



Technical support to the implementation and management of ENI CBC programmes

Factsheet on procurement by project public beneficiaries in Ukraine

Applicable rules, tips and recommendations

Update April 2020

DISCLAIMER

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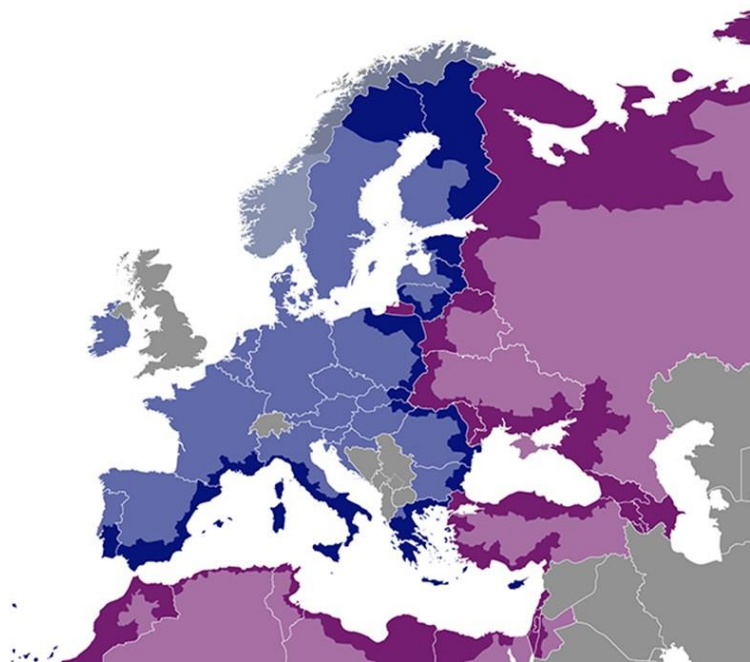


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1. Introduction

The implementation of projects in the framework of ENI CBC requires the procurement of works, supplies and/or services by the beneficiaries in nearly all of them.

During the programming period 2007-2013 ENPI CBC projects were obliged to use the procedures of the Practical Guide to Contract procedures for EC external actions (PRAG). This obligation has not been included in the ENI CBC Implementing Rules (EC Regulation 897/2014), hereinafter ENI CBC IR.

The new regulatory framework allows therefore for the use of national legislation and procedures in CBC Partner Countries. However, national rules will be applied (1) under certain conditions and (2) only for certain types of beneficiaries. The present factsheet aims to describe the applicable rules of awarding contracts related to works, supplies and services for public the Ukrainian beneficiaries¹, deriving from the applicable legislation, but also from the programmes' specific rules and the Financing Agreement.

This factsheet was updated in accordance with the entry into force of the new Law of Ukraine "On Public Procurement" on April 19, 2020. The main changes introduced by the updated law are listed below:

- Introduction of the new procedure - restricted tender (pp. 12-13).
- Implementation of the electronic catalogue in the Prozorro system (p. 13).
- Organization of a simplified procurement procedure, which applies to procurement that exceeds UAH 50,000 and does not exceed the thresholds established for open tender (p. 13).
- Changes concerning the tender committee are introduced (p. 15).
- The term "abnormally low price" is defined (p. 16).
- Alternative evaluation criteria are provided (p. 16).
- A new complaint procedure is introduced (p. 16).

For your convenience, each of the substantive changes is preceded by a reference page where the change is described in detail. On the specified page, the essential changes are placed in purple boxes, and quotations from the updated law are presented in bold italics.

¹ For the purpose of this note, the notion of "non-public", that is, "private beneficiary" should be understood as private non-profit organization, as none of the programmes in which Ukraine is involved allows for the participation of profit-making bodies (e.g., businesses). A separate guide on procurement is available for them.

Also, please note that references to the current article numbers of the updated law have been restored. Also, the factsheet has updated the URLs of the applicable regulations.



2. Applicable legal provisions

2.1. Provisions in the ENI CBC Implementing Rules

Section 1 of the chapter 4 of the ENI CBC IR regulates procurement. The articles relevant to Ukrainian beneficiaries are as follows:

Article	Content
52.2	General principles
52.3	Rules of nationality and origin
53	Procedures and thresholds for service contracts
54	Procedures and thresholds for supply contracts
55	Procedures and thresholds for work contracts
56	Use of negotiated procedure

General principles

Article 52.2 stipulates that:

- a) *The contract is awarded to the tender offering the best value for money, or as appropriate, to the tender offering the lowest price, while avoiding any conflict of interest;*
- b) *For contract with a value of more than 60.000€, the following rules shall apply:*
 - i. *An evaluation committee shall be set up to evaluate applications and/or tenders on the basis of the exclusion, selection and award criteria published by the beneficiary in advance in the tender documents. The committee must have an odd number of members with all the technical and administrative capacities necessary to give an informed opinion on the tenders/applications;*
 - ii. *Sufficient transparency, fair competition and adequate ex-ante publicity must be ensured;*
 - iii. *Equal treatment, proportionality and non-discrimination shall be ensured;*
 - iv. *Tender documents must be drafted according to the best international practice;*
 - v. *Deadlines for submitting applications or tenders must be long enough to give interested parties a reasonable period to prepare their tenders;*
 - vi. *Candidates or tenderers shall be excluded if they fall within one of the situations described in article 106(1) of Regulation 966/2012 [...] (bankruptcy, etc.).*

In 2016, Ukraine joined the World Trade Organisation Agreement on Public Procurement, therefore the law on procurement approved in December 2015 fulfils the conditions to be considered as "*best international practice*". Information about this agreement may be found in the following URL address:

https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

Nevertheless, the Ukrainian beneficiaries, in accordance with the provisions of the Financing Agreement, also need to comply with the rules stipulated in the ENI CBC IR. A specific check-list for the verification of the compliance has been prepared. The identified potential incompliances are indicated in this guide.

