



EU PUBLIC PROCUREMENT LEGISLATION: DELIVERING RESULTS SUMMARY OF EVALUATION REPORT



TABLE OF CONTENTS

1. INTRODUCTION	5
2. BACKGROUND TO THE EU PUBLIC PROCUREMENT DIRECTIVE	6
3. OVERVIEW OF EU PUBLIC PROCUREMENT MARKETS	8
3.1. Implementation of EU Directives by Member States	8
3.2. National structures and rules for public procurement	8
3.3. Procurement subject to EU Directives	9
3.4. Structural changes in public procurement markets	10
3.5. Use of public procurement to support the achievement of other objectives	11
4. ORGANISATION OF EU REGULATED PROCUREMENT PROCEDURES	12
5. COMPETITION AND PARTICIPATION IN EU PUBLIC PROCUREMENT MARKETS	13
5.1. SME participation and success	13
5.2. Utilities	14
6. CROSS-BORDER PROCUREMENT	15
7. TIME- AND COST-EFFICIENCY OF PROCEDURES	18
8. IMPACT ON OUTCOMES	20
9. CONCLUSIONS	21
9.1. Effectiveness	21
9.2. Relevance	21
9.3. Efficiency	21
9.4. Consistency with other policies	22

1. INTRODUCTION

EU Public procurement Directives regulate the publication and organisation of tender procedures for higher-value contracts. The Directives apply common principles of transparency, open competition and sound procedural management to public contract award procedures which are likely to be of interest to suppliers across the single market. Open and well regulated procurement markets are expected to contribute to a better use of public resources.

This evaluation assesses whether EU public procurement Directives 2004/17/EC and 2004/18/EC have succeeded in putting transparency and cross-border competition to work for better public procurement outcomes. It examines whether those objectives remain relevant in the light of evolving economic and policy priorities. It analyses the trade-off between the costs and the benefits of the legislation with a view to identifying the need for improvement.

The findings of this evaluation will provide a factual basis for drawing lessons about the impact and effectiveness of EU public procurement. Evaluation will inform policy debate and help the Commission services in identifying possible improvements to the existing legislation and policy approach. Along with responses to the Commission Green Paper on modernisation of public procurement legislation, the evaluation will constitute an important input for the preparation of the Commission proposals for review of the Directives.

The revision of EU public procurement Directives is one of twelve key actions identified in the Single Market Act¹, which will help to leverage growth and employment in Europe. The revision should 'underpin a balanced policy which fosters demand for environmentally sustainable, socially responsible and innovative goods, services and works. This revision should also result in simpler and more flexible procurement procedures for contracting authorities and provide easier access for companies, especially SMEs'. The Single Market Act foresees the publication of the Commission proposal before the end of 2011, paving the way for adoption of the revised legislation before the end of 2012.

¹ Commission Communication (COM(2011)206 of 13.04.2011) to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: "a Single Market Act: 12 levers to boost growth and strengthen confidence".

2. BACKGROUND TO THE EU PUBLIC PROCUREMENT DIRECTIVES

The management of public procurement is a matter of primary public policy importance – particularly in the context of fiscal consolidation and retrenchment in which most Member States must now manage public resources. Total public expenditure on goods, works and services accounts for a large part of economic activity – amounting to over €2 trillion in 2009. This money is spent by a very large and heterogeneous population of public authorities - over 250 000 contracting authorities in Europe managing procurement budgets of different sizes and possessing very different administrative capacities. The money is spent in a wide variety of ways and disbursed via an enormous number of distinct procedures (over 2 million procedures for the award of public contracts per year). The administration of public procurement is therefore highly fragmented and complex. The organisation of public procurement administration – and notably the extent of centralisation/decentralisation - varies from Member State to Member State as a function of the organisation of their public administration.

Public purchasers cannot be assumed to have the same commercial pressure or organisational incentives in sound management of their expenditure as private sector purchasers subject to strong competition. This has prompted the imposition, by many jurisdictions around the world, of disciplines to encourage the better use of resources, greater efficiency and to reduce the risk of favouritism or corruption in public purchasing.

EU Public procurement rules exist to bring some common disciplines to regulation of this critical government function. In particular, EU Directives seek to ensure that companies from across the single market have the opportunity to compete for public contracts (above defined thresholds). As far as possible, they also seek to remove legal and administrative barriers to participation in cross-border tenders, to ensure equal treatment and to remove scope for discriminatory purchasing by ensuring transparency.

Key principles of EU public procurement legislation:

EU procurement rules govern the way that public money is spent – rather than what the money is spent on. The focus of EU legislation is therefore primarily on the procedures that individual contracting authorities must follow when organising a public purchase for an expected value above the thresholds laid down in the Directives. EU Directives impose a number of steps that public purchasers must follow before awarding public contracts. These include rules to:

- Ensure transparency (through publication of notices in the Official Journal (OJEU), normally both before and after award procedures); apply pre-announced criteria (in particular concerning the requirements to be met in order to participate as well as the award criteria that will be used to designate the “winner”); award the contract on the basis of objective criteria (linked to the subject-matter of the procurement);
- Regulate the conduct of the procurement procedure so as to give interested tenderers a fair chance. The Directives establish a menu of common procedures. This was enlarged by the 2004 Directives through the introduction of the competitive dialogue and provisions on other procurement techniques such as electronic auctions, dynamic purchasing systems, central purchasing bodies etc.;
- Define the subject-matter of the purchase through non-discriminatory technical specifications, thereby limiting foreclosure of markets by reference to proprietary or idiosyncratic specifications.

Directive 2004/18/EC applies these principles to procedures for the award of public contracts for works, supplies and services. Directive 2004/17/EC extends these principles (with some variations) to the award of public procurement contracts by utility operators in water, transport and energy sectors.

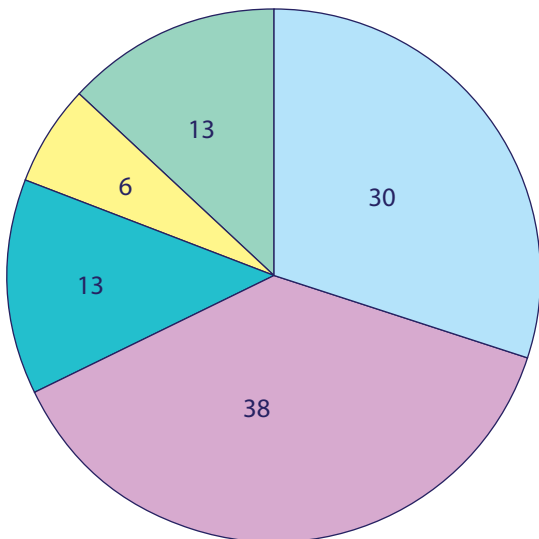
Substantial changes were introduced through the 2004 Directives to many aspects of the Directives – including in particular enlargement of the menu of procedures and techniques that public purchasers can use when organising procedures for award of public contracts. These changes were implemented by most Member States in 2006 and 2007.

