



The Cost of Non-Europe in the Single Market

IV - Public Procurement and Concessions

STUDY

EPRS | European Parliamentary Research Service

European Added Value Unit
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The Cost of Non-Europe in the Single Market (‘Cecchini Revisited’)

In May 2013 the European Parliament's Committee on Internal Market and Consumer Policy (IMCO) requested a Cost of Non-Europe Report in the field of the European Single Market. Cost of Non-Europe Reports are intended to evaluate the possibilities for economic or other gains and/or the realisation of a ‘public good’ through common action at EU level in specific policy areas and sectors.

In response to IMCO's request, the European Added Value Unit of the European Parliamentary Research Service (EPRS) has produced this Cost of Non-Europe Report, which seeks to analyse the costs for citizens, businesses and relevant stake-holders of remaining gaps and barriers in the Single Market, building on, and updating, the 1988 Cecchini Report which quantified its potential benefits.

In addition to a general paper bringing together the research findings as a whole, the exercise comprises five studies commissioned from outside experts on specific dimensions of the subject, which are published as separate documents:

I Free Movement of Goods

Study by RAND Europe

This study uses an econometric model to estimate the potential benefits of removing existing barriers to foreign direct investment and non-tariff trade barriers within the European Union. The removal of existing trade barriers could boost total intra-EU merchandise exports up to 7 per cent in the long-term. These effects will vary by Member State, and by sector of the internal market.

II Single Market for Services

Study by CEPS

This study attempts to take stock of the remaining gaps or deficits in intra-EU market access obligations in services, and the related deficits in the proper functioning of the internal market for services. It also tries to identify the quantitative and qualitative economic gains of overcoming the costs of non-Europe of the remaining fragmentation, insofar as the EU can address such deficits.

III **Digital Single Market**

Study by GHK

This study analyses the gaps in the European digital single market legislation which prevent attaining the benefits of a fully functioning e-commerce single market. It provides a qualitative appreciation of the existing legislation, identifying gaps where further legislative action at European level could be beneficial and quantifying the direct costs of failure to legislate and the potential broader economic impact of closing the gaps.

IV **Public Procurement and Concessions**

Study by Europe Economics

One of the key benefits of the Single Market was expected to arise in the context of public procurement. This study updates the analysis presented in the Cecchini Report, estimates the value of savings to the public purse that have been achieved to date through European legislation on public procurement, and discusses the extent to which future savings might be achieved (in particular following approval of the proposals for new public procurement directives in January 2014).

V **Consumer Acquis**

Study by GHK

This study analyses the gaps in European consumer legislation. It provides a qualitative appreciation of the existing legislation, identifying areas where further EU legislative action could be beneficial, and provides tentative estimates of the costs of failure to legislate. It is not intended as comprehensive quantification, but rather as a 'snap shot' of some benefits which could be attained through completion of the consumer acquis.

Cost of Non-Europe in the Single Market

- IV -

Public Procurement and Concessions

**Study
by Europe Economics**

Abstract

Cost of Non-Europe Reports identify the possibilities for economic or other gains and/or the realisation of a 'public good' through common action at EU level in specific policy areas and sectors. This Cost of Non-Europe Report seeks to analyse the costs for citizens, businesses and relevant stake-holders of remaining gaps and barriers in the European Single Market, building on and updating the 1988 Cecchini Report, which quantified its potential benefits.

One of the key benefits of the Single Market was expected to arise in the context of public procurement. This particular study - the fourth in a series - updates the analysis presented in the Cecchini Report, estimates the value of savings to the public purse that have been achieved to date through European legislation on public procurement, and discusses the extent to which future savings might be achieved (in particular following approval of the proposals for new public procurement directives in January 2014).

AUTHOR

This study has been written by **Chris Smith** and **Dr Andrew Lilico** of Europe Economics (London) at the request of the European Added Value Unit of the Directorate for Impact Assessment and European Added Value, within the Directorate-General for Parliamentary Research Services (DG EPRS) of the General Secretariat of the European Parliament.

RESPONSIBLE ADMINISTRATOR

Zsolt Pataki, European Added Value Unit

To contact the Unit, please e-mail eava-secretariat@ep.europa.eu

This document is available on the Internet at: www.europarl.europa.eu/thinktank

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Executive summary

The Cecchini Report, which aimed to analyse and quantify the potential benefits of the Single Market was published in 1988 by the European Commission. One of the key benefits of the Single Market was expected to arise in the context of public procurement. The report found that removing inefficiencies in public sector procurement created by barriers to intra-EU trade could create savings in public expenditure of €8-19bn in the five member states studied (Belgium, France, Germany, Italy and the UK).

In this context, the European Parliament asked Europe Economics to explore the costs that gaps in the current European public procurement and concessions legislation place on a range of stakeholders, effectively updating the Cecchini estimates. It also asked us to assess the benefits that could arise from completing the Single Market in the field of public procurement and concessions.

We have obtained the information required to support this analysis through a literature review and a series of case-study interviews.

Literature review

The key role of the literature review was to identify gaps in current public procurement and concessions legislation. With respect to public procurement, we found that the key gaps relate to: scope; procedures; strategic procurement; access; and governance. With respect to concessions, we found that EU-wide rules governing the award of concession contracts are limited and so concessions markets are largely domestic.

Case studies

Three case studies were completed as part of this study, in the fields of construction, food and drink, and transport. We interviewed both bidders and awarding authorities to identify their perceptions of the key challenges they face with public procurement.

Overall, there is some concern about the lack of clarity of the Directives which has led awarding authorities to choose relatively burdensome procedures to ensure that they are on the right side of the law. More generally, administrative costs are seen to be a key problem and both sets of stakeholders are very interested in measures that might reduce such costs by simplifying the process of searching for projects, writing / reviewing proposals and submitting required documents.

Additional concerns of awarding authorities related to the use of strategic procurement and the use of award criteria other than price, which may be subject to challenge due to their somewhat subjective nature.

Quantitative analysis

We used two different approaches to quantify the extent to which gaps in public procurement legislation have been closed since the publication of the Cecchini report

(i.e. the savings to the public purse) and the extent to which these gaps remain open (i.e. the remaining Cost of Non-Europe).

The first approach used the findings of previous detailed studies on the benefits of the Procurement Directives to produce a top-down estimate of the extent to which the Cecchini gap has closed, adjusting the estimate for inflation and for the fact that there were 27 Member States in 2012 (the most recent year for which data are available).

Under this approach, we found that prior to the enactment of the new public procurement legislation approved by the European Parliament in January 2014 the achieved savings and remaining Cost of non-Europe is as follows:

	Low	Central	High
Annual savings to date	€6.4 bn	€22.7 bn	€35.5 bn
Annual CoNE remaining	€36.5 bn	€49.7 bn	€66.5 bn

The second approach used DG Internal Market's data to estimate the average difference between the initial estimated total value and the total final value of contracts, i.e. the 'average saving'. This bottom-up approach found that the annual saving as a result of the procurement legislation was €15.1 billion in 2012 prices while the remaining 'Cost of non-Europe' (as per Cecchini's definition) is approximately €57.3 billion per annum. This value lies towards the upper end of the range estimated using Approach 1.

