



EUROPEAN SEMESTER THEMATIC FACTSHEET

PUBLIC PROCUREMENT

1. INTRODUCTION

Every year public authorities in the EU spend around 14% of GDP on public procurement. This amounts to more than EUR 1.9 trillion¹. Public procurement is clearly important for competitiveness because of its size. This is true especially in sectors such as energy, transport, defence, IT and health services, where the public sector is a key source of demand.

Efficient public procurement is crucial for solving many of the key policy challenges that the EU is facing. This includes growth and jobs, fiscal discipline, modernising public administration, the fight against corruption and collusion, market access for SMEs, citizens' trust in public authorities and democracy, as well as innovation and environmentally and socially sustainable growth.

Productive spending and investment of public money are key levers to restore economic growth, especially in times of constrained government budgets. For Member States, public procurement is an essential vehicle for delivering governmental policies and meeting national strategic objectives. Well-functioning public procurement markets boost national competitiveness through better public

finances, better investments and higher quality services such as infrastructure or e-government.

Public contracts above the EU thresholds set at EU level² have to be published EU-wide, on the 'Tenders Electronic Daily' (TED)³ platform. The aim is to integrate procurement markets across the EU, increase competition and obtain better value for public money spent. In total, calls for tenders have been published EU-wide representing EUR 450 billion in 2015.

2. KEY POLICY CHALLENGES

The strengthening of public procurement is central in the actions of public authorities to create a fairer society based on equal opportunity, sustainable economic growth and wide market participation. At the same time, an efficient public procurement system can greatly contribute to sustainable public finances.

Under the current EU regulatory framework, assessment of the quality and effectiveness of public procurement systems is essential to identify strengths and weaknesses in the Member States.

¹ This is the latest estimate not including spending by utility companies. Former estimates including utility procurement are around 19% of EU GDP, i.e. roughly EUR 2.3 trillion.

² EU law sets minimum harmonised rules for tenders whose monetary value exceeds a certain amount. These are available on https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds_en.

³ <http://ted.europa.eu/TED/main/HomePage.do>

This should lead to corrective action and strategies. Modern public procurement is based on some key elements:

- value for money: providing the required goods, works, and services in an economic, efficient and effective way;
- transparency: disclosure of information related to public procurement procedures in a comprehensible, accessible and timely manner;
- fairness: the public procurement process should be free from bias and ensure equal treatment of all bidders;
- good governance: procurement should not be seen as an administrative process; on the contrary it is as an opportunity to deliver various societal objectives through smart spending. This may lead to improve trust in government, green, social or innovation.

Availability and quality of reporting data is essential to analyse procurement and prepare appropriate actions and policy responses. Better and more accessible data on procurement for all interested

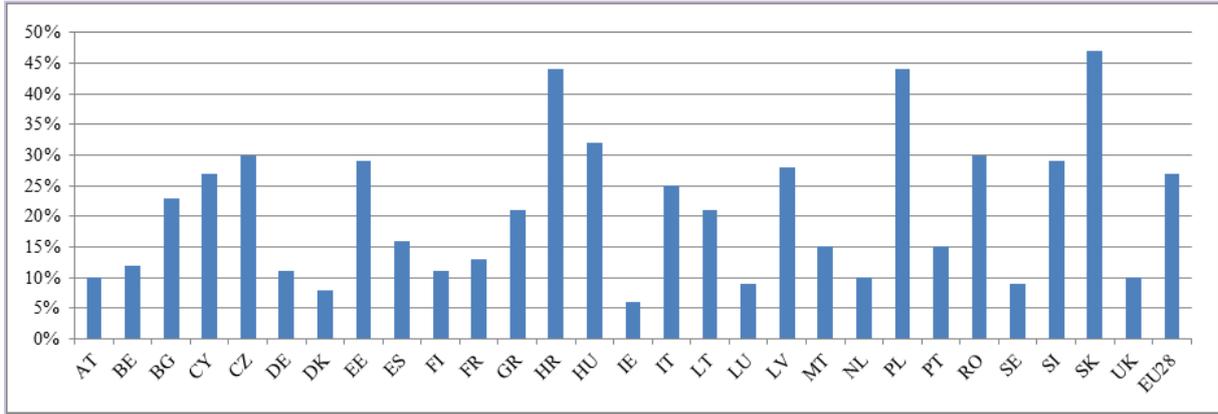
parties could bring more attention to this subject from the research community (which could result in new ideas on how to tackle certain weaknesses) and optimise the interaction with the society at large (building trust and creating public pressure to improve the performance of public procurement systems).