The objectives of EU procurement legislation remain well-understood and widely supported by EU citizens. A recent Eurobarometer (2011) survey shows a large understanding/support for the role of procurement in the fight against favouritism and corruption. It also demonstrates widespread understanding for the importance of opening procurement markets to competition.

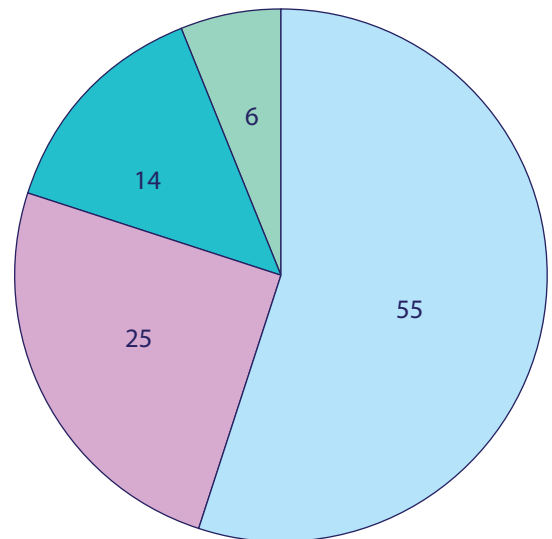
Figure 1: Public perceptions of EU procurement policy (2011)

To what extent do you agree or disagree with the fact that common EU-wide rules for public authorities on how they have to award contracts help to combat favouritism and corruption?

Do you think that foreign companies should be able to compete for public contracts in your country?



- Totally agree
- Tend to disagree
- Don't know
- Totally disagree
- Tend to agree



- All foreign companies
- None
- Only EU
- Don't know

3. OVERVIEW OF EU PUBLIC PROCUREMENT MARKETS

3.1. Implementation of EU Directives by Member States

While EU procurement legislation establishes common rules and procedures for high-value procurements, Member States have considerable discretion in implementing the provisions of the public procurement Directives – in particular as regards the mechanisms and administrative arrangements that are put in place to ensure compliance with those provisions.

Directives 2004/17/EC and 2004/18/EC were adopted on 31 March 2004, with a deadline for transposition into national legislation of 31 January 2006 for all Member States. Romania and Bulgaria were required to implement the Directives by 1 January 2007, the date of their accession to the EU.

There were delays in several Member States, resulting in a number of infringement procedures for non-transposition, but both EU public procurement Directives have now been fully transposed by all the Member States (the last country to transpose being Belgium in 2010).

Most of the Member States use the same legal instrument for the classical and utilities sectors in the regulation of procurement above EU thresholds. With only two exceptions, all Member States have the same regulatory instrument covering the supply, services and works contracts.

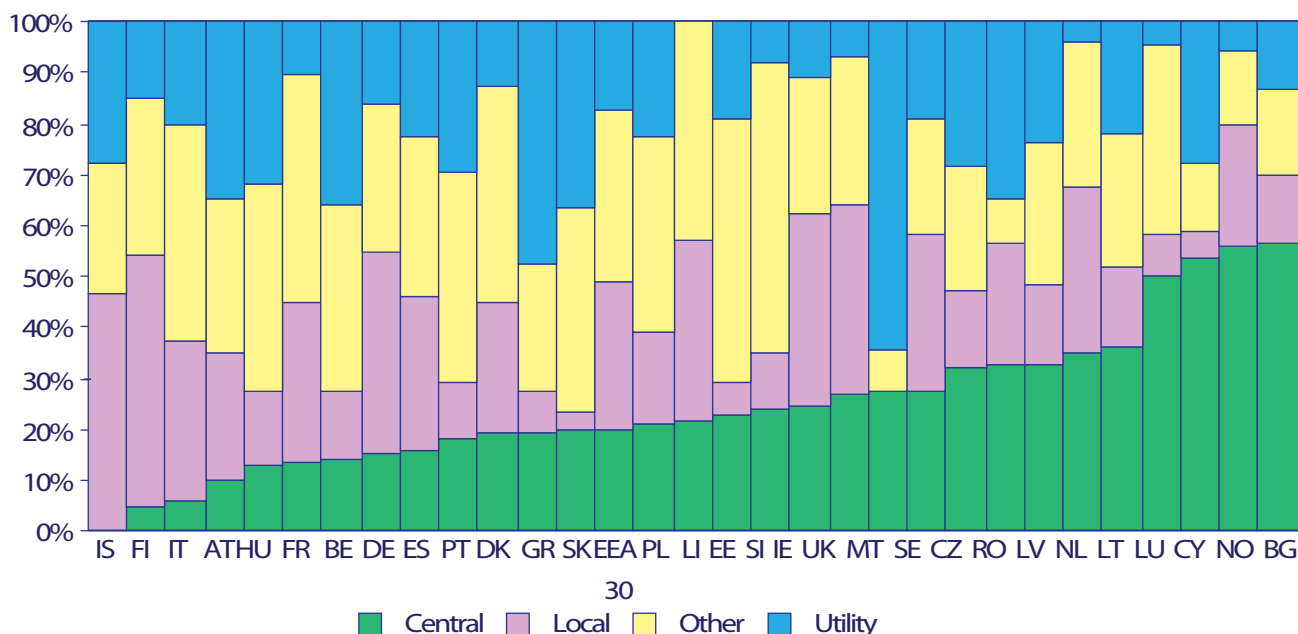
Member States retain full discretion for the regulation of public procurement outside the scope of the EU Directives. They have exercised this responsibility in very different ways as evidenced by their approaches to regulation of below-threshold procurement. Several Member States regulate public procurement below EU thresholds within the same act as the contracts covered by the EU Directives and also require the use of open, fair and competitive procedures, which have similar features to those laid down in the Directives. There are areas where national rules and procedures are often similar for contracts above and below the EU thresholds, such as rules for qualitative selection, evaluation of tenders, award criteria, abnormally low tenders, technical specifications, framework agreements and electronic procurement.

Other Member States may provide a lighter regime for contracts below the EU thresholds, which may take the form of administrative guidance rather than formal legislation. There may be shorter time limits for submission of applications and tenders and less demanding rules for publication and for selection of tenders.

3.2. National structures and rules for public procurement

Of the 250 000 different contracting authorities and entities involved in public procurement in the EU, only about 35 000 publish a notice in the OJEU in any one year. Most of the smaller authorities may never make a purchase large enough to fall within the scope of the Directives. The degree of centralisation also varies enormously across Member States and there is a significant amount of procurement carried out by bodies providing specific public services which are neither central nor local government administrations. The following chart illustrates the different share of EU regulated procurement that is accounted for by central, local, utility or other authorities across the Member States.

Figure 2: Breakdown of total value of contracts awarded by type of Authority (2006-2009)



In terms of national administrative capacity to implement and enforce procurement rules and policy, we observe the emergence of a general tendency towards better/more complete reporting (helped by greater traceability and automation of procurement data); the development of structures and organisations to assist with guidance and support; use of e-procurement and related infrastructures (which potentially bring together large numbers of purchasers and suppliers).