Rules of nationality and origin

Article 52.3 stipulates that *"In all cases, the rules of nationality and origin set forth in articles 8 and 9 of Regulation 236/2014 shall apply."* This rule is also included in article 5 of the General Conditions of the Financing Agreements signed between the European Union and Ukraine for the ENI CBC programmes.

What does it mean in practice?

The **rule of nationality**, that is, the eligibility conditions for the participation of tenderers in procurement procedures, is the same as the one applied in the Member States. Therefore, there is **no restriction on nationality of tenderers**.

This Regulation provides that in the case of actions implemented under shared management with a Member State, as it is the case in the ENI CBC Programmes, **countries that are eligible under the rules of that Member State are also eligible**. According to the Romanian, Polish and Hungarian legislations, no restrictions regarding origin are foreseen, so there is **no restriction on the origin of supplies**.

As an exception, the sanctions currently imposed by the EU on Russia (and vice versa) may lead to restrictions in the acquisition of goods and services from this country.

Procurement procedures and thresholds

Articles 53 to 55 of the ENI CBC IR define the type of procedure and thresholds for services, supplies and works, as follows:

Article 53	Service contracts
> 60.000€ < 300.000€	Competitive negotiated procedure without publication
≥ 300.000€	International restricted tender

Article 54	Supply contracts
> 60.000€ < 100.000€	Competitive negotiated procedure without publication
≥ 100.000€ < 300.000€	Open tender procedure published in the programme area
≥ 300.000€	International open tender

Article 55	Work contracts
≥ 60.000€ < 300.000€	Competitive negotiated procedure without publication
≥ 300.000€ < 5.000.000€	Open tender procedure published in the programme area
≥ 5.000.000€	International open tender

In the cases where the tender needs to be published in the programme area, the beneficiary might need to go beyond the obligations of the national legislation, that is, whatever the threshold stipulated at national level, the publication should be in English. Moreover, it should be published by other means on top of the Ukrainian electronic platform, so that the potential suppliers from the other participating countries of the programme area are informed (e.g. web-site of the project or of the programme).

Nevertheless, the thresholds in the ENI CBC IR are not directly applicable to all Ukrainian beneficiaries, as indicated in the Financing Agreements:

Article 9 of the Special Conditions of the Financing Agreements stipulate that: “[...] For the avoidance of doubt, **lower thresholds** than those set out in title VI Chapter 4 of Implementing Regulation (EU) no 897/2014 may be applied by beneficiaries or the CBC partner country”.

This clause applies to the public bodies, as the thresholds in the national legislation are lower and the national legislation is mandatory for these bodies.

Moreover, there is no specific reference in the ENI CBC IR on the procedures with a value **below 60.000€**. Also in these cases, beneficiaries need to refer to the **national legislation and, where allowed, to the internal rules of the organisation**.

Note that contracts must not be split artificially to circumvent the procurement thresholds.

Irrespective the amounts concerned, all procurements must respect the **general principles** of avoidance of conflict of interest, transparency, fair competition, equal treatment, proportionality and non-discrimination (unless regulated otherwise in the Guidelines for applicants or in the grant contract).

Conversion of thresholds from Euro to Ukrainian Hryvnia (UAH)

The amounts indicated in the ENI CBC IR and in the programme rules are all in EUR, while in the actual procurement procedures UAH will be used. **Which exchange rate should be used to verify if the procedure is above or below the threshold?**

Article 8 of the General Conditions of the Financing Agreements stipulates that “[...] in case of procedures in currencies other than Euro, the amount shall be converted to Euro using the exchange rate method mentioned in the Programme (Annex II).”

The exchange rate may be “monthly accounting rate of the Commission”, which can be found in the **Inforeuro website** at the following URL address: <http://ec.europa.eu/budg/inforeuro/index#!/countries/>

Use of negotiated procedure

Article 56 of the ENI CBC IR stipulate that “*The beneficiary may decide to use negotiated procedure on the basis of a single tender in the cases referred to in Article 266 of Delegated Regulation (EU) No 1268/2012.*” This article provides a list of reasons for justified use of the negotiated procedure and need to be complemented with the instructions and thresholds stipulated in articles 265, 267 and 269 of the above-mentioned Regulation.

“*Negotiated procedures*” **should not be confused** with the “*Competitive negotiated procedure*” mentioned in article 53 to 55.

A non-exhaustive list of the cases referred in Article 56 of ENI CBC IR is:

- Extreme urgency,
- Extension of contracts already started (with respect of certain conditions),
- Additional delivery of original supplies as replacement of normal supplies,
- Contract following a contest,
- The tender procedure has been unsuccessful,
- Where for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular provider,
- Where a new contract has to be concluded after early termination of an existing contract.