Value for money

2.1. Competition in public procurement

Contract award notices published in TED record the number of bids submitted. This is an important indicator of the level of competition in public procurement markets. Competition among bidders for public contracts is one of the main ways of achieving the final aim of public procurement policy i.e. best value for money. Between 2006 and 2016, the number of tenders with only one bid has grown from 14% to 29%. This shows that the competitive process is either not present or it is losing intensity; overall, companies have more difficulties accessing procurement markets.

Figure 1: Proportion of contracts for which there was a single bid (excl. frameworks) 2006-2016



Source: European Commission based on OJ/TED data (Croatia 2013-2016, Romania & Bulgaria 2007-2016)

At EU-28 level there were 27% notices with just one bidder in 2006-2016. The highest figures were in the new Member States. Also Italy recorded an also high percentage, close to EU-28 average.

Overall there is an increasing number of EU Member States with a high proportion of contracts with a single bid, i.e. with insufficient competition (Figure 1).

2.2. Level of cross-border public procurement

The conditions created by EU public procurement rules were expected to result in increased cross-border tendering. In general, there are two distinct forms of cross-border procurement, direct⁴ and indirect⁵. Between 2009 and 2015, the levels of direct cross-border procurement have generally been increasing both as a share of total value of contracts awarded (from 2.5% to 3.5%) and as a share of the total number of contract awarded (1.5% to 2%). Over the same period, the indirect cross-border also followed an overall increasing trend: the share of total number of contracts awarded rose from 19.9% to 22.6% while the share of the total value of contracts awarded increased from 18.6% to 21.4%. It can be noted however that this trend of growth has not been stable over time.

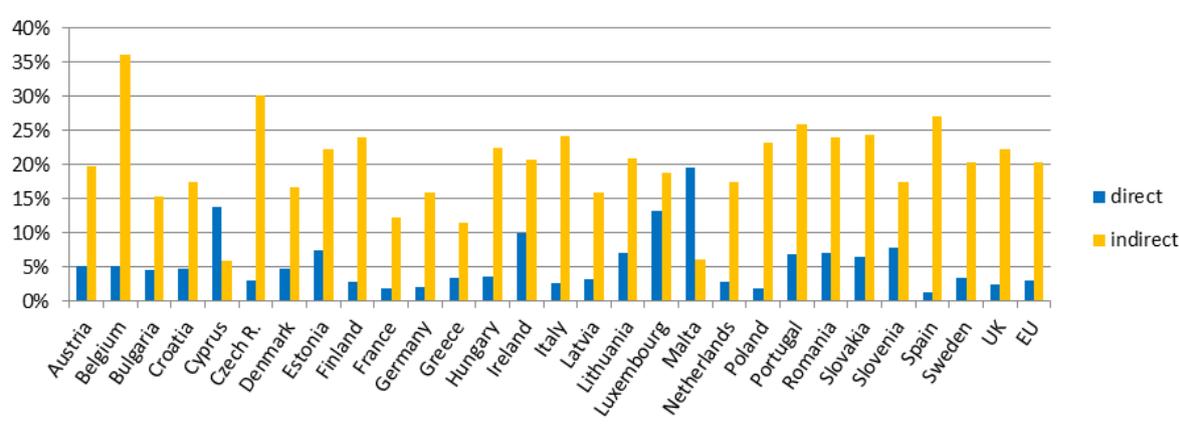
Between 2009 and 2015, the share of direct cross-border by number of awards

is above 10% in only three countries: Malta (12%), Ireland (13%) and Luxembourg (17%). In these three small countries it would so seem that local supply is insufficient to meet buyers' needs. In the majority of EU-28 Member States the direct cross-border share in the number of awards remained under 5% (Figure 2).

Between 2009 and 2015 indirect cross-border procurement was above 15% in most Member States. The range of indirect cross-border procurement as a share of the number of awards varied between 2.1% and 34.8% (by value 5.9% and 36%) across EU-28 countries.

The fact that indirect cross-border procurement is often high when direct cross-border is low may be a reflection of, actual or perceived, barriers to cross-border bidding which lead firms to rely on locally based subsidiaries for their cross-border sales⁶.

Figure 2 – Proportion of contracts awarded to foreign companies by value (directly and indirectly), 2009-2015



⁴ Where the successful bidder is not located in the same country as the contracting authority and is not domestically owned.

⁵ Where the successful bidder is based in the same country as the contracting authority but is a subsidiary of a foreign company.

⁶ As the firms' strategy to reach cross-border markets develops, they are therefore more likely to establish a subsidiary to deal with the complexity of country-specific requirements. Cross-border bidders see a local presence as an advantage also because contracting authorities are perceived to favour contractors who speak their language and are not geographically remote.