3.3. Procurement subject to EU Directives

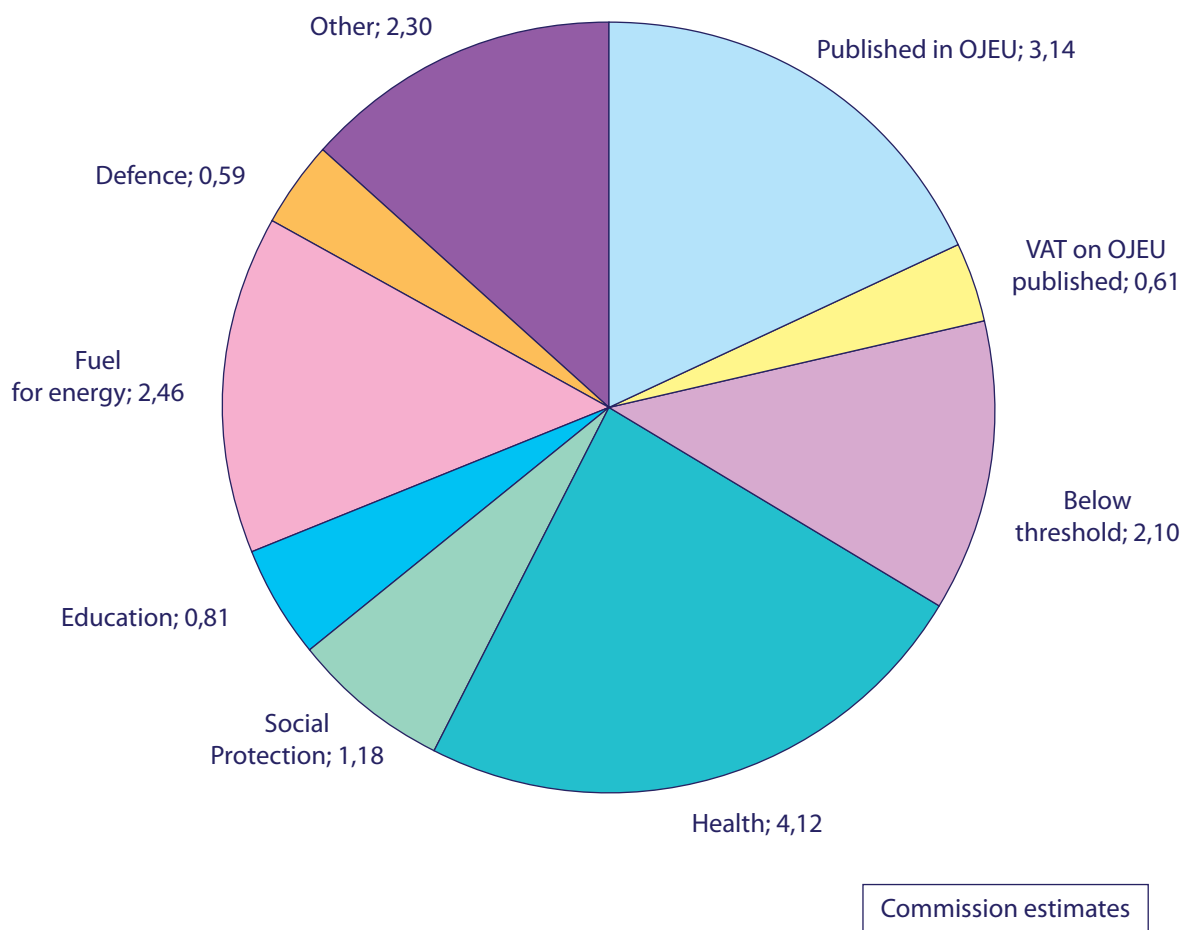
Only 1/5 of total public expenditure on goods and services is covered by the EU Directives. In 2009 over 150 000 invitations to tender were published (by 35 000 authorities) in conformity with EU Directives. The estimated value for these contracts was €420 billion. This represents approximately 20% of total public expenditure on goods, works and services.

Consequently, the bulk of total public expenditure on goods, services, and works is not organised in accordance with EU procurement legislation. This public expenditure may take the following forms:

- Large amounts of public expenditure on goods and services to provide health, education and social services (over 6% of GDP) are spent in ways which are not covered by the EU public procurement Directives.
- Public contracts below the EU thresholds fall outside the scope of the EU public procurement Directives but they are of significant importance. Below-threshold procurement was estimated at around €250 billion in 2008 or around 2% of EU GDP.
- EU procurement Directives provide certain explicit exemptions for expenditure on fuel, water and defence equipment (now covered by a separate Directive).

Figure 3: Total expenditure on works, goods and services as % GDP (2008)

Three quarters of the value of procurement advertised in accordance with EU rules is for construction work and services. Supplies make up only a quarter of all procurement. However this EU wide pattern issues from a great variety across Member States.



3.4. Structural changes in public procurement markets

The evaluation highlights certain structural changes toward increased sophistication and aggregation of demand through framework contracts and central purchasing often combined with development of e-procurement platforms. There has been a sharp increase in the use of framework agreements, and centralisation/joint procurement as well as e-procurement. Between 2006 and 2009 the number of framework contracts has increased by almost a factor of four. In 2009 over 25 000 framework contracts amounted to about one seventh of the value of all the contracts published in the OJEU. In the same year 6.8% of all contracts were awarded by contracting authorities purchasing on behalf of other authorities. Over 40% of the value of contracts published by central or joint purchasing bodies was through framework agreement contracts.

There are however concerns in some Member States that framework agreements may close particular markets to competition for significant periods of time and that the size of the contracts may put them well beyond the ability of small and medium sized enterprises (SME) to bid for them.

The use of electronic communications, and the automation of procurement procedures, is also becoming more commonplace. Although the enabling technology is now widely available, initial take-up of e-Procurement has been slow. The Commission Services estimate that, on average, less than 5% of procurement is conducted electronically today. However, momentum is building and the adoption rate is increasing. According to Eurostat, the percentage of enterprises using the Internet for submitting a proposal in a public electronic tender system to public authorities has risen from 11 to 13% between 2009 and 2010.

Across Europe, the picture is mixed. Countries such as Lithuania, Cyprus and Portugal are leading the way with use rates as high as 60-90%. Portugal has made the use of e-procurement mandatory across all procurement procedures. Many of the bigger countries are lagging behind, despite strong efforts on the part of Italy and France.

All Member States have enabled the use of e-procurement in their national legislation. Furthermore, infrastructure is largely in place and it is possible to advertise on-line, access procurement documents and submit bids in 24 Member States. In 2010 nearly 93% of forms for procurement notices sent to Tenders Electronic Daily (TED) were received electronically. In short, the use of e-procurement has been enabled legally and technically and actual use, although low, is starting to increase.