Conclusions

The estimates presented in this report should be treated as indicative: a more substantial project would be required to produce a robust, comprehensive estimate of the scale of gaps in public procurement legislation. Nonetheless, with this caveat in mind, the following conclusions can be drawn:

- Our central estimate suggests that European public procurement legislation has delivered annual savings to the public purse of approximately €22.7 bn;
- the key pre-January 2014 legislative gaps related to scope; procedures; strategic procurement; access; governance; and concessions.
- Some of these gaps will be closed, in part, by the new legislation (approved on 15 January 2014); and
- some of the remaining gaps may not be possible to close through further European legislation because they are 'natural' rather than legislative.

Introduction

The Cecchini Report, which aimed to analyse and quantify the potential benefits of the Single Market was published in 1988 by the European Commission. One of the key benefits of the Single Market was expected to arise in the context of public procurement. The report found that removing inefficiencies in public sector procurement created by barriers to intra-EU trade could create savings in public expenditure of €8-19bn in the five member states studied (Belgium, France, Germany, Italy and the UK).

However, as of 2011, only 20 per cent of total public expenditure on goods and services was covered by the EU procurement directives. The vast majority of total public expenditure on goods, services and works is not organised in accordance with EU procurement. Reasons for this include:

- Public contracts that have a value below the EU thresholds fall outside the scope of the EU public procurement directives (although some countries voluntarily apply the Directives below threshold). Below-threshold contracts are, however, of significant economic importance, estimated at around €250 billion in 2008 or around two per cent of EU GDP.
- Much public expenditure on goods and services to provide health, education and social services are spent in ways which are not covered by the EU public procurement directives. Such expenditure accounts for more than six per cent of EU GDP.
- EU procurement directives provide certain explicit exemptions for expenditure on fuel, water and defence equipment (now covered by a separate directive).

It should be noted that not all of these reasons represent 'gaps' in public procurement legislation but they are important explanations for why only a minority of public procurement contracts are covered by the Procurement Directives.

Moreover, it should be noted that the Treaty on the Functioning of the European Union applies to all procurements, irrespective of the contract value. Therefore, European legislation can be seen as having an influence even on contracts which are not covered by the EU Procurement Directives. The relevant principles applicable to below-threshold procurement include:

- Transparency: contract procedures must be transparent and contract opportunities should generally be publicised.
- Equal treatment and non-discrimination: potential suppliers must be treated equally.
- Proportionality: procurement procedures and decisions must be proportionate.
- Mutual recognition: qualifications and standards from other Member States should be given equal validity, where appropriate.

In this context, the European Parliament asked Europe Economics to explore the costs that gaps in the current European public procurement and concessions legislation place on a range of stakeholders. It also asked us to assess the benefits that could arise from completing the Single Market in the field of public procurement and concessions.

The objective of this study is not to provide a comprehensive assessment of costs and benefits for all European stakeholders. Rather it aims to provide concrete examples, from different areas, of the costs incurred by citizens and business as well as of the wider economic effects on the functioning of the internal market.

We have obtained this information through a literature review and a series of case-study interviews. We have used the same tools to explore the potential benefits of completing the Single Market in the field of public procurement and concessions.

Proposals for a new public procurement directive were approved on 15 January 2014 and, to bring the analysis right up to date, the potential consequences are discussed towards the end of this report. It is not possible to provide quantitative analysis of the potential impact of these directives within the scope of this study since citizens and businesses do not yet have any concrete experience of them. However, we do make a qualitative assessment of the potential impact of the directives on gaps in the current European public procurement and concessions legislation.

Methodology

Overview of approach

The European Parliament identified three broad questions that should be answered by the current study:

- What is the current state of play of the European public procurement and concessions, and what gaps can be identified?
- What are the economic costs incurred due to gaps in European public procurement and concessions legislation?
- What benefits can be expected from the completion of the Single Market in the field of public procurement and concessions?

The first of these questions was entirely answered by reviewing the existing literature on European public procurement and concessions. However, we considered that in addition to extracting secondary data from the literature review, it would be necessary to gather primary data to adequately answer the remaining questions. Our approach to primary data collection was to conduct an in-depth interview programme for different groups of stakeholders. Following the data gathering phases of the study we assessed the costs and benefits of public procurement legislation to the greatest extent possible.

Our approach to this study is described in greater detail below.

Literature review

The first task completed in this project was a targeted literature review of existing studies on European procurement legislation, the impacts of this legislation on the European economy and weaknesses in the legislation.

The literature review was designed to provide a conceptual framework for the tasks that follow as well as allowing for general 'reading-in' time to fully acquaint the team with the current issues in European procurement legislation. In addition, the literature review informed the selection of a sample of Member States and sectors to be the focus of the analysis in this project. The sample selection framework is discussed in greater detail later in this report, but it is worth noting at this point that we identified some literature on the extent and nature of procurement in different sectors and Member States.

Contribution of literature review to description of state of play and identification of gaps

Desk-based research was the primary research method employed when building our understanding of the current state of play in European procurement legislation and identifying gaps that could be tackled through further legislation. In this respect, the output of the task was to be a concise and targeted discussion of the relevant literature and a list of gaps and weaknesses that could potentially be tackled through further legislative action at European level.

Contribution of literature review to assessing costs and benefits

Having identified the gaps and weaknesses in current legislation, we sought to estimate the costs of these gaps. Our approach to this task included an in-depth interview programme and additional desk-based research. Our approach to designing and implementing the interviews is described in the next section. With respect to the desk-based research, useful lessons on the cost on non-Europe were drawn from previous studies that have been conducted in the field of European public procurement. Many of these studies are the same as those that were reviewed when building our understanding of the current state of play (e.g. our study on the benefits of procurement).

Case studies

A key element of our approach to assessing the costs associated with gaps and the benefits of removing those gaps was to conduct numerous interviews with relevant stakeholders. These interviews took place in the context of specific case studies, which were identified on the basis of specified criteria and in consultation with the European Parliament.

Identifying case studies

The purpose of the case studies was to extract information on the experiences that each group of stakeholders has had in the period since European public procurement and concessions legislation were implemented.

More specifically, the key goal of the each case study was to:

- provide evidence of the costs of current gaps in public procurement and concessions legislation;
- show estimates of the potential benefits of closing the gaps; and
- identify how the costs and benefits would differ between sectors and Member States, if relevant.

The outputs of this analysis would be a key input to our overall analysis of costs and benefits.

Sample selection

Within the scope of this project we conducted case studies for a limited number of sectors and Member States. Such an approach permits our analysis to go into greater depth than would be possible were we to attempt to cover all sectors and Member States and would allow for greater engagement with stakeholders. The approach therefore ensures that our results would be as robust as possible, given the available data and the duration of the project.

We conducted three case studies, each of which focused on a different sector of the economy. Within each case study, we considered the views of organisations based in different Member States. As discussed later in this report, sample selection criteria were used to select the case study sectors and Member States. The purpose of defining selection criteria was to limit the potential for bias in results by ensuring that the sample

to be used in the analysis would cover a broad range of market characteristics and country characteristics. However, we found it necessary to introduce some flexibility to the selection of countries based on the willingness of awarding authorities and bidders to participate in our interview programme.

