Public consultation on the setting up of the voluntary ex ante assessment

Fields marked with * are mandatory.

1 About you

*1.1 Are you completing this questionnaire on behalf of/as:

- an individual?
- (•) a single organisation?
- a network of organisations?

*1.2 What is your name/ the name of your organisation?

FIEC - the European Construction Industry Federation

*1.3 Your e-mail address (this data will not be made public):

info@fiec.eu

*1.4 Which type of organisation do you represent?

- Ministry
- National Procurement Authority
- Remedies body
- Official audit body
- Contracting authority/entity
- Promoters of a big infrastructure project
- Law firm
- Company
- (•) European-level business organisation
- National business organisation
- Financial institution
- Academic body
- Other

*1.5 What is your country of residence/ where is the head-quarter of your organisation?

- Austria
- (•) Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal

- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- United Kingdom
- Non-EU country

1.6 If you would like to give additional information regarding your organisation, please upload a file here:

Select file to upload

*1.7 Are you registered in the transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do)?

- (•) Yes
- ( ) No

*1.8 We will include your answers in the consultation summary that we will publish on the Commission website (www.ec.europa.eu/yourvoice (http://ec.europa.eu/yourvoice/consultations/index_en.htm)). If your responses include some free text comments, do you agree to them being quoted in the summary?

- (•) YES - *under my name* (I consent to my name and my answers being quoted; none of the information I have provided is subject to copyright restrictions).
- ( ) YES - *anonymously* (I consent to my answers being quoted anonymously; none of the information I have provided is subject to copyright restrictions).
- ( ) NO - *please keep my answers confidential* (in this case, your answers and personal data will not be published, but will be evaluated by the Commission along with all other responses).

2 Experience with large infrastructure projects

*2.1 Have you been involved in **any phase of a large infrastructure project** (e.g. initial project preparation, preparing the tender documentation, contracting, executing, auditing, etc.)?

- ( ) Yes
- ( ) No
- (•) N.A. (N.A.: not applicable)

2.2 In the course of your work, **did you contact the European Commission** for guidance on procurement procedures or contract amendments, either directly or via your national authorities?

- ( ) Yes
- ( ) No
- (•) N.A.

*2.3 Have you used **other support tools** of the Commission or other European bodies?

- [ ] Yes, JASPERS
- [x] Yes, the European Investment Advisory Hub
- [x] Yes, the European PPP Expertise Centre
- [ ] Yes, other
- [ ] No

2.3.2 Please explain what sort of guidance did you receive and how did it help you in carrying the project forward.

As regards the EIAH, it was general information about its functioning.
As regards the EPEC, FIEC has been involved in the Private Forum aimed at exchanging expertise and best practices between public and private sectors about PPPs.

2.4 Is there enough **national support** available for large infrastructure projects in the field of public procurement?

- (•) Yes
- ( ) No
- ( ) Don't know

2.4.1 Please give examples

In some Member States, there are already well-functionning structures to support large infrastructure projects.
For instance, FININFRA in France.
In Belgium, this support exists at regional level only and concentrates on PPPs.
So, the situation is quite different from one country to the other.

2.5 Are you aware of **complaints or court proceedings** linked to public procurement in large infrastructure projects?

- (•) Yes
- ( ) No

2.5.1 Please explain the issue briefly.

Concerning PPP contracts. For instance, the requalification of PPPs in "traditional" public contracts.

3 Helpdesk for contracting authorities/ entities

3.1 How important is it for the helpdesk to provide **support on the following issues**? Please rate each option below from 1 (*least important*) to 5 (*most important*).

	1	2	3	4	5	Don't know / N.A.
*The **legal framework** for the project: classical procurement or utilities directive; concessions directive, etc.	( )	( )	(•)	( )	( )	( )
*The **scope** of public procurement rules	( )	( )	(•)	( )	( )	( )
*Explanations of **exclusions** from the Directives	( )	( )	(•)	( )	( )	( )
*The **procurement procedure** to be used (open, restricted, negotiated procurement without prior publication, etc.)	( )	( )	( )	( )	( )	(•)
*The specificities of **PPP**	( )	( )	(•)	( )	( )	( )
*In **concessions**, the possible separation of construction contracts from operating contracts	( )	( )	( )	( )	( )	(•)
*Explanations of particular **stages of particular procedures**, e.g. the competitive procedure with negotiation or the competitive dialogue	( )	( )	( )	( )	( )	(•)
*The choice of **assessment criteria** for tenders (selection and award criteria)	( )	( )	( )	( )	( )	(•)
*How to take into account **other factors**, e.g. project sustainability, maintenance services after completion, green procurement, etc.	( )	( )	( )	( )	( )	(•)
*Questions about **amendments** to existing contracts	( )	( )	( )	( )	( )	(•)

3.2 Are there any other points the helpdesk should deal with? If yes, which?

As a priority, the European Commission should provide guidelines on public procurement rules applying to large infrastructure projects.
The creation of an helpdesk should build upon the experience of the EPEC and the EIAH for large projects.
In any case, the European Commission should NOT interfere "ex-ante" on contractual choices.