Transparency and fairness

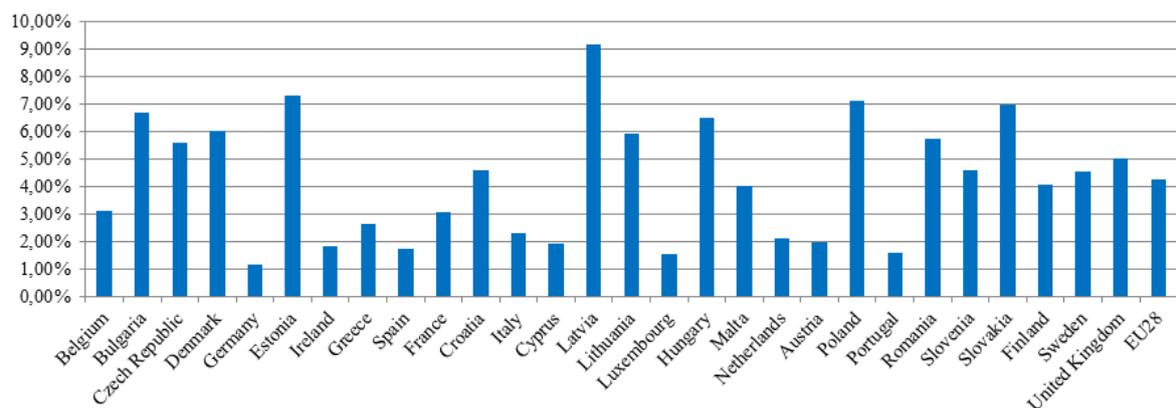
2.3. Publication of public tenders at EU level

A key indicator is how many public tenders are published at EU level⁷. The general trend is relatively stable for the last four years; however, the level of publication varies greatly between countries. In some of them the value of procurement published in relation to GDP is far below the EU average of 4.25% (2012-2015) (Figure 3).

Countries where the value of published tenders is relatively small in relation to

GDP will not reap the benefits of increased publicity, such as reduced search costs in search for upcoming procurements or enlarging the pool of potential participants. Also, while benefiting from other Member States market openness, such countries do not offer symmetric opportunities for European businesses from other Member States; this is of high relevance in the relation between deficit and surplus Member States. Germany is the Member State recording the lowest publication rate in the EU (1.2%).

Figure 3 – Value of calls for tender published as a percentage of GDP by Member State, 2012-2015



Source: European Commission based on OJ/TED data (Croatia 2013-2015)

2.4. Openness of procedures used in public procurement

Transparent public procurement markets have a high level of openness and a potential for high competition which means the companies that win the bids are those with the best product, at the best price targeted at achieving the best outcome.

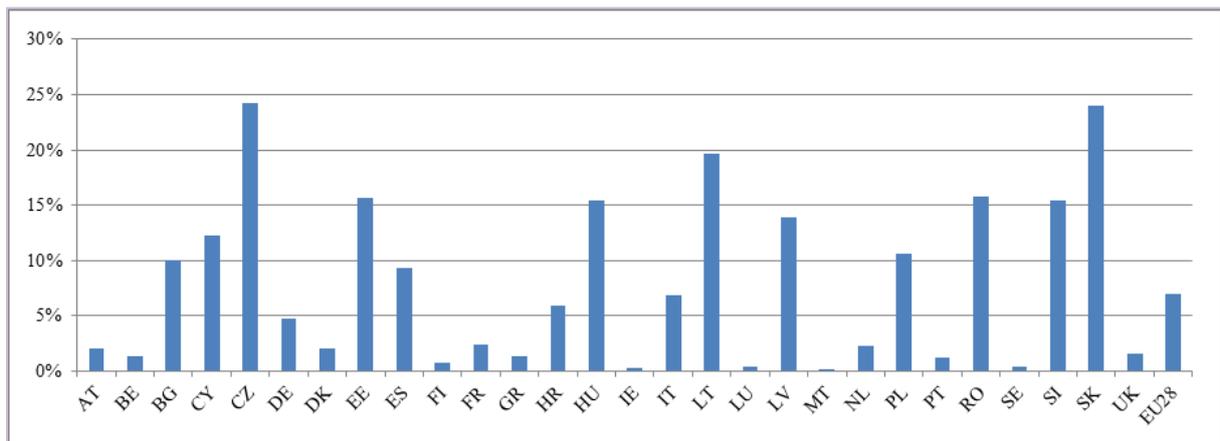
A key element indicating the degree of transparency is the type of procedures used. When open procedures are used, high transparency and competition are more likely. By contrast, when a negotiated-procedure-without-publication (NOC) is used, levels of transparency

and competition are likely to be much lower.

