

ESMA updates its MiFID II Q&As

03 October 2017

MiFID – Secondary Markets

The European Securities and Markets Authority (ESMA) has updated today its (Q&As) regarding the implementation of the Markets in Financial Instruments Directive (MiFID II).

Today's Q&As include news answers to questions regarding:

The purpose of the Q&As is to promote common supervisory approaches and practices in the application of MiFID II and its implementing measures.

Commission backs greater European Central Bank regulatory powers for clearing systems to fulfil its monetary policy responsibilities

The European Commission is today issuing a [favourable opinion](#) on the European Central Bank's (ECB) recommendation of 23 June 2017, in which the ECB asked for a greater role in regulating clearing systems for financial instruments, for example with regard to central counterparties (CCPs), by proposing to amend [Article 22](#) of its Statute.

With today's opinion, the Commission strongly welcomes the initiative to provide the ECB with a clear regulatory competence in the area of central clearing. With the proposed amendment to its Statute, the ECB seeks to bring clearing systems for financial instruments within its regulatory competences. This important change will enable the ECB to fully perform the tasks conferred on it by the [recent Commission proposal](#) to amend the European Market Infrastructure Regulation (EMIR). In his [Letter of Intent](#) of September 2017, Commission President Juncker urged the European Parliament and Council to swiftly adopt the proposal to amend EMIR and the ECB recommendation to amend Article 22.

In its opinion, the Commission also recommends some limited adjustments to the ECB proposal to underline the need for consistency with the regulatory powers between the ECB, the European Parliament, the Council and the

Commission with regard to clearing systems.

The European Parliament and the Council will now consider for adoption the proposed changes to the ECB statute under the ordinary legislative procedure, thanks to a simplified procedure under Article 129(3) of the Treaty on the Functioning of the European Union. As President Juncker underlined in his [State of the Union speech](#) of 13 September, making use of the possibilities offered by such clauses – namely allowing for technical changes to the Treaty under the ordinary legislative procedure – is an important tool to allow for faster and more efficient EU decision-making.

Background

ECB recommendation

In its [recommendation](#) of 23 June, the ECB proposed amending Article 22 of the Statute of the European System of Central Banks and of the European Central Bank as follows:

“The ECB and national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems, and clearing systems for financial instruments, within the Union and with third countries.”

The recommendation suggests in particular that the ECB be given regulatory powers to adopt binding assessments and require remedial action, in close cooperation with other EU authorities. Moreover, where necessary for protecting the stability of the euro, the ECB should have the regulatory powers to adopt additional requirements for CCPs involved in the clearing of significant amounts of euro-denominated transactions. The ECB also emphasises that this new task should only be used for monetary policy purposes.

The Treaty on the Functioning of the European Union (Article 129 (3)) requires the Commission to provide an opinion on this recommendation. The European Parliament and Council then decide on the amendment.

Ongoing review of financial regulation

The ECB recommendation and today’s Commission opinion are to be seen in particular in the context of the Commission’s legislative proposal of 13 June 2017 to review the European Market Infrastructure Regulation (EMIR) (Regulation No 468/2012).

The proposed targeted reforms are designed to further improve the financial stability of the European Union. Central counterparties are already well-regulated and equipped to deal with financial distress, thanks to a range of measures adopted in the wake of the financial crisis. However, further amendments are still needed to ensure a more consistent and robust supervision of CCPs in EU and non-EU countries, as well as to deal with newly-emerging challenges. CCPs have become a systemically-important part of the financial sector and their importance is growing. In addition, the upcoming withdrawal of the United Kingdom from the EU will have a significant impact on the regulation and oversight of clearing in Europe.

The recommended change to the Statute would enable the ECB to perform fully the responsibilities that the Commission's legislative proposal foresees for central banks of issue in the process of authorisation, recognition and oversight of CCPs based both within and outside the EU.