* 3.3 What is an **acceptable response time** for the helpdesk to avoid delays in the project?

- (•) < 1 month
- ( ) 1- 2 months
- ( ) 2 - 3 months
- ( ) Doesn't matter
- ( ) Don't know

* 3.4 Would it **be useful to extend** the helpdesk, in the context of a **"one-stop-shop"**, to other relevant EU rules and procedures, such as public accounting rules and environmental permits?

- (•) Yes
- ( ) No
- ( ) Don't know

3.4.1 Which ones?

A one-stop-shop should focus on:
- public accounting rules / Is the project "on" or "off" balance sheet of the Government? (i.e. EUROSTAT advice)
- environmental permits
- State aid issues
- etc.

3.5 Do you have other comments about the helpdesk?

Again, the helpdesk should build upon and/or be interlinked with other existing tools like EPEC, EIAH, JASPERS, JESSICA, etc.

4 Notification mechanism

*4.1 What exactly should be **subject to notification** to the Commission?

- [ ] The procurement framework of the project
- [ ] Individual tender files
- [ ] Amendments to contracts
- [x] Other elements

4.1.1 Please specify **which other elements**:

The notification procedure proposed requires a certain number of clarifications:
- How many projects shall be assisted within which time schedule?
- Will procuring entities have a right to request an „ex-ante assessment“ or will the European Commission have a discretion whether to assess or not?
- To be clarified are the legal basis for an „ex-ante assessment“, the legal consequence and the question of transparency, impartiality and non-discrimination.
- Will the European Commission be bound by its „ex-ante assessment“? If so, to which extent? If not, what is the purpose/benefit?
- What happens, if enterprises participating in the procurement and/or third parties have legal complaints later? Can the European Commission base an infringement procedure on these complaints or is an infringement procedure excluded by the European Commission`s previous „ex-ante assessment“?
- Will the „ex-ante assessment“ be published? If not, how will anyone know about it (except for the European Commission and the procuring entity)? How can be verified what was assessed with which result? How will tranparency, impartiality and non-discrimination be safeguarded?

In any case, the notification should remain voluntary and the notifier should be able to choose by himself what concrete elements are relevant to be disclosed.

*4.2 In which **phase of a big infrastructure project** would it be best to notify the Commission?

- [ ] In the project planning phase
- [ ] In the project permit phase
- [ ] In the procurement phase, *before* drafting the tender specifications
- [ ] In the procurement phase, *when* drafting the tender specifications
- [ ] In the procurement phase, *after* drafting the tender specifications
- [x] Anytime the notifier finds it useful
- [ ] Other (please specify below)

4.2.1 More details to add?

NA

*4.3 **Who** should **notify** the Commission of the project?

- ( ) The national ministry responsible
- ( ) The public procurement authority
- ( ) The contracting authority/entity (the promoter)
- (•) To be left to each Member State to decide on case-by-case basis

* 4.4 On a scale from 1 (*least important*) to 5 (*most important*), please rate the importance of having a **standard form** to notify the details of a project?

- ( ) 1
- ( ) 2
- (•) 3
- ( ) 4
- ( ) 5
- ( ) Don't know / N.A.

*4.5 What **information** should a standard form include?

Why not having a standard form but the notification should remain voluntary and the notifier should be able to fill in only parts of the required information, according to his own assessment.

* 4.6 What **deadline** would the Commission have to meet when **assessing** the project not to delay it?

- (•) 2 - 3 months
- ( ) 3 - 4 months
- ( ) 4 - 5 months
- ( ) Doesn't matter
- ( ) Don't know

*4.7 What **form** should the **Commission opinion** take in order to be most useful?

It should take the form of an informal legal advice (non-binding).

* 4.8 Would it **be useful to extend** the notification mechanism, in the context of a **"one-stop-shop"**, to other relevant EU rules and procedures, such as public accounting rules and environmental permits?

- (•) Yes
- ( ) No
- ( ) Don't know

4.8.1 Which ones?

see answer to point 3.4.1.

4.9 Other comments about notification?

Again, see questions under point 4.1.1

Although it is aimed at fighting against it, a notification process might end up in being burdensome and delaying infrastructure projects!

Also, in those countries where national ex-ante evaluation mechanisms already exist, it will be redundant.

5 Information mechanism

5.1 How important is it for the information exchange mechanism to include the **following components**? Please rate each option below from 1 (*least important*) to 5 (*most important*).

