



EIB Project Cycle and Procurement

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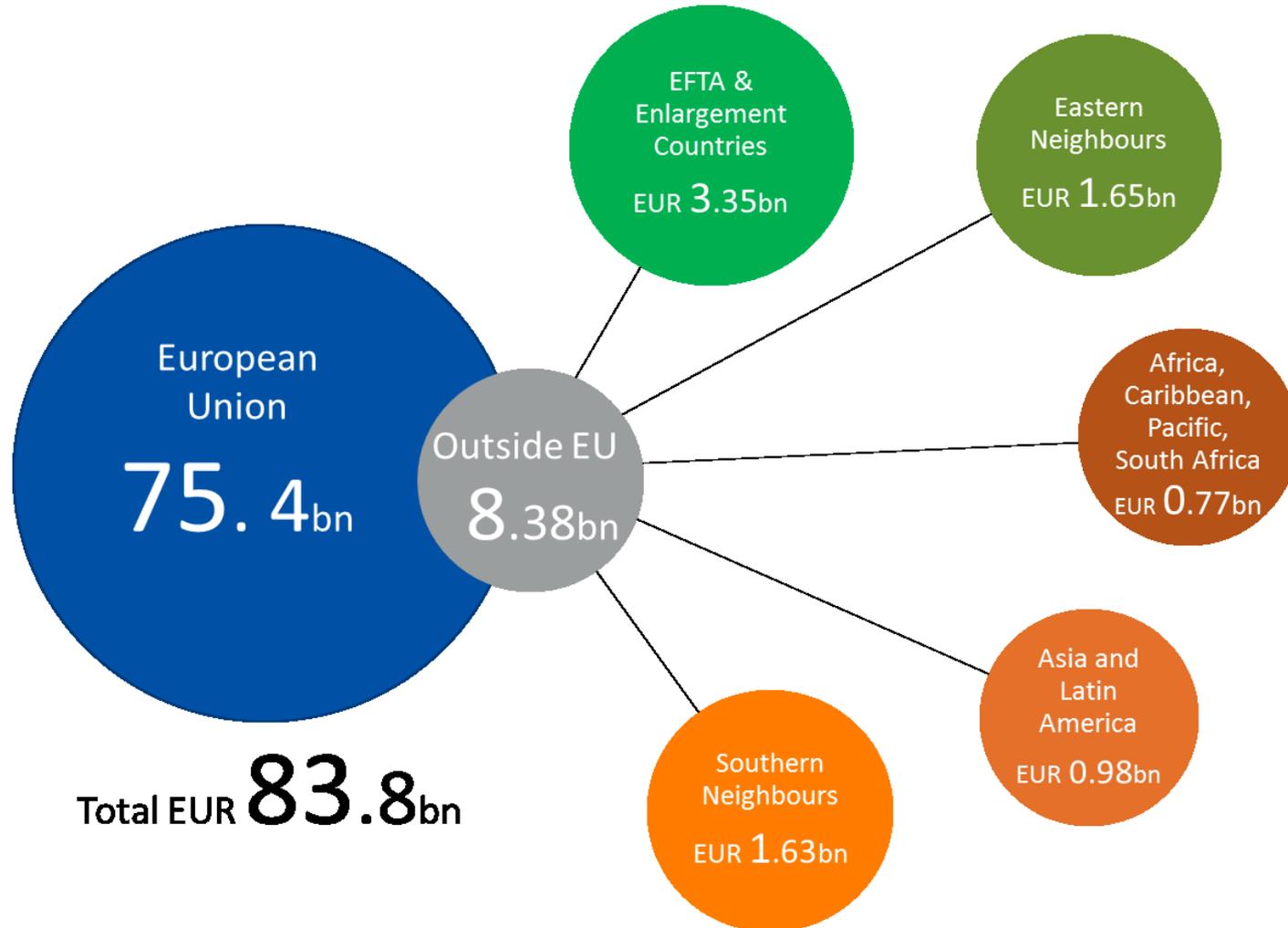
The European Investment Bank (EIB)

Long-term finance promoting European objectives

- ❖ European Union's long-term lending bank set up in 1958 by the Treaty of Rome.
- ❖ Shareholders: 28 EU Member States
- ❖ Governance
 - ❖ Board of Governors – EU Finance Ministers
 - ❖ Board of Directors - Member States & European Commission
 - ❖ Management Committee –EIB's executive body
 - ❖ Audit Committee – independent, non-resident