Interviews

We chose to rely on interviews rather than surveys as the key means of engaging with stakeholders in this project. While surveys are a useful way of collecting data from a relatively large sample of respondents, the drawback is that because of the relatively rigid format, the information retrieved in this way tends not to be very detailed or nuanced and can sometimes be difficult to interpret. Furthermore, it can be challenging and time-consuming to identify a sufficiently large number of potential respondents that the achieved number of responses will be great enough to analyse.

The interviews allowed us to gather rich, complex and diverse information and provided detailed insights into both interviewees' point of view and the reasons behind these. In particular, the surveys enabled us to secure a better understanding of stakeholders' views on the effectiveness of current European public procurement legislation and the weaknesses and gaps that currently exist. They also allowed us to explore stakeholders' thoughts about what would be the most beneficial legislative changes in greater detail than would be possible through a questionnaire.

Scope of interviews

We held interviews with two key stakeholder groups: economic operators; and Member States' awarding authorities. With respect to the economic operators, our interviews explored issues such as:

- Background information on the firm (sector, Member State(s), number of employees etc.)
- Involvement in public procurement (proportion of business accrued through public procurement, participation in tenders covered by procurement directives, participation in below-threshold tenders in own and other Member States etc.)
- Difficulties (identifying tender opportunities, understanding administrative requirements, language difficulties, etc.)
- Costs and administrative burdens (at different stages including identifying tender opportunities, understanding tender documents, complying with tender requirements etc. for tenders that are covered by the Procurement Directives and those that are not)
- Completing the gaps (closed question on the extent to which certain amendments, specified by Europe Economics on the basis of the literature review, would impact on the economic operator)
- Suggestions for improvement (probably open-ended questions that would seek to identify how the current legislation could be improved from the bidder's perspective)
- Potential impacts of suggestions for improvement (if the suggestions of the economic operator were implemented, what would be the impacts on the economic operator).

With respect to the awarding authorities, our interviews explored issues such as:

- Background information on the authority (sector, Member State(s), number of employees etc.)
- Involvement in public procurement (typical annual expenditure, typical number of contracts awarded, proportion of contracts allocated by the various possible procedures, proportion of contracts awarded to bidders from each Member State etc.)
- Difficulties (understanding procurement legislation, compliance, inconsistencies in legislation etc.)
- Costs and administrative burdens (costs of complying with procurement legislation, costs of evaluating tenders etc.)
- Completing the gaps (closed question on the extent to which certain amendments, specified by Europe Economics on the basis of the literature review, would impact on the awarding authority)
- Suggestions for improvement (probably open-ended questions that would seek to identify how the current legislation could be improved from the awarding authority's perspective)
- Potential impacts of suggestions for improvement (if the suggestions of the awarding authority were implemented, what would be the impacts on the awarding authority).

Practicalities

We sought to conduct a telephone interview with at least one awarding authority in each selected Member State for each case study (i.e. a minimum of nine interviews in total). We also sought to conduct at least one interview per case study with economic operators (i.e. a minimum of three interviews in total). The lower target for economic operators reflected our past experience that it can be relatively time consuming and challenging to arrange interviews with this group of stakeholders.

To ensure that we gained as much information from the interviews as possible, each interview was preceded by an email and / or telephone call providing background information and explaining the agenda for discussion.

Quantifying costs and benefits

Using the information and data gathered in previous tasks, we sought to quantify the costs of gaps in public procurement legislation and the potential benefits of closing those gaps.

We note that the analysis sought by the European Parliament for this project was not intended to be exhaustive but should focus on a number of specified examples. Our case-study approach was designed with this intention in mind. Nonetheless, we used several alternative approaches to attempt a quantification of the costs of gaps in public procurement legislation and the potential benefits of closing those gaps.

Literature review

Background to public procurement¹

Procurement is the purchase of goods and services by public and private enterprises. Efficiency in procurement from competing suppliers has long been recognised as a way to obtain the desired goods or services at the lowest price or, more generally, at the best “value for money”.²

The most common practices of procurement involve some form of tender or auction, and it is believed that, under these, efficient procurement outcomes can usually be achieved in situations where there are enough firms in the procurement market to sustain reasonable competition. In cases with a reduced number of firms, more sophisticated arrangements are necessary to prevent practices such as collusion, bid-rigging, fraud and corruption, which hinder the achievement of efficient outcomes. Public procurers also face the additional challenge of preventing political favouritism (situations where contracts are allocated according to loyalty or support rather than on the grounds of efficiency).

There has been a growing literature relating to public procurement practices. A substantially larger amount of research has been devoted to the design of procurement processes in order to achieve efficient outcomes under different circumstances. Another strand of literature has recently been developing around the empirical quantification of procurement outcomes under different type of practices. The two strands of work are reviewed in the following paragraphs.

Procurement design

The procurement design literature recognises a number of tools and strategies for its effective implementation. Several aspects have been investigated such as the type of auction and subdivision of contracts into lots, usefulness of open versus negotiated procedures, the impact of centralised purchases, dealing with contracts which include a quality component or mechanisms for dissuading collusion or preventing corruption. We will review briefly some recent contributions in this field.

The sealed bid format has traditionally been the preferred form of procurement, although recently some variants have been introduced. In general, sealed bids are preferred when bidders face some certainty and high knowledge of the goods or services provided.³ In other circumstances, where the conditions of provision of the contract are uncertain, a dynamic auction is believed to perform better because it allows participants to learn along the process. Variations, such as the two-stage sealed bid format, are also preferred

¹ This section draws on the information provided in some of our previous studies (see “Estimating the Benefits from the Procurement Directives (second phase)”, Europe Economics, 2011).

² See OECD (1999) Competition Policy and Procurement Markets.

³ Albano, Gian Luigi, Dimitri, Nicola, Pacini, Riccardo and Spagnolo, Giancarlo ‘Information and competitive tendering’ in Dimitri, Nicola, Piga, Gustavo and Spagnolo, Giancarlo (eds) (2006) *Handbook of Procurement*, Cambridge: Cambridge University Press, p143-167.

in cases where there are risks of participants exaggerating bids which would make the fulfilment of the contract impossible.

One of the main instruments to increase procurement efficiency has been the division of the contract into specific lots or awards. It is believed that this can increase the participation of bidders, and in particular encourage the involvement of SME's. However, there are exceptions to this rule in cases, for example, where lots have strong positive complementarities. In such cases it has been shown that lots should be allowed to be bundled into particular lot groups.⁴

Several authors describe the advantages and disadvantages of negotiated versus open auctions in relation to the complexity of the auction. In cases where projects are simple and well specified it is easy to argue that competitive tendering is efficient.⁵ On the contrary, where projects are complex, specifications are incomplete, accurate monitoring is not possible and/or the expertise of the supplier is required at the initial design stage, negotiations may be more efficient, and this is due to the increased scope for information exchange during the process. It has also been shown that in cases with incomplete contracts and moral hazard issues scoring-based auctions perform better than bargaining.⁶

Another important dimension has been the appropriate balance between procurement that specifies required delivery quality after which competition proceeds almost entirely on price (the "cost effectiveness" or "compulsory competitive tendering" model) versus those in which quality itself is an important dimension of competition (the so-called "best value" model). One concern is that the best value model provides scope for tacit or even potentially unconscious collusion between favoured bidders and the tendering authority, and in particular may close out foreign bidders as, without the benefit of detailed tendering specifications, a foreign bidder may be much less well-placed than a local bidder to understand what forms of "quality" improvements will be valued.

