



Bu proje Avrupa Birliđi ve Trkiye Cumhuriyeti tarafından finanse edilmektedir.



Avrupa Birliđi Bakanlıđı
IPA II Teknik Destek Projesi

Ministry for EU Affairs
Technical Assistance for IPA II

“Introductory training on PRAG and Twinning”

Ankara, 12 – 16, December, 2016

Trainer: Antal Tth





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Logistics



- Please turn off ringing tones of mobile phones
- 2 coffee/tea breaks and 1 lunch break





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Who am I?



Name: Antal Tóth

- Free-lance consultant (From 2004)
 - Several assignments for European Commission
 - Working for NDA in Hungary for 10 years
 - Public procurement assignments in several countries (Hungary, Netherland, Romania, Kenya)
 - Trainer in many projects (Training KE in BiH between 2014-2016, Croatia, Turkey)
 - Participating in tender evaluations (Hungary, Romania, Kosovo)
- Manager of EU Funds and State Aid Group at PwC Hungary (2003–2004)
- Project manager of CFCU Hungary (1999-2003)





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Please introduce yourself!



- Name, position, institution
- How long have you worked in your recent position?
- Your role, responsibilities
- Educational background and working experience
- What are your expectations from the workshop?
- Please write your first name on a folded paper so that others could see it





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Rules



- There are no stupid questions
- Interactive and informal approach
- Questions and comments welcome any time



Objectives of the Workshop

- Training goal:
 - „To consolidate the capacity to correctly tender services, supplies and works according to PRAG and to build a solid understanding of PRAG standard contracts as well as of the Twinning instrument”
- Aims of the workshop
 - Understanding and applying procurement principles
 - Understand and apply rules for procuring services, supplies and works
- By the end of the workshop participants:
 - know how to use (find information in) the PRAG, especially the sections on services, supplies and works
 - have knowledge on the Framework Contract procedures
 - are able to draft procurement documents for services, supplies and works, possibly with limited support from senior colleagues



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Structure of the Workshop



- We follow the programme, but can be reasonably flexible
- Lectures
- Case studies
- Questions and answers (after each modules)
- Workshop, teamwork
- Study of PRAG documents
- Entry/exit test





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Ice-breaker exercise



Five of
anything?

- Together
- Everyone
- Achieves
- More





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- **Completing entry test**





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Procurement procedures



- **Framework contracts (PRAG 2.4.5.)**
 - framework contract is an agreement between **one or more contracting authorities and one or more economic operators**, the purpose of which is to **establish the terms governing specific contracts** which may be awarded during a given period, particularly as regards the duration, subject, price, maximum value, implementation rules and the quantities envisaged,
 - framework contracts with several economic operators are called **‘multiple’ framework contracts**,
 - **minimum number** of economic operators is three,
 - the **duration** of such contracts may not exceed four years,
 - must obey the **principles** of transparency, proportionality, equal treatment, non-discrimination and fair competition.





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Procurement procedures



- **Framework contracts (PRAG 3.4.1.)**
 - services worth **more than € 20 000, but less than € 300 000,**
 - **Framework contract Beneficiaries 2013 (FWC BENEF 2013):** entered into force on January 1st 2014 and is valid until December 31st 2017,
 - may be used **for all operations within its scope where the contracting authority is the European Commission** acting on behalf of the partner countries or in mixed interest,
 - can be used by **other entities managing external aid funds,** if authorized by EuropeAid,



- **Framework contracts (PRAG 3.4.1.)**
 - CA for a specific contract **must have the funds** necessary to cover the services,
 - divided into a **number of thematic lots**, with several contractors selected for each lot,
 - These operations must:
 - be financed with **external aid funds**;
 - be in the **exclusive interest** of an authority receiving external aid;
 - **not exceed € 300 000**, addenda included, without being unduly split;
 - **not** give rise to services **exceeding 260 days per expert** and the **total duration** of a Specific Contract **may not exceed 730 calendar days**, addenda included;
 - use of the CRIS FWC module for the award of the Specific Contract is compulsory for all Commission services.

- Framework contracts (PRAG 3.4.1.) – procedure:
 - a) **Consultation:**
 - Identification of lot
 - **Request for services is sent to three FWCs** (in case of ineligibility – conflict of interest, suspension – of a FWC within a lot of 3 contractors, it is authorized to consult only 2 contractors),
 - **Must comply with the principles** of transparency, proportionality, equal treatment, non-discrimination and of sound competition,
 - **Suspension clause can not be added**, e.g. no request may be issued under the Framework Contract if no funds are available to cover the operation,

- **Framework contracts (PRAG 3.4.1.) – procedure:**
 - the **specific ToR** for the proposed specific contract is **attached** to the request,
 - **deadline for submission** of offers is at least **14 days** from the sending of the request (for the Conferences lot, the submission period can be reduced to 7 days for events with up to 15 participants),
 - FWCs can ask for **clarification**, the answers are sent simultaneously to all FWCs (if amendments would need the date for submission of offers must be adapted accordingly),

- Framework contracts (PRAG 3.4.1.) – procedure:
 - b) **Evaluation of offers:**
 - offers are **valid for 14 calendar days** after the deadline for submission (offers received – whatever their number – must be evaluated),
 - **at least three evaluators**, one representative of the partner country may be invited to participate as an evaluator,
 - **offers complying** with the deadline for submission, the eligibility rules, the maximum prices, the maximum budget stated (for lot 5 the minimum required skill specified as such in the specific ToR are respected) **are evaluated**,
 - **economically most advantageous offer** is selected on the basis of a 80/20 ratio (for the Conferences lot 50/50) between technical quality – CV and availability of experts, methodology – and the price (total fees, for the Conferences lot flat rates and reimbursable expenses are taken into account on a 50/50 basis)
 - if no offer is selected – after analyzing the ToRs – made changes and **relaunch the request** with the same framework contractors,
 - **within 14 days** of the deadline for receipt of offers, all **FWCs must be notified** of the results and the award decision (not to wait contract signature).