The 2010 e-Government benchmark survey identified over 230 active e-procurement platforms and portals. The average number of registered contracting authorities (for a sample of 67 platforms) was 3 500, while the average number of registered suppliers was 11 000. Around 5% of the latter were non-domestic suppliers.

3.5. Use of public procurement to support the achievement of other objectives

There has been growing policy interest in re-orienting public expenditure towards solutions that are more compatible with environmental sustainability, promote social policy considerations, or support innovation.

Almost all Member States have adopted National Action Plans for Green public procurement. Many have adopted targets for priority product groups identified by the Commission in areas such as construction, transport or office and IT equipment.

It is difficult to tell whether these plans are having a significant impact as there is, as yet, little organised monitoring or measurement in place. However it seems clear, from recent studies and surveys, that the majority of contracting authorities do attempt to ensure that they are buying green, when this is feasible. There are differing levels of ambition between and also within Member States. Other sustainable procurement policies, such as encouraging more socially responsible procurement and more innovation, are also being adopted although fewer contracting authorities have extensive experience of integrating these policy objectives within their procurement practice. Contracting authorities face the challenges of setting appropriate requirements that do not unduly reduce the number of potential suppliers and in determining how to evaluate life cycle costs and the weightings applicable for different levels of compliance with sustainable criteria. Suppliers are faced with a range of different levels of requirement for environmental or social standards together with the proliferation of different certificates and labels with which they may demonstrate that their products meet certain standards.

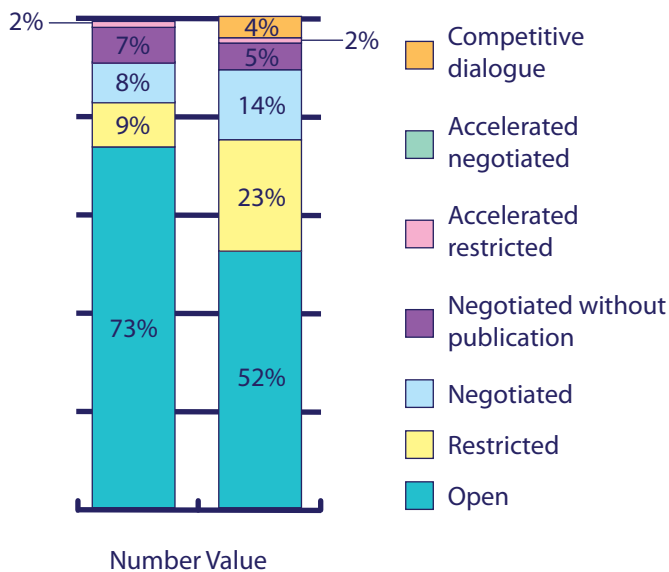
4. ORGANISATION OF EU REGULATED PROCUREMENT PROCEDURES

The EU Directives provide a wide menu of procedures and techniques for contracting authorities who are organising tenders in accordance with the Directives. This set of procedural options was enlarged in 2004 to allow contracting authorities to tailor the purchasing procedure to the circumstances of the market/purchase, and to introduce innovative techniques (e-auctions, Dynamic Purchasing systems).

Around 18% of all contracts published in TED have values below the €125 000 threshold while 30% of sub-central contracts are below €193 000. Most significantly, 70% of all works contracts are below the threshold for works (i.e. €4.85 million). These findings may suggest that purchasers are following EU procedures voluntarily or that they may be aggregating contracts, in particular works contracts, for which the combined value exceeds the thresholds.

The traditional open call for tenders remains the most commonly used procedure. Over the last five years, about 73% of all contract award notices published in the OJEU followed an open procedure. However, this equals only 52% of the published total value, as the open procedure is mainly used for contracts of smaller value. The second most popular is the restricted procedure, used in contracts of much higher value. The restricted procedure accounts for 9% of award notices, but 23% of the value of all contracts awarded. The difference between the two procedures is demonstrated by the average contract size - €8.2 million for the restricted compared to €2.1 million for the open procedure. The negotiated procedure with publication, which can be freely used only by entities operating in the utilities sectors, accounts for 8% of contract award notices and 14% of the value. Data from the last five years show growing use of the competitive dialogue since it was introduced during the last revision of the Directives in 2004.

Figure 4: Use of procedures (2006-2010)



Although this procedure is the least frequently used, amounting to less than 1%, the total values involved are significantly higher – up to 8.6% of total value of contracts awarded in 2010 (5.2% in 2009), with a mean contract value of €40 million.

This overall pattern is, however, marked by wide variation across Member States. Three Member States (France, Poland and Germany) awarded half of all the contracts advertised in 2006-2010 while half of the value of all contracts was awarded by the UK, France and Spain.

80% of all works contracts were awarded on the basis of open procedure compared with 78% of supplies and 68% of service contracts.

The restricted procedure seems to be used for more expensive works contracts. While only 15% of restricted procedures are for works contracts, they make up nearly half of the value of the contracts for which it is employed.

The negotiated procedure is used much less overall for all categories measured both in terms of value and frequency (the number of contract award notices ranges from 14% in works to 57% in services while the value ranges from 26% in supplies to 47% in services).

Competitive dialogue appears to be mainly used for services (67% by value), and to a lesser extent for works (29% by value of all contracts awarded on the basis of competitive dialogue).

By 2010, 27 countries had implemented legal provisions to enable to use of a dynamic purchasing system (DPS). However the fact that 10 Member States have added further provisions, clarifying the conceptual framework, the different stages and scope of a DPS, may show that there was some lack of clarity in the original provisions on DPS. So far the actual use of the procedure has been marginal, and in most cases seems to demonstrate a misunderstanding of the provisions.

5. COMPETITION AND PARTICIPATION IN EU PUBLIC PROCUREMENT MARKETS

It was expected that more transparency would encourage greater competition for public contracts. Contract award notices published in TED record the number of bids submitted. These numbers can be interpreted as indicators of the strength of competition. And when competition is stronger, we would expect procurement outcomes to be superior.

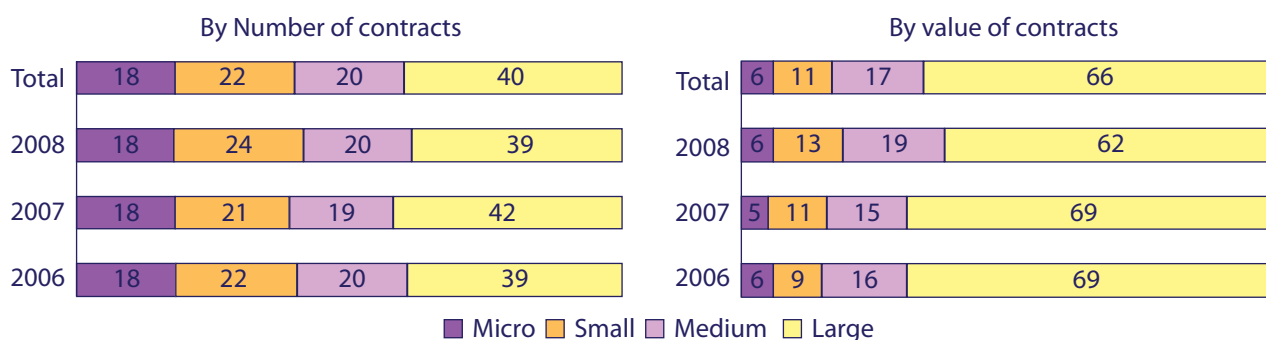
Most EU advertised tenders receive between 4 and 6 with an average of 5.4 bids. One in five tenders receives only one bid. The averages for the open and for the restricted procedures are higher, indicating that these procedures attract more competition than negotiated procedures. We also find that framework agreements and joint purchasing attract more bids.

