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Central project
management
agency




Tony Mortier

- Inspector-general of Finance
- Flemish Audit authority
- European Structural Funds

The training has been organised by EIPA and CPVA under the Framework Contract Nr 2023CE160AT004.


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1





Facts on procurement

- procurement represents about 13% of EU GDP, about Euro 2050 billion in 2017 (excluding utilities and some concessions)
- value of tenders published at EU level (only the public sector directive) was about 437 billion in 2017
- in 2017 contracting authorities and entities published public contracts worth 545 billion Euro (all directives)
- publication in the Official Journal (OJ) in 24 languages; Tenders Electronic Daily (TED)
- through public procurement, Member States national budgets can save between 15-30 billion Euro per year
- direct cross-border procurement was relatively low, 2.4% of the number of contract awards but indirect cross-border procurement was considerably higher at 20.2% of contract awards with a value below EUR200 million (between 2016 and 2019)




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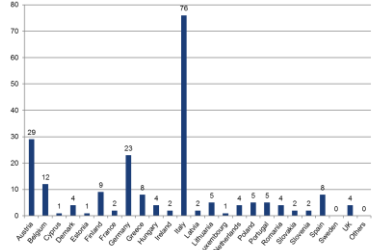
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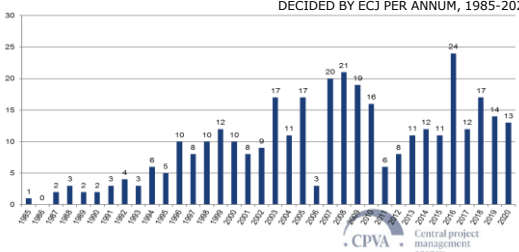
Procurement Cases, Adrian Brown, Herbert Smith Freehills, Brussels

- Commission actions v. Member States under Art. 258 TFEU (> 100 CJEU rulings)
- “preliminary rulings” by CJEU on references from national courts under Art. 267 TFEU (> 200 rulings)
- cases in EU national courts: many thousands, but numbers vary greatly per Member State
- actions in General Court against EU institutions (> 160 rulings)
- all CJEU + GC rulings available online at <https://curia.europa.eu>

PROC-RELATED REF TO ECJ FROM NAT COURTS, TO 10 JUNE 2021




TOTAL NUMBER OF PROCUREMENT CASES DECIDED BY ECJ PER ANNUM, 1985-2020



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3


European Commission

EU public procurement rules

WTO

EU-treaties

National law

Spill over effects

Case law

Geopol sit

UN

General rules

- Procurement Directive 2014/24/EU** for contracting authorities
- supplies, services, works
- Utilities Directive 2014/25/EU** for contracting entities
- supplies, services, works
- Concessions Directive 2014/23/EU** for contracting authorities and entities
- works and services concessions
- remedies referring to remedies directives
- Defence and Security Procurement Directive 2009/81/EC** for contracting authorities and entities
- specific remedies
- Remedies Directives** (need to refer to concessions directive)
- 89/665/EEC
- 92/13/EEC
- amending remedies directive 2007/66/EC
- Directive 2014/55/EU** of 16 April 2014 on electronic invoicing in Public Procurement

Specific rules

- PPI & PCP**
- Transport Regulation 1370/2007**
- Environmental / energy directives**
- Regulation (EU) 2022/1031 of 23 June 2022 on Third Country Access**