For more information

[Commission Opinion on the Recommendation of the European Central Bank amending Article 22 of the Statute of the European System of Central Banks and the European Central Bank](#)

Memo: [Commission Opinion on the Recommendation of the European Central Bank amending Article 22 of the Statute of the European System of Central Banks and the European Central Bank](#)

[Proposal](#) for a regulation amending European Market Infrastructure Regulation (EMIR)

[Communication](#) on further changes to European Market Infrastructure Regulation (EMIR)

[Proposal](#) on more robust supervision of central counterparties (CCPs)

[Commission Opinion on the Recommendation of the European Central Bank amending Article 22 of the Statute of the European System of Central Banks and the European Central Bank](#)

1. Why is the Commission adopting this Opinion?

The European Central Bank (ECB) adopted a [recommendation with a view to amending Article 22](#) of the Statute of the European System of Central Banks and the European Central Bank on 23 June 2017. The ECB has used [Article 129\(3\) of the Treaty on the Functioning of the European Union](#), according to which the European Parliament and the Council can change a limited number of the Articles of the Statute following a recommendation from the ECB or a proposal by the Commission. In the case of a recommendation from the ECB, Article 129(3) foresees that the Commission gives an opinion on that recommendation.

2. What changes to the Statute is the European Central Bank seeking to achieve in its recommendation?

Article 22 of the Statute currently only establishes regulatory powers for the ECB in relation to payment systems with a clearing stage, but not for all clearing systems, including those for clearing financial instruments. The current powers serve to allow the ECB to perform its task of ensuring the smooth operation of payment systems, but do not go beyond that area. With the recommended amendment, the ECB seeks to expand its regulatory powers to also include “clearing systems for financial instruments”, such as central counterparties (CCPs), in view of the bearing these infrastructures could have on the ECB’s basic tasks and primary monetary policy objectives.

3. Does the Commission agree with this recommendation from the European Central Bank?

Yes, the Commission strongly welcomes this recommendation and fully supports the ECB in its wish to amend Article 22 of the Statute. However, these new regulatory powers, which will be enshrined in primary law, need to be appropriately framed to ensure that there can be no regulatory conflicts, particularly between:

- regulations adopted by the ECB under (the amended) Article 22;
- legal acts adopted by the co-legislators (the European Parliament and the Council), as for example the European Market Infrastructure Regulation (see below);
- or legal acts adopted by the Commission in the form of delegated or implementing acts.

In light of this, the Commission’s Opinion suggests some additional framing to the ECB’s recommended amendment to Article 22.

4. How are clearing and central counterparties currently regulated at the EU level?

The [European Market Infrastructure Regulation \(EMIR\)](#), adopted in 2012, is one of the most important EU post-financial crisis pieces of legislation. It covers clearing of financial instruments (for example derivatives) and the prudential and supervisory requirements on central counterparties (often referred to as CCPs).

A significant part of clearing is done across borders, both within the EU and internationally with CCPs established in third countries. The scale and importance of CCPs in Europe and globally has nearly doubled since the post-crisis G20 commitment to clear standardised over-the-counter (OTC) derivatives through CCPs.

A central counterparty is a financial institution that helps facilitate the clearing and settlement process in financial markets. The central counterparty interposes itself between parties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to

every buyer. A CCP's main purpose is to manage the risk that could arise if one of the counterparties is not able to make the required payments when they are due – i.e. defaults on the deal. CCPs are commercial firms. There are currently 17 European CCPs authorised and 28 third-country CCPs recognised under EMIR, most of which clear various exchange traded or over-the-counter derivatives.

This is an important risk mitigation tool since it means that financial transactions can be completed even if individual buyers or sellers were to default on their individual obligations.

The role of central counterparties has expanded in the global financial system during recent years, reflecting not only the introduction of regulatory obligations in the interest of systemic stability, but also the voluntary use amid increased global initiatives and greater awareness of the benefits of central clearing. However, this has inevitably concentrated risk at the level of the central counterparties. Major problems in one central counterparty could pose significant risks to the smooth operation of payment systems and the implementation of the single monetary policy, which would ultimately affect the achievement of the primary objective of the ECB of maintaining price stability.