- Framework contracts (PRAG 3.4.1.) – procedure:
 - c) **Signature of the specific contract:**
 - based on the **highest ranking offer**,
 - **contract comprises** the assignment letter, the specific ToRs, any methodology used, and the financial offer,
 - **contract enters into force upon notification** that the CA has signed it, a copy must be sent by fax to the selected FWC, then it can start to provide the services, two sets are sent by courier for counter signature.
 - d) **Assessment of the framework contractor's performance:**
 - performance assessment form must be filled in **after the end of the assignment**,
 - covers the **standard** to which the FWC has executed the contract,
 - must be **sent** to the latter **for comments**.



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Procurement procedures



Framework contracts (PRAG 3.4.1.) – Lots:

- **FWC BENEf 2013:**

- Lot 1: Rural development and food security
- Lot 2: Transport and Infrastructures
- Lot 3: Telecommunications and information technologies
- Lot 4: Energy and nuclear safety
- Lot 5: Conferences
- Lot 6: Environment
- Lot 7: Governance and Home Affairs
- Lot 8: Health
- Lot 9: Culture, Education, Employment and Social
- Lot 10: Trade, Standards and Private sector
- Lot 11: Macro economy, Statistics, Public finance management
- Lot 12: Humanitarian Aid, Crisis Management and Post-Crisis assistance





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Other essentials



- All the documents related to FWC BENEf 2013 are published on the EuropeAid Development and Cooperation's **internal website** (Intranet)
- For the Decentralised Authorities of candidate or potential candidate countries which have no access to CRIS, all the documents for the use of the FWC BENEf 2013 are available **through the responsible delegations**
- **3 categories of experts:** Category I, Category II and Category III
- Can be either fee-based or global price





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What are services?



- Service contracts are used in case there is a need for outside know-how (technical assistance, experts' advice)
- The “products” bought are intellectual, not physical
- For all services procured, PRAG services' sections should be followed, except
 - For Framework Contracts there are separate procedures
 - Twinning is in principle delivery of services, but the service provider is a public sector institution, different procedures apply („Twinning Manual”)
- Types: study or technical assistance contracts





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Service contracts - types



- Service contracts shall comprise study and technical assistance contracts
 - Study contract (for the identification and preparation of projects, feasibility, economic and market studies, technical studies and audits)
 - Technical assistance contract (service provider is called on to play an advisory role, to manage or supervise a project, or to provide the experts)





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Fee-based contracts



- Fee-based contracts
 - **output is unpredictable** or the workload to achieve the specified output is impossible to quantify in advance,
 - affected by many factors which are **beyond control**,
 - **pay** the services **on the basis of time** actually worked.
- Fee-based contracts often only **specify the means**: the contractor is responsible for implementing the tasks entrusted to it in the ToR and ensuring the quality of the services provided.
- The contractor should, however, **contribute to improve** the performance, service consultant also has a **duty of care**.
- May also include activities **paid under the basis of lump sums**.
- **Examples?**





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Fee-based contracts



- Examples: project supervision, project management, monitoring, on-the-spot checks, evaluations, Technical assistance, Facilitation in a multi-stakeholder process





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Fee-based contracts



- **Do you see any problems with fee-based contracts?**



Fee-based contracts

- **Problems:**
 - **difficult to control the quality** of the outputs/deliverables
 - **not appropriate feedback/warning mechanism:** in many projects the most expert days were “consumed” when problems are realized, then it is quite difficult to make corrective steps
 - fee based contracts are **not realistic within the available maximum budget:**
 - expertise used during the identification of projects/programmes dramatically lacks appropriate guidelines to build up realistic budgets
 - various other items (office costs, support staff etc.) are added to the fees element but not taken into account in the maximum available budget
- **Consequences:**
 - firms cannot propose permanent personnel who are too expensive for the budget
 - even for employment of non permanent staff the best are becoming increasingly unaffordable



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Fee-based contracts



- **Solutions:**

- all project/programme budgets should be built realistic, allowing to hire best consultants, permanent (trained) staff
- promote a strategic change in the Commission approach to the industry through the gradual introduction and expansion of Global Pricing.





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Global-prices contracts



- Global-price contracts
 - **specified outputs** are defined,
 - **paid on the basis of the delivery** of the specified outputs, e.g. lump-sum contract (partial payments have to be determined according to the partial implementation of the outputs).
- in principle not possible to formally (or informally) add **any additional breakdown** to a global price contract (unless, e.g. where some deliverables are optional).
 - The **technical and operational means** by which the contractor achieves the specified output **are not relevant** for the method of measurement.
- **Examples?**





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Global-prices contracts



- Examples: studies, evaluations, audits, organisation of events such as conferences, trainings, workshops, seminars.
- Studies: identification and preparation of projects, feasibility studies, economic and market studies, technical studies, drafting a legal document, evaluations and audits





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Global-prices contracts



- Key assumptions and risks:
 - Decision for using either a fee-based or a Global price contract is currently not based on any regulation, decision largely **depends on interpretation**
 - Continuing **confusion between outputs, outcomes and results**
 - The **definition of output/deliverables and milestones** in the ToR should be very exact and clear; including measurement of quality, consequences of delays and non-performances (in the contract)
 - The **main control over the performance** is the approval of outputs/reaching milestones and the depending payment(s)