Related to this is the question of when the "winners curse" problem creates barriers to entry for new players – in particular foreign entrants from within the Single Market. In many local or central government procurement contracts there may be cost features that would be common across bidders of which a firm that had executed the same contract previously would be better aware than an external bidder. That means an incumbent may know the value of the contract better than an external bidder, with the potential consequence that, if an external bidder has offered a lower price than the incumbent, the

⁴ Grimm, Veronika, Pacini, Riccardo, Spagnolo, Giancarlo and Zanza, Matteo "Division into specific awards and competition in procurement" in Dimitri, Nicola, Piga, Gustavo and Spagnolo, Giancarlo (eds) (2006) *Handbook of Procurement*, Cambridge: Cambridge University Press, p168-192. Dimitri, Nicola, Pacini, Riccardo, Pagnozzi, Marco and Spagnolo, Giancarlo "Multi-contract tendering procedures and package bidding in procurement" " in Dimitri, Nicola, Piga, Gustavo and Spagnolo, Giancarlo (eds) (2006) *Handbook of Procurement*, Cambridge: Cambridge University Press, p193-219.

⁵ Bajari, Patrick and Tadelis, Steve 'Incentives and award procedures: competitive tendering vs. Negotiations in procurement' in Dimitri, Nicola, Piga, Gustavo and Spagnolo, Giancarlo (eds) (2006) *Handbook of Procurement*, Cambridge: Cambridge University Press, p121-139.

⁶ Asker, John and Cantillon, Estelle (2010) "Procurement when price and quality matter" *RAND Journal of Economics*, Vol 41, No 1, p1-34.

contract will be loss-making (there is a “winner’s curse”). Because of this feature, if incumbents are permitted to bid for later contracts, that might deter other bidders. Some commentators have therefore proposed that incumbents be forbidden from bidding for certain procurement contracts. It is questionable, however, how often it will be feasible to exclude incumbents, as to do so efficiently would require both a range of viable alternative bidders and the prevention of employees of past incumbents from providing exclusive advice to other bidders. This therefore remains a difficult policy challenge.

The degree of centralisation of procurement has also been the subject of some research. It is now understood that that centralisation offers net benefits “when procurement involves standardised, strategic, urgent or very essential products”.⁷ Centralisation also facilitates coordination in the development of networks and increases bargaining power of the purchasing authority which can materialise in cost savings. However, it is also clearly understood that in other circumstances centralisation can lead to inefficient outcomes, for example, when transport costs are high, in situations which could benefit from local knowledge of market conditions, or when information sharing is costly. The characteristics of the supply chain and market structure should also be investigated as this may raise competition issues.⁸

The realisation of value for money from aggregation is not direct and relies on a number of particular strategies.⁹ In some cases a volume-based approach can be used if the product is a commodity item and contracting bodies are able to provide the market with an estimation of demand and standardised specifications. When there are frequent changes to the demand, such as when the buyer wishes to be on par with the advances in technology, successive competitions between pre-selected suppliers may be the optimal arrangement. Brokerage is a type of arrangement that could minimise transaction costs in the case where the public sector customer lacks experience or competence. Finally, cooperation and intelligence sharing should always be promoted, especially when it is not feasible to aggregate demand. The bottom line is that no one form of aggregation is superior to another. The optimal approach requires careful analysis of the best strategy and good understanding of the associated demand and supply market.

In situations where both price and quality matter, efforts have been directed at finding an optimal award mechanism. However, it is acknowledged that implementation of such contracts is complex and requires full information about the bidding environment.

⁷ Dimitri, Nicola, Dini, Frederico and Piga, Gustavo “When should procurement be centralised?” in Dimitri, Nicola, Piga, Gustavo and Spagnolo, Giancarlo (eds)(2006) *Handbook of Procurement*, Cambridge: Cambridge University Press, p47-81.

⁸ Competition authorities have different views on contract aggregation. On one hand, it is believed that “the bundling of requirements into fewer, larger contracts being tendered less frequently” can lead to several benefits (OFT, 2004: “Assessing the impact of public sector procurement on competition”). On the other hand, authorities also believe contract aggregation can increase the costs of procurement by reducing competition in cases where the pool of potential tenders is smaller and more difficult for smaller firms to compete; and it can also limit the scope of co-operation and knowledge sharing, in cases where multiple contracts are tendered.

⁹ Roinn Airgeadais Department of Finance (unknown year): “Public Sector Aggregation Guidance Note”.

Collusion has also been the subject of substantial research. Several authors have proposed recommendations to dissuade collusion in procurement settings, including setting longer contract lengths, delaying information disclosure, using an aggressive reserve price, avoiding second-lowest price competitive tendering, or using simultaneous as opposed to sequential procurement.¹⁰

Measuring effects of improved procurement practice on procurement outcomes

A number of studies have looked at the effects of different procurement practices on the costs and value of winning bids or in encouraging participation or competition.

The effects of improved transparency are estimated to have reduced public procurement costs by up to eight per cent in the Mie Prefecture of Japan. The study used data containing information on all public-works projects offered for tender by the Mie government from March 2001 to March 2004 (winning and other submitted bids) and compared procurement outcomes in a difference-in-difference approach after improved transparency requirements came into force in mid-2002.¹¹

In a study using survey data on procurement practices by New York State school districts, the use of competitive bidding, purchasing calendars, central warehouses, and bidders' lists were associated with significant cost savings.¹²

Bids data from the Texas Department of Transportation relating to asphalt and bridge construction projects from August 1998 to August 2007 were used to demonstrate that encouraging participation in public procurement auctions lead to lower bids when costs were predominantly known to the different bidders, but had no statistically significant effect when costs were predominantly of an uncertain nature.¹³

Using the results of a stakeholder survey, Europe Economics (2006) estimated that the introduction of the procurement Directives in the then 15 MS increased the value for money of procurement subject to the Directives by between 2.5 and 10 per cent from 1992 to 2003. There was also an increase in administrative costs of about 0.7 per cent. In Europe Economics (2011) we found that publishing ITT is most beneficial in improving transparency: it lowers award value by 1 per cent as compared to the initial estimated values. Using the open procedure results in estimated savings of around 3 per cent.

¹⁰ Albano, Gian Luigi, Buccirosi, Paolo, Spagnolo, Giancarlo and Zanza, Matteo "Preventing collusion in procurement" in Dimitri, Nicola, Piga, Gustavo and Spagnolo, Giancarlo (eds) (2006c) *Handbook of Procurement*, Cambridge: Cambridge University Press, p347-380. Kovacic, William E, Marshall, Robert C, Marx, Leslie M and Raiff, Matthew E "Bidding rings and the design of anti-collusive measures for auctions and procurements" in Dimitri, Nicola, Piga, Gustavo and Spagnolo, Giancarlo (eds) (2006) *Handbook of Procurement*, Cambridge: Cambridge University Press, p381-411.