There are also large differences between Member States. The number of bids received varies dramatically between groups of countries. While the top group receives an average of 8 or more bids for each invitation to tender, the bottom group only receives 3 or less. Such large differences in degree of competition could significantly affect the outcomes of public procurement procedures.

5.1. SME participation and success

Between 2006 and 2008, small and medium enterprises among companies won around 60% of contracts covered by the Directives. The total value of public contracts awarded to SME was for around 34% of the total over these three years. These figures only take into account the contracts directly awarded to SME and do not include the value of subcontracts which could be considerable. Available data suggest that subcontracting is involved in around 8% of published contracts.

Figure 5: SME success in above threshold procurement



The median value of contract award notices published on TED was just below €400 000, while the typical value of the individual lot or contract was around €85 000. Contracts of this size would seem to be readily accessible for SME.

Breaking down tenders into lots is commonly seen by stakeholders as one of the most important tools that helps SME accessing public tenders. Many contracting authorities and entities use this possibility: between 2006 and 2008, 27% of the contract award notices contained two or more awards. The number of lots published between 2006 and 2008 increased by close to 47%, and has significantly surpassed the growth of the number of contract award notices (42%). On average 2.7 contract awards were listed in each contract award notice published over the 2006-2008 period.

5.2. Utilities

Around one-fifth of the procurement advertised at EU level originates from utility operators. Utility operators were brought under the public procurement regime on the grounds that, because they enjoy monopoly or special and exclusive rights, they could not be presumed to have the incentives to procure efficiently. Consequently, they run the risk of engaging in preferential procurement and failing to offer foreign suppliers the opportunity to compete for their custom.

As the rationale for Utilities procurement Directive stems from the absence of competition-induced discipline to procure efficiently and competitively, the evaluation examined whether the utilities sectors are now more exposed to competition than they were. On the occasion of the 2004 legislative modification, EU authorities concluded that the liberalisation of the telecommunication sector and introduction of competition in that sector were sufficient to warrant its exclusion from the scope of Directive 2004/17/EC.

A number of factors are relevant to evaluating changing circumstances: the degree of liberalisation and privatisation, the extent of competition and the effectiveness of regulation. Competition in a sector is assessed in very broad terms, taking into account the number of competitors, the degree of concentration and barriers to entry in the markets concerned, and the degree of switching amongst operators.

Significant EU legislation has been adopted to liberalise market access in four sectors covered by the Directive: electricity, gas, postal services and exploration for oil and (natural) gas. There has been less EU legislative activity to liberalise access in the rail, 'other land transport' (bus transport) or port sectors and little or no direct action in the area of water, heat industry or airports. The liberalisation of air transport and ground-handling services has intensified competitive pressure on undertaking of some airport operations. In certain sectors competition is based on public tendering under specific EU transport legislation.

Progress on the legal or regulatory front has not translated into sustained or effective competitive pressure on incumbent operators in markets where access is unrestricted. In many utility sectors, high levels of market concentration or anaemic competition continue to be observed. Conditions have not evolved to the extent that competition can be deemed to be sufficiently strong on a sector wide basis to permit the exclusion of sectors from the scope of the Utilities procurement Directive. One possible exception is the market for oil exploration where markets are global.

Moreover, there is such wide variation in the degree of liberalisation and effective competition across Member States as to preclude any EU wide conclusions. The rationale for the Directive would seem to continue to apply in general, while specific exemptions from the application of the Directive may be justified on the basis of an in-depth, case by case analysis of each sector, broken down by relevant activities/product markets and relevant geographical markets.

Article 30 of the Utilities Directive provides a way of exempting market sectors from the EU public procurement rules where there has been both a regulatory liberalisation and the emergence of meaningful competition. To date twenty four applications have been received for ten Member States concerning either the postal or energy sectors. Two applications are still under examination, three have been withdrawn and seventeen Decisions have been adopted (ten positive, three negative and four mixed).

6. CROSS-BORDER PROCUREMENT

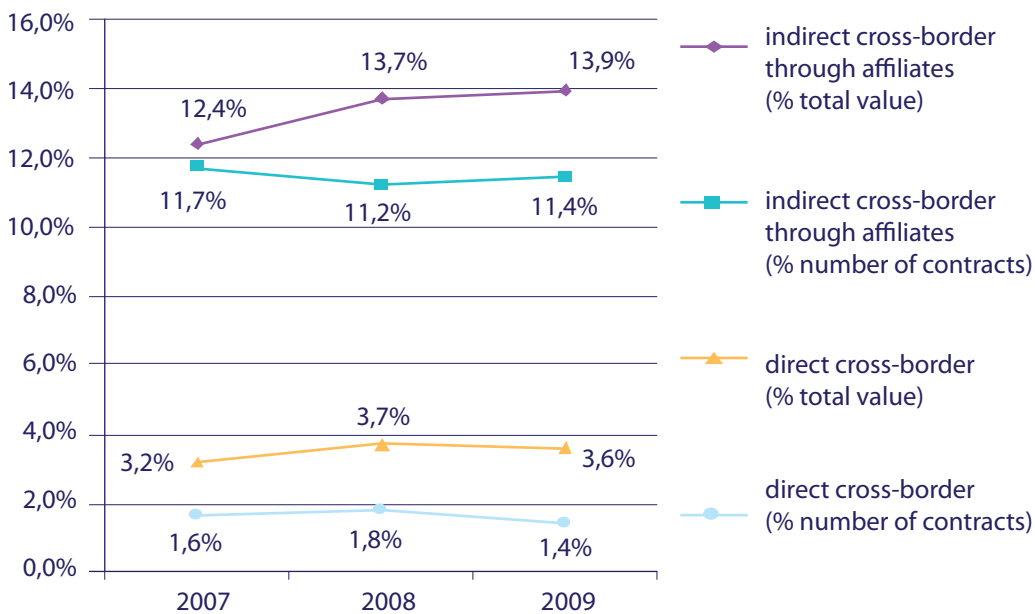
Import penetration in the public sector remains significantly lower than in the private sector. In 2005 public sector import penetration stood at 7.5%, compared to private sector import penetration of 19.1%. The gap between public and private sector import penetration has narrowed slightly in the period 1995-2005.

