CONCERTED ACTION
ENERGY EFFICIENCY
DIRECTIVE

Model contract and guidelines for energy performance contracts in the public sector

Executive Summary WG 2.5/5.5

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1 Summary

The Energy Efficiency Directive (EED) explicitly states in Articles 5 and 6 that the public sector shall play a leading and exemplary role in promoting energy efficiency. However, there are also cross-cutting provisions which indirectly address the public sector, including Articles 18 and 19. These refer to the take up of energy services, indicating ways to support the public sector, and the removal of regulatory and non-regulatory barriers, deterring public bodies from energy performance contracting (EPC) and third party financing (TPF).

This report investigates the way Member States (MS) have approached the provisions of Articles 18 and 19 to foster EPC and TPF within the public sector.

A questionnaire was circulated to national experts from MS ministries and energy agencies, of which 22 replied.

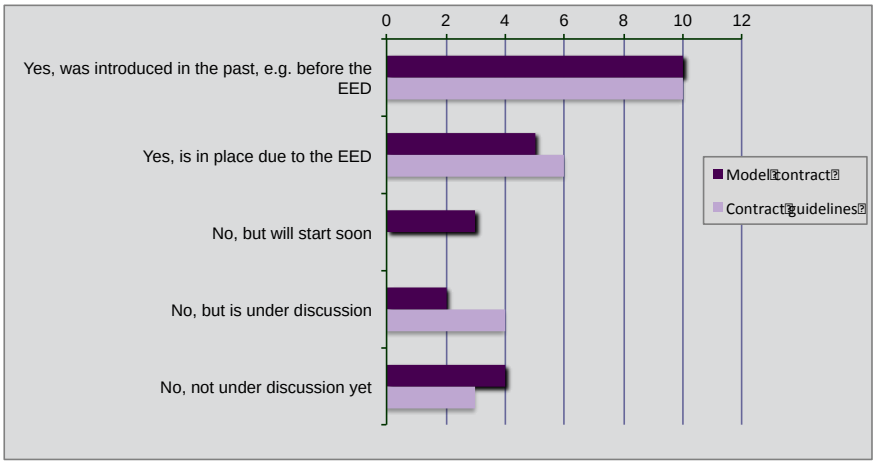
The main **information** from the above investigation **can be summarised** as follows:

- The establishment of a model contract **at a national level for energy performance contracting** in the public sector has been initiated in half of the MS: in two thirds of these this happened before the EED obligation was introduced. However **at a regional/local level** it is much less developed and in most cases the implementation or discussion of a model contract hasn't been considered at all.

- The same picture refers to the establishment of **contract guidelines at a national level for energy performance contracting.** 10 MS established this before the EED came into force and 5 established it subsequently. **At a regional/local level** this situation is not expected to improve**.**

- Both model contracts and contract guidelines are in place in 13 MS: in 9 MS they were introduced before the EED.

Figure 1 Situation of model contract and contract guidelines availability for energy performance contracting in the public sector at national and regional/local level



- The main reasons for the development of model contract/contract guidelines have been:
  - A growing EPC market and the need for standardised guidelines of minimum criteria to be covered by Energy Services Companies (ESCO) contracts.
  - Encouragement of the utilisation of ESCO and EPC concepts in large buildings, where procurement rules and competition make the ESCO tendering more challenging.

- Where established, the contracts are either part of regulations or published independently without obligation for use.

- The most common options for the development of model contracts are:
  - Collecting contracts and information from the existing national market

    - Taking experience from abroad
    - Involving a limited number of experts

- Regarding the **items that should be included in an EPC** (such as listed in EED Annex XIII), 10 MS have fulfilled all the minimum requirements, some after the publication of the EED. Five MS only partially met the minimum requirements due to particular constraints, for instance a lack of clear and transparent measurement and verification methodologies in the market place, non-disclosure of consumption/savings data due to competitiveness reasons (e.g. for the next tendering) or a security margin in case of problems (e.g. underperformance).

- Information on best practice in the public sector for EPC is mostly provided only as part of wider information on energy efficiency for both the public and private sectors.

- Successful ESCO/EPC projects have been disseminated and recognised through journals, seminars, and websites.

- Information on best practice in the public sector with cost-benefit analysis using a life-cycle approach has only been developed in 1/6 of MS and is under evaluation in another third. This raises the question - if ESCO/EPC projects are long term contracts in nature and it is appropriate to include long term cost analysis into the contracts, why is such a practice still regarded as difficult and not commonly used?