	1	2	3	4	5	I don't know/ N.A.
*A **database** grouping the information on past large infrastructure projects	○	○	○	○	◉	○
*An **expert group** to validate the information in the database	○	○	○	○	○	◉
*A **platform** where stakeholders involved in large infrastructure projects in different EU countries can share information	○	○	○	◉	○	○
***Other components**	○	○	○	○	○	◉

5.2 On a scale from 1 (*least important*) to 5 (*most important*), how helpful would it be for you to have access to the following **documents** in a possible database?

	1	2	3	4	5	I don't know/ N.A.
*Organisational structure of the project	○	○	○	○	◉	○
*Tender file	○	○	○	○	○	◉
*Contracts	○	○	○	○	○	◉
*Guidelines on certain types of procedures such as PPPs, etc.	○	○	○	○	◉	○
*Specific information to cross-border projects.	○	○	○	○	◉	○
*Audit reports on projects	○	○	○	○	○	◉
*Rulings from the European Court of Justice	○	○	○	○	◉	○
*Other documents	○	○	○	○	◉	○

5.2.1 Which ones?

In any case, it is of the utmost importance to protect confidential information which these documents might entail.

As regards PPPs, numerous EPEC documentation already exists and should be kept up-to-date.

5.3 Would you consult these documents:

- ☑ **only** if provided in **English** ?
- ☐ if provided in **English, French or German**?
- ☐ if provided in **any of the official languages** of the EU?
- ☑ if provided in **any of the official languages** of the EU, but with a **summary in English**?

* 5.4 **Who** should have **access** to the documents?

- ○ The general public (no restrictions).
- ○ The public, but only if they have registered in the system.

- Contracting authorities/entities in the EU.
- Only those national authorities/bodies who have provided documents for the database.
- Other.

5.4.1 Who?

The various stakeholders (public and private) which have been involved in the projects presented in the database + possible access to universities, business organisations, etc. for research purpose.

* 5.5 Would the access policy for the database influence your **willingness to provide documents** for it?

- Yes
- No
- N.A.

5.5.1 Why?

The question of confidentiality is key.
A system of registration on the database (or membership) could allow to receive non-confidential information of projects, with the aim of comparing the practices applyied by different contracting authorities.

5.6. Would you agree to the information you submit via the following tools **being automaticallly disclosed**, if we guarantee to remove confidential information and apply data protection rules?

	Yes	Yes - if I can check that my confidential information has been removed properly.	No	Don't know/N.A.
*Helpdesk	○	○	◉	○
*Notification mechanism	○	○	◉	○

* 5.7 Would it be useful to **extend** the information exchange mechanism, in the context of a **"one-stop-shop"**, to other relevant EU rules and procedures, such as public accounting rules and environmental permits?

- Yes
- No
- Don't know

5.8 **Other comments** about the information exchange mechanism?

It might not be a good option, due to the possible sensitivity/confidentiality of many information contained in the targeted documents.

6 Particular projects

6.1 In your opinion, what are the specific needs of **cross-border projects** in relation to public procurement, and how should the Commission help to meet them?

NA

6.2 Regarding **concessions**, are there specific points that require attention and what could the Commission do to address them?

NA

7 Interest in the new tools

7.1 Would you **use** the following tool(s) or **advise** somebody else to use it(them) for a large infrastructure project?

	Yes	No	Don't know / N.A.
*The helpdesk	◉	○	○
*The notification	○	○	◉
*The information exchange mechanism	◉	○	○

*7.2 Why?

The helpdesk can be a useful tool.
The two others require further clarification first (see again answer to point 4.1.1.).

7.3 Please evaluate the **admistrative burden** you anticipate from these tools?

	No administrative burden	Little administrative burden	Reasonable administrative burden, not detering the use of the tools	Significant administrative burden, detering the use of the tools	Don't know/ N.A.
Helpdesk	○	◉	○	○	○
Notification mechanism	○	○	○	◉	○
Information exchange mechanism	○	○	◉	○	○

*7.4 Initially, the tools were envisaged to cover only large infrastructure projects in energy, transport and ICT. In which **sectors** do you think they will be most useful:

- [ ] transport
- [ ] energy
- [ ] ICT
- [ ] non-residential construction
- [x] other sectors

7.4.1 Which ones?

Indeed, these tools should cover large infrastructure projects (whatever the sector).

* 7.5 The tools were envisaged to cover large infrastructure projects above €700 million. Do you consider this threshold to be appropriate to reach the objectives of the action and be helpful for the users?

- ( ) Yes
- (•) No
- ( ) Don't know

*7.5.1 Please mention which threshold you consider appropriate.

- ( ) Above €100 million
- ( ) Above €250 million
- ( ) Above €500 million
- ( ) Above €700 million
- ( ) Above €1000 million
- (•) Don't know

7.6 If you would like to upload a file providing additional comments or information, please upload your file here:

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