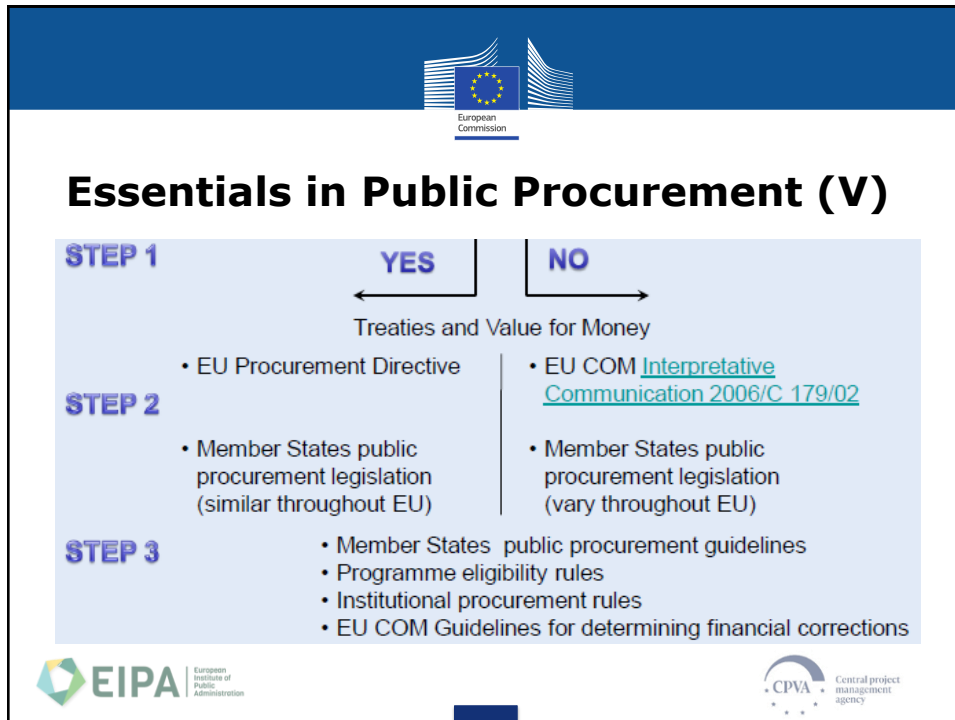
Guidelines

- Financial corrections on PP in Eur Struc Funds**
- Emergency/Covid19 Guidance C(2020/C108 I/01)**

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4



5



6



Principles in the Treaty applying to public contracts

TREATY PRINCIPLES:

- free movement of goods - Article 34 TFEU
- freedom of establishment - Article 49 TFEU
- freedom to provide services - Article 56 TFEU

PRINCIPLES DERIVING FROM TREATY PROVISIONS:

- non-discrimination
- equal treatment
- transparency
- proportionality
- mutual recognition




7



Additional framework

- EU-China strategy 12 March 2019
- Formal letter of notice to 12 Member States for non-transposition of electronic invoicing directive in procurement or e-Invoicing standard 21 May 2019
- EC Guidance on participation of third country bidders and goods 24 July 2019, C(2019)5494
- Compliance with procurement and concession rules: EC sends letters of formal notice to 4 Member States 10 Oct. 2019
- EC Guidance on using public procurement in emergency situations (COVID-19) 1 April 2020
- EC 2021, Notice to stakeholders Withdrawal of the United Kingdom and EU rules in the field of public procurement, Brussels 25 January 2021
- EC 2021, Notice on tools to fight collusion in public procurement and on guidance on how to apply the related exclusion ground, OJEU C91 of 18 March 2021 p. 1-28
- EC, 2021, Notice "Buying Social - a guide to taking account of social considerations in public procurement (2nd edition)" 26.5.2021 C(2021) 3573 final
- EC, 2021, Guidance on Innovation Procurement, Notice, Brussels 18.6.2021 C(2021) 4320 final




8



European recent initiatives

Anti-coercion instrument 1: REGULATION (EU) 2019/452 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 March 2019 establishing a framework for the **screening of foreign direct investments** into the Union

REGULATION (EU) 2022/1031 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 June 2022 on the access of third-country economic operators, goods and services to the Union's public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries (**International Procurement Instrument** – IPI)




9



European (ongoing) initiatives

Anti-coercion instrument (ACI)
Reaction if economic coercion by third country has a dissuasive effect'

Foreign Subsidy Regulation (FSR)

- 1.Goal: to guarantee a level playing field
- 2.Method/instruments:
 - Notification obligation for companies > 500 MEUR turnover, when acquisition involving foreign intervention > 50MEUR
 - Notification obligation for public procedures > 250MEUR whereby third country > 4MEUR subsidies

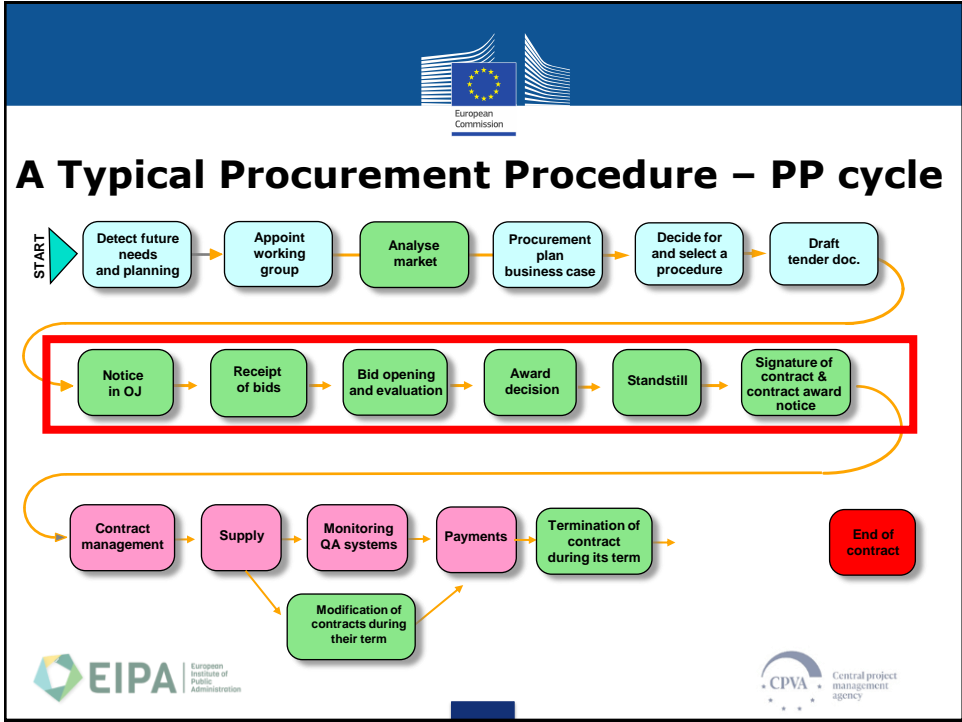
Strategic autonomy through admission conditions (no control by 3rd country)