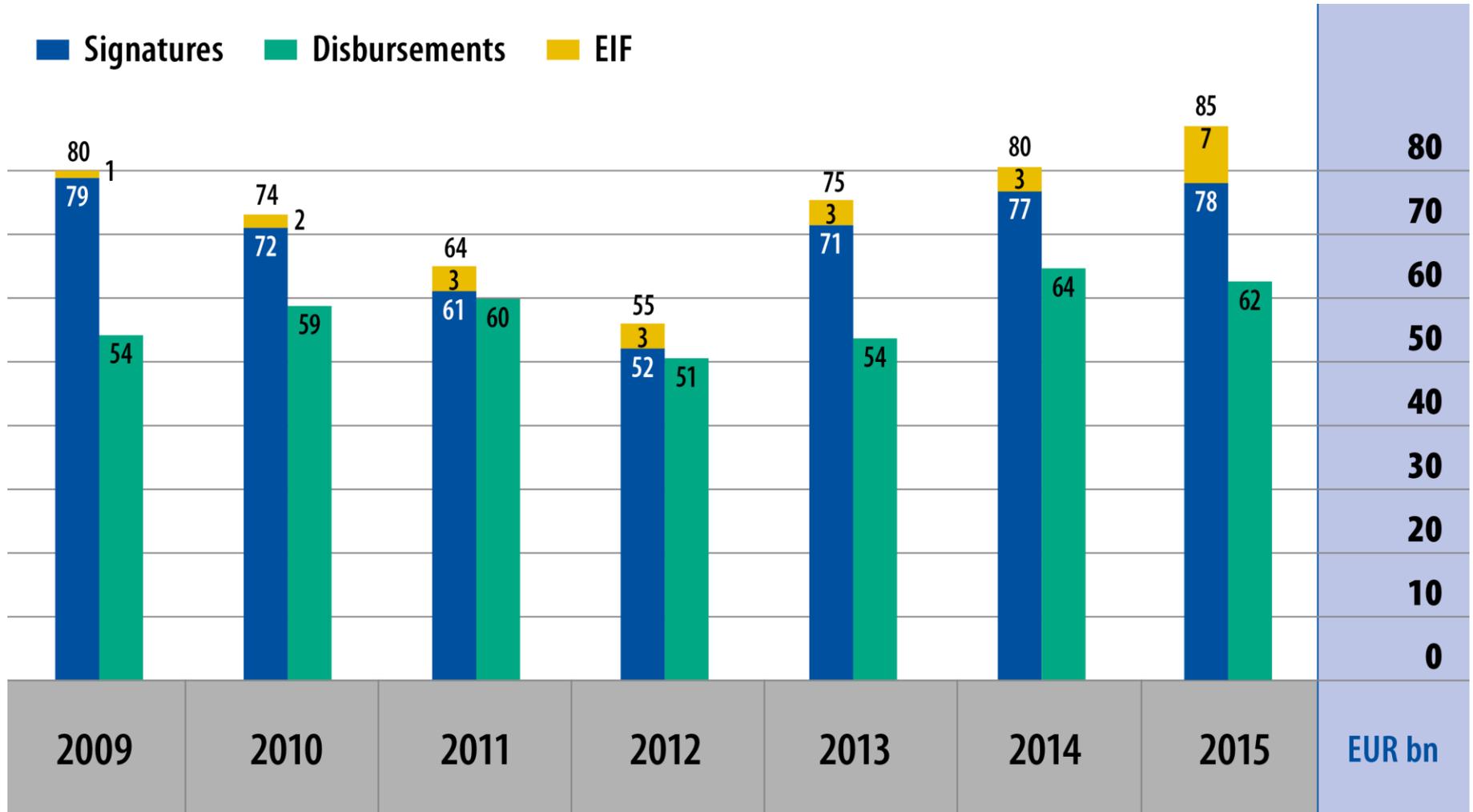
EIB Lending in 2016: EUR 83.8bn (EIB signatures)