The use of negotiated procedure is **exceptional** and there are specific provisions in national legislation. Please **check very carefully** article 40 of the **Law of Ukraine** on public procurement to assess the convenience of using this procedure.

2.2. Provision in the grant contract

The grant contract stipulates for public bodies in its article 9.3 a):

a) the Lead Beneficiaries / Beneficiaries established in Ukraine, shall apply national procurement laws. Notwithstanding the previous paragraph and if national legislation imposes otherwise, for contracts below 60,000 EUR the provisions of the Procurement and grants for European Union external actions (PRAG), including templates and details related to each type of procedures (mainly PRAG chapters 2, 3, 4, 5 and 8), in force at the moment of the launch of the call for proposals/the date of the JMC Decision approving the LIP [title], available at <http://ec.europa.eu/europeaid/prag/>, and <http://ec.europa.eu/europeaid/prag/annexes.do>, respectively.

2.3. Overview on applicable Ukrainian legislation

The list of applicable legal acts is as follows:

Legal reference	Content
<p>Framework Agreement between Ukraine and The Commission of the European Communities ratified by the Law of Ukraine as of 3.09.2008 (Рамкова угода між Урядом України і Комісією Європейських Співтовариств) http://zakon2.rada.gov.ua/laws/show/994_763</p>	<p>Activities and contracts, financed from the Community, are not subject to taxes (VAT), customs and other duties (Article 3 Taxes and customs)</p>
<p>Cabinet of Ministers of Ukraine Decree No 153 as of 15th February 2002 on unified system of the use and monitoring of international technical assistance (ПОСТАНОВА КМУ № 153 від 15 лютого 2002 Про створення єдиної системи залучення, використання та моніторингу міжнародної технічної допомоги) http://zakon3.rada.gov.ua/laws/show/153-2002-%D0%BF</p>	<p>Requires all international technical assistance projects (including CBC projects) to mandatory state registration at the Ministry of Economic Development. This registration entitles projects to receive tax, custom fee and other privileges, envisaged by the national law and international treaties of Ukraine</p>
<p>Decree of Cabinet of Ministers of Ukraine n° 544 of 11th July 2018 About creation of</p>	<p>Procurement of supplies, works and services under the grant funding is</p>

<p>the national system of management and control of the programs of border cooperation of the European Neighborhood Instrument for 2014-2020 (Постанова КМУ № 544 від 11 липня 2018 Про запровадження національної системи управління та контролю за виконанням спільних операційних програм прикордонного співробітництва Європейського інструменту сусідства 2014—2020)</p> <p>https://zakon.rada.gov.ua/laws/show/554-2018-%D0%BF</p>	<p>subject to the respective financing agreement (Article 15)</p>
<p>The Law of Ukraine on Public Procurement in version that is in force from April 19th 2020 (Закон України «Про публічні закупівлі», у редакції від 19.04.2020 р)</p> <p>https://zakon.rada.gov.ua/laws/show/922-19/ed20200419</p>	<p>Establishes a mandatory legal framework for procurement by public bodies and provides the types of the public bodies, covered by this Law</p>
<p>Financing Agreements on CBC 2014-2020 Special Conditions and its Annex I- General Conditions</p> <p>http://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=29838a36-411d-4e4f-a13d-8bb2ef99ed6e&title=UgodiMizhUriadomUkrainiTas-schodoDopomogis</p>	<p>Requirement for Beneficiaries in CBC countries to follow procurement procedures and rules of nationality and origin as per Articles 52-56 of the Implementing Regulation (EU) No 897/2014 (Articles 4 and 5 of the Annex I)</p>
<p>Order N° 680 on “Sample of tender documents”</p> <p>https://zakon.rada.gov.ua/rada/show/v0680731-16</p>	<p>Minimum content of tender documentation (no templates)</p>
<p>Order N° 35 on “Procedure below the established thresholds”, modified by Order N° 49</p> <p>http://www.ua-tenders.com/legislation/orders/248043/</p>	<p>Description of the procedure to follow below the thresholds for compulsory use of Prozorro.</p>

The practical implications of this legislation are explained in the next chapter.

3. Requirements on procurement for Ukrainian public bodies

3.1. General principles

The “**Law of Ukraine on public procurement**” (see reference in the previous section of this document) shall apply to the beneficiaries considered as public bodies in the understanding of the law². Article 6 of the law allows to use procurement provisions of the ratified international treaties of Ukraine, if different from the law.

The general procurement principles, as stated in article 5 of Chapter I and in Chapter III, are in line with the ENI CBC IR: fair competition, economy and efficiency, transparency, non-discrimination, objectivity and fight against corruption and fraud.

3.2. Definition of public bodies

Article 1.9 of the “*Law of Ukraine on public procurement*” includes the following types of “**contracting authorities**”:

- *public authorities and local governments (legislative, executive, judiciary, law enforcement agencies, the authorities of the Autonomous Republic of Crimea, local governments, associations of local communities);*
- *social insurance (Pension Fund of Ukraine, targeted insurance funds due to temporary disability, accident and occupational disease, medical insurance and unemployment insurance);*
- *enterprises, institutions, organizations that provide the needs of the state or territorial community, if such activity is not carried out on an industrial or commercial basis, in the presence of one of the following characteristics:*
 - *the legal entity is the manager or recipient of government funds;*
 - *public authorities or local self-government bodies or other contracting authorities hold a majority of the votes in the highest governing body of a legal entity;*
 - *the government or community share of equities in the capital of legal entity exceeds 50 percent.*

Contracting authorities shall also include legal entities and/or economic operators operating in certain areas of economic activity and meeting at least one of the following criteria:

- *public authorities, authorities of the Autonomous Republic of Crimea, local self-governing authorities own a share of more than*

² This is without prejudice to the application of a different notion of “public body” for the purposes of determining the financial liability of Ukraine in accordance with Article 74.5 of the ENI CBC IR and the Financing Agreement.