- 1.Space Regulation
- 2.Digital Europe Programme (DEP)
- 3.Connecting Europe Facility (CEF)

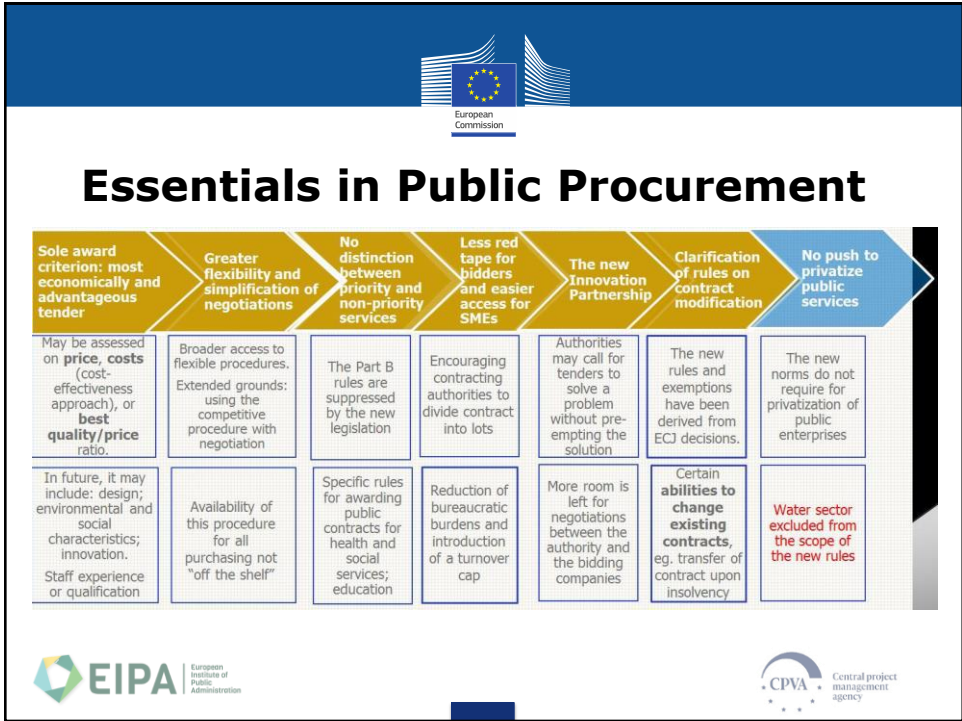
Cyber Resilience Act
Mandatory cybersecurity requirements for hardware software, conformity assessment and market surveillance