5. What does this change to Article 22 (once adopted) mean in the context of the latest changes proposed by the Commission, in June 2017, to the European Market Infrastructure Regulation (EMIR)?

The [Commission's proposal of 13 June 2017](#), amending the European Market Infrastructure Regulation, strengthens the common European supervisory system over central counterparties, led by the European Securities and Markets Authority. It also reinforces the responsibilities of the central banks of issue (the ECB in case of euro-denominated financial instruments) in the context of the authorisation and oversight over central counterparties on matters of relevance for monetary policy. The proposal deals with central counterparties in the EU as well as counterparties in third countries. Once adopted, the new regulatory powers recommended by the ECB will ensure, inter alia, that the ECB is able to fulfil its responsibilities as the central bank of issue of the euro under the proposed changes to the European Market Infrastructure Regulation.

The recommended changes to Article 22 are thus consistent with, and complementary to, the EMIR-framework, including the latest changes proposed in June 2017.

6. How does this amendment to the Statute make use of simplified procedures, as mentioned by President Juncker in his State of the Union speech of 13 September?

The Statute is contained in Protocol 4, annexed to the Union Treaties, and is thus a part of these Treaties. According to Article 129(3) of the Treaty on the Functioning of the European Union, a limited number of Articles of the Statute can be changed by a simplified procedure instead of using the regular procedure to amend the Treaty. Under this simplified procedure, the European

Parliament and the Council will adopt the change to the Statute, using the ordinary legislative procedure.

The new regulatory powers that will be granted to the ECB via the amendment of Article 22 of the Statute will be enshrined in primary law. It is thus very important that they are appropriately framed.

7. What is the link to the judgment of the General Court delivered in 2015 in the case United Kingdom vs. the European Central Bank?

In this case, the General Court held that the current wording of Article 22 of the Statute had to be interpreted narrowly and that the regulatory powers of the ECB were limited to clearing in relation to payment systems and did not cover all clearing systems. Consequently, the Court stated that the ECB did not have the competence, under Article 22 of its Statute, to regulate clearing systems for financial instruments more generally, so for example with regard to clearing systems for derivatives. With its recommendation, the European Central Bank seeks to extend the regulatory remit of Article 22 and increase legal clarity and certainty.

8. What are the next steps?

The Commission's opinion, once adopted, will be transmitted to the European Parliament and the Council, which will deal with the recommended amendment to Article 22 of the Statute in the ordinary legislative procedure. This means that the co-legislators (the European Parliament and the Council) will deal with this matter in parallel to the pending changes to the European Market Infrastructure Regulation from June this year.

For More Information

[Commission Opinion on the Recommendation of the European Central Bank amending Article 22 of the Statute of the European System of Central Banks and the European Central Bank](#)

[Commission proposals on more robust supervision of central counterparties \(CCPs\)](#)

[MEMO on the proposal to amend EMIR](#)

[Commission proposal on more robust supervision of central counterparties \(CCPs\)](#)

[Efficient and professional public](#)

procurement

New EU rules on public procurement were adopted in 2014 – why do we need a new initiative now?

The EU is making an unprecedented effort to stimulate the economy and unlock investment, in particular via the [Investment Plan for Europe](#), a positive fiscal stance in the European Semester and with expansionary monetary policy by the European Central Bank.

These policies need to be underpinned by structural change to foster innovation and growth. It is therefore crucial to focus on improving the functioning of the Single Market and the removal of barriers to investment, at the national and European level.

A substantial part of public investment in our economy is spent through public procurement: €2 trillion yearly representing 14% of EU GDP. Ensuring that this taxpayer money is spent efficiently and effectively is of common European interest.