- 50 per cent in the authorized capital of the economic operator, or such authorities have the majority of votes in the supreme governing body of the economic operator or the right to appoint more than a half of the members of the economic operator's executive or supervisory board;
- enjoying special or exclusive rights.

3.3. Language requirements

The procurement announcements have to be published in Ukrainian, even though other languages may be used regardless the amount, if decided by the contracting authorities in accordance with article 15.

For procedures related to services and supplies equal or more than 133.000€ and for procedures related to works equal or more than 5.150.000€, tender announcements should be also published in English according to article 10.3.

3.4. Type of procurement procedures

The Article 13 of the law defines the following types of procedure, which are described in detail in chapters IV-VII:

- Open tender which is the main type of procurement procedure,
- **Restricted tender is used when the pre-qualification of bidders is required through qualification selection and if the announcement of a restricted tender is published in English, since the estimated value of the procurement exceeds an amount equivalent to: for supply and services - EUR 133 000; for works – EUR 5 150 000.**
- Competitive dialogue can be applied in case it is impossible to determine the required technical, qualitative characteristics (specifications) of the works or to determine the type of services, and a procurement decision requires negotiations with the participants in the procurement procedure,
- Negotiated tender can be applied as an exception if the open tendering procedure, including partially (on the lot) was cancelled twice, due to the lack of sufficient bids; if the work, goods or services can be performed, delivered or provided exclusively by a certain business entity (in the case of the purchase of works of art, lack of competition for technical reasons, the need to protect the rights of intellectual property, etc.), in the case of emergency purchase; in the case extra procurement same goods, services or work from the same supplier, etc.

The restricted tender procedure requires a mandatory pre-qualification check of participants. It should be noted that this procedure can be applied by contracting authorities only from October 10, 2020.

The simplified procedure is applied to procurement, the cost of which is equal to or exceeds UAH 50 000 (EUR 1,620.97), but less than that specified in paragraphs 1, 2, h. 1, article 3 of the Law of Ukraine "On public procurement". This type of procedure must be performed in an electronic system. Also, the new law defines several cases where the contracting authorities may not apply the simplified procurement procedure.

3.5. Use of on-line system "Prozorro"

The "Law of Ukraine on public procurement" requests that all public bodies use an **e-procurement** on-line system via a dedicated web portal called "**Prozorro**". The use of the system is regulated by the Decree N° 473 of the Ministry of Economic Development and Trade of Ukraine of 18 March 2016.

The new law provides the use of the electronic catalogue ProZorro Market for low-amount public procurement. The electronic catalogue works on the principle of an online shop. To receive an order from public contractors via the electronic catalogue, the supplier must be qualified. All qualified suppliers are entered in the Register of Qualified Suppliers.

ProZorro Market system generates and publishes the report on such procurements automatically.

Some useful links for the system are:

- Access to the web portal: <http://www.prozorro.gov.ua>
- Access to the ProZorro market: <https://prozorro.gov.ua/ProzorroMarket>
- FAQ section: <https://prozorro.gov.ua/faq>
- Where to start from: <http://infobox.prozorro.org/knowledge-base/view/668?q=>
- Online study practical courses: <http://infobox.prozorro.org/courses?page=1&count=10&sorting%5Bid%5D=desc>
- Six-week free online course on how to use Prozorro: https://courses.prometheus.org.ua/courses/course-v1:Prometheus+PP101+2017_T1/about

3.6. Applicable thresholds

The "**Law of Ukraine on public procurement**" stipulates the minimum thresholds for public bodies, but also allows the concerned institutions for the use of lower ones.

The thresholds in the Law are expressed in UAH. **This guide uses the accounting rate of the Commission of the month of April 2020**, that is 30,84577 UAH/EUR. The updated accounting rate may be found in:

(<http://ec.europa.eu/budg/inforeuro/index#!/countries/>).

The Law fixes the following thresholds for the use of Prozorro:

Type of contracts	Amount in UAH	Estimated amount in EUR (April 2020)
Supplies and services	200.000 UAH	6.483,87 €
Supplies and services for certain economic activities, as per article 1.4, such as energy or transportation	1.000.000 UAH	32.419,36 €
Works	1.500.000 UAH	48.629,03 €
Works for certain economic activities, as per article 1.4	5.000.000 UAH	162.096,78€

When procuring services, supplies and works below the threshold indicated in the law for the use of Prozorro, the contracting authorities shall also comply with the public procurement principles and may also use the e-procurement system for the purpose of selecting the contractor.

In case Prozorro is not used for the procurement of services, supplies or works where the value is equal or exceeds 50.000 UAH (1.620,97€) and even if it is below the thresholds, the contracting authorities shall publish a report on awarded contracts within the e-procurement system, in accordance with article 10 of the Law.

However, the public bodies may decide to apply lower thresholds for the use of Prozorro.