Global-prices contracts

- Key assumptions and risks:
 - The communication, cooperation with Consultant are less frequently, therefore it is very important to **take care of information** from any parties (e.g. beneficiaries) relating any problem of implementation/performance, probably **asking for regular (e.g. 6-months) reports** about the implementation, which can be additions over the reports of deliverables/outputs
 - If any doubt occur, **corrective actions** should be taken immediately (e.g. asking official information from involved parties, organizing ad-hoc meeting(s) with relevant key players, stakeholders)

Global-prices contracts

- Main advantages:
 - **More cost-effective:** would help decrease the considerable costs which are currently incurred by the multiple financial controls
 - **More efficient management and procedures:** in line with the policy of simplification of the financial management and invoicing procedures, enabling the consulting industry to focus on the best completion of the projects rather than on procedures, which do not contribute to the quality of the result
 - **Introducing intellectual added-value:** fee-based system excludes any possible variation to the Terms of Reference does not leave any room for creativity and alternative solutions for best reaching the objectives of a project



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Global-prices contracts



- Main advantages:
 - **An opportunity for more use of in-house experts:** Within the fee-based system the TOR describe in detail the required experts and their individual time input, in relation to fixed fee rates. As a result, firms cannot increase the involvement of their permanent personnel (often too expensive for the proposed budget) in the projects.
 - **An improved relationship:** enable to focus on their collaboration, to the benefit of the outcome of the projects, as it would do away with delays in payment procedures caused by time consuming discussions about a missing boarding pass or quarrels about any details...





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Mixed contracts



- Mixed (hybrid) contracts:
 - each item or each section of the contract should have a **clear method of measurement and verification**,
 - **Clarified in the Terms of Reference** and furthermore stipulated in **the financial offer template**,
 - **combined tender dossier**,
 - technical assistance projects may contain a mix of fee-based and global price for projects which are structured into **different phases**.
- **Examples?**





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Mixed contracts



- Examples: a design and supervision contract
 - design section is a collection of several global prices (geotechnical study, environmental study, economic study, etc.),
 - the supervision section would be fee-based.





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Which one should we use?



Global price contracts

Pros

- Simplifies the management of the contract (for both Contracting Authority and Consultant) as it is not necessary to record or check input or exact costs (no expenditure verification).
- No addenda or increase of costs if the estimated inputs change, e.g. increase of man/days has no impact in the contracted price and hence the increased costs are borne by the Consultant.

Fee-based contracts

Pros

- Contracting Authority maintains control of exact input and costs incurred. Possible modifications can be more easily assessed since there is a budget breakdown.





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Which one should we use?



Global price contracts

Cons

- Less control of exact input or exact costs (fees and incidental expenditure such as missions). Difficult to make amendments to the contract (e.g. additional services). If deliverables are not sufficiently detailed in the ToR, possible misunderstandings and difference in expectations between contracting parties.

Fee-based contracts

Cons

- Where deliverables are involved, may be less effective as Consultant tends to be more focused on the input of resources (requests for using extra days) than the quality of the deliverable. More administrative burden (addendum) and possibly more costs to be borne by the Commission, when the inputs need to be changed even when the outputs are not modified (changes for travels or working days/number of persons).





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Increasing the use of global price contracts



- **Remember!**
- Fee-based service contracts are justified where
 - the output of the contract is difficult or impossible to define in advance and/or
 - the main objective of the contract is to give support on a continuous basis.
- In other cases the use of global price service contracts could be considered as more appropriate.
- The decision for using either a fee-based or a Global price contract is currently not based on any regulation!
- Separate ToR, budget, evaluation grid in PRAG.





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Increasing the use of global price contracts



- **Comparative advantages:**
 - May include where relevant a price breakdown based on outputs/deliverables against which partial payments can be made
 - Possible to have incidental expenditures also under a global price contract
 - SoEA will as a general rule, not be required in a global price contract (experts will be subject to approval CA before they implement the services)
 - Could include a "certification" process by which the experts proposed by the successful tenderer will be interviewed
 - Methodologies must include a workplan indicating the envisaged resources to be mobilised (better comparison of offers, a basis for negotiation in case of amendment to the contract)
 - Generate less micromanagement and verification of time sheets and incidental expenditures





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Summary table



Global price contracts

Specified outputs are defined

Paid on the basis of the delivery

Not possible to formally (or informally) add any additional breakdown

Fee-based contracts

Output is unpredictable or the workload to achieve the specified output is impossible to quantify in advance

Affected by many factors which are beyond control

Pays the services on the basis of time

May also include activities paid under the basis of lump sums





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Summary table



Global price contracts

Technical and operational means by which the contractor achieves the specified output are not relevant

Examples:
studies,
evaluations, audits,
organisation of
events such as
conferences,
trainings

Fee-based contracts

Often only specify the means

Contractor should, however, contribute to improve the performance, service consultant also has a duty of care

Examples:
project supervision,
project management,
monitoring, on-the-spot checks,
evaluations, Technical assistance, Facilitation





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Procedure to be applied



	International procedures	Local, competitive negotiated or FWC procedures	Single tender
SERVICE CONTRACTS	<p>≥ EUR 300 000 International restricted tender procedure</p>	<p>< EUR 300 000 but > EUR 20 000 Framework contract BENEf 2013 or Competitive negotiated procedure</p>	<p>≤ EUR 20 000 Single tender</p> <p>≤ EUR 2 500 A payment may be made against invoice without prior acceptance of a tender</p>
	<p>Procedures applicable without ceilings Negotiated procedure or Competitive dialogue</p>		