EIB Group track record: over EUR 500bn lent since 2008

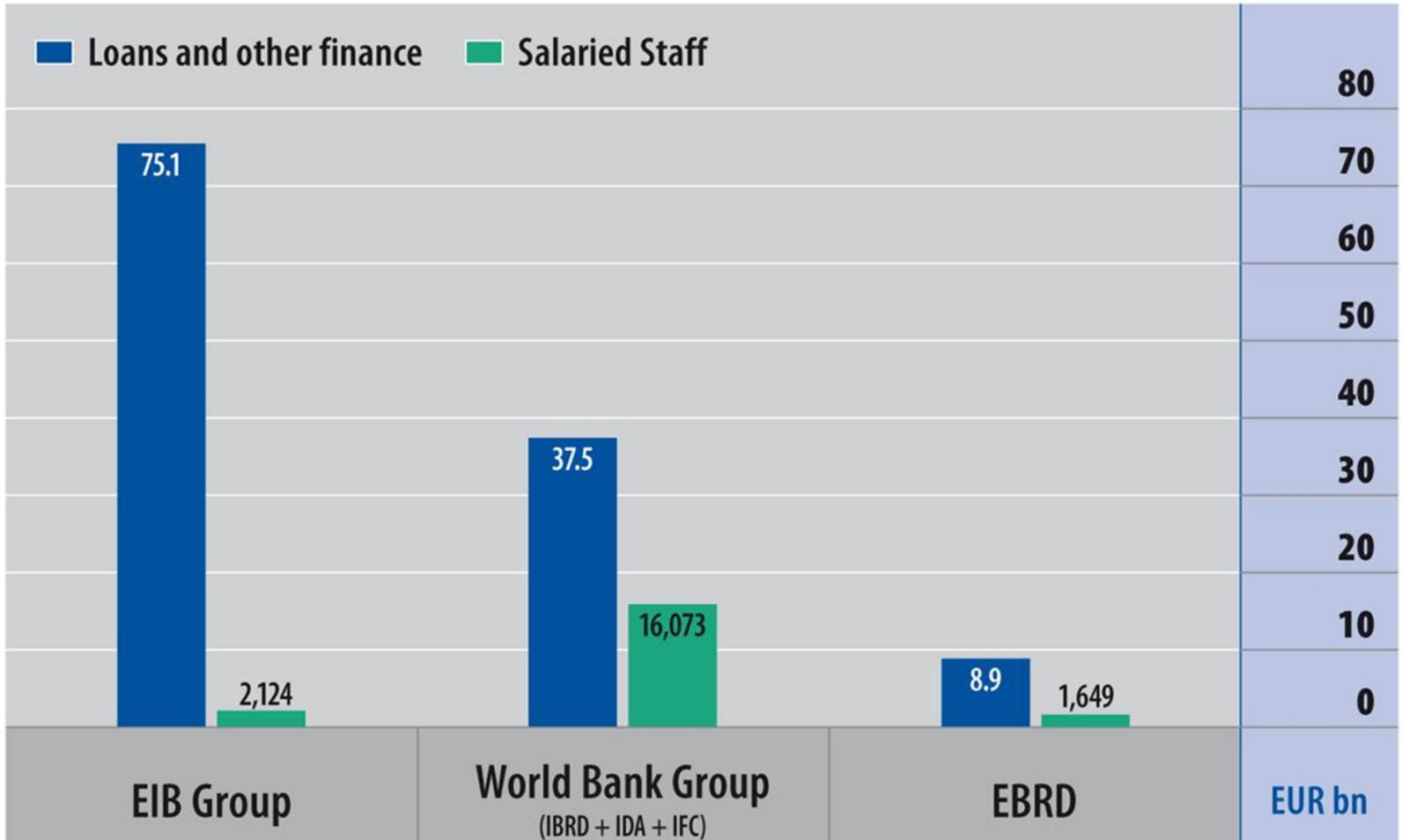
■ Signatures ■ Disbursements ■ EIF





Total lending and staffing (2015 figures)

Peer group of MDBs





Benefits of an EIB Loan

- ❖ Benefits of low cost of funding passed on to clients:
 - ❖ Large amounts
 - ❖ Broad range of currencies
 - ❖ Long maturities
 - ❖ Attractive interest rates
 - ❖ Catalytic effect on participation of other banking or financial partners



Project Requirements

- ❖ Projects must:
 - ❖ Correspond to at least one of the EIB objectives
 - ❖ Be technically sound
 - ❖ Be financially viable
 - ❖ Show an acceptable economic return
 - ❖ Comply with environmental protection and social and procurement regulations



We support sound and sustainable projects





Stages of the Project Cycle

- ❖ Pre-Appraisal – preliminary assessment of the project's suitability
- ❖ Appraisal – assessment of the soundness of the project, taking into account technical, legal, environmental, social and other impacts of the projects
- ❖ Negotiation – signature of the contract
- ❖ Monitoring – verification of compliance with the contract and possible due diligence requirements



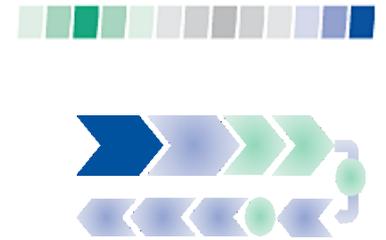
Project Directorate-PJ checks the project eligibility:

1. EU policy

- reflected in EIB's sector lending policies

2. Excluded activities

- Ammunition and weapons, military/police equipment or infrastructure.
- Projects which result in limiting people's individual rights and freedom, or violation of human rights.
- Projects unacceptable in environmental and social terms.
- Ethically or morally controversial projects - Sex trade and related infrastructure, services and media; animal testing; gambling and related equipment, hotels with in-house casinos; tobacco (production, manufacturing, processing and distribution).



Project Directorate-PJ checks the project eligibility:

3.EIB's four Public Policy Goals

- in the Corporate Operational Plan

-  **Innovation and Human Capital**
-  **SME and MidCaps**
-  **EU Infrastructure**
-  **Environment and climate**



Appraisal-I



<http://www.eib.org/projects/cycle/appraisal/index.htm>

- ❖ Eligibility
- ❖ Overall quality and soundness

- ❖ Market and demand
- ❖ Profitability

- ❖ Conditions for disbursement



Appraisal-II

- Technical scope
- Implementation
- Operation

- Investment cost

- Environmental impact (EIA, etc)