[EU public procurement legislation](#) requires all public contracts above a certain threshold to be put out for tender respecting the principles of transparency, equal treatment and non-discrimination. These [rules were further simplified in 2014](#) (Directives [2014/23/EC](#), [2014/24/EC](#) and [2014/25/EC](#)), giving public authorities the power to use public procurement to achieve environmental, societal or innovative objectives when buying goods and services. But so far these new opportunities have not been fully used.

With the [initiative presented on 3 October 2017](#), the Commission aims to help public authorities understand and take full advantage of the possibilities of public procurement, might it be funded by the EU or not.

Why should award decisions factor in innovative, green and social criteria and not just the cost?

Value for money is very important when public money is being spent, but the lowest price does not always guarantee the best value. When governments are faced with budget constraints on one side and the need to overcome global challenges on the other, they have to spend public money in a more efficient, sustainable and strategic manner.

Currently applicable public procurement rules reflect the challenges we are facing, such as climate change or social exclusion, and equip public buyers with tools to address them. They allow them to take multiple game-changer factors into account when awarding public contracts, not just the price. For example, insistence on energy-efficient street lighting systems can create a critical mass in demand, bringing down prices and paving the way for the elimination of less efficient incandescent lightbulbs.

Why do we need more competition in public procurement, and how will this initiative help?

Competition helps ensure that taxpayer money is well spent. Competition is increased by applying the principles of EU public procurement legislation – transparent publication of tenders, equal treatment of all bidders and non-discrimination in the assessment of offers. Greater awareness and application of the rules, together with increased use of digital technology to manage procurement will ensure that more procurement is put out to competitive tender, opportunities are more widely publicised and procurement is in the end more cost-efficient.

Collusion in public procurement markets may add up to 20% to the price that would be paid in competitive markets^[1]. That is 20% of taxpayer money that could be spent elsewhere.

But saving money on particular purchases is far from being the whole story for improved public procurement. Progress can also be achieved by procuring higher quality, more resource-efficient or innovative products and services bringing accompanying benefits to citizens.

Does the Commission only want to improve national tenders or foster more pan-European awards?

The Commission wants to improve the conditions for both. Currently, the proportion of public procurement contracts awarded to a bidder from another Member State is low. A recent [Commission study](#) showed that direct cross-border procurement accounted for 3.5% of the total value of contracts during 2009-2015, while indirect cross-border procurement (through their foreign subsidiaries) accounted for above 20%. This means lost opportunities, especially for SMEs, and it means taxpayers are not getting value for money and not getting the best public goods and services.

EU rules also make it easier for contracting authorities from different EU countries to jointly organise their procurement procedures. When public buyers join forces, they can improve the way they purchase goods and services, attract more offers, open new possibilities for innovative procurement and also save money. The Commission will continue promoting the benefits of cooperation and helping national authorities to set up their own system of cooperative procurement. It will focus on exchanging good practices, sharing experiences and explaining how the new tools (e.g. the joint cross-border procurement) work in practice. The Commission stands ready to explain the benefits of cooperation to municipalities and central purchasing bodies, especially in policy areas, such as IT, mobility, sustainable construction or healthcare which have the greatest potential for savings or innovation.

What's in it for SMEs?

When it comes to SMEs, the 2014 framework already makes it easier for small businesses to bid for public tenders. The Commission will continue to work on improving SMEs' access to public procurement markets in the EU and abroad. The actions outlined in the strategy (professionalisation, digitisation, strategic procurement), together with transparent publication of contract opportunities and awareness raising activities will increase the interest of

SMEs to take part in public procurement.

In what respect do public buyers lack the necessary professional skills, and what improvements are needed?

Procurement requires expertise, especially in the procurement of innovation solutions. However, many public buyers still do not have the necessary business skills, technical knowledge or procedural understanding. This can lead to a lack of compliance with rules and has negative consequences for both businesses and taxpayers. Tackling the resulting inefficiencies is essential – the cost saving potential is estimated at billions of euros every year.