The EU-28 proportion of contract award notices where the NOC procedure was used was 7% in 2006-2016 (see Figure 4). This indicates that the observable part of public procurement is fairly transparent. The overall trend since 2006 is for relative stability, but with significant discrepancies among Member States. Some sectors, however, stand out due to a very high use of NOC procedures. This is the case, for example, for procurement of IT solutions, where supplier lock-in is a frequent phenomenon.

⁷ Including utilities and defence.

Figure 4 – Proportion of contract award notices where a negotiated-procedure-without-publication (NOC) was used, 2006-2016



Source: European Commission based on OJ/TED data (Croatia 2013-2016, Romania & Bulgaria 2007-2016)

2.5. Quality of reporting data

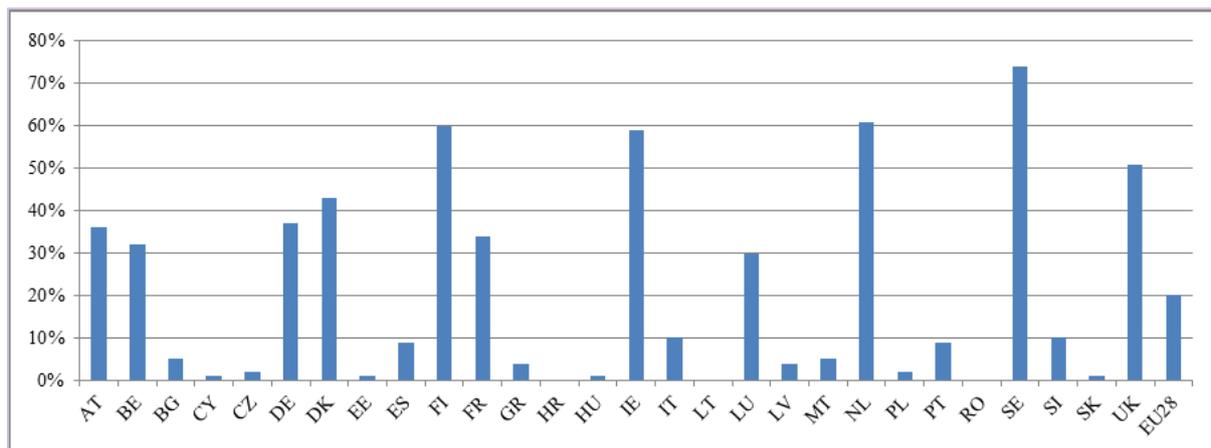
The importance of data is widely agreed upon. The OECD has, for example, stated that 'although member countries increasingly collect basic data on procurement, few of them make a systematic analysis of this information to measure the performance of the procurement system'. Furthermore, Commission's studies have recommended improving the quality of procurement data, and of remedy data. Dedicated studies have been carried out in some Member States for instance by the British, German, and Swedish governments and by the Croat, Czech and Hungarian non-governmental sectors.

The cost of the proposed solutions is generally not large, neither in absolute terms nor in comparison with procurement expenditure especially. For example, the cost of the contract register in Slovakia was below EUR 25 000. In addition, audit data are already available, meaning that the main changes now need to be made to work processes. Lastly, sophisticated data analysis has been

done in some Member States on modest NGO budgets.

One indicator used to illustrate data quality is the rate of notices in TED with no information about the contract value. At EU level, the proportion of contracts with no value was 20% in 2006-2016. However, 10 Member States had much higher values with top four being Sweden, the Netherlands, Finland and Ireland. Moreover, a number of countries with a high proportion of missing values are not improving their performance on this issue over time, the most extreme cases being of Sweden and the Netherlands.

Figure 5 – No information recorded on contract value, 2006–2016



Source: European Commission base on OJ/TED data (Croatia 2013-2016, Romania & Bulgaria 2007-2016)

Good governance

2.6. Aggregation of demand

The public procurement landscape is characterised by significant fragmentation in the number of buyers. It is estimated that there are over 350 000 individual contracting authorities operating in the EU. However, in many Member States there are no reliable data on the number of contracting authorities, and therefore this number is to be considered as indicative.