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Procurement procedures



- Restricted procedure (PRAG 2.4.3.)
 - Only **international**,
 - All economic operators may ask to submit a tender but only those **who satisfy the selection criteria** may be invited to do so,
 - **Publishing** a notice in the Official Journal of the European Union (for international open procedure only), the official journals of all the ACP States (for EDF programmes), on the EuropeAid website, and in any other appropriate media,
 - A ‚long list‘ of all the candidates replying to the notice is cut down to a ‚**shortlist**‘ of the best qualified, CA checks that none of the candidates or their partners are in exclusion situation in the **Early Warning System**,
 - Tenders must be submitted by the **same service provider or consortium** which was shortlisted (in exceptional cases change is possible, EC can be consulted),
 - Tenders are **analyzed**, they are **compared** and the successful tenderer is **chosen**,
 - **No negotiation** is allowed.



- **Competitive negotiated procedure** (PRAG 2.4.4.)
 - CA invites candidates of its choice to submit tenders,
 - **simplified tender dossier** (PRAG Annex B8o),
 - from the technically compliant tenders, CA selects the one that offers
 - the **best value for money** in the case of tenders for services,
 - the **cheapest**, in the case of tenders for supplies or works,
 - the tenders are **evaluated** (including the use of an evaluation committee) and the contract **awarded** in the **same way as they are in the restricted procedure.**



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Procurement procedures



- **Competitive negotiated procedure (services, PRAG 3.4.2.)**
 - **< € 300 000 but > € 20 000,**
 - **alternative to the framework contract,** requires more time,
 - CA draws up a list of **at least three service providers** and **justifies** its choice,
 - **letter of invitation to tender accompanied by a tender dossier** (incl. contract notice) to be sent,
 - regular service annexes shall be used,
 - candidates must be allowed **at least 30 days** from the dispatch of the letter of invitation to tender to submit their tenders,
 - tenders must be opened and evaluated by an **evaluation committee,**





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Procurement procedures



- **Competitive negotiated procedure (services, PRAG 3.4.2.)**
 - tenderers for the competitive negotiated procedure may also be chosen from a **list of vendors** (call for expression of interest, valid for no more than five years, legal framework for this procedure to be developed),
 - if **receive only one tender** that is administratively and technically valid, the contract may be awarded provided that the award criteria are met,
 - in the event of a failure of the competitive negotiated procedure the contract may be concluded by **negotiated procedure** (PRAG 3.2.4.1.),
 - rules are the same as under the restricted procedure,
 - CA may use the competitive negotiated procedure **for legal services whatever the estimated value** of the contract.



Procurement procedures



- Single tender procedure (PRAG 2.4.8.)
 - when the contract to be concluded **does not exceed EUR 20 000**,
 - CA must draft a **report** explaining how participant(s) were picked and the price set, and the grounds for the award decision (Annex A10b),
 - CA must **follow the negotiation steps** shown in the negotiation report template and ensure that **basic principles** relating to procurement procedures (such as checking compliance with eligibility rules, e.g. nationality rules), **selection and exclusion criteria** are duly applied,
 - **simplified tender dossier** (PRAG Annex B8o),
 - payments for amounts **less than or equal to EUR 2 500** may consist **simply in payment against invoices** without prior acceptance of a tender.



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Procurement procedures



- **Negotiated procedure** (services, PRAG 3.2.4.1.)
 - a) **reasons of extreme urgency** brought about by events which the Contracting Authorities could not have foreseen and which can in no way be attributed to them, the ordinary time limits for the procedures cannot be respected,
 - b) the services are **entrusted to public-sector bodies or to non-profit institutions** or associations and relate to activities of an institutional nature or designed to provide **assistance to peoples in the social field**,
 - c) the **extension of an ongoing contract** through the repetition of similar services entrusted to the original contractor (only applicable after a restricted call for tender),
 - d) the **tender procedure** has been **unsuccessful**, if at least one offer was received, which meets the selection criteria,
 - e) the contract consists in the **acquisition of a plan or design selected by a jury** following a design contest and must, under the rules applying, be awarded to the winner or to one of the winners,





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Procurement procedures



- **Negotiated procedure** (services, PRAG 3.2.4.1.)
 - f) where, for technical reasons, or for reasons connected with the protection of exclusive rights, the **contract can be awarded only to a particular service provider**,
 - g) for contracts **declared to be secret**, or for contracts whose performance must be accompanied by **special security measures** or when the protection of the **essential interests** of the European Union or the beneficiary country so requires,
 - h) where a new contract has to be concluded after **early termination of an existing contract**,
 - i) **legal services**,
 - j) **financial services and loans**,
 - k) the **purchase of electronic communication services** in the meaning of art. 2(c) of Directive 2002/21/EC,
 - l) a service contract is to be **implemented by an international organisation** which cannot participate in competitive procedures.