- Procurement





Additional Control

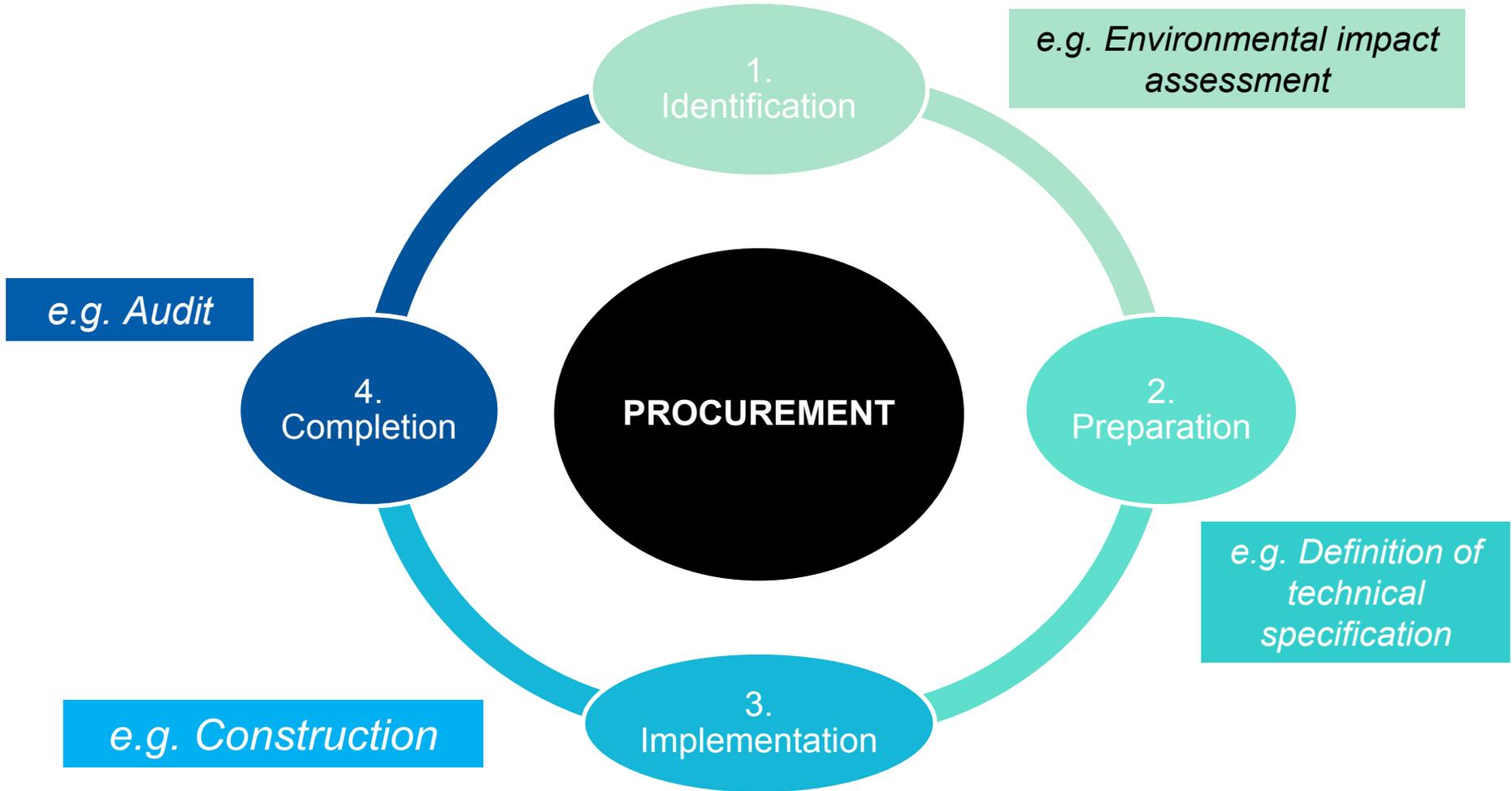


- ❖ During appraisal of a project, before Board approval:
- ❖ Projects Directorate assesses
 - ❖ Environmental and social aspects of the project
 - ❖ Procurement procedures
 - ❖ Economic viability
- ❖ Compliance Department assesses
 - ❖ Reputation risk and runs integrity controls
 - ❖ Involvement of Offshore Financial Centers in project structure
 - ❖ Capability of financial intermediaries to implement measures against money laundering and terrorism financing
 - ❖ Politically Exposed Persons (PEPs) associated with the project



Procurement in an investment project

Most of funding of an investment project is used to procure goods, works & services needed for the completion of the project





Procurement: why do we have procurement rules?

- ❖ The Bank will ensure that its funds are employed as rationally as possible in financing sound projects in the interest of the Union (EIB statute).
- ❖ The objective of procurement: acquire in the economically most advantageous way works, goods and services to implement a project.
- ❖ Why do we have procurement rules?
 - ❖ The promoter is using public money.
 - ❖ Incentive for economy is not as strong as in private sector, which uses their own money. Risk of corruption and fraud, no economic tension.
 - ❖ Therefore, the process must be (in line with the principles of the EU Treaty):
 - ❖ Transparent
 - ❖ Fair and non-discriminatory
 - ❖ Traceable
- ❖ EIB also wants full access of EU firms to procurement under EIB financed projects.
- ❖ EIB Guide to Procurement: <http://www.eib.org/infocentre/publications/all/guide-to-procurement.htm>



Why EIB should pay attention to project procurement?

A. Project with adequate economic added value, rational use of funds

B. Obligation to report back on usage of funds
→ reputational risk



C. Transactions
→ vulnerable to fraud & corruption



Foundations of EIB's Project Procurement Policy

**Procurement
policy of EIB**

EIB

Statute: Rational use of funds in
the interest of the EU
(Economy, Efficiency)

EU:

Freedom of movement and establishment,
Non-discrimination based on nationality,
Economy, Efficiency, Transparency, Mutual
recognition, Proportionality



The EIB procurement model : a dual approach

- ❖ EIB as EU institution must follow EU Public Procurement principles: EIB procurement rules are based on the EU Public Procurement Directives.
- ❖ EIB as an MDB, when operating outside the EU, has to harmonise its rules with other MDBs: EIB procurement rules incorporate MDBs' best practice.