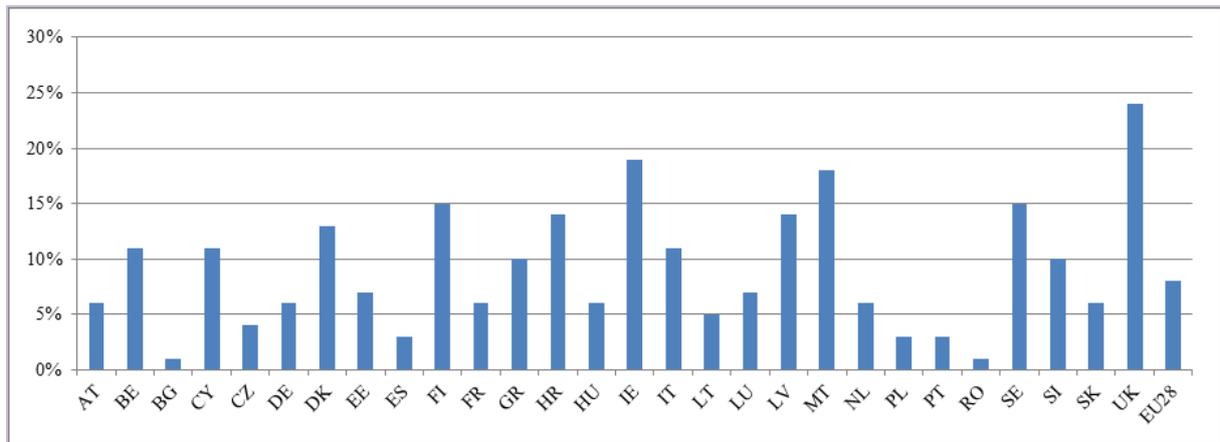
Financial constraints and stronger public demands for more responsibility push public authorities to centralise and standardize procurement. At the same time, demand aggregation in public procurement has the potential to help public authorities achieving key objectives such as:

- as best value for money through large-scale economy benefits;
- social or green targets;
- professionalisation of buyers;
- to ensure more effective planning and monitoring of the public procurement cycle;
- to implement e-tools.

For example, energy has become one of the most successful instances of collaborative procurement in the UK. In 2010 all central government departments were mandated to source energy through the Government Procurement Service, saving £51 million. Two demand aggregation options are (i) buying through an established Central Purchasing Body (CPB) or (ii) through joint procurement with other entities. Commodities such as electricity and gas, office furniture and equipment are good examples.

At EU-28 level, the average proportion of contract award notices where the contracting authority is purchasing on behalf of other contracting authorities was 8% (Figure 6) in 2009-2015, with the UK at the highest level. There is a wide range for the usage of joint purchasing or central purchasing versus EU-28 average. However, the relatively stable change over time is evidence that despite the budgetary constraints, the Member States are not taking advantage of aggregation of demand (where this is suitable).

Figure 6 – Proportion of contracts award notices where the contracting authority is purchasing on behalf of other contracting authorities (either joint purchasing or central purchasing bodies) 2006–2016



Source: European Commission base on OJ/TED data (HR 2013-2016, Romania & Bulgaria 2007-2016)

2.7. Varying use of quality criteria

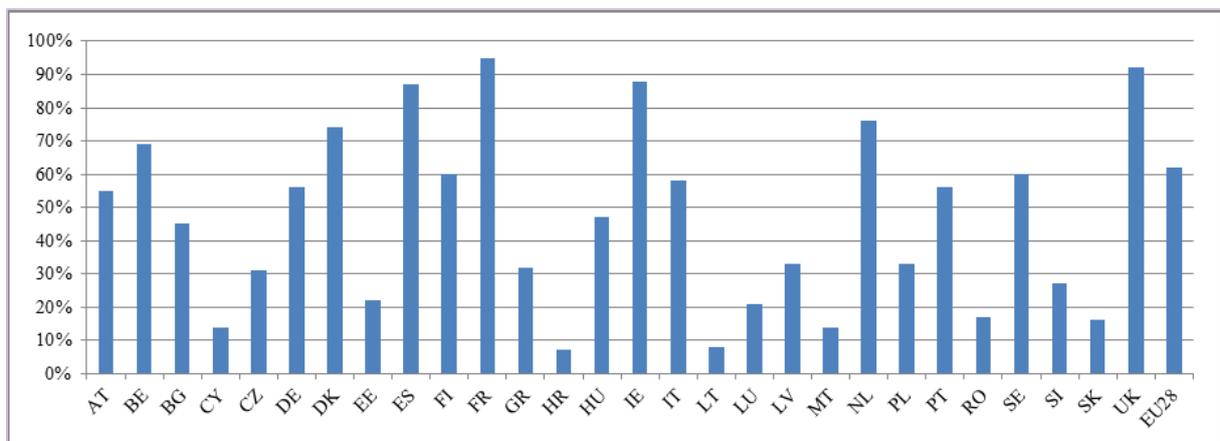
Only few Member States have been active in putting in place policies for environmentally/socially responsible public procurement or innovation. As a result there is excessive use of the lowest price as an award criterion which does not always lead to best value for money.