Microsoft Word
97-2004





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Procurement procedures



- **Competitive dialogue** (PRAG 2.4.7.):
 - In the case of **particularly complex contracts**, neither direct use of the open procedure nor the arrangements governing the restricted procedure will result in the best value for money: objectively unable either to specify the technical means of satisfying needs or objectives or to specify the legal or financial makeup of the project,
 - publish a **contract notice** setting out or attaching their needs and requirements,
 - must open a **dialogue with the candidates satisfying the selection criteria**, conducted separately with each candidate on the basis of their proposed solutions and ideas,
 - must **ensure equal treatment** of tenderers and keep the **tenders confidential**,
 - not allowed to pick the best solutions from different tenderers (“**cherry-picking**”),



Procurement procedures

- **Competitive dialogue (PRAG 2.4.7.):**
 - **minimum number of candidates is three**, CA may continue the procedure with the one or two who do meet the criteria,
 - CA **may reduce the number of solutions** for dialogue by applying the award criteria at a pre-dialogue stage, if the contract notice informs candidates of this possibility,
 - CA **may specify prices or payments** to the participants in the dialogue,
 - CA must **prepare a report justifying** the manner in which dialogue was conducted,
 - upon dialogue conclusion, CA must ask candidates to **submit their final tenders** on the basis of the solutions presented and specified during the dialogue,
 - **tenders may be clarified, specified and fine-tuned**, provided this does not have the effect of changing basic aspects of the tender or of the invitation to tender, variations in which could distort competition or have a discriminatory effect,
 - **contract is awarded to** the technically compliant tender which is the **most economically advantageous**,
 - **standard templates must be adapted** as required,
 - Examples: major integrated transport infrastructure, large computer networks or projects involving complex and structured financing, for which the financial and legal make-up cannot be determined in advance.



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Estimated duration of procurement process



- International restricted procedure: at least 6 months
- Framework Contracts: around 2 months
- Competitive negotiated procedure: 3 months
- Single tender: 2 months
- Negotiated procedure: 1 -2 months





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Ministry for EU Affairs
Technical Assistance for IPA II

“Introductory training on PRAG and Twinning”

Ankara, 12 – 16, December, 2016

Trainer: Antal Tth



Management modes

- Direct management: EC is in charge of all EU budget implementation tasks, which are performed directly by
 - its departments either at headquarters or
 - in the EU delegations or
 - through European executive agencies (EEA).
- EC or EEA is the contracting authority and takes decisions on behalf and for the account of the partner countries.



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Management modes



- Indirect management: EC entrusts budget implementation tasks to
 - partner countries (or to bodies designated by them),
 - international organizations,
 - development agencies of EU Member States,
 - other bodies.





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Management modes



- Indirect management with ex-ante controls:
Decisions on the procurement and award of contracts are taken by the partner country, which acts as the contracting authority, following prior authorisation of EC.
- Indirect management with ex-post controls:
decisions provided for in the financing agreement are taken by the partner country, which acts as the contracting authority without prior authorisation by EC.





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Management modes



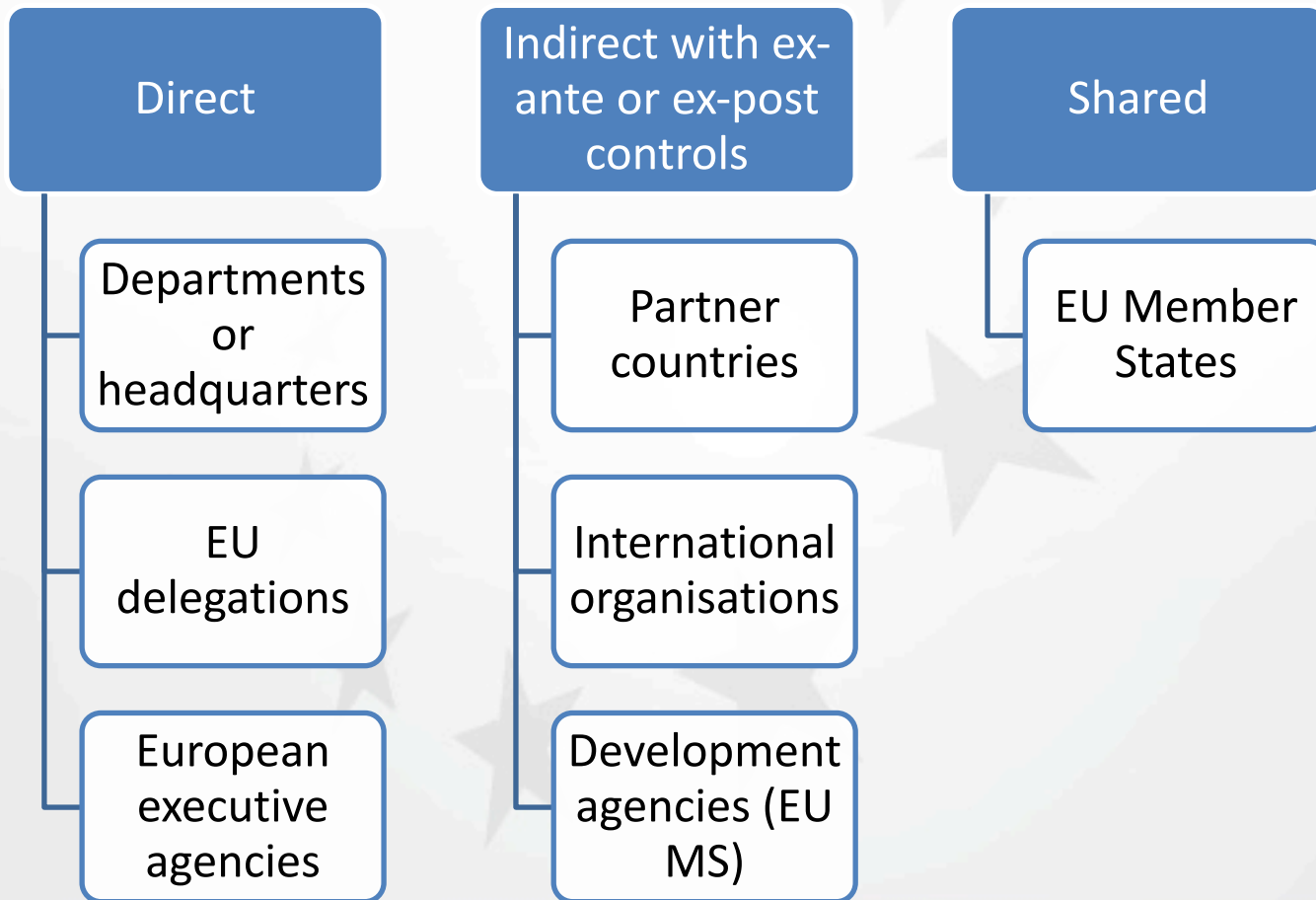
- Shared management : EC delegates implementation tasks to the EU Member States. This mode is rarely used in the implementation of external actions, but there are a few cases such as joint operational programmes on cross-border cooperation implemented by a joint managing authority