¹¹ Ohashi, Hiroshi (2009) "Effects of transparency in procurement practices on government expenditure: a case study on municipal public works" *Review of Industrial Organization*, Vol 34, No 3, p267-285.

¹² Duncombe, William and Searcy, Cynthia (2007) "Can the use of recommended procurement practices save money?" *Public Budgeting and Finance*, Vol 27 No 2, p68-87.

¹³ De Silva, Dakshina G, Jeitschko, Thomas D and Kosmopoulou, Georgia (2009) "Entry and bidding in common and private value auctions with an unknown number of rivals" *Review of Industrial Organization*, Vol 35, Issue 1, p73-93.

Price data from an exercise by DG MARKT shows that higher number of bids lowers the price paid by about 30 per cent. The study also shows that the effective price paid is lower when there is a purchasing department (not a central purchasing agency) in the public body that arranges public procurement centrally.¹⁴

A recent study completed for DG TRADE considered the potential economic impacts of reducing a range of tariff and non-tariff barriers to trade – including procurement barriers – for both the EU and the US.¹⁵ The study assumed that non-tariff barriers linked to procurement would fall by 25 per cent or 50 per cent in the “less ambitious” and in the “ambitious” scenarios respectively. The central estimated impact of such a reduction was a rise in EU GDP of €6.4 billion, all else being equal, and a rise in US GDP of €1.9 billion.¹⁶ This demonstrates the potentially important positive impact on procurement outcomes that can arise from reciprocal agreements between countries.

Some other studies have looked at the effects of different auctions formats on participants and found that sealed bid procedures are better at encouraging participation when participants have different costs of fulfilling the contract and there is uncertainty about the characteristics of the goods or services required. Other practices, such as increasing the number of lots, are also associated with more participation.¹⁷

Finally, another study looked at the advantages and disadvantages of negotiated versus open auctions using data on non-residential building projects in Northern California between 1995 and 2000. The study found that the use of negotiations was positively related to project complexity, negatively to buyer experience and positively to the number of potential bidders.¹⁸

Public procurement regulation

Public procurement legislation in the EU is aimed at creating a common market by ensuring free movement of goods, persons, services and capital, and promoting effective competition in the Internal Market.¹⁹ The guiding principles²⁰ by which these aims are sought to be achieved are:

- equal treatment of all economic operators;
- transparent behaviour; and
- no discrimination based on nationality.

¹⁴ COWI (2003) “Monitoring Public Procurement in the European Union using Public Authorities Panel Data” Lot 2, Final report.

¹⁵ CEPR (2013), “Reducing Transatlantic Barriers to Trade and Investment An Economic Assessment”

¹⁶ CEPR (2013), “Reducing Transatlantic Barriers to Trade and Investment An Economic Assessment”, p3.

¹⁷ Albano, Gian Luigi, Dimitri, Nicola, Perrigne, Isabelle and Piga, Gustavo “Fostering participation” in Dimitri, Nicola, Piga, Gustavo and Spagnolo, Giancarlo (eds) (2006a) *Handbook of Procurement*, Cambridge: Cambridge University Press, p267-292.

¹⁸ Bajari, Patrick, McMillan, Robert and Tadelis, Steven (2008) “Auctions versus negotiations in procurement: an empirical analysis” *The Journal of Law, Economics, & Organization*, Vol 25, No 2, p375-399.

¹⁹ These objectives are laid out in Articles 2 and 3 of the Treaty of Rome (1957).

²⁰ These are laid out in Articles 2 and 3 of the Public Sector Directive 2004/18/EC.

Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors²¹ and Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts²² (hereinafter referred to as “the Procurement Directives”) emphasise the coordination of national procedures in order to guarantee that these principles are achieved. The harmonised rules regarding advertising, procedures, deadlines, selection and award criteria and reporting are thought to lead to greater transparency, participation, objectivity and non-discrimination in procurement markets. It is believed that this would increase competition and cross-border trading, resulting in a better price/quality ratio (value for money) for public authorities, while increasing the productivity in the supply industries and improving the participation and access to such markets by SMEs. A more efficient use of public funds coupled with competitive industries would have obvious economic benefits for the economy.

The Cecchini Report

The Cecchini Report of 1992 argued that public sector procurement should be a priority for integration. Public sector procurement was the second major topic of the report – after red tape – and the authors argued that:

“Cross-frontier trade between private-sector business in the EC has, despite the many residual obstacles, developed strongly in the 30 years since the Community's formation in 1958. Not so the public sector, whose purchasing programmes, in the vast majority of cases, stop still at national borders.”

The authors considered that the community rules in force at the time had “very little effect [even] in the areas of procurement actually within their scope” because there were too many ways to evade the rules, other barriers to trade inhibited suppliers and purchasing in many Member States was decentralised, making it harder to enforce transparency rules.

The report found that removing inefficiencies in public sector procurement created by barriers to intra-EU trade could create savings in public expenditure of €8-19bn in 1984 in the five member states studied (Belgium, France, Germany, Italy and the UK). The breakdown of these savings would be:

- €3-8bn saved with the ‘static trade effect’ as public authorities buy from cheaper suppliers;
- €1-3bn saved with the ‘competition effect’ putting downward pressure on the prices charged by domestic firms; and
- €4-8bn saved with the ‘restructuring effect’ in the longer-run as industry reorganises and secures greater economies of scale. This effect was expected to be concentrated in high tech sectors.

On the basis of those figures, the report estimated the total savings in all 12 Member States at around €17.5bn – or 0.5 per cent of GDP in 1986 – even excluding defence procurement. The report also pointed to advantages for private sector consumers (who

²¹ OJ L134/1 of 30.4.2004.

²² OJ L134/114 of 30.4.2004.

would also pay less) and a dynamic effect on innovation, investment and growth as other advantages that could not, at the time, be captured empirically.

The report recommended closing down loopholes in existing rules; providing companies with a right to legal redress if the rules were breached; and to extent the transparency rules to excluded sectors. It estimated that could lead to large savings, from nine per cent for motor vehicles in the UK to 52 per cent for pharmaceuticals in Germany.

Recent developments

In recent years, the Commission has considered a proposal for regulations around concessions that would reduce current market distortions and inefficiencies that result from a lack of legal certainty and law provisions around concession contracts.²³ It also aims to address SMEs' limited access to the opportunities offered by concession contracts. The Commission has recently evaluated the extent to which current Directives have achieved their objectives²⁴ and other social policy objectives.²⁵

In addition, the Public Procurement Remedies Directives (Directives 89/665/EEC and 92/13/EEC) were revised to improve the effectiveness of national review procedures for the award of public contracts. Directive 2007/66/EC focuses on addressing unfair awards of public contracts by setting rules aiming at clear and effective procedures.

Finally proposals for a new public procurement directive were announced in January 2014, which are discussed towards the end of this report.