4. Compliance with ENI CBC Implementing Rules

Even though the “Law of Ukraine on public procurement” is compliant with the requirements of articles 52.2 to 56 of the ENI CBC IR, there are some few points of attention, which might imply ineligibility of expenditure if not taken into account:

- Composition of the tender committee;
- Exclusion criteria for tenderers;
- Tender documents in accordance with best international practices.

4.1. Composition of tender committee

Article 11 of the Law stipulates:

The person responsible for the organization and conduct of the procurement / simplified procurement procedure is an authorized person, who is defined or appointed by the purchaser.

[...] By the decision of the purchaser, a working group consisting of the purchaser's employees may be created to consider the tender offers / proposals. In case of working group creation, the authorized person is the chairman and organizes its work. [...] The working group takes part in the consideration of tenders/proposals, in negotiations during the negotiation procedure, and the decision of the working group is advisory in nature.

Article 11 of the Law of Ukraine "On Public Procurement" stipulates instead of creating a tender committee to appoint an authorized person, which contradicts the rules of ENI CBC. Part 4 of Section X of the Law stipulates that until 1 January 2022 the contracting authority may either create a tender committee or appoint an authorized person.

The beneficiaries **must** consider the requirement of the ENI CBC IR of **designation of tender committee and an odd number of its members. The appointment of authorized person must be avoided.**

4.2. Exclusion criteria for tenderers

Article 17 of the Law stipulate exclusion criteria for tenderers. However, the eligibility criteria defined are not fully compliant with the requirements of the ENI CBC IR.

Not including specific provisions in the tenders, which fully comply with the eligibility criteria, may lead to the full or partial ineligibility of expenditure. Therefore, it is necessary to add **a declaration on honour** fully compliant with the ENI CBC IR. A template for such declaration is included as **annex A** of this document

4.3. Changes in procurement procedures

In the previous version of the Law of Ukraine "On Public Procurement" the term "abnormally low price" was not defined. Accordingly, many tender results were contested by suppliers due to dumping. Therefore, the new law introduced the concept of abnormally low price. Article 1 of the Law defines the abnormally low price:

Abnormally low tender offer price (hereinafter - abnormally low price) - price / adjusted price of the most economically advantageous offer according to the results of the auction, which is less by 40 or more percent of the average arithmetic value of the price / adjusted price of tender offers of other participants at the initial stage of the auction, and / or less by 30 or more percent of the next price / adjusted price of the tender offer according to the results of the conducted electronic auction.

According to the new version of the Law of Ukraine "On Public Procurement" the abnormal low price will be determined automatically by the electronic system. Thus, participants in the tender will be protected from dumping. This does not mean that a participant who set such a price will not be able to win the tender. If the participant provides a justification for the price, it will be able to continue participating in the tender.

The abnormally low price is determined only in competitive tender procedures.

Another important point in the changes for contracting authorities is the possibility to include alternative qualification criteria in the tender documents.

As part of the EU Association Lab project, an electronic designer of non-price criteria was created. It can be accessed at the following link: <https://nk.prozorro.ua/>.

The Law returns to the qualification criterion of financial capacity, which is confirmed by financial statements. If this criterion is established, the contracting authority is not entitled to demand confirmation of the amount of annual income (revenue) exceeding the expected value of the object of procurement.

The new Law introduced changes in procurement complaint procedures. The changes concern deadlines for filing complaints and taking decisions.

Complaints shall be filed within 10 days from the day when the participant found out or should have found out about the violation of its rights due to the decision, action or inaction of the contracting authority, but by the day the procurement contract was concluded. Additional materials to the complaint can be submitted

via the electronic system no later than three working days before the date of consideration. Novelties in the complaint procedure are: the time limit for execution of the decision of the appeal authority, complaint about lot procurement, refund of the fee for filing the complaint, and complaint about procurement in the case of automatic cancellation of a procedure.

4.4. Tender documents in accordance with best international practices

There are no specific templates under the Ukrainian legislation, but the minimum content of the compulsory documents is stipulated in the **Law on public procurement** and the **Order N° 680 of the Ministry of Economy of Ukraine** of 13 April 2016 on “**Sample tender documentation for open tender procedure**” (*Наказ N° 680: примірна тендера документація*). There is no reference to single tender or competitive negotiated procedure, which may be used only below the thresholds for the compulsory use of Prozorro.

In the following check-list we compare the compulsory documents in PRAG with the compulsory ones indicated in the Law on public procurement of Ukraine and the above-mentioned Order from the *Ministry of Economics*. As there are no templates, we analyse if the minimum information in the Law and the Order is in line with the equivalent documents in PRAG. When the **information is not fully in line with PRAG**, please refer to the comparative table below the check-list.

The information in PRAG is not always in the same document than the one mentioned in the Order N° 680, so we make a reference to them, whenever needed. The sections in the Order N° 680 are:

- General terms;
- Providing explanations relating to tender documents and changes therein;
- Submission and opening of tenders;
- Evaluation of the tenders;
- Results of the auction and award of the procurement contract.