- A wide range of **prerequisites** or **accompanying measures** that may foster the diffusion of EPCs can be categorised as follows:
    - Information to wider public
    - Training and communication to sectorial targets
    - Consultancy service by facilitators to applicants and to public administrations in developing a regulatory framework
    - Bundling of building sets in a single contract or of smaller similar contracts (e.g. of small municipalities) into a bigger framework tender to reduce risk for ESCO
    - Online systems

2 Recommendations/Conclusions

For model contract/guidelines the following can be advised:

- Standard rules and standardisation[1] in all stages of EPC help decision making and financing, etc., but as every case (or building) is different, there must be enough flexibility to adapt to each situation.

- Measurement & Verification methodologies and risk management and allocation procedures should be part of the contract. A standardised Certification or a Code of Conduct should also be incorporated into contracts.

- A dynamic on-line tool for generating draft contracts was considered by many MS a more flexible and useful solution compared to a traditional model contract.

For EPC in the public sector the following can be advised:

- The first step is to understand the needs and the situation, starting with data gathering and an energy audit. It is then possible to evaluate the best solution, which may not always be a performance contract.

- One of the main issues is awareness amongst all the parties and stakeholders involved. Support/information programmes are needed.

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[1] This is also underlined by the results of EEFIG report (http://ec.europa.eu/energy/en/news/new-report-boosting-finance-energy-efficiency-investments-buildings-industry-and-smes) and other works such as the Investment Confidence Project Europe, etc.

- Facilitators are crucial at all stages, but sometimes their availability or qualifications are insufficient for market needs. Qualification/certification of facilitators (and energy experts) should be considered.
- ESCO certification and a certified ESCO inventory and/or Code of Conduct can not only build confidence but also work as a communication tool.
- As the transaction costs are high, support/subsidies for the preparation of EPC and guarantee funds are quite varied among MS.
- There is a strong need for the simplification of accounting and tender procedures for the public sector and clarification about the off-balance sheet. This is also the case in more mature markets, where the main barriers are legislative.
- International Performance, Measurement and Verification Protocol (IPMVP) is commonly used as a Measurement & Verification methodology in a number of MS.
- Centralised contracting can simplify EPC for the public sector and scale it down to a single small building.

3 Practical Examples

The three presentations at the Plenary Meeting illustrated the EPC situation for the public sector in three markets at different stages, namely in Germany, the Czech Republic and Ireland. In all three cases, the importance of the facilitator was highlighted, and the framework and the support measures were illustrated. In the Czech Republic, the Association of Energy Services Providers also has an important role in fostering EPC. In Ireland, the Energy Agency has a section of their website dedicated to the EPC and has developed a 5 step approach to EPC.

On or off balance sheet

There are different approaches/interpretations in each region according to the financial expert involved or based on the fact that the risks are transferred from the public to the private party.

The following table can be useful in summarising debt and deficit treatment of Public Private Partnership (PPP) according to Eurostat (http://www.eib.org/epec/g2g/i-project-identification/12/125/index.htm)

Accounting treatment of a PPP according to ESA95 rules

	RISK TYPE			"ON" or "OFF" Government Balance Sheet
	Construction risk	**Demand risk**	**Availability risk**	
Who bears the risk?	Government	Government	Government	**ON**
			Private	**ON**
		Private	Government	**ON**
			Private	**ON**
	Private	Government	Government	**ON**
			Private	**OFF**
		Private	Government	**OFF**
			Private	**OFF**

Three further presentations illustrated tools/approaches that can foster EPC in different ways:

- **Netherlands**: A web tool for EPC (also available in English) has been developed for commercial buildings, but can also be used for public buildings. It is more flexible than a traditional model contract and covers heating and HVAC systems, energy management and maintenance for the entire building.
- **Italy:** central EPC framework contracts for public lighting and buildings. A single small building of a small public administration can also benefit from EPC. Strict requirements for measurement and verification with centralised servers collecting all the data from meters and sensors.

- **Transparense Project:** European Code of Conduct for Energy Performance Contracting. The barriers to EPC are mainly lack of trust, complexity and lack of regulation. A Code of Conduct shared with stakeholders at national and European level can provide necessary information and give more confidence to the client (e.g. client tailored provisions can be added to the contract) and at the same time is a way to disseminate information on EPC and act as a marketing tool for the ESCO.

All the presentations can be downloaded from the CA EED website: www.ca-eed.eu/good-practices/member-state-presentations/energy-services/model-contracts-and-guidelines-for-energy-performance-in-the-public-sector

For more information please email
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Legal Disclaimer

The Concerted Action for the Energy Efficiency Directive (CA EED) was launched by Intelligent Energy Europe (IEE) in spring 2013 to provide a structured framework for the exchange of information between the 29 Member States during their implementation of the Energy Efficiency Directive (EED).

For further information please visit **http://www.ca-eed.eu/** or contact the CA EED Coordinator Lucinda Maclagan at **lucinda.maclagan@rvo.nl**

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