The low level of public sector import penetration can be explained in large part by the nature of the goods and services that the public sector consumes. Public administration, education, health and social services make up more than 60% of public sector expenditure (25.3%, 14.3% and 21.2% respectively in 2005). These sectors have import penetration close to zero (0.1%).

In markets for public contracts which are the specific focus of EU public procurement legislation, only a small proportion of contracts are awarded for firms from another Member State. Direct cross-border procurement accounts for 1.6% of awards or roughly 3.5% of the total value of contract awards published in TED during 2006-9.

In addition to direct cross-border procurement however, there is a considerable volume of indirect cross-border procurement. For example firms can bid for contracts through their foreign affiliates or subsidiaries. This channel accounted for 11.4% of awards published in TED and 13.4% by value during 2006-9.

Figure 6: Cross-border procurement (2007 – 2009)



Local distributors or agents may also import goods in order to supply them to a contracting authority or entity. This form of wholesale distribution amounts to 13% of procurement in both the number and value of contracts awarded. Finally, foreign bidders can submit offers in consortia with local firms or through subcontractors. This form of cross-border procurement appears to be little practised.

While the share of direct cross-border procurement over 2007-2009 in terms of value amounts to 7% for supplies but only 2% for works or services, indirect cross-border procurement through affiliates makes up 25% of the total value of supplies contracts, 6% of works and 14% of services. It seems clear that supplies have the highest propensity to be traded cross-border.

Analysis of average distances between buyers and sellers confirms that relatively small geographical distances are typical in public procurement. The average distance between purchaser and supplier is 102 km for works contracts, 123 km for services and 232 km for supplies. These distances also seem to be related to the size of national markets: the smaller the country the shorter the distance between contracting authority and successful bidder. The average distance between buyer and seller, for example, is 60 km for Belgium, 170 km for Poland and 190 km for France.

Both public procurement Directives divided services into two categories (A and B) on the basis of their perceived tradability. The 16 category A services, assumed to be better suited for cross-border procurement, are subject to the full procedures like works or supply contracts, while the eleven category B services, assumed to be less tradable, are subject to a lighter regime. Since contract award notices must be submitted for both categories it is possible to test whether cross-border procurement (both direct and indirect through affiliates) is significantly higher for A services than for B services.

Despite certain limitations in the data, it appears that category A contracts may have a higher share of cross-border procurement (2.8% direct and 16.2% indirect in value), than category B contracts (1.2% and 12.1% respectively). However some category B services perform better than average when compared to category A services. For example 21.2% of the total value of contracts for legal services was awarded directly cross-border, compared to the average of 2.8% for category A services. The value of contracts awarded indirectly cross-border is 39.1% of the total for hotel and restaurant services compared to the average indirect cross-border of 16.2% for category A services. These findings suggest that, as far as some sectors are concerned, the distinction between tradable and non-tradable sectors is somewhat arbitrary.

There are important differences between Member States in the level of cross-border procurement. The majority of countries have a share of cross-border procurement close to the average, but some Member States (above all the smaller ones) have an average share of direct cross-border procurement between of 5 and 15%, while Cyprus, Luxembourg, Malta and Slovakia have a share of value of direct cross-border procurement of over 15%. In some Member States the share of value of indirect cross-border is higher than 25% (e.g. Belgium, the Czech Republic and Sweden).

Figure 7: participation in cross-border tenders

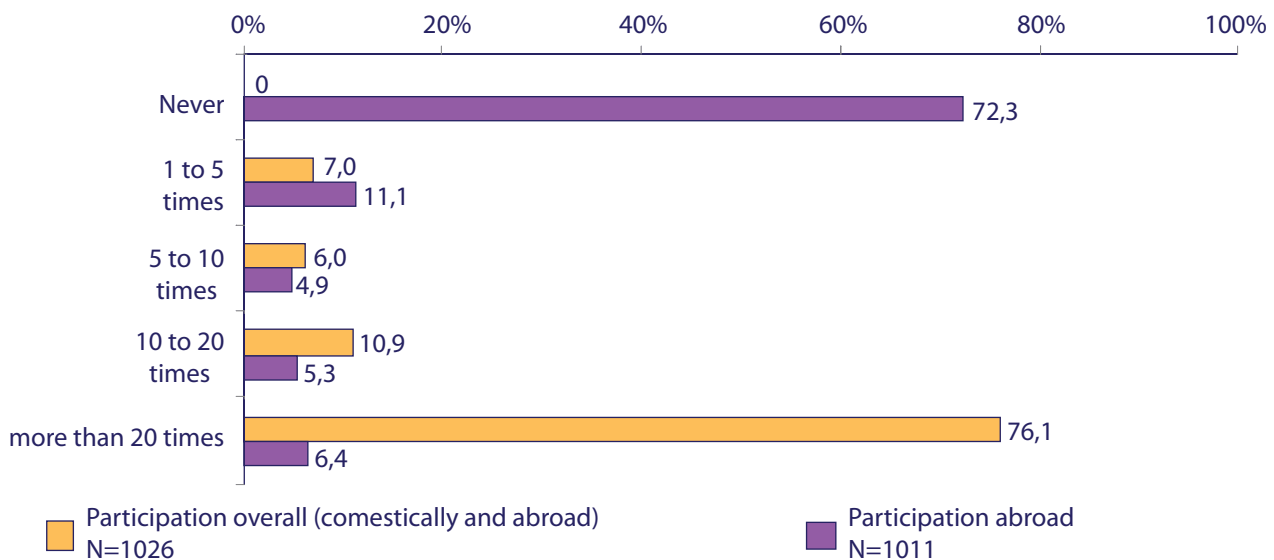
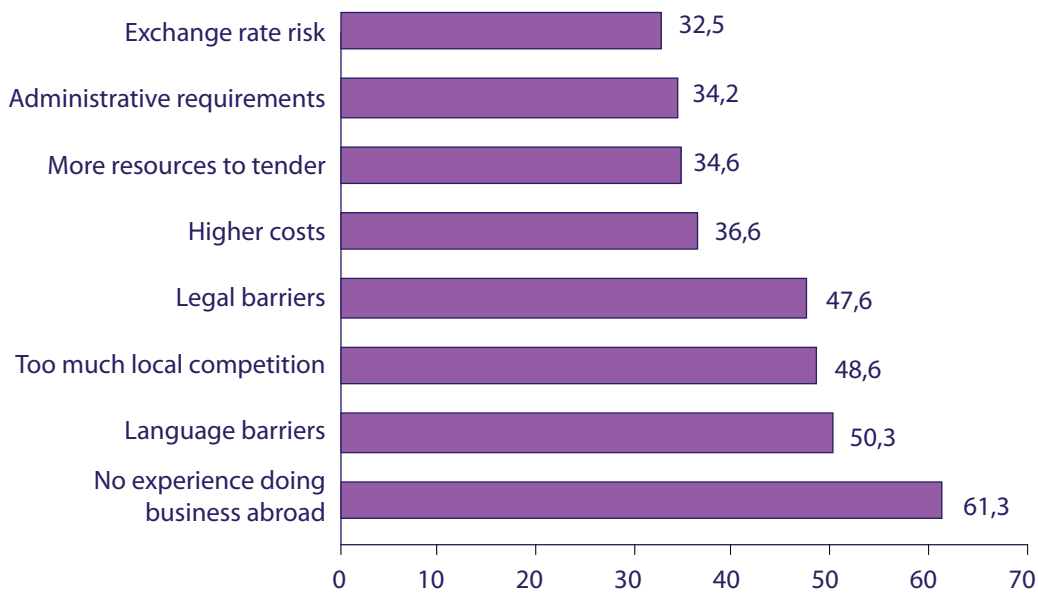