Document	Is it compulsory? YES/NO	Legal reference	Is it in line with PRAG? YES/NO
Prior information notice	No	Not usual in Ukrainian practice	No
Contract notice	Yes	Article 10.1 of the Law	Not fully

		<p>Announcement of a procuring procedure and tender documents — not later than 15 or 30 (depend of the contract value) days prior to the tender opening procedure</p> <p>The contracting authority shall publish procurement information on the Authorized Agency's Web Portal in accordance with the procedure established by the Authorized Agency and Law "On public procurement", at its own discretion and on a free-of-charge basis via the authorized e-platforms.</p> <p>The contents are defined in the "general terms" in Order N° 680</p>	
Receipt for delivered tenders	Yes	the e-procurement system shall automatically generate a notice of receipt of the tender and send it to the tenderer specifying the date and the time of receipt	Yes
Declaration of honour on exclusion and selection criteria	No	There is no specific document, as it is filled-in on-line in Prozorro. However, as some exclusion criteria included in the ENI CBC IR are not included in Ukrainian legislation, it will be needed to require the template in annex for the tender to be fully compliant	Not fully
Instructions to tenderers	Yes	<p>Article 10, 22 of the Law</p> <p>It is published by the contracting authority on the web-site Prozorro. The contents are defined in the "instructions for preparing tenders" in Order N° 680</p>	Yes
Terms of reference	Yes	<p>Article 10, 23 of the Law</p> <p>It is published by the contracting authority on the web-site Prozorro. There is no standard template, but there are some examples in the Infobox of Prozorro:</p>	Yes

		http://infobox.prozorro.org/specifications?page=1&count=25&search_in_all=false	
Draft contract	Yes	Article 10.1 of the Law It is published by the contracting authority on the web-site Prozorro, but there is no standard template It is part of the tender document and it is compulsory to use it after award.	Yes
Administrative compliance grid	No	Not usual in Ukrainian practice, as the information is included in the report by the tender committee	Yes
Evaluation grid	Yes	There is no standard template in Ukrainian practice, but tenders shall be automatically evaluated by the e-procurement system based on the criteria and methods of evaluation specified by the Contracting Authority in the tender documents and by way of applying an e-auction. Article 16 of the Law indicates that the non-price criteria are given a value by the contracting authority, which is the equivalent to the evaluation grid.	Yes
Tender submission form	Yes	The tender shall be submitted electronically by means of completing an electronic form with separate boxes to be filled in with information about the price, other evaluation criteria (if established by the contracting authority), and uploading the required documents	Yes
Tender opening checklist	No	Not usual in Ukrainian practice as a separate check-list. The check is done by the tender committee and explained in the opening report	Yes
Tender opening report	Yes	Article 10 of the Law Minutes on tender opening are prepared by the Contracting Authority	No

Evaluators grid	No	Not usual in Ukrainian practice. The non-price criteria are automatically taken into account by the system through a formula. The evaluators take into account the result. If there is any non-compliant non-price criterion, the system rejects the bid.	Yes
Evaluation report	Yes	Article 10 of the Law Minutes on tender decision are prepared by the Contracting Authority	Yes
Notification letters to tenderers	Yes	Article 10 of the Law There is no template, as it is performed automatically by PROZORRO	Yes
Contract award notice	Yes	Article 10 of the Law There is no template, as it is performed automatically by PROZORRO	Yes

Comparison of content between PRAG and Ukrainian documents mentioned in Order N° 680

PRAG	Order N° 680 of Ministry of Economy	To be added
<u>Contract notice</u>	<u>“General terms” (article 21.2) of the Law</u>	
Publication reference	Not mentioned	Yes
Procedure (type of procedure)	Procurement procedure (open) (3)	-
Programme title and budget line (name of EU funding programme and item in the grant budget)	Not mentioned	Yes
Contracting Authority	Information about the Contracting Authority (2)	-
Description of the contract	Information about the procurement item (4)	-
Number and title of lots	Description of a particular part or parts [...] (4.2)	-

Eligibility (<i>nationality</i>) and rule of origin	Non-discrimination of tenderers (5) (<i>nationality</i>)	Rule of origin
Grounds for exclusion	Not mentioned	Yes
Number of tenders	Included in the “Instructions for preparing tenders”	-
Tender guarantee	Included in the “Instructions for preparing tenders”	-
Performance guarantee	Included in “Results of the auction and award of the procurement contract”	-
Information meeting and/or site visit	Not mentioned	Optional
Tender validity	Included in the “instructions for preparing tenders”	-
Period of implementation of tasks	Not mentioned	Yes
Selection criteria	Included in the “Instructions for preparing tenders”	-
Award criteria	Included in the “Evaluation of tenders”	-
How to obtain the tender dossier	Not applicable, as it is in Prozorro	-
Deadline for submission of tenders	Included in “Submission and opening of tenders”	-
Tender opening session	Included in “Submission and opening of tenders”	-
Language of the procedure	Information about the language (s) [...] (7)	-
Legal basis	Not mentioned	Yes
Other information	Information about the currency	-

PRAG	Order N° 680 of Ministry of Economy	To be added
<u>Instructions to tenderers</u>	<u>“Instructions for preparing tenders” (article 21.2) of the Law</u>	
Publication reference	Not mentioned	Yes
Services/Supplies/Works to be provided	Content and method of the tender submission (1)	-
Timetable	Not mentioned	Yes
Participation and subcontracting	Content and method of the tender submission (1)	-
Origin	Not mentioned	Yes
Content of tenders	Content and method of the tender submission (1)	-
Language of tenders	Included in “General terms”	Yes
Type of contract (unit price, lumps sum or hybrid)	Not mentioned	Yes
Currency	Not mentioned	Yes
Taxes and other charges (exemption according to Financing Agreement)	Not mentioned	Yes
Lots	Included in “General terms”	-
Tender validity	Period during which tenders are considered valid (4)	-
Additional information before the deadline for submitting tenders (meeting, etc.)	Included in “General terms”	Optional
Submission of tenders	Included in “submission and opening of the tender”	-
Amending or withdrawing tenders	Included in “Providing explanations relating to tender documents and changes therein”	-
Evaluation of tenders	Included in “Evaluation of tenders”	-