Public procurement fraud

A recent European Commission study on anti-corruption in the EU considered the extent to which public procurement is prone to corrupt practices and the costs that arise from these practices.²⁶ The report noted that a 2008 study found that corrupt practices typically add a cost of between 20 per cent and 25 per cent of the total contract value while in some cases the cost can reach 50 per cent of the total contract cost.²⁷ It also reports the findings of a 2013 study which considered the cost of public procurement corruption in five sectors and eight Member States. The study estimated that the total direct cost during 2012 was between €1.4 billion and €2.2 billion.²⁸ In light of these findings, it is clear that public procurement fraud and corruption add significantly to public expenditures.

²³ European Commission (2011), "Impact Assessment of an Initiative on Concessions ", "Proposal for a directive of the European Parliament and of the Council on the award of concession contracts" {SEC(2011) 1588 final}{SEC(2011) 1589 final}.

²⁴ European Commission (2011), "Impact and Effectiveness of EU Public Procurement Legislation" Part I and Part II.

²⁵ European Commission (2011), "Strategic Use of Public Procurement in Europe".

²⁶ European Commission (2014), "Report From The Commission To The Council And The European Parliament EU Anti-Corruption Report".

²⁷ See www.nispa.org/files/conferences/2008/papers/200804200047500.Medina_exclusion.pdf.

²⁸ PricewaterhouseCoopers and ECORYS (2013), "Identifying and Reducing Corruption in Public Procurement in the EU - Development of a methodology to estimate the direct costs of corruption and other elements for an EU-evaluation mechanism in the area of anti-corruption".

At present, legislation for dealing with public procurement corruption is not consistent across EU Member States. Indeed, while some countries have specific legal provisions dealing with public procurement corruption or have designed specific measures to reducing public procurement risks, many simply tackle public procurement corruption using general legislation.

There is also some inconsistency within current European legislation. For example, there exist several specific provisions in European law regarding the award of works concessions whereas service concessions are covered only by the general principles of the Treaty on the Functioning of the European Union.

Responsibility for investigating whether a violation of EU public procurement rules may be due to corruption rests with the Member States. Nonetheless, the Commission seeks to ensure compliance with the procurement legislation and will assess and report the extent to which awarding authorities have infringed this legislation. In 2012, more than 50 per cent of infringement cases concerning only three Member States while most cases related to allegations of:²⁹

- unjustified use of the negotiated procedure without prior publication;
- discrimination;
- direct awards;
- lack of transparency;
- unjustified amendment of the contract; and
- incorrect application of the internal rules or infringement of general principles of the Treaty.

As part of the proposed revision to the Public Procurement Directives, the Commission has “proposed provisions regarding conflicts of interest (for the first time defined in EU legislation), centralised data on corruption, fraud and conflicts of interest, stricter rules governing modification of contracts, broader exclusion criteria, and monitoring of concluded contracts”.³⁰

With respect to concessions, proposed legislation seeks to reduce the uncertainty surrounding awards and ensure that contracts are awarded to the bidder that provides best value for money. In addition, the proposed concessions directive would require Member States to adopt rules to combat favouritism / corruption and to prevent conflicts of interest. Such rules would ensure transparency in awards and the equal treatment of all tenderers.

This brief discussion has highlighted that fraud and corruption add significantly to the cost of public procurement across the EU. The fact that legislation covering such fraud and corruption differs between Member States may mean that some countries have tackled the issues more effectively than others. Harmonising legislation across the EU could help to close these gaps by ensuring that best practice is followed in all Member States. Reducing the costs of fraud and corruption would, in turn, benefit taxpayers in each EU Member State, including citizens, SMEs and larger businesses.

²⁹ European Commission’s 2012 Annual Public Procurement Implementation Review.

³⁰ European Commission (2014), “Report From The Commission To The Council And The European Parliament EU Anti-Corruption Report”, page 24.

Identifying gaps in public procurement legislation

The European Commission conducted a study in 2011 on the challenges faced by the EU Public Procurement Policy.³¹ The study identified five areas of problems, namely:

- scope;
- procedures;
- strategic procurement;
- access; and
- governance.

Each of these problems is discussed in turn.

Scope

A lack of clarity with respect to the scope and coverage of certain regulations and procedures means that awarding authorities continue to face uncertainty and also makes it difficult for contracting authorities and entities (CAEs) to identify the rules that are applicable to them in specific procurement instances.

Any uncertainty concerning available regimes / procedures is available or if the contract is covered or not covered by the Directive may lead CAEs to apply the full regime or a less flexible procedure even where the Directive permits the use of a lighter regime or more flexible procedure in order to guarantee compliance with EU rules and avoidance of litigation costs in the presence of uncertainty. The problem is particularly more severe for small CAEs who are inexperienced and infrequent users of the system. For suppliers, the risks due to uncertainty add to the cost of participating in public procurement and may discourage participation.

This same uncertainty can discourage authorities from switching to e-procurement and can discourage smaller CAEs from awarding contracts that are above the threshold. Such risk-averse behaviour reduces the cost efficiency of the Directive. A stakeholders' consultation conducted during the European Commission's 2011 study showed that "65 per cent of respondents believe that the EU procurement legislation should clarify the possibility for individual Member States to impose the use of e-Procurement".

It has been suggested that targeted adjustments to the scope of public procurement policy could help to address the grey areas in the existing scope and coverage to provide greater legal certainty and improve cost-efficiency. Some stakeholders have also suggested removing certain criteria that apply to the use more flexible procedures (such as the negotiated procedure) to eliminate the uncertainty over if and when such procedures are available. This would allow CAEs to use the most appropriate procedure without the fear of infringing any EU rules.³² Other stakeholders suggested retaining the criteria but

³¹ European Commission (2011), "Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on Public Procurement and the Proposal for a Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal sectors".

³² Arrowsmith, S. (2012), "Modernising the EU's Public Procurement Regime: a Blueprint for Real Simplicity and Flexibility", *Public Procurement Law Review*, 21 pp. 71-82.

raising current thresholds. However, these suggestions have received mixed reactions from Member States due to potentially adverse the implications for competitiveness and transparency.

Procedures

Participating in public procurement exercises comes with a cost. Indeed, a typical procurement procedure costs CAEs €5,500 while each bidder faces costs of approximately €3,800.³³ The sum of these costs represents a significant proportion of contract value for those contracts that are close to the threshold. In addition, the time taken to conduct the procedure varies significantly among different Member States. This reflects poorly on the efficiency of public procurement. As noted above, the use of disproportionate procedures by CAEs generates excessive costs for both awarding authorities and bidders.

Suggestions to tackle the use of disproportionate and/or excessively costly procedures include promoting more frequent use of repetitive purchasing and e-Procurement to streamline or automate the procedures. These measures might be expected to reduce the transaction costs for both CAEs and suppliers. In addition, Deutsche Bank's research suggests that making e-procurement mandatory would not only save €50-75 billion annually on public procurement but would also increase transparency and public accountability.³⁴ However, it should not be forgotten that there are costs associated with this too, such as investments in technology and training for CAEs and suppliers. In addition, stakeholder consultations have highlighted the need to simplify the use of e-signatures, DPS and e-catalogues. The use of repetitive purchasing would also need to be carefully monitored to ensure that the level of competition is not compromised and SMEs do not find it more difficult to participate as a result of it.