In the context of the so-called “European semester” the Commission has formulated [country-specific recommendations](#) in the area. The new guidance encourages EU countries to take steps to make sure buyers have the right skill, knowledge and high level of integrity. The Commission will facilitate the exchange of good practices and innovative approaches. Specifically for those procurers in charge of large infrastructure projects, the ex-ante notification system and help desk for large infrastructure projects will contribute to their effort. To this end, the Commission will:

- **raise awareness** of the need for professionalisation in all Member States, facilitate exchange of best practices at EU level and launch a European Competence Framework for procurement listing the necessary competences and skills,
- **provide guidance on strategic aspects** (e.g. moving from lowest price criteria to use qualitative criteria such ‘best price quality ratio’, uptake of innovation, green and social procurement criteria) through e-competence center ,guidance, e-library of good practice and targeted training schemes.
- **monitor closely the progress** made in this area.

What are you doing to improve access to third country markets?

The European Union stands for free and progressive trade and for an inclusive and rules based globalisation process. Reciprocity in access to procurement markets is a key element of the several trade and investment negotiations in which the EU is currently engaged with the aim of opening up new markets for EU investors and thus ensuring a level-playing field.

The EU is constantly working to improve access for companies to third countries’ procurement markets by negotiating ambitious agreements on procurement and by encouraging new parties to join the multilateral [WTO Agreement on government procurement](#). In addition, the Commission promotes the adoption of international standards and regulatory convergence.

Finally, in January 2016 the Commission tabled a revised [proposal for an International Procurement Instrument](#) which aims at opening up procurement markets of third countries for EU companies. There is an urgent need to unlock the current stalemate in the Council with regard to this instrument.

How will you increase transparency of public procurement? Are you addressing corruption?

Improving openness and transparency of public procurement is one of the main aims of the 2014 legislation on public procurement. The directives provide Member States with tools to fight corruption and malpractice such as stronger provisions on the detection, prevention and tackling of conflicts of interest; or the extension of exclusion grounds in respect of bidders. Enforcing these measures is a responsibility of Member States. Moreover, the introduction of mandatory e-Procurement by 2018 should substantially contribute to increased transparency. The Commission will work on raising awareness of the new possibilities at all levels of government.

Transparency of public procurement can also be ensured by better publication of existing and new procurement data. It is crucial that citizens are able to see who is buying what, how, and for how much. Furthermore, data on procurement can also be used to fight collusion as well as identify possible cases of misconduct. The Commission is strongly promoting the establishment of publicly accessible contract registers to provide transparency on procurement.

In addition, in order to improve transparency in public procurement for EU-funded projects, the European Commission and the NGO Transparency International are currently promoting the use of [Integrity Pacts](#). They are legally-binding agreements under which independent third parties oversee the public procurement process to ensure that it is carried out in a fair and transparent manner.

If contracts are not awarded to the lowest bid, how do you make sure procurement is not manipulated?

The assessment criteria have to be clearly defined, justifiable in the context of the procurement and applicable to the service, product or works procured. This allows authorities to support innovation or address environmental challenges but they must have the right skills and knowledge to handle more complex procedures.

The weighting of factors must in fact be transparent, objective and non-discriminatory and authorities must be able to justify the collateral benefits they expect to see when other criteria are met. For example, tenderers for a cleaning contract might be asked to submit a mobility plan for the workforce. Such a plan could be taken into account in the award of the contract. This requires that Member States develop ambitious and effective professionalisation strategies so that public procurement procedures are performed in accordance with the highest standards.

It also requires effective ex-post controls to ensure the integrity of the process. When economic operators believe a procurement procedure has been run without proper application of the EU Public Procurement Directives, they have the possibility of seeking rapid and effective redress.

How will the ex-ante assessment help manage large scale projects more

efficiently? Will it help reduce delays and budget overruns?

Public authorities will have the option to use the mechanism on a voluntary basis to raise questions with the Commission and receive an assessment of a project's compatibility with the EU public procurement legislation before taking important steps, e.g. launching a call for tender for the main project works, signing an international agreement or deciding to use a negotiated procedure without prior publication. This saves time and avoids potentially costly mistakes. While there are many factors that can cause a project to overrun, the ex-ante assessment helps to greatly reduce the risk of legal challenges or costs resulting from poor choice of procedures.