Ethic clauses	Not mentioned	Yes
Signature of contract	Content and method of the tender submission (1)	-
Cancellation of tender procedure	Included in "Evaluation of tenders"	-
Appeals	Not mentioned	Yes

4.4.1. Additional templates

As indicated in the check-list above, some of the documents stipulated in PRAG are not usual in the Ukrainian procedure or there is no specific template.

We strongly recommend:

- to adapt (and translate) PRAG templates or
- to ensure that its content is included in your usual templates,

in case of **procurement documents NOT compliant** with EU's practices. The non-inclusion of this templates may result in the ineligibility of the expenditure.

You may find the templates in the annexes for services, supplies and works in the following URL: <https://goo.gl/Ungxi6>³



The screenshot shows the PRAG website interface. At the top, there is a navigation bar with 'INTERNATIONAL COOPERATION AND DEVELOPMENT' and 'eContent'. Below this, a breadcrumb trail reads 'European Commission > International Cooperation and Development > Funding > Online Services > Prag > PRAG'. A menu bar includes 'Version 2016.0', 'Document', 'Annexes', 'Download available languages', 'Previous versions', 'Keywords', 'External links', and 'Search'. The 'Annexes' menu is expanded, showing a list of options: 'Annexes Z (Ch. 1): Introduction', 'Annexes A (Ch. 2): General', 'Annexes B (Ch. 3): Services', 'Annexes C (Ch. 4): Supplies', 'Annexes D (Ch. 5): Works', 'Annexes E (Ch. 6): Grants', 'Annexes F (Ch. 7): Legal texts', and 'All annexes'. On the left, a sidebar menu lists sections from '1. Introduction' to '8. List of Annexes'. A date stamp '15 January 2016' is visible at the bottom right of the page content.

The **additional templates** to use are:

Document	PRAG reference
Prior notice	b1_priorinfo_en.doc (services); c1_priorinfo_en.doc (supplies); d1_priorinfo_en.doc (works)
Declaration of honour on exclusion and selection criteria	Adapted version in Annex A of this document
Draft contract (services)	b8c_contract_en.doc

³ This is a shortened URL address

	b8d_annexigc.pdf
Draft contract (supplies)	c4c_contract_en.doc c4d_specialconditions_en.doc c4e_annexigc.pdf
Draft contract (works)	d4n_contract_en.doc d4o_specialconditions_en.doc d4p_annexgc.pdf

“Tender documents must be drafted according to best international practice” This is an essential requirement for the eligibility of expenditure.

Despite the recent alignment of Ukrainian legislation with best international standards, the **absence of harmonized templates** obliges the Ukrainian public beneficiaries to a thorough verification of the compliance of its usual templates.

DO NOT PROCURE AS USUAL!!

CHECK THE COMPLIANCE OF THE TENDER TEMPLATES BEFORE LAUNCHING ANY PROCUREMENT PROCEDURE.

ANNEX: Declaration of honour on exclusion and selection criteria

Declaration on honour on exclusion criteria and selection criteria

The undersigned [*insert name of the signatory of this form*], representing:

<i>(only for natural persons)</i> himself or herself	<i>(only for legal persons)</i> the following legal person:
ID or passport number: (‘the person’)	Full official name: Official legal form: Statutory registration number: Full official address: VAT registration number: (‘the person’)

I – Situation of exclusion concerning the person

(1) declares that the above-mentioned person is in one of the following situations:	YES	NO
(a) it is bankrupt, subject to insolvency or winding up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended or it is in any analogous situation arising from a similar procedure provided for under national legislation or regulations;	<input type="checkbox"/>	<input type="checkbox"/>
(b) it has been established by a final judgement or a final administrative decision that the person is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the law of the country in which it is established, with those of the country in which the contracting authority is located or those of the country of the performance of the contract;	<input type="checkbox"/>	<input type="checkbox"/>
(c) it has been established by a final judgement or a final administrative decision that the person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:		
(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) entering into agreement with other persons with the aim of distorting competition;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) violating intellectual property rights;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) attempting to influence the decision-making process of the contracting authority during the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>