Some stakeholders have also complained about a disproportionate number of administrative documents being required. As the EU does not impose restrictions on the number of documents there is some flexibility for CAEs in different Member States and this has, in some cases, resulted in a significant administrative burden. European legislation could be considered in order to set rules to restrict the documents which can be requested so as to reduce these administrative burdens.

Another potential procedural problem is the inflexible nature of certain procedures. A lack of flexibility limits CAEs' ability to negotiate with bidders and integrate other strategic goals to make the most optimal purchasing decisions. Both CAEs and suppliers call for more freedom to use negotiated procedures while additional suggestions for improvements include "greater ability to negotiate; a less rigid sequencing of

³³ It should be noted that such costs are not exclusively due to the EU Directive. According to the PwC study on "Public procurement in Europe: Cost and effectiveness", some of these costs would still be incurred even without the EU regulation.

³⁴ Deutsche Bank's research is reported in: European Commission (2011), "Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on Public Procurement and the Proposal for a Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal sectors".

examination of selection and award criteria; ability to take into account previous experience with a bidder, [and] greater use of life cycle costing approaches".³⁵

Finally, Arrowsmith (2012) argued that the complete exclusion of the open procedure in the Defence and Security Directive limits the choices available to the authorities.³⁶ This could potentially lead to procurement in the sector being more expensive than necessary since there may be cases in which better value for money could be obtained through an open procedure. As a result, the study suggests including the open procedure in the Defence and Security Directive.

Strategic procurement

Despite the European Commission's repeated clarification, there remains uncertainty regarding the integration of strategic goals and this has, due to a fear of litigation, led to stakeholders being reluctant to take up such options. There are also concerns that the Directive does not "leave sufficient latitude to permit other policy considerations to be taken account when awarding contracts".³⁷

There are two sides to this problem. On the one hand, it is difficult to contract strategic objectives into solid criteria that can be included in the tender. On the other hand, the difficulty of quantifying the extra costs or benefits associated with achieving strategic objectives also make it difficult for authorities to determine which is the most economically advantageous tender. At present, the treatment of strategic objectives in public procurement is largely left to the discretion of each Member State.

One consequence of giving Member States discretion on the integration of strategic goals is that companies may be unwilling to bid for projects in other countries due to a lack of knowledge of the procurement legislation. As a result, such discretion can lead to a primarily national procurement market rather than an EU-wide market. Besides the acknowledged costs associated with the lack a fully-functioning single market, such divergence also reduces the possibility for CAEs to work together to identify good practices that should be encouraged across the EU.

Due to an expected increase in costs if the legislation enforces stricter rules in taking other strategic objectives into consideration when awarding contracts, some opposition is observed among both CAEs and suppliers. Indeed, the European Commission's stakeholder engagement has found that "SMEs in particular would encounter difficulty

³⁵ European Commission (2011), "Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on Public Procurement and the Proposal for a Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal sectors".

³⁶ Arrowsmith, S. (2012), "Modernising the EU's Public Procurement Regime: a Blueprint for Real Simplicity and Flexibility", *Public Procurement Law Review*, 21 pp. 71-82.

³⁷ European Commission (2011), "Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on Public Procurement and the Proposal for a Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal sectors", pp. 24.

in responding to these requirements”.³⁸ Existing studies do not seem to offer a viable and enforceable policy option that would solve this problem effectively.

Access

A more general problem that prevents the EU public procurement market from functioning as a single market is regulatory and other linguistic and geographic barriers that limit market access across borders. While bidders find it harder to win contracts from overseas, CAEs also appear to be somewhat reluctant to publish tenders overseas. Indeed, at the time of the European Commission’s 2011 Impact Assessment, 73 per cent of active CAEs had not made any cross-border tenders in the previous three years. A lack of experience and language/legal barriers are considered to be the main reasons for low cross-border procurement.

To tackle this issue, European institutions could conduct more training sessions and remove administrative barriers to facilitate cross-border procurement. Another particularly interesting proposal is that of the EU procurement passport which would ensure that the validity of certificates is recognised across the EU). This would help to remove cross-border procurement barriers, save the cost of translation, and reduce perceived risks due to the uncertainty over the originality of documents provided.

To increase access for SMEs it would be possible for European legislation to specify that a certain proportion of the public procurement market should be reserved for SMEs. CAEs could also be encouraged to structure the contract in ways that facilitate SMEs to bid. However, it is not clear that such measures should be made mandatory. For example, although forcing CAEs to split all above threshold contracts to lots would open more doors for SMEs, there may be negative implications for the results of the procurement exercise, especially if there are significant economies of scale to be exploited.

Governance

Differences in governance capacity, governance models and levels of proficiency in public procurement in different Member States result in inconsistency in the “application, control and monitoring [of public procurement legislation] across the EU”.³⁹

To date, most Member States have established central purchasing bodies. However, it is unclear if these bodies are also performing the role of controlling and monitoring. Therefore, one possible solution to the problem would be to oblige Member States to have a specialised public procurement authority that is responsible for the application, control and monitoring of public procurement. The experience accumulated from these specialised bodies could significantly reduce costs of error and may also alleviate the

³⁸ European Commission (2011), “Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on Public Procurement and the Proposal for a Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal sectors”, pp. 63.

³⁹ European Commission (2011), “Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on Public Procurement and the Proposal for a Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal sectors”.

risk-averse behaviour of CAEs that was described above. Such measures would be expected to incur additional costs on CAEs and Member States at least in the short run. However, long term savings and benefits in terms of increased transparency and competition should outweigh these costs.

An issue of governance concerns collaboration between awarding authorities. We are aware of anecdotal evidence that collaboration in the procurement process is a desirable objective for awarding authorities and that this does happen unofficially. The rationale for such collaborations is to save costs due to the exploitation of economies of scale and larger quantity of purchases. While legislation requires that only one authority may supervise the procurement process, others have sometimes contributed to the the procedure.

Identifying gaps in concessions legislation

Concessions contracts are used by public bodies for the purpose of engaging private firms to supply services or to perform works. Concessions contracts are typically high-value, complex and long-term and include building roads, bridges, sports venues or supplying energy or waste disposal services. The key feature of concession contracts is that the private firm must bear a substantial part of the economic risk stemming from executing the contracted works or services.⁴⁰

At present, EU-wide rules governing the award of concession contracts are limited. As noted in the EC's "Impact Assessment of an Initiative on the Concessions", this gives rise to legal uncertainty and impedes the operation of the Internal Market in the field of concessions. The lack of harmonisation is itself a barrier to bidding for contracts in other Member States and so concessions markets are largely domestic. It is also relatively difficult for SMEs to access concessions contracts at present and the proposed Concessions Directive seeks to address this legislative gap.

Key findings: Literature review

- The Cecchini report found that removing inefficiencies in public sector procurement created by barriers to intra-EU trade could create annual savings of €8-19bn (in 1984 prices) in the five member states studied.
- Fraud and corruption add significantly to the cost of public procurement across the EU. Harmonising legislation across the EU could help to address this issue.
- The key gaps in public procurement legislation are: scope; procedures; strategic procurement; access; and governance.
- EU-wide rules governing the award of concession contracts are limited, giving rise to legal uncertainty and so concessions markets are largely domestic.
- The proposed Concessions Directive seeks to address this legislative gap.