Instead, the Commission promotes the integration of quality criteria into what is called 'Most Economically Advantageous Tender' (MEAT) principle. The use of this principle by the Member States,

however, varies widely (Figure 7). France and the UK use MEAT in more than 90% of tenders, whereas Croatia and Lithuania are below 10%. The EU average is 62%.

As a consequence of their low recourse to the MEAT principle, Member States may be missing an opportunity to use substantial sums spent through procurement smartly and strategically, and generate more economic spillovers. This issue is particularly relevant in central and eastern European Member States.

Figure 7 – Use of MEAT criteria for evaluating tenders, 2006–2016



Source: European Commission base on OJ/TED data (Croatia 2013-2016, Romania & Bulgaria 2007-2016)

3. SOLUTIONS FOR MEMBER STATES

3.1. Solutions

Clear and concrete action can transform public procurement into a powerful instrument in each Member State's economic policy toolbox, leading to substantial benefits in procurement outcomes. This has been argued in the Commission Communication adopted on 3 October 2017⁸; the Communication sets out the policy framework to improve procurement practices throughout the EU; the approach proposed is based on a partnership. Action in priority areas would also allow the Member States to address the shortcomings seen in the previous section.

As indicated in the Communication, such actions cover six priority areas.

- Ensuring wider uptake of strategic public procurement;
- Professionalising public buyers;
- Improving access to procurement markets;
- Increasing transparency, integrity and better data;
- Boosting the digital transformation of procurement;
- Cooperating to procure together.

With regard to **strategic public procurement**, it should play a bigger role to respond to societal, environmental and economic challenges. In practice, this means mainstreaming innovative, green, and social criteria⁹, a more extensive use of pre-market consultation or qualitative assessments (MEAT¹⁰) as well as procurement of innovative solutions at the pre-commercial stage. Some Member States made MEAT, including green criteria mandatory for their procurement processes. In any event, to achieve optimum outcomes in public procurement, strategic criteria need to be applied systematically. This can be

enabled by extensive practical support, such as dissemination of standards, methodologies for benchmarks, regular updates of labels¹¹ and evaluation criteria and availability of a library of good practice.

Professionalisation is another important aspect. The increased use of strategic public procurement requires a wider use of flexible practices, knowledge of markets and innovative tools. The public sector needs to put in place a comprehensive strategy to counteract risk aversion and to attract and develop skills across the public procurement landscape. Member States are at different stages in their journey towards professionalisation. Sharing experiences will enable them to improve their procurement practice; it will also increase the impact of procurement in delivering public policy objectives. Long-term professionalisation strategies at national level are essential to have the right people with the right skills and tools to deliver the best outcomes.

Another important aspect concerns **access to public procurement markets**. SMEs are key for job creation, growth and innovation, but they have difficulties finding access to procurement. Currently, SMEs win 45% of the aggregate contract value above EU thresholds — directly or as joint bidders or subcontractors. The 2014 directives include measures¹² that should facilitate the access of SMEs to public procurement. These enhanced procurement opportunities for SMEs need to be communicated more vigorously to the general public, companies and contracting authorities. The aim is to increase the SME share of public procurement in line with their overall weight in the economy.

Another way to improve access is to build trust among market players,

⁸ COM(2017) 572 final.

⁹ Which should also include the obligation of accessibility for persons with disabilities.

¹⁰ Most economically advantageous tender which allows for giving more prominence to quality.

¹¹ Such as Ecolabels, energy or fair trade labels.

¹² Measures to improve SMEs' access to public procurement markets include an encouragement to divide contracts into lots, a limit to the turnover required to participate in a tender procedure and a reduction in documentation requirements.

including SMEs, to participate in procurement procedures. This can be done by offering fair, efficient possibilities for problem solving and an independent review of procurement decisions. Furthermore, the EU is the world's most open market for procurement, but access for our companies in other countries is not always reciprocal. Major EU trade partners maintain discriminatory measures affecting EU businesses by granting preferential treatment to national bidders.

Governance of public procurement relies on reliable **data**. These are essential to prepare appropriate policy responses. Better and more accessible data on procurement should be made available¹³. They open a wide range of opportunities to assess better the performance of procurement policies and shape future strategic decisions. The use of electronic procurement systems will also allow producing data which also provide a means to detect irregularities.

Moreover, access to public procurement data should enable the dialogue with civil society and holds governments more accountable. Public authorities are thus better equipped to fight fraud and corruption¹⁴. To this end, setting up publically accessible contract registers¹⁵ is strongly recommended, providing transparency on awarded contracts and their amendments. Moreover, enabling the reporting of corruption by setting up effective reporting mechanisms and protecting whistleblowers against retaliation can also contribute to impro-

ving the transparency of public procurement and saving public money¹⁶.