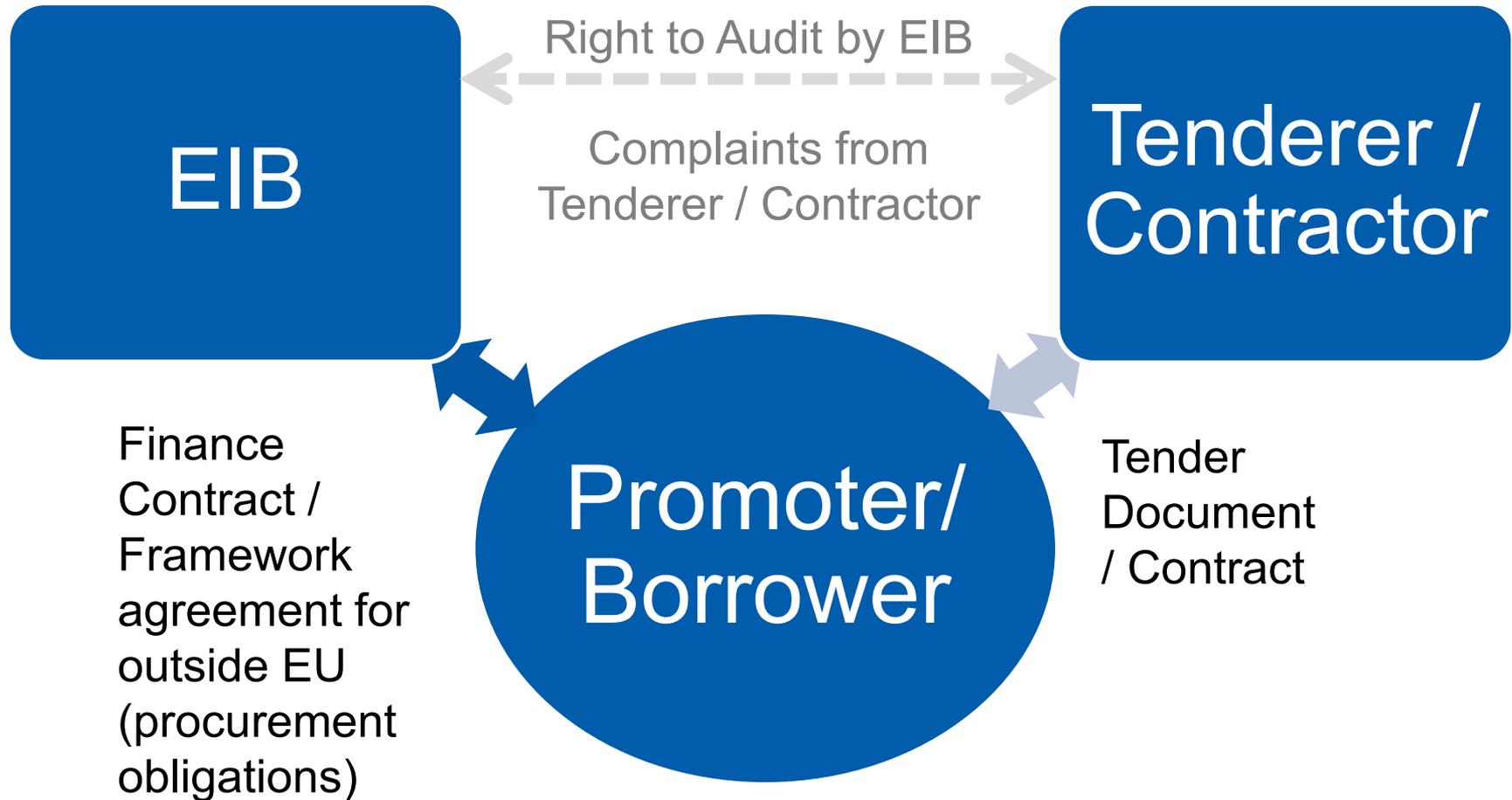


Bank and Promoter respective roles

- Promoters are fully responsible for all aspects of the procurement process.
- The Bank's involvement is confined solely to verifying whether or not the the conditions attached to its financing are met.
- The Bank may advise or assist promoters, but is not a party to the resulting contracts.
- The Guide to Procurement is NOT a legal framework, and therefore the national legislation is the framework governing procurement procedures.



Legal Relationship between parties





Inside the EU

- ❖ Within the EU and in those candidate countries that have already incorporated the relevant EU legislation, procurement is covered by national legislation implementing EU Law, in particular EU Public Procurement Directives.
- ❖ It is the role of the relevant national and EU authorities to ensure that procurement is carried out in compliance with this legal framework.
- ❖ The Bank requires the promoter to ensure that the applicable procurement directives are complied with under the project.
- ❖ The Bank will take further steps during implementation, to the extent necessary to control compliance in order to reduce risks.



Outside the EU

- ❖ In all other countries outside the EU, the Bank requires that the main mechanisms of the EU Procurement Directives be complied with, with the necessary procedural adaptations.
- ❖ Procurement of works, goods and services financed by the Bank must be carried out in accordance with the EIB Guide to Procurement.
- ❖ The Bank monitors the procurement process to ensure that it is compliant with the Guide to Procurement.



- ❖ Financed from the Bank's own resources: Open to nationals of all countries. (GP §3.2.1)
- ❖ Financed partially or completely from resources from third parties (GP §3.2.2):
 - ❖ Cotonou Agreement: Open to nationals of all countries
 - ❖ Other instruments (NIF, FEMIP, etc.): Depends on the rules of the instrument. At least EU and parties to or beneficiaries of such agreement.
- ❖ Co-financed from own resources (GP §3.2.3):
 - ❖ Joint co-financing: Open as much as possible, at least EU and beneficiary country.
 - ❖ Parallel co-financing: Normal EIB eligibility rules



Public / private operations

- ❖ Definition of Public Sector Operations (based on Utilities Directive):
 - ❖ Public Authorities (bodies governed by public law)
 - ❖ In the specific sectors of gas, heat, electricity, water, transport, exploration for, or extraction of oil, gas, coal or other solid fuels, ports and airports, telecommunications, and postal services carried out by:
 - ❖ Public undertakings operating in markets which are not liberalised;
 - ❖ Private entities that have been granted special or exclusive rights without an acceptable competitive process and operate in markets which are not liberalised (See concessions decision tree)
- ❖ Other operations are considered to be in the private sector.