Having access to a mechanism which allows clarifying public procurement issues is expected to give confidence both to public investors to go ahead with the plan, and, equally important, to private investors to join in the realisation of the projects.

The Commission will set up a helpdesk that can answer specific questions at an early stage related to projects with an estimated value over €250 million.

For projects with a total estimated value above €500 million, once the relevant authorities or entities have advanced with the preparation of the necessary tender documentation, they can ask the Commission to check the complete procurement plan for compatibility with the EU procurement legislation. It is also foreseen that Member States can submit projects considered to be of "high importance", according to some criteria, below €500 million.

In addition, a Member State can request the Commission to use the mechanism for any lower value infrastructure projects it considers to be of high importance for itself and/or the EU as a whole, for instance, for [projects of common interest](#) (PCI) in the field of the Trans-European Networks.

The proposed mechanism can help clarify issues such as:

- the applicable EU legal framework governing the project: classic procurement or utilities directives; concessions directive, etc.
- conditions for exclusions from the directives;
- procurement procedures to be used and their specific features;
- selection and award criteria;
- how to implement joint cross-border procurement under Article 39 of Directive 2014/24/EU.

It will supplement, not replace, the existing national mechanisms for ex-ante checks or support. Member State authorities are responsible for the national dimension of public procurement, and any project will have to respect national laws.

The mechanism is intended for all types of infrastructure projects, in particular the transport and energy sectors, ICT and non-residential construction. The mechanism is voluntary, the Commission's services' advice is non-binding, and information will be handled subject to strict

confidentiality requirements.

Won't the assessment mechanism for infrastructure projects just delay the building of projects that Europe badly needs?

Quite the contrary. Presently, too much time is already spent in finding out whether a large scale investment project conforms or not to the procurement rules. Under the proposed mechanism, the Commission will deliver its opinion within a timeframe which should not generally exceed three months following the notification of the project. It will provide much increased certainty for the actors in a limited amount of time.

What is “innovative procurement” and what are you proposing to encourage it?

Innovative procurement or public procurement of innovation refers to:

- **driving the process of innovation:** public buyers obtain products, services or processes which do not yet exist by partnering with innovative businesses to deliver a custom made solution; and/or
- **buying the outcomes of innovation:** instead of renewing or replicating existing contracts, public buyers choose a product, service or process which is new in the market or simply new to them.

Procuring innovation is inherently more risky than buying existing products and services. Where there are environmental or societal benefits to be gained, such risk might be justified. Public buyers can mitigate risks by involving the appropriate legal expertise in the process or employing staff that has experience working with innovative products and services. Applying cooperative procurement solutions, such as recourse to a central purchasing body, can also help individual public buyers to achieve their policy objectives in the context of innovation and exchange of good practice helps authorities learn from successes elsewhere. Sharing experience?

The Commission encourages Member States to be ambitious and to make innovative procurement their priority. To support this approach, new guidance, to be finalised during the first quarter 2018 after an extensive consultation of stakeholders, will clarify the issues public buyers might be faced with and explain the tools they can use. Feedback from stakeholders will help identify the problems and the potential solutions to them.

Further information

[\[1\]](#) See Anderson and Kovacic, ‘Competition Policy and International Trade Liberalisation: Essential Complements to Ensure Good Performance in Public Procurement Markets’, PPLR, 18 (2009): 67.

Increasing the impact of public investment through efficient and professional procurement

To strengthen the Single Market and as part of the continuous effort to stimulate investment in the EU, today the Commission has put forward an initiative to carry out procurement more efficiently and in a sustainable manner, while making full use of digital technologies to simplify and accelerate procedures.