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Management modes





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The rules on nationality and origin



- *„Participation in procedures for the awarding of contracts or grants is open to international organizations and to all natural persons who are nationals of, and legal persons which are effectively established in:”*





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The rules on nationality and origin



Eligible countries for IPA II (CIR - Article 10), Annex A2a

EU Member States

Beneficiary countries

Listed in the Annex I of the IPA II: Albania, Bosnia and Herzegovina, Kosovo, Montenegro, Serbia, Turkey, the former Yugoslav Republic of Macedonia

European Economic Area States

Iceland, Lichtenstein, Norway

Partner countries and territories covered by ENI Instrument (annex I of ENI Instrument)

Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Republic of Moldova, Morocco, occupied Palestinian territory (oPt), Syria, Tunisia, Ukraine.

Countries for which Commission has adopted a decision approving the request for **reciprocal access** to external assistance:

Currently there are no such countries.





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The rules on nationality and origin



- **Rules for experts and international organizations:** the nationality of experts and other natural persons employed or legally contracted does not have to follow the nationality rules!
- **How to verify compliance with the nationality rules?**
Tender dossier and the guidelines for applicants require:
 - natural persons must state the country of which they are nationals,
 - legal persons must state the country in which they are established and provide evidence of such establishment by presenting the documents required under that country's law.
- „Real seat” as the place where managing board and central administration are located or its principal place of business.





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Origin of goods



- In principle, products supplied under a procurement contract, or in accordance with a grant contract must originate from an eligible country as designated by the relevant Instrument (see above).
- Products can originate from any origin (full untying) if their value is below the threshold of the competitive negotiated procedure - EUR 100 000.
- Goods purchased by the contractor for use during the execution of the contract are not subject to the rule of origin. It is only if the contract explicitly states that at the end of the contract the ownership of the goods is transferred from the contractor.





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Definition of „origin”



- Defined in the relevant EU legislation on rules of origin for customs purposes:
 - the Customs Code (Council Regulation (EEC) No 2913/92), and in particular its Articles 22 to 24, and
 - the Code's implementing provisions (Commission Regulation (EEC) No 2454/93).
- If only one country is involved in the production, the „wholly obtained” concept will be applied. In practice, these goods wholly obtained in a single country shall be regarded as having their origin in that country.
- If two or more countries are involved in the production of goods, it is necessary to determine which of those countries confers origin on the finished goods. For this purpose the concept of „last, substantial transformation” is applied:
 - by a rule requiring a change of tariff (sub) heading,
 - by a list of manufacturing or processing operations,
 - by a value added rule.





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How to verify compliance with the origin rules?



- Tenderer must state expressly that all the goods meet the requirements concerning origin and must state the country(ies) of origin.
- Tenderer may be requested to provide documents supporting the stated origin, „certificate of origin”.
- Certificates of origin must be issued by the competent authorities of the goods' or supplier's country of origin (usually the Chamber of Commerce) and comply with the international agreements to which that country is a signatory.





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Derogations from the rules on nationality and origin



- On a case-by-case basis
- The decision on derogations is taken by EC before the procedure is launched.
- Derogations may be granted on the grounds of
 - economic, traditional, trade or geographical links with neighboring countries,
 - unavailability of products and services in the markets of the related countries concerned,
 - extreme urgency/crisis situation, or
 - extreme difficulties to carry out a project, programme or other action with the general rules on eligibility. The argument that a product of ineligible origin is cheaper than the EU or local product would not alone constitute grounds for awarding a derogation.





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Exclusion criteria



- a) it is bankrupt, subject to insolvency or winding-up procedures;
- b) is in breach of its obligations relating to the payment of taxes or social security contributions;





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Exclusion criteria



- c) is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession:
- i. fraudulently or negligently misrepresenting information required for the verification,
 - ii. entering into agreement with other economic operators with the aim of distorting competition,
 - iii. violating intellectual property rights,
 - iv. attempting to influence the decision-making process,
 - v. attempting to obtain confidential information;





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Exclusion criteria



d) is guilty of any of the following:

- i. fraud,
- ii. corruption,
- iii. participation in a criminal organisation,
- iv. money laundering or terrorist financing,
- v. terrorist-related offences or offences linked to terrorist activities,
- vi. child labour or other forms of trafficking in human beings;





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Exclusion criteria



- e) the economic operator has shown significant deficiencies in complying with main obligations in the performance of a contract financed by the EU, which has led to its early termination or to the application of liquidated damages or other contractual penalties or which has been discovered following checks, audits or investigations by an authorizing officer, OLAF or the Court of Auditors;
- f) it has been established by a final judgment or final administrative decision that the economic operator has committed an irregularity.





Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından finanse edilmektedir.