Thresholds

- In accordance with GtP, §3.7 if contracts > GtP thresholds
- Procurement & award notices to be published in Official Journal of EU

Nature of the Contract	GtP Threshold (€)
Works	> 5 million
Goods and Services except Consultancy services: In General Electricity, Gas, Water and Transport Telecommunications	> 200,000 > 400,000 > 600,000
Consultancy services	> 200,000



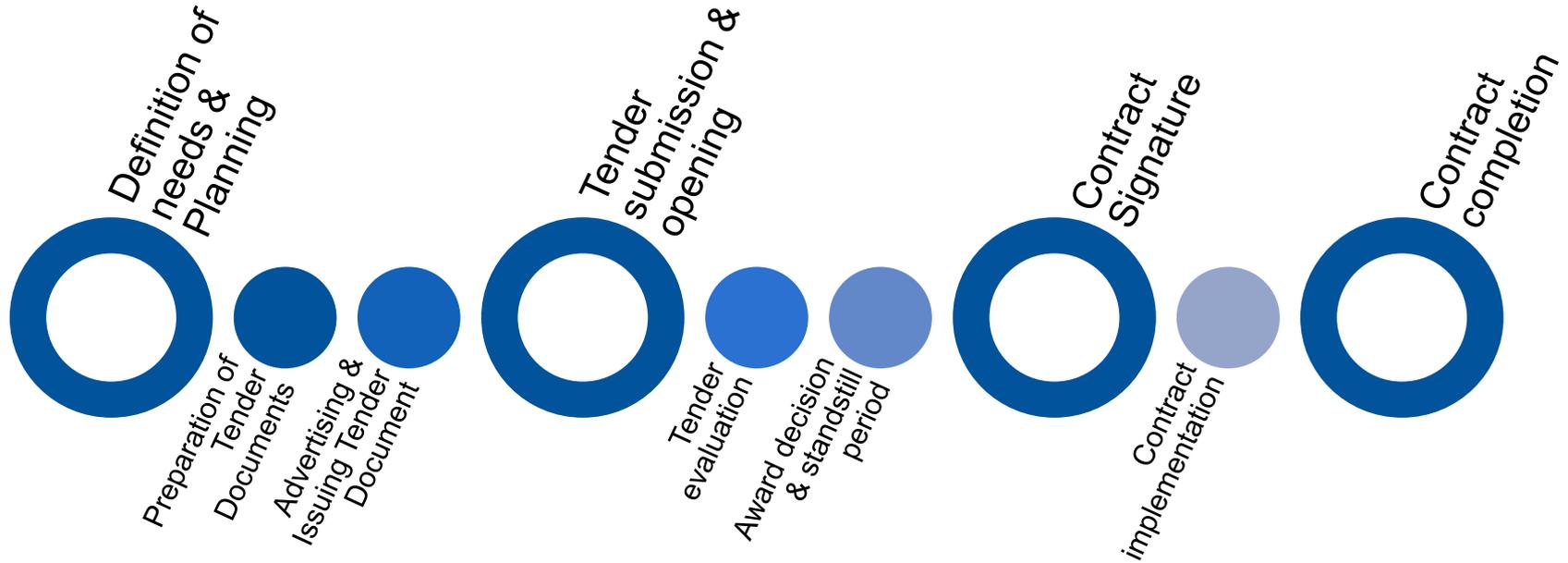
Main public procurement methods

- ❖ International procurement procedures
 - ❖ Open procedure
 - ❖ Restricted procedure (with open pre-qualification)
 - ❖ Competitive dialogue
 - ❖ Negotiated procedure with publication
 - ❖ Negotiated procedure without publication
 - ❖ ...

- ❖ National procurement procedures: < GtP/EU thresholds
 - ❖ National competitive bidding
 - ❖ Shopping
 - ❖ Force account
 - ❖ ...



Typical (public) procurement process: open tendering





- International procurement procedures (GP §3.5, Annex 2)
 - **Prior review**
 - the Bank has a policy to leave the entire responsibility of the procurement procedures to the promoter. Consequently, the Bank limits its review of the promoters' procurement decisions to the essential steps. The promoter must send to the Bank, for its “non-objection”, the pre-qualification report, proposed list of pre-qualified candidates and evaluation report.

- Others procurement procedures (GP Annex 2)
 - **Post review**
 - the promoter will send a copy of the main elements of the contract together with an evaluation or justification report to the Bank prior to his request for disbursement.

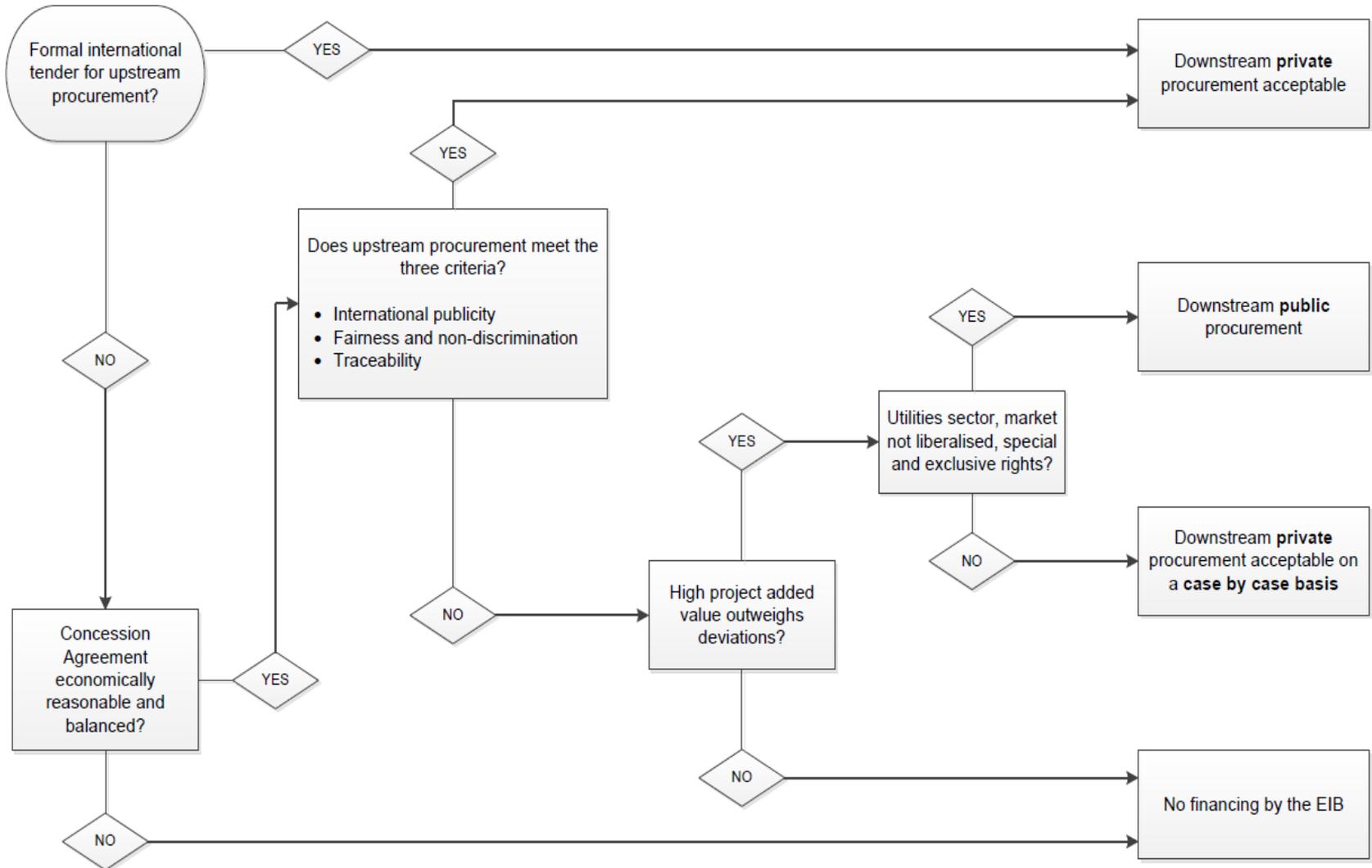


Concessions: upstream/downstream procurement - I

- ❖ For concession projects there are two sides to procurement:
 - ❖ **Upstream:** Selection of concessionaire. Preferred procedure is formal international competitive tender. If not, aligned as much as possible with basic EU public procurement principles.
 - ❖ **Downstream:** procurement by the concessionaire. Required procedures depend on how upstream procurement was carried out.
- ❖ Prerequisite for financing concessions: the Concession Agreement must be economically reasonable and balanced.



Concessions: upstream/downstream procurement-II



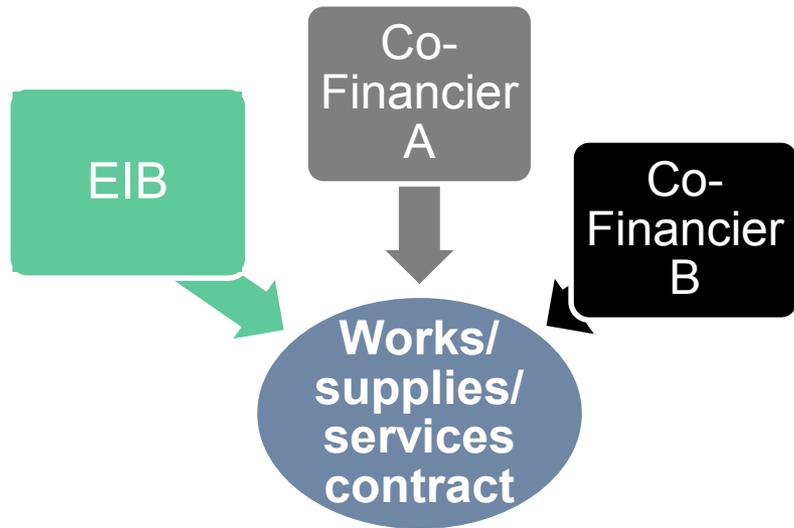


Co-financing

EIB accepts to rely on a co-financier's procurement policy provided that:

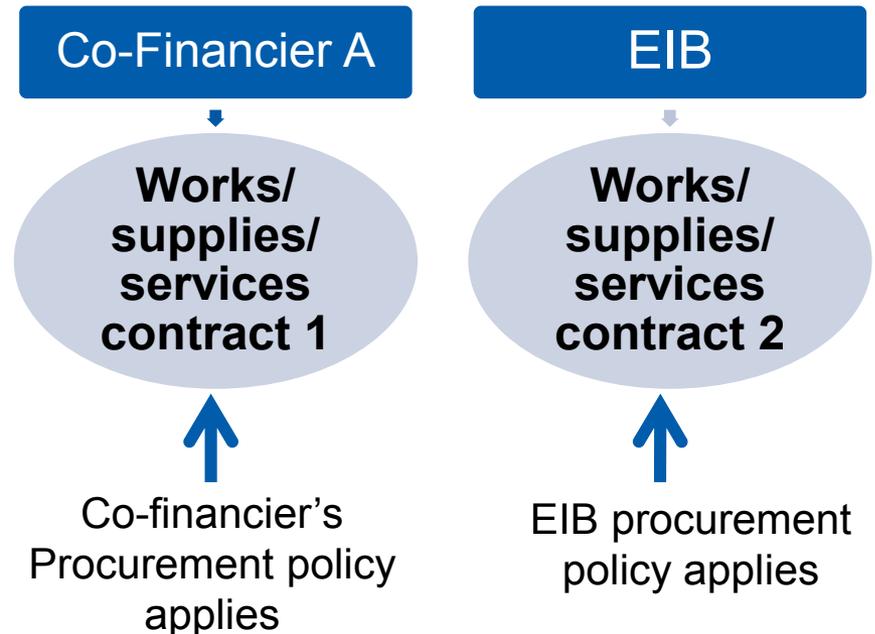
- A. Universal Eligibility
- B. Adequate publicity
- C. Internationally accepted practices