Figure 8: reasons for not bidding cross-border



Companies are clearly reluctant to tender cross-border. In a recent large scale survey around 73% of firms, otherwise active in public procurement, say that they have not made cross-border tenders in the last three years. Language barriers and unfamiliar or complicated formal requirements are among the most important reasons given.

While these import penetration figures for above threshold procurement contracts are an improvement on the situation as seen in 1987 and 1996 they are also evidence that the full potential for cross-border public procurement has still not been realised in many sectors.

7. TIME- AND COST-EFFICIENCY OF PROCEDURES

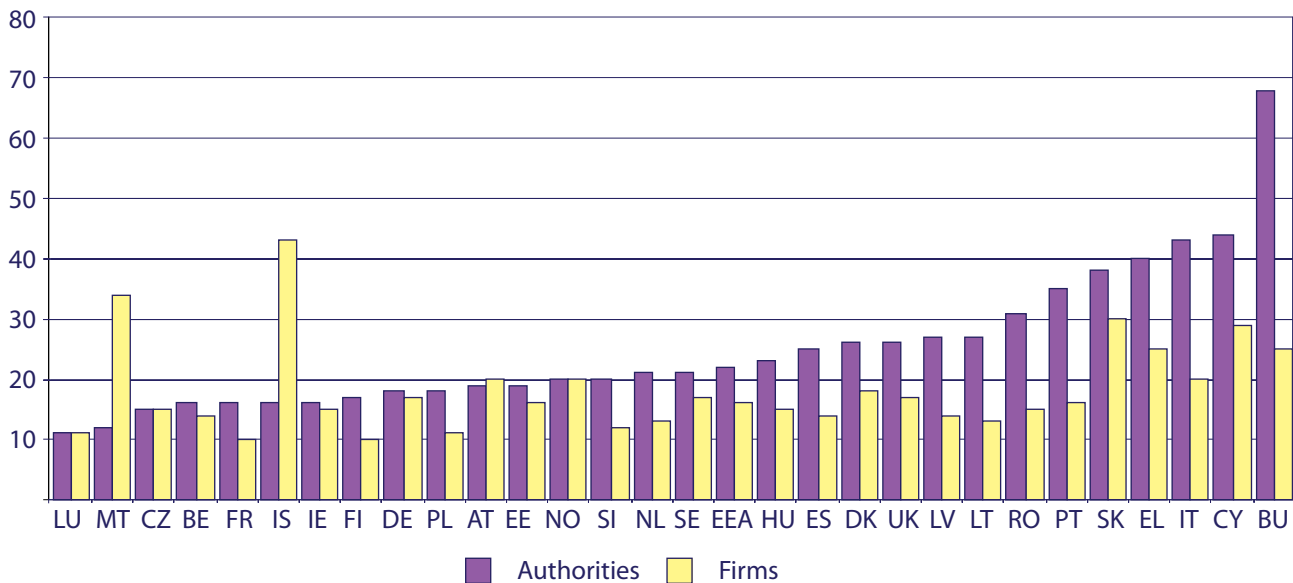
A recurrent concern in the design of public procurement procedures is the cost, complexity and delay. The typical time from the dispatch of an invitation to tender to an award across all procedures is 108 days, but the difference between the top performers and the slowest is approximately 180 days. This is a hugely significant difference that will inevitably impact on the efficiency and cost procurement procedures.

While the time required for publication of contract notices is prescribed by EU law and subject to limited flexibility, the time taken by contracting authorities to award contract is subject to their control. The time taken to complete these processes varies significantly across procedures, techniques and countries. The average time necessary to award a contract is around 58 days, ranging from 45 days in case of simple lowest price contracts, up to 245 days in case of complex competitive dialogue procedures. The length of the competitive dialogue procedure can be explained, to a large extent, by the complex nature of the projects for which this procedure is meant to be used.

The restricted procedure, the second most popular after the open procedure, takes on average 160 days, which is much more than the average timing of the open procedure (53 days to award). The length of restricted procedure may be explained by the fact that it too is mainly used for high value and more complex contracts.

A significant variation in terms of person-day costs (i.e. time effectively spent on carrying out the procedure, as opposed to the above mentioned duration of procedures) can be observed across Member States and procedures or techniques. While for Member States, the overall average stands at 38 days, including both the time invested by authorities and by the winning firm, the difference between the top and the bottom performing countries is approximately 71 person-days.

Figure 9: Average costs of procedures by country (in person days for authorities and firms)



Source: PwC, London Economics, Ecorys

Restricted procedures are the most expensive for contracting authorities, followed by negotiated procedures. As far as 'techniques' are concerned, running a Dynamic Purchasing System is the most expensive. As expected, framework contracts have lower costs per contract than any other form of procurement. There are savings in frameworks for both authorities and for firms. This has probably contributed to their popularity.

The evaluation finds that the average cost of running each procedure is approximately €28 000. To a large extent, this cost can be viewed as the costs of sustaining competition for public contracts. 75% of the total figure is incurred by suppliers as the cost of preparing tenders. This will be shared out among the average 5.4 bidders for each tender. It can be assumed that these costs will be incorporated in the long run into the prices of tenders or built into the margins the successful tenders.

The cost of the procurement process may represent quite a high percentage of the total value of a contract, particularly at the lower end. At the lowest threshold in the Directives, €125 000, total costs can amount to between 18 and 29 % of the contract value. At €390 000, the median contract value, costs reach between 6 and 9 %. Although the cost for each participant is lower than this total (about 1/6), these shares are significant. However these findings are influenced by the fact that many of the contracts published are well below the thresholds.

The total cost to society of procuring the goods and services covered by the Directives is estimated at around €5.26 billion per year (for the EEA-30 in 2009), which is less than 1.3% of the value of invitations to tender published (by the EU-27) in the same period (i.e. €420 billion). This estimate covers the whole cost incurred during the entire procurement process i.e. from the pre-award phase, through the preparation of offers by all participating bidders, the selection of a successful bidder, and including any costs of litigation.