Vice-President for Jobs, Growth, Investment and Competitiveness Jyrki **Katainen** said: *"We have put investment centre stage since taking office in November 2014, notably by attracting private capital with the Investment Plan for Europe. Now we want to unlock the full potential of public procurement in ensuring that the €2 trillion spent yearly in public services and products boost our economy, spur innovation and help meet sustainability goals."*

Elżbieta **Bieńkowska**, Commissioner for Internal Market, Industry, Entrepreneurship and SMEs, added: *"We encourage public authorities to use public procurement strategically as a tool to obtain better value for taxpayers money and to contribute to a more innovative, sustainable, inclusive and competitive economy. The Commission will continue to assist Member States in doing so, and invites public authorities at all levels of government and other stakeholders to work in a broad partnership."*

Today's initiative has four main strands:

- **Definition of priority areas for improvement** –Member States are encouraged to develop a strategic approach to procurement policies, focusing on six priorities: greater uptake of innovative, green and social criteria in awarding public contracts; professionalisation of public buyers; improving access by SMEs to procurement markets in the EU and by EU companies in third countries; increasing transparency, integrity and quality of procurement data; digitisation of procurement processes; and more cooperation among public buyers across the EU.
- **Voluntary ex-ante assessment of large infrastructure projects** – Complex projects can go wrong right from the beginning if the project managers do not fully grasp the complex rules that apply to large-scale procurement. The Commission will set up a helpdesk that can answer specific questions at an early stage related to projects with an estimated value over €250 million. For projects of high importance for the Member State concerned or with a total estimated value above €500 million, relevant authorities can ask the Commission to check the complete procurement plan for compatibility with the EU procurement legislation, significantly reducing uncertainties and the risk of delays and legal challenges. The mechanism is voluntary, the Commission's advice is non-binding, and information will be handled subject to strict confidentiality requirements.

- **Recommendation on professionalisation of public buyers** – The Commission recommends steps to be taken by Member States to ensure that public buyers have the business skills, technical knowledge and procedural understanding needed to comply with the rules and make sure that taxpayers get the best goods and services for their money. The Commission will facilitate the exchange of good practices and innovative approaches.
- **Consultation on stimulating innovation through public procurement** – Today the Commission is launching a targeted [consultation](#) to collect feedback from stakeholders on how to stimulate innovation through the procurement of goods and services. Procurement of innovation may concern the outcomes of innovation as well as innovative ways of purchasing. The consultation is open until 31 December and will feed into future guidance for public authorities, addressing issues such as how to set a strategy, organise support for innovation procurement or use innovation-friendly procurement tools.

The Commission will continue to support Member States in making full use of the possibilities offered by the new public procurement rules and looks forward to building a partnership with authorities and stakeholders to improve procurement on the ground.

Background:

The EU is making an unprecedented effort to stimulate the economy and unlock investment, in particular via the [Investment Plan for Europe](#), and a positive fiscal stance in the European Semester. These policies need to be underpinned by structural reforms to foster innovation and growth. It is therefore crucial to focus on improving the functioning of the Single Market and the removal of barriers to investment, at the national and European level.

A substantial part of public investment in our economy is spent through public procurement: €2 trillion yearly representing 14% of EU GDP. Ensuring that this taxpayer money is spent efficiently and effectively is of common European interest.

[EU public procurement legislation](#) requires all public contracts above a certain threshold to be put out for tender respecting the principles of transparency, equal treatment and non-discrimination. These [rules were further simplified in 2014](#). Rather than only award a contract on the basis of the best price, authorities are encouraged to integrate qualitative criteria, demand innovative, energy saving solutions or insisting on sustainable and socially inclusive approaches.

The Commission continues to closely monitor the transposition of EU public procurement legislation into national law, and to help public authorities understand and take full advantage of the possibilities of public procurement.

In parallel, as announced in the [Industrial Policy Strategy](#), the Commission

continues to strive to conclude ambitious procurement chapters in free trade agreements, helping EU companies to sell abroad. There is an urgent need to unlock the current stalemate in the Council with regard to the Commission's proposal for an [International Procurement Instrument](#) swiftly.

More information: