)	6,8%
North Norway (Including counties Finnmark, Nordland, Troms)	7,8%
Entire country	9,7%
<b>N</b>	916

- Please state the number of employees in your company.

1	5.9%
2-5	32.3%
6-10	17.6%
11-50	31.2%
51-250	10.1%
251-500	1.2%
501-1000	0.4%
More than 1000	1.2%

- Please state the gross income of your company.

Gross early income	Percent
Less than NOK 1 million	6,3%
NOK 1 – 5 million	24,0%



NOK 6 – 10 million	15,9%
NOK 11 - 50 million	33,7%
NOK 51 – 100 million	8,0%
NOK 101 - 200 million	5,1%
NOK 201 - 400 million	3,0%
More than NOK 400 million	4,0%
<b>N</b>	<b>921</b>

- What kind of category does your company mainly operate in? [Check one]
  - Goods 21.2%
  - Services 47.9%
  - Public works 30.9%