New digital technologies offer great opportunities to streamline and simplify the procurement process through the roll-out of electronic public procurement. The procurement directives provide that the electronic submission of tenders will be mandatory by October 2018. However, the full benefits of e-procurement will only be captured if the whole public **procurement process undergoes digital transformation**. New technologies provide the possibility to rethink fundamentally the way public procurement, and relevant parts of public administrations, are organised. There is a unique chance to reshape the relevant systems.

Cooperative procurement has started to take hold across the EU¹⁷. As aggregators central purchasing bodies (CPBs) manage increasing shares of public procurement markets. They are becoming important players in promoting public procurement reform, including the implementation of a strategic approach. They create the possibility to increase the leverage of public purchasers, which is indispensable in certain markets dominated by a small number of market operators. CPBs can be set-up with a general mandate at national level, target specific sectors (such as health, IT) or specialise in regional/municipal procurement.

The large procurement volumes of CPBs could be used to leverage strategic procurement, e.g. by setting targets for innovative or green procurement. Their market insight also represents a key element for the professionalisation of public procurement. CPBs' expertise

¹³ While respecting the fundamental rights, and in particular the right to protect personal data, to the extent applicable.

¹⁴ According to the Commission's 2014 Anti-Corruption Report, corruption costs EU society around EUR 120 billion per year. According to a 2013 study (PWC and Ecorys for the European Commission), the overall direct costs of corruption in public procurement in only five sectors (road and rail, water and waste, urban/utility construction, training, and research and development) and in only eight EU countries ranged from EUR 1.4 billion to 2.2 billion.

¹⁵ To the extent that such register will contain personal data, it shall comply with the requirements of the data protection legislation.

¹⁶ According to the 2017 study 'Estimating the economic benefits of whistleblower protection in public procurement (Milieu for the European Commission), the potential benefits of effective whistleblower protection for the EU as a whole in the area of public procurement are in the range of EUR 5.8 to 9.6 billion each year.

¹⁷ Demand aggregation refers to contracting authorities or others operating through Central Purchasing Bodies (CPBs) which act as wholesalers or intermediaries.

creates spillover effects, as they often provide support for other contracting authorities.

There is also much to be gained from a stronger cooperation among contracting authorities. Joint cross-border procurement, where contracting authorities from different countries jointly organise their procurement procedures, is greatly facilitated by the new EU rules. Several recent examples demonstrate the feasibility of such partnerships.

3.2. The EU regulatory framework

The EU public procurement directives cover tenders that are expected to be worth more than a given threshold, although Member States have also to comply with the principles of the EU Directives for tenders below the threshold. The core principles of the Directives are transparency, equal treatment, open competition, and sound procedural management. They are designed to achieve a procurement market that is competitive, open and well regulated. This is essential for putting public funds to good use. The implementation of the Directives also can greatly contribute to achieving the objectives of value for money, transparency, fairness and good governance.

The Directives were thoroughly amended by the 2014 Reform; the new rules simplify public procurement procedures and make them more flexible. This will benefit public purchasers and businesses, particularly SMEs. Specifically:

- Simpler procedures for contracting authorities will open up the EU's public procurement market, prevent 'buy national' policies and promote the free movement of goods and services. As a result, contracting authorities will obtain better value for money.
- The new rules, including a new electronic self-declaration for bidders (ESPD), pave the way for the digitalisation of public procurement, which will considerably increase the efficiency of the public procurement

system. For instance, only the winning company needs to submit all the documentation proving that it qualifies for a contract. This will drastically reduce the volume of documents needed for selecting companies.

- By limiting turnover requirements and using the option to divide tenders into lots, SMEs will gain easier access to public procurement.
- Public procurement is becoming a policy strategy instrument. Under the new rules, public procurement procedures will also help public purchasers to implement environmental policies, as well as those governing social integration and innovation.

The Public Procurement Directives had to be transposed by Member States at the latest by 18 April 2016. As of September 2017, four Member States have yet to transpose the three Directives. Two more have yet to transpose the Concessions Directive.

4. SUCCESS STORIES

With regard to several of the key challenges referred to in the previous sections there are good examples.

With regard to **strategic procurement**, Sweden's policy is a best practice. Recently the Swedish Government adopted a National Public Procurement Strategy. The objective of the Strategy is to enable contracting authorities to implement strategic procurement. The strategy contains proposals for concrete actions which are relevant to all public sector activities. The Strategy includes seven policy objectives among which 'Public procurement that is environmentally responsible'. This calls for an increase of green public procurement, especially in product categories with major impact on the environment. Environmental concerns and a life cycle perspective should be taken into account in the different phases of the public procurement process. The implementation and follow-up of the National Public Procurement Strategy was entrusted to the

established in 2015 National Agency for Public Procurement – an independent authority whose main role is to provide effective support to contracting authorities in the country through guidance, trainings, etc.