Joint Financing



The co-financers have to agree on the procurement that applies

Parallel Financing





Complaint against a Promoter's procurement decision

- ❖ GtP: Reliance on country's procurement system, including complaints mechanism
 - ❖ Access to remedies is a fundamental requirement
- ❖ Complaints to be sent primarily to Promoter / national remedies for response & action (in consultation with EIB)
- ❖ **EIB shall issue no-objection after having been satisfied with the way in which complaints were handled by the Promoter.**
- ❖ No legal relationship between tenderers/contractors and EIB



Complaints against an EIB's procurement monitoring decision



- ❖ EIB Complaint Mechanism review complaints on maladministration by EIB group; in procurement, e.g.:
 - ❖ EIB's (No-)objection on a procurement decision allegedly not in line with the GtP;
 - ❖ EIB's Advice to a promoter allegedly in a way inconsistent with the GtP;
 - ❖ Omission to take action or unjustified delay in taking action by EIB, etc.

- ❖ EIB unique among MDBs :
 - ❖ Subject to European Court of Justice
 - ❖ Possibility for stakeholders to go to the European Ombudsman
 - ❖ European Ombudsman requires stakeholders to address their complaints against EIB first to EIB's Complaint Mechanism



Standstill period and National Remedies

- ❖ EIB requires promoters to ensure that bidders and interested parties have access to review procedures for effective remedies.
- ❖ These are normally national administrative or judicial courts.
- ❖ Sometimes the national systems do not work adequately, and project specific systems are put in place.
- ❖ For accessing these Remedies systems, the contract should not be signed until the expiry of a reasonable time period after bidders are notified. This is called Standstill Period.
- ❖ These systems avoid (to some extent) that bidders complain directly to EIB.



Tender documents - I

- ❖ The objective is to achieve an economic and efficient outcome, while respecting the principles of transparency and traceability, equal treatment and non-discrimination, international competition and proportionality.
- ❖ Procurement procedure must be tailored to the works, goods and services that are being procured.
- ❖ Design and build vs build only: including the design in the tendering is recommended for some PPPs and unique works (like a bridge), but not for simpler works (like road rehabilitation).



Tender and contract documents - II

- ❖ International contract documentation, such as FIDIC conditions of contract, provide a good basis, as risks are properly allocated between promoter and contractor, and provide means to resolve disputes that will inevitably arise.
- ❖ Changes to the contract should maintain this proportional risk sharing.
- ❖ Even if national standard contracts are developed, the key point is to keep a balanced risk sharing.
- ❖ Contract documents should allow for some variation orders, as there will always be things that were not considered in the design.



Procurement of services - I

- ❖ Procurement of consultancy services for preparation and implementation of the works is extremely important, as they can save large amounts of money and problems at implementation phase.

- ❖ Lowest Price vs. Most Economically Advantageous:
 - ❖ Lowest price can be used for standardized goods, or for works that can be precisely specified.
 - ❖ Most economically advantageous is the default recommendation and also when services or works are difficult to specify in the tender documents.



Procurement of services - II

- ❖ Selection criteria should be proportionate to the size of the contract.
- ❖ Award criteria should reflect not only price but technical merit, i.e. qualification and experience of the staff assigned to perform the contract (not of the company).
- ❖ Award criteria, including weights of the different criteria should be fully established before opening bids.
- ❖ Qualifications and experience of the staff is key for a quality output that will save time and money in the long run.
- ❖ For repeated or common assignments, framework contracts can be a good option.



Procurement of works – Prequalification criteria

- ❖ Proportionality on prequalification criteria is essential to allow a smooth implementation of the works.
- ❖ A balance must be achieved:
 - ❖ Too low criteria will improve competition, but can lead to contractors that do not perform.
 - ❖ Too high criteria ensures a competent contractor, but reduces competition, driving prices up.
- ❖ If there are minor deviations on the administrative documentation, clarification should be sought from bidders to ensure all competent bidders are prequalified.



Procurement of works – Bid Evaluation

- ❖ The use of the two envelope system allows a fair assessment of the technical and administrative compliance of the bid.
- ❖ Opening of the financial bids should only be done for technically compliant bids.
- ❖ Unsuccessful bidders should be fully informed of the reasons why they were disqualified, which will reduce complaints in the long run.
- ❖ A standstill period for complaints allows fixing things while it is still possible.
- ❖ Publication of the Award Notice in the OJEU is mandatory.
- ❖ Abnormally low tenders: a difficult issue



- ❖ A proper procurement plan can save time and money in the long run, time spent planning is time saved later.
- ❖ Good risk allocation will reduce prices and avoid delays, if contractors take more risks, they will price them in their bids.
- ❖ A procurement process cannot be rushed, sometimes it takes time, but there are no good shortcuts.



Covenant of Integrity

- ❖ Applicable to all contracts outside the EU
 - ❖ No threshold
 - ❖ Public & private sector operations
- ❖ Undertaking not to engage in Prohibited Practice (extended to the tenderers' sub-contractors)
- ❖ Obligation for tenderers to declare if they have been excluded by the European Institutions or the main MDBs
- ❖ Obligation of keeping records for possible auditing (extended to the tenderers' sub-contractors)



Thank you for your attention.