Visibility



- All EU partners (contractors, grant beneficiaries or entities managing funds on behalf of EC) must ensure the visibility of EU financing,
- requirements and guidelines: Communication and Visibility Manual for EU External Actions

(more info: https://ec.europa.eu/europeaid/communication-and-visibility-manual-eu-external-actions_en)





Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından finanse edilmektedir.

Other essentials



- **Conflicts of interests**
 - conflict of interest for the contracting authority,
 - grave professional misconduct,
 - involvement in drafting tender specifications and distortion of competition,
 - professional conflicting interests.
- **Awarding principles**: principles of transparency, proportionality, equal treatment and non-discrimination.
- **Non-retroactivity**: contracts take effect from the date of signature of the last signatory.
- **Use of standard documents**
- **Record keeping**





Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından finanse edilmektedir.

Other essentials



- **Availability of funds**: Before initiating any procedure, the funds must be available. Calls may exceptionally be launched with a suspension clause after prior approval of the relevant services.
- **Environmental issues**: environmental matters must be duly considered.
- **Accessibility for disabled people**: accessibility requirements for persons with disabilities following a „design for all approach“.
- **Joint procurement**: with an EU Member State, an EFTA State or an EU candidate country
- **Ex post publication of beneficiaries**:
http://ec.europa.eu/europeaid/funding/about-funding-and-procedures/funding-recipients_en





Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından finanse edilmektedir.

Basic principles



- Transparency: the tenderer must be selected in a **transparent manner and according to a proscribed procedure**, e.g.
 - procedures are **public** which is ensured by free-of-charge public procurement announcements,
 - to ensure **visibility** of the contracting authority's behaviour to the **greatest extent possible**.
- Proportionality: public procurement must be performed in accordance with the **subject of public procurement**, primarily in terms of the **selection, determination and use of conditions and criteria** which must be related *mutatis mutandis* with the subject of the public procurement.





Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından finanse edilmektedir.

Basic principles



- Equal treatment and non-discrimination: CA must guarantee that **non-discrimination** is maintained among tenderers **in all stages** of the public procurement procedure and **regarding all elements**, e.g. not create circumstances which mean locational, material or personal discrimination of tenderers, discrimination originating from the classification of activities performed by the tenderer, or any other discrimination.





Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından finanse edilmektedir.

Selection of tendering procedures



- Competitive tendering: basic means of awarding
 - to ensure that operations comply with the awarding principles;
 - to obtain the desired quality of services, supplies or works at the best possible price.
- Two main criteria
 - Type: is it service, supply, works or grant?
 - Budget?
- Based on these, it is possible select the correct procedure
- See table in PRAG section 2.4.1.
- No project may be split to follow a simpler procurement procedure!





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Selection of tendering procedures



	International procedures	Local, competitive negotiated or FWC procedures		Single tender
SERVICE CONTRACTS	<p>≥ EUR 300 000 International restricted tender procedure</p>	<p>< EUR 300 000 but > EUR 20 000 Framework contract BENEf 2013 or Competitive negotiated procedure</p>		<p>≤ EUR 20 000 Single tender</p> <p>≤ EUR 2 500 A payment may be made against invoice without prior acceptance of a tender</p>
SUPPLY CONTRACTS	<p>≥ EUR 300 000 International open tender procedure</p>	<p>< EUR 300 000 but ≥ EUR 100 000 Local open tender procedure</p>	<p>< EUR 100 000 but > EUR 20 000 Competitive negotiated procedure</p>	
WORKS CONTRACTS	<p>≥ EUR 5 000 000 International open tender procedure or International restricted tender procedure</p>	<p>< EUR 5 000 000 but ≥ EUR 300 000 Local open tender procedure</p>	<p>< EUR 300 000 but > EUR 20 000 Competitive negotiated procedure</p>	





Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından finanse edilmektedir.

Methods of procurement



- **Open procedure** (international or local) – number of tenderers is not limited
- **Restricted procedure** – number of tenderers is limited by creating a shortlist based on selection criteria
- **Competitive negotiated procedure** – restricted procedure, but CA creates shortlist itself
- **Framework contracts** – a general contract for ordering series of specific contracts on previously agreed terms
- **Dynamic purchasing system** – completely electronic process for making commonly used purchases, for a limited period, which is open to any economic operator who meets the selection criteria





Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından finanse edilmektedir.

Methods of procurement



- **Competitive dialogue** – for particularly complex contracts
- **Negotiated procedure** – in exceptional and duly justified cases:
 - extreme urgency,
 - crisis situation,
 - extension of service and work contracts,
 - additional supplies,
 - supplies quoted and purchased on a commodity market,
 - legal services.
- **Single tender procedure** – for contracts does not exceed EUR 20 000.





Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından finanse edilmektedir.

Selection criteria



- General principles
 - Clear and non-discriminatory selection criteria
 - Shall be proportionate and may not go beyond the scope of the contract
 - Additional criteria to reduce the shortlist to the maximum allowed
- Criteria for assessing tenderers' capacity
 - Financial, economic: bank statements, balance sheets, turnover statements
 - Technical, professional: educational and professional qualifications, implemented projects, description of the technical equipment, samples, descriptions and/or photographs and/or certificates, number of managerial staff, indication of the proportion of the contract to be subcontract.





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Award criteria



- Contracts are awarded on the basis of the **most economically advantageous** tender
 - **Best price-quality ratio** – decision is based on the combination of the technical quality and price applying a weighting formula
 - **Lowest price** – contract will be awarded to the tender that meets the technical criteria and offers the lowest price





Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından finanse edilmektedir.



Procedure with a 'suspension clause'

- In duly justified cases and via a prior approval, tender or grant award procedures may be published with a suspension clause in the two following cases:
 - before a financing decision is adopted or
 - before a financing agreement between the European Commission and the partner country is signed.





Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından finanse edilmektedir.

Cancellation of a tender procedure



- A tender may be cancelled, if
 - the tender has been unsuccessful, i.e., no qualitatively or financially worthwhile tender has been received or there is no response at all,
 - economic or technical data of project have been fundamentally altered,
 - normal performance of contract is impossible (e.g. exceptional circumstances or force majeure),
 - all technically compliant tenders exceed the budget ,
 - substantial errors, irregularities or frauds in the procedure,
 - award is not in compliance with sound financial management.





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Cancellation of a tender procedure



- Then CA may
 - launch a new tender procedure,
 - re-launch the tender procedure,
 - start negotiations with one or more of the tenderers who comply with the selection criteria,
 - decide not to award the contract.





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Other important issues



- Ethics clauses
- Fight against fraud
- Legal remedies
 - Complaints to the contracting authority
 - Complaints to the European Ombudsman
 - Ordinary Actions





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EC Assistance Programmes



- EU funds to be provided as grants for Turkey within the period of 2014-2020
- Regulation (EU) No 231/2014 of the European Council establishing an Instrument for Pre-Accession Assistance
- Commission Implementing Regulation (EU) No 447/2014 for implementing the Regulation





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IPA II Framework Agreement



- “Framework Agreement between the Government of the Republic of Turkey and the European Commission on the Rules for Cooperation concerning the EU Financial Assistance to the Republic of Turkey in the framework of the Implementation of the Assistance under the Instrument for Pre-Accession Assistance (IPA II)” (**IPA II Framework Agreement**) signed between the Republic of Turkey and the European Commission on 11 February 2015

More info: http://www.ab.gov.tr/files/ipaii_framework_agreement_original.pdf





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Strategy Paper for Turkey



- Nine priority sectors identified under five policy areas listed in IPA II, Indicative Strategy Paper for Turkey (2014-2020) (**Strategy Paper for Turkey**)
 1. Reforms in Preparation for Union Membership
 2. Socio-economic and Regional Development
 3. Employment, Social Policies, Education, Promotion of Gender Equality, and Human Resources Development
 4. Agriculture and Rural Development
 5. Regional and Cross-Border Cooperation

More info: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140919-csp-turkey.pdf



Institutional structure

- **National IPA Coordinator (NIPAC):** The Undersecretary of the Ministry for EU Affairs
- **National Authorizing Officer (NAO):** The Undersecretary of Treasury
- **Economic and Social Cohesion Coordinator:** Ministry of Development
- **Multi-Annual Programme Operating Structure:** different Ministries, Agencies for different sectors



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Institutional structure



- **Annual Programme Operating Structure:** The Central Finance and Contracts (CFCU) Unit as implementing unit with the lead of different institutions in different sectors, acts as the Contracting Authority duties related to tendering, contract management, payment, accounting and financial reporting
- **Lead Institutions:** Ministries in charge of each sector / sub-sector





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Institutional structure



- Other institutions:
 - **Authorized Representative of End Recipient**
 - **Agriculture and Rural Development Support Institution**
 - **Managing Authority:** Directorate General of Agricultural Reform of the Ministry of Food Agriculture and Livestock
 - **Anti Fraud Coordination Service (AFCOS):** The Prime Ministry Inspection Board
 - **Audit Authority:** The Board of Treasury Controllers
 - **National Authority:** The Ministry for EU Affairs, programming, monitoring and evaluation activities
 - **Coordination Board and Committees, Monitoring Committees**





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General Project Cycle (1)



- Programming:
 - Projects identified
 - Project fiches drafted and approved
 - Annual financing document signed
- Implementation
 - Preparing procurement documents
 - Selection of contractor
 - Signature of contracts
 - Contract implementation
 - Payments





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General Project Cycle (2)



- Monitoring and evaluation
 - Monitoring
 - Evaluation (ex-ante, mid term, ex-post)





Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından finanse edilmektedir.

What is the PRAG?



- PRAG = **Practical Guide** to contract procedures financed from the EU general budget (the EU budget) and the European Development Fund (EDF) in the context of external actions
- Objective: explains the contracting procedures which apply to EC external aid contracts
- Used by the Directorates General and Commission Services in charge of the instruments financing and implementing external actions, DG DEVCO, DG NEAR (Instrument for Pre-accession assistance, **IPA II**, ENI)
- In force since 2001 (before a similar manual, called DIS manual was used), last modification in early 2016





Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından finanse edilmektedir.

What is the PRAG?



- In March 2014, a regulation establishing the Common Rules and Procedures for the Implementation of the Union's instruments for External Action (CIR) was adopted, a set of common rules for the DCI, EIDHR, ENI, ISP, IPA II, PI and NSCI2 consistent with the Financial Regulation of the Union's budget.
- Following the revision of the EU Financial Regulation in 2016, the scope of the Practical Guide is extended over procurement and grant award procedures managed by the EC acting as contracting authority in shared interest with partner countries

What does the Practical Guide not cover?

- EC acts as contracting authority on its own account and in its sole interest
- Humanitarian crisis management aid, civil protection operation and humanitarian aid operations
- EC has authorised to use their own procurement/grant award procedures, or procurement/grant award procedures agreed among donors
- Twinning operations obey specific rules that are described in the „Common Twinning Manual”





Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından finanse edilmektedir.

Structure of the Practical Guide



1. Introduction
2. Basic rules
3. Service contracts
4. Supply contracts
5. Works contracts
6. Grants
7. Legal Texts
8. List of Annexes





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