⁴⁰ This discussion is based on information available on the European Parliament's website.

Case studies

Introduction

A key element of our approach to assessing the costs associated with gaps and the benefits of removing those gaps was to conduct a number of interviews with relevant stakeholders.

Many of these interviews took place in the context of specific case studies, which would be identified on the basis of specified criteria and in consultation with the European Parliament. Relative to an online survey, the case study approach selected for this project permits our analysis to go into greater depth than would be possible were we to attempt to cover all sectors and Member States and allows for greater engagement with stakeholders.

The core purpose of the case studies was to extract information on the experiences that each group of stakeholders has had in the period since European public procurement and concessions legislation were implemented. More specifically, the key goal of the each case study was to:

- provide evidence of the costs of current gaps in public procurement and concessions legislation;
- estimate the potential benefits of closing the gaps; and
- identify how the costs and benefits would differ between sectors and Member States, if relevant.

We conducted three case studies, each of which focused on a different sector of the economy, and within each case study we considered the views of organisations based in no more than three Member States. The identity of the Member States considered differed between cases and hence our analysis is based on the perspectives of stakeholders from nine EU Member States in three different sectors.

Sample selection⁴¹

Given that the coverage of Member States and sectors in this project is not comprehensive, it is important to define sample selection criteria. The purpose of defining selection criteria is to limit the potential for bias in results by ensuring that the sample to be used in the analysis covers a broad range of market characteristics and country characteristics.

For the selection of Member States the selection criteria included:

- economic and social characteristics (e.g. geographical location, population, GDP per capita);
- trade characteristics (e.g. proportion of imports and exports relative to GDP); and
- public procurement characteristics.

⁴¹ The statistics included in this section are taken from Europe Economics' 2011 Study for DG Internal Market entitled "Estimating the Benefits from the Procurement Directives". Updating these statistics lay outside the scope of the present project and would be disproportionate given that the core use of the statistics is simply as case study selection criteria. Croatia is not included in these statistics as it only joined the EU in July 2013.

Selection of Member States

Economic and social characteristics

Figure 1 shows the population of each EU Member State during 2013 while Figure 2 presents the GDP per capita of each Member State in the same year. Both charts indicate significant differences between European countries and it is important to capture this diversity in sample selection.

Figure 1: Population by Member State

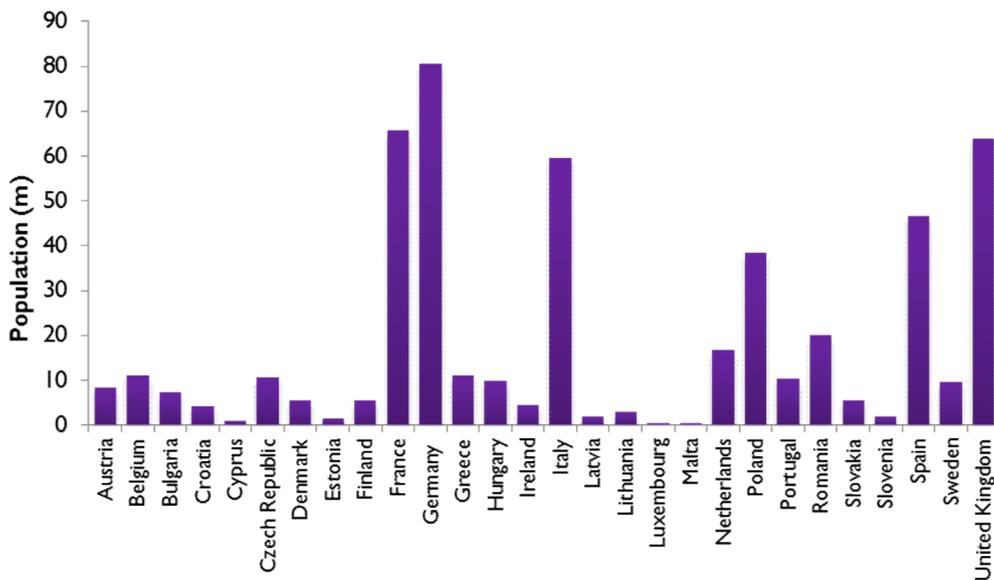
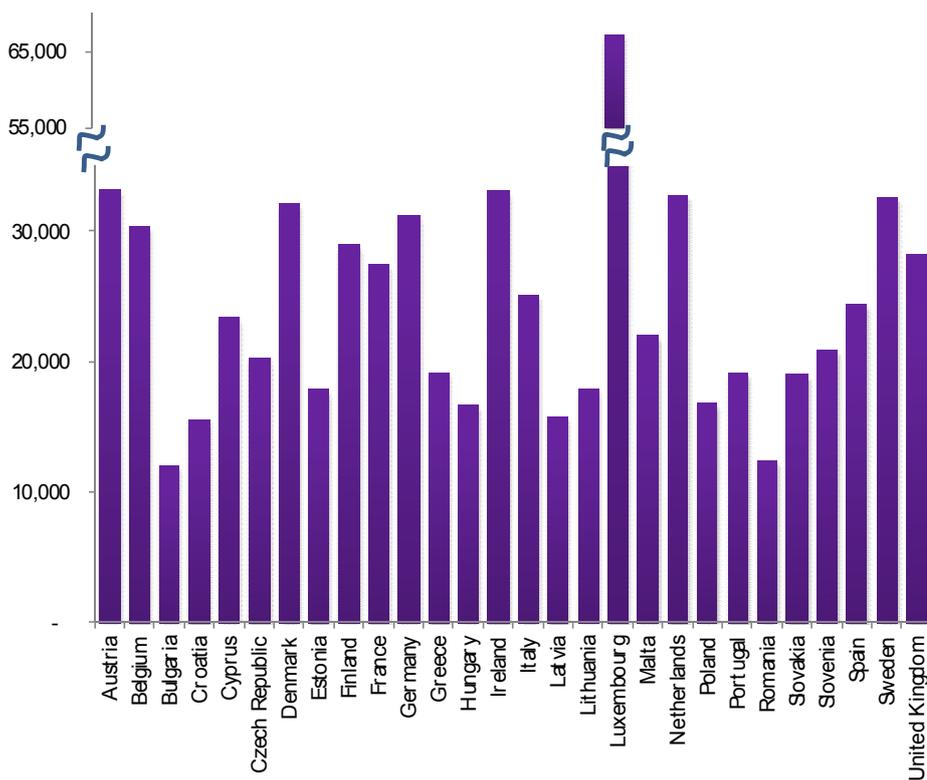


Figure 2: GDP per capita by Member State (€)



Trade characteristics

The figures below show the importance of trade to the GDP of each Member State, both with respect to imports from other countries and exports to other countries. The figures for exports and imports are remarkably similar within each Member State while there are marked differences across Member States. In general, smaller countries have a higher ration of exports and imports to GDP, although Luxembourg is a clear outlier.

Figure 3: Imports as a percentage of GDP, by Member State