(d) it has been established by a final judgement that the person is guilty of the following:		
(i) fraud, within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of EU Member States, drawn up by the Council Act of 26 May 1997, and in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as defined in Article 14 of the General Conditions of the Financing Agreement for ENI CBC between Ukraine and the European Commission in the legal provisions of Ukraine;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(v) terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;	<input type="checkbox"/>	<input type="checkbox"/>
(vi) child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(e) the person has shown significant deficiencies in complying with the main obligations in the performance of a contract financed by the Union's budget or by the Ukrainian public budget, 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 the Ukrainian competent authorities, the Delegation of the European Union in Ukraine, any Managing Authority of ENPI CBC or ENI CBC, Audit Authorities of ENI CBC, the European Commission, OLAF or the European Court of Auditors;	<input type="checkbox"/>	<input type="checkbox"/>
(f) it has been established by a final judgment or final administrative decision that the person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;	<input type="checkbox"/>	<input type="checkbox"/>
(g) for the situations of grave professional misconduct, fraud, corruption, other criminal offences, significant deficiencies in the performance of the contract or irregularity, the applicant accepts to be subject to: <ul style="list-style-type: none"> i. facts established in the context of audits or investigations carried out by the European Court of Auditors, OLAF, or any other check, audit or control performed under the responsibility of an authorising officer of the European Commission, Managing Authority or Audit Authority, the competent Ukrainian authorities or any other competent body; ii. non-final administrative decisions, which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics; iii. decisions of the Managing Authority, the Ukrainian National Authority (identified in the Financing Agreement for ENI CBC programmes between the European Commission and Ukraine) or the European Commission relating to the infringement of the competition rules stipulated in the Association Agreement between the 	<input type="checkbox"/>	<input type="checkbox"/>

European Union and Ukraine or of a national competent authority relating to the infringement of national competition law; or iv. decisions of exclusion by an authorising officer of the Contracting Authority.		
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II – Situations of exclusion concerning natural persons with power of representation, decision-making or control over the legal person

(2) declares that a natural person who is a member of the administrative, management or supervisory body of the above-mentioned legal person, or who has powers of representation, decision or control with regard to the above-mentioned legal person (this covers company directors, members of management or supervisory bodies, and cases where one natural person holds a majority of shares) is in one of the following situations:	YES	NO
Situation (c) above (grave professional misconduct)	<input type="checkbox"/>	<input type="checkbox"/>
Situation (d) above (fraud, corruption or other criminal offence)	<input type="checkbox"/>	<input type="checkbox"/>
Situation (e) above (significant deficiencies in performance of a contract)	<input type="checkbox"/>	<input type="checkbox"/>
Situation (f) above (irregularity)	<input type="checkbox"/>	<input type="checkbox"/>

III – Situations of exclusion concerning natural or legal persons assuming unlimited liability for the debts of the legal person

(3) declares that a natural or legal person that assumes unlimited liability for the debts of the above-mentioned legal person is in one of the following situations:	YES	NO
Situation (a) above (bankruptcy)	<input type="checkbox"/>	<input type="checkbox"/>
Situation (b) above (breach in payment of taxes or social security contributions)	<input type="checkbox"/>	<input type="checkbox"/>

IV – Grounds for rejection from this procedure

(4) declares that the above-mentioned person:	YES	NO
(h) has distorted competition by being previously involved in the preparation of procurement documents for this procurement procedure.	<input type="checkbox"/>	<input type="checkbox"/>

V – Remedial measures

If the person declares one of the situations of exclusion listed above, it must indicate measures it has taken to remedy the exclusion situation, thus demonstrating its reliability. This may include e.g. technical, organisational and personnel measures to prevent further occurrence, compensation of damage or payment of fines. The relevant documentary evidence which illustrates the remedial measures taken must be provided in annex to this declaration. This does not apply for situations referred in point (d) of this declaration.

VI – Evidence upon request

Upon request and within the time limit set by the Contracting Authority the person must provide information on the persons that are members of the administrative, management or supervisory body.

It must also provide the following evidence concerning the person itself and concerning the natural or legal persons which assume unlimited liability for the debt of the person:

For situations described in (a), (c), (d) or (f), production of a recent extract from the judicial record is required or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of establishment of the person showing that those requirements are satisfied.

For the situation described in point (a) or (b), production of recent certificates issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the person is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions. Where any document described above is not issued in the country concerned, it may be replaced by a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

The person is not required to submit the evidence if it has already been submitted for another procurement procedure. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

VII – Selection criteria

(5) declares that the above-mentioned person complies with the selection criteria applicable to it individually as provided in the tender specifications:	YES	NO
(a) It has the legal and regulatory capacity to pursue the professional activity needed for performing the contract as required in section [insert] of the tender specifications;	<input type="checkbox"/>	<input type="checkbox"/>
(b) It fulfills the applicable economic and financial criteria indicated in section [insert] of the tender specifications;	<input type="checkbox"/>	<input type="checkbox"/>
(c) It fulfills the applicable technical and professional criteria indicated in section [insert] of the tender specifications.	<input type="checkbox"/>	<input type="checkbox"/>

The contracting authority must adapt the table above to the criteria indicated in the tender specifications (i.e. insert extra rows for each criterion or delete irrelevant rows).

(6) if the above-mentioned person is the sole tenderer or the leader in case of joint tender, declares that:	YES	NO
(d) the tenderer, including all members of the group in case of joint tender and including subcontractors if applicable, complies with all the selection criteria for which a consolidated assessment will be made as provided in the tender specifications.	<input type="checkbox"/>	<input type="checkbox"/>

VII – Evidence for selection

The signatory declares that the above-mentioned person is able to provide the necessary supporting documents listed in the relevant sections of the tender specifications and which are not available electronically upon request and without delay.

The person is not required to submit the evidence if it has already been submitted for another procurement procedure. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

The above-mentioned person may be subject to rejection from this procedure and to administrative sanctions (exclusion or financial penalty) if any of the declarations or information provided as a condition for participating in this procedure prove to be false.

Full name

Date

Signature