Much of this cost would be incurred whether the Directives were in place or not. As a result, this global figure would not reduce to zero if the Directives were repealed. Procurement carried out below EU thresholds, as well as private procurement, has associated costs. In fact, the additional cost imposed by provisions of the Directives is likely to be relatively limited, as has been pointed out in an earlier evaluation of the public procurement Directives carried out in 2006. That evaluation put the additional cost of the compliance with the EU Directives compared to national/below-threshold procurement at 0.2% of total contract value for public purchasers, and a further 0.2% for suppliers – or approximately €1.68 billion in 2009.

When it comes to comparing public procurement against private sector procurement, firms find the latter less time-consuming and cheaper. The efficiency of the private sector procurement is also rated higher than for public procurement. However, private sector purchasing is seen as less competitive and less fair or transparent, and is based more on relationship trading. 40% of companies say that public procurement run on the basis of the open procedure is more or much more transparent than private purchasing, with 35% saying the same for the restricted procedure. Similarly, firms say that public procurement is fairer than private purchasing (32% in the open procedure and 34% in the restricted one).

The evaluation reveals very wide variation across Member States in terms of time and cost involved in running a procedure. The worst performers take 3 times as long, and are 3 times more expensive than the best performers. This suggests that the Directives support relatively efficient procurement practice but that some Member States have considerable scope for improving the efficiency of their procurement administration.

8. IMPACT ON OUTCOMES

The economic logic informing the Directives was that transparency would generate competition, which would lead to savings or lower prices. The evaluation finds that the procurement Directives have boosted openness and transparency, that this has triggered increased competition, and that this in turn translates into savings.

New econometric analysis carried out in the context of the evaluation finds that even incremental increases in transparency or openness can yield tangible savings. Publication of a contract notice results in a saving of 1.2% compared to contracts where neither contract nor prior information notice was published. Using an open procedure is associated with further 2.6 % savings. Based on these findings, a contracting authority that publishes an invitation to tender and uses an open procedure may expect total benefits equivalent to savings of 3.8 % on the final contract value. For restricted procedures, the corresponding saving appears smaller at around 2.5%.

Savings linked to higher competition tend to be higher in services and works. The more successful the procedures are in mobilising competition in these markets, the greater the savings that can be reaped.

The identified savings are consistent with previous estimates of savings from the procurement Directives. The Commission has previously estimated that overall prices for EU advertised procedures are 2.5-10% lower than contracting authorities initially expected. Budget savings on this scale can aggregate to significant amounts. Based on an estimate of savings of 5% realised for the €420 billion of public contracts which are published at EU level would translate into savings or higher public investment of over €20 billion. This could generate increases in employment and GDP of between 0.08 and 0.12% after one decade (160-240 000 jobs). If these savings were realised for all public procurement, the gains would be correspondingly greater (0.5% GDP and employment).

Public procurement is not only about obtaining the lowest price per contract. Qualitative and other performance considerations – including contribution to other policy objectives – may be integral to the procurement outcome. In general, contracting authorities do not focus on the lowest price but look for the economically most advantageous offer overall, taking into account quality or life cycle cost. Indeed 70% of all contract notices (and nearly 80% in terms of value) use the economically most advantageous tender criteria rather than lowest price. Lowest price is used more frequently for smaller contracts and less complicated procedures. The evaluation also finds that the integration of green or socially responsible requirements in tender specifications is effective in ensuring that procurement outcomes (i.e. the successful tenders) embody these features.

² See L. Vogel, "Macroeconomic effects of cost savings in public procurement". Economic Papers 389, 2009.

9. CONCLUSIONS

This evaluation set out to answer a number of key questions about the extent to which the public procurement Directives had achieved their objectives: whether those objectives remain relevant in the light of evolving market conditions and political preferences and to identify potential improvements in the cost-benefit trade-off.

9.1. Effectiveness

The evaluation finds that the Directives have resulted in greater transparency. This has been accompanied by greater levels of competition. The Directives have achieved measurable savings through lower prices as well as probable improvements in quality which are not easily measurable.

Direct cross-border procurement has not increased as much as was anticipated, although it is commonplace in smaller Member States. Many economic operators still appear to be deterred from competing for tenders in other Member States by a combination of competitive, structural and legal or administrative factors. The regulatory guarantees established by the Directives may be a necessary but not a sufficient condition to break down the barriers to cross-border participation in public procurement markets.

The evaluation has also found that differences in implementation and application of the Directives have led to different outcomes in different Member States. The time taken to complete procedures and the cost to public purchasers vary widely across Member States.

9.2. Relevance

Are the objectives of the Directives still pertinent? Budgetary pressure and continued emphasis on value for money argue for the continued appropriateness of the objectives. Increased aggregation, both through central purchasing and wide use of framework contracts, has led to an increasingly sophisticated and professional procurement. None of the evaluation findings suggest that the original objectives of removing legal and administrative barriers to participation in cross-border tenders, of ensuring equal treatment and removing scope for discriminatory purchasing by ensuring transparency are no longer relevant. While progress has been made, there still appear to be some factors which prevent the full impact of the single market being extended to all public contracts.

9.3. Efficiency

The evaluation finds that the savings generated by EU public procurement Directives far exceed the costs, for public purchasers and suppliers, of running those procedures. The positive cost-benefit analysis is almost certainly even more favourable if qualitative improvements are taken into account.

However, this generally positive assessment must be tempered by concerns about specific aspects of the functioning of the EU public procurement regime. The evaluation suggests that there may be circumstances where the costs of running regulated procedures may be disproportionate to the expected benefits. There may also be situations when aspects of the regulation give rise to unintended consequences for the wider economy – notably, the risk of market closure and concentration where long term or framework agreements are used.

The disparity between Member States in the time taken to complete procedures, and cost to public purchasers suggests that there is considerable scope, within the Directives, for reducing the cost of procurement administration in many Member States by aligning practice on the most efficient Member States.

9.4. Consistency with other policies

EU public procurement Directives permit contracting authorities to take into account a range of other policy considerations when defining their desired procurement outcome, subject to some safeguards to avoid arbitrary or unjustified restrictions on potential suppliers. Contracting authorities must design award criteria, for example, which comply with EU State aid rules.

In order to avail themselves of these possibilities, most Member States have adopted National Action Plans for Green or sustainable public procurement, often including targets for priority product groups as identified by the Commission. The focus has been on environmental procurement (through integration of life-cycle costing etc), and fewer Member States have been active in defining policies for socially responsible public procurement or innovation.

There is little organised monitoring or measurement in place, and this makes it impossible to draw firm conclusions on the effectiveness of these policies in re-orienting public expenditure towards more sustainable solutions. However, it appears that the majority of contracting authorities seeks to buy green, when this is feasible. Contracting authorities also encourage more socially responsible procurement and more innovative solutions although they have less experience of integrating these policy objectives within their procurement practice.

Respondents to surveys expressed concerns that different national requirements for environmental or social standards across the EU, or demands for different certificates and labels may constitute barriers to cross-border participation in public procurement procedures.