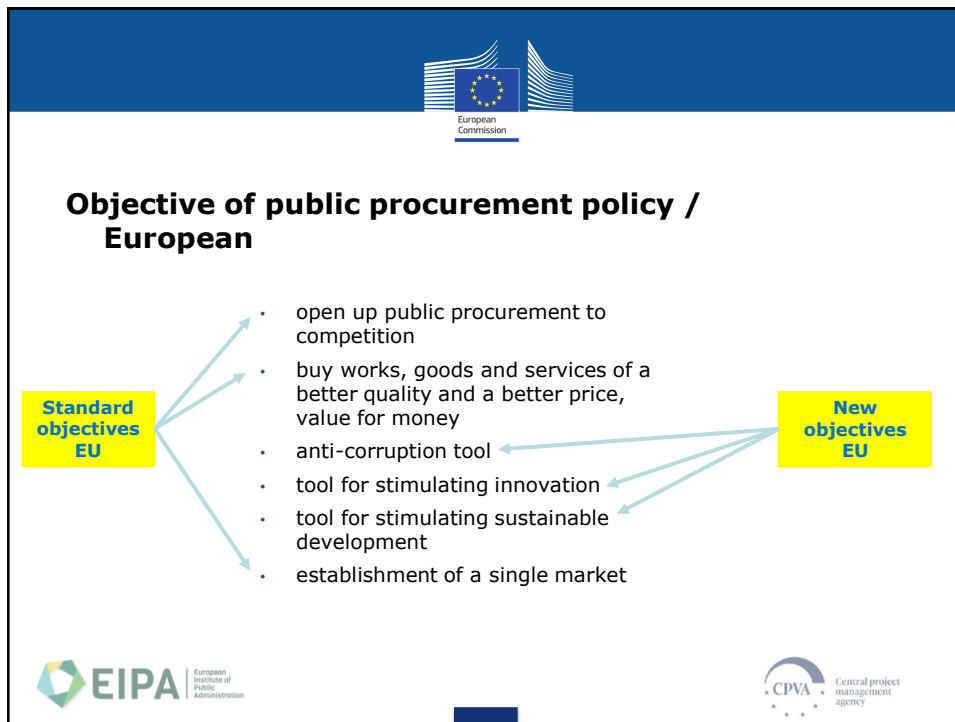

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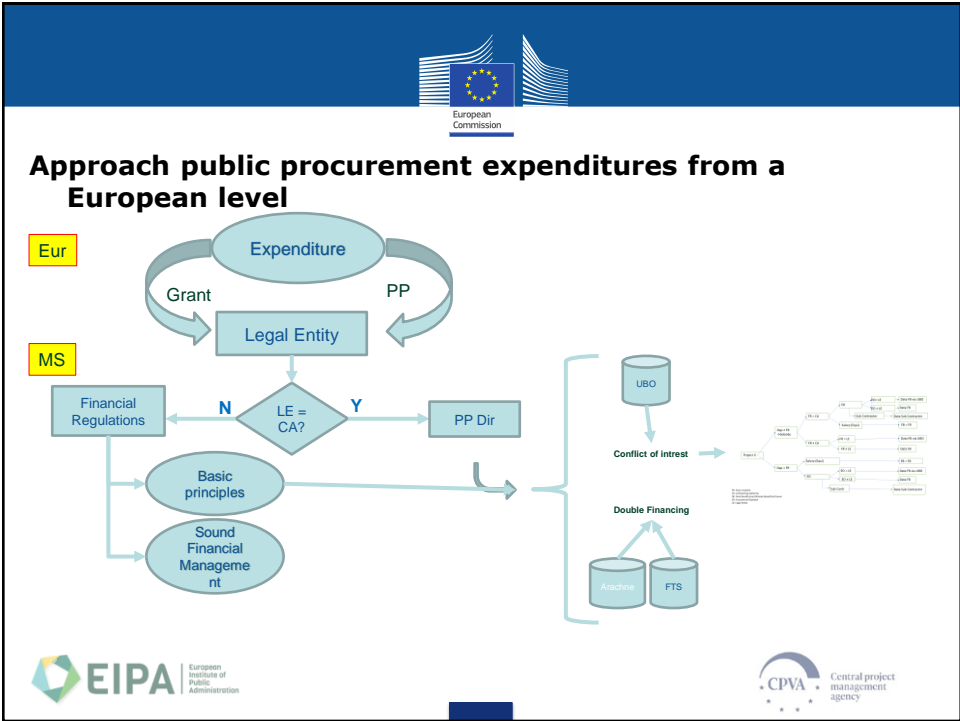


13



14

2023	28	
Special report	Public procurement in the EU	
	Less competition for contracts awarded for works, goods and services in the 10 years up to 2021	
	Observations	30-107
	Less competition in public procurement according to key indicators over the past 10 years	30-46
	A high number of direct awards in several member states	31-34
	The share of single bidding procedures almost doubled in the past 10 years	35-40
	Direct cross-border procurement accounts for around 5 % of all contract awards	41-44
	The prices of works, goods and services purchased under public procurement contracts are not monitored	45-46
	Key objectives of the 2014 reform of the directives have not yet been met: simplification, SME access and strategic procurement	47-66
	Public procurement has not become simpler to administer	48-56
	The share of contracts awarded to SMEs has not increased overall	57-58
	Most member states' contracting authorities implement strategic procurement to a very limited extent	59-61
	Integrity and transparency are still a challenge	62-64
	Delicate balance between competition and the 2014 reform objectives	65-66





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Thank you for your attention!



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