Another dimension of strategic procurement is the so-called social procurement. This means that public procurement is used to achieve social objectives such as the inclusion of disadvantaged persons. In its 2015 National action plan for sustainable public procurement, France set the objective of including social considerations in at least 25% of its public tenders by 2020. In order to achieve this goal, the action plan launches a series of actions, recommendations and communication tools to raise awareness among contracting authorities.

With regard to **cooperative procurement**, Italy has implemented an important a reform to rationalize the functioning of public procurement. The fragmentation of the procurement system (counting in Italy about 36 000 contracting authorities) is common a weakness of public procurement systems in the EU. Excessive fragmentation of public procurement has a number of problems:

- leads to insufficient economies of scale and reduced bargaining power of the contracting authorities;
- insufficient professionalisation and knowledge of the markets by the buyers;
- high transaction costs;
- complicates and increases risk of irregularities in the procurement procedures;
- excessive price dispersion for the same product procured by different entities.

As part of its spending review, Italy decided that for 19 categories goods and services (mainly in the health sector) procurement had to be carried out by a group of 'aggregating bodies', mainly including national or regional central purchasing bodies. This allowed also addressing significant price dispersions

among the buyers (differences of over 300% within the same Region have been reported for cardiac stents). This resulted in significant savings in 2015: 23% on average for procurement procedures already completed, and ranging between 6% and 59%. The results are also noticeable as the involved parties have set up a system to plan and coordinate the procurement of the relevant product.

The digitalization of public procurement facilitates the monitoring of public procurement and therefore of a significant portion of public expenditure. Contract registers are a cost-efficient tool for managing contracts and to improve **transparency, integrity and better data**. They store digitalized contracts, their structured summaries, including contract performance conditions, terms of delivery, and subsequent modifications. In some countries these registers are accompanied by the requirement that any contract not published in the register is void. These registers help contracting authorities manage their contracts and help improve the governance of public procurement. In Portugal, the public procurement portal 'Base'¹⁸ allows the monitoring of public procurement expenditure and volume as well as the production of statistics on the type of purchases, tenders won by companies, etc.

The transition to **e-procurement** is an opportunity to modernise the public procurement system. Good practices in this process are for instance:

- setting up a single portal at national level including all notifications and connecting it to TED;
- having a competitive market for e-procurement services;
- having a contract register with full disclosure of information on contract awards;
- light requirement for signatures. E-signature use is decreasing;
- implementing the once-only principle.

¹⁸ <http://www.base.gov.pt>

Equally important is that that companies (or citizens) must provide information only one time to all public administrations. The Once only principle (OOP) is a practice in interaction between the state and companies (or citizens). It is based on the fact that information can be recovered from within a public administration using various references (like the tax number) should never be asked from companies (or citizens). This can be either through national registers directly (like in Estonia) or through an aggregation system (like pre-qualifications) where companies provide the information to administrations only once.

5. CONCLUSIONS

Improvements have been made in the public procurement framework in recent years, both at EU and national levels, but challenges still persist. Member States spend a considerable part of their public expenses on procurement. Yet in several countries, the publication rate remains low resulting in insufficient openness to cross-border business opportunities. The use of procurement procedures restricting competition, such as negotiated-procedures-without-publication, varies greatly from country to country, ranging from close to 0% to more than 20%, while the proportion of contracts for which there was only one bid remains high. This is particularly relevant in some sectors (such as IT) where supplier lock-in is a frequently observed phenomenon. All this indicates that the single market for public procurement is not sufficiently integrated and further opening could boost economic efficiency and growth.

The use of quality criteria when awarding of contracts widely varies between Member States, from below 10% in Croatia and Lithuania to above 90% in France and the UK. In general, many Member States in central and eastern Europe make frequent use of the lowest price criterion, missing out on potential to encourage innovation or pursue social or green objectives.

The advantages of cooperative public procurement based on aggregation of demand are being explored by Member States as a means of increasing the efficiency of their public spending. However, there is still much room for improvement. Another challenge is the need for professionalisation meaning that public procurement is performed by personnel who have the necessary skills, technical knowledge, or procedural understanding.

Electronic procurement is a way of increasing transparency and efficiency of procurement procedures. It is being implemented progressively in Member States. However, the quality of the introduced e-procurement services introduced still leaves room for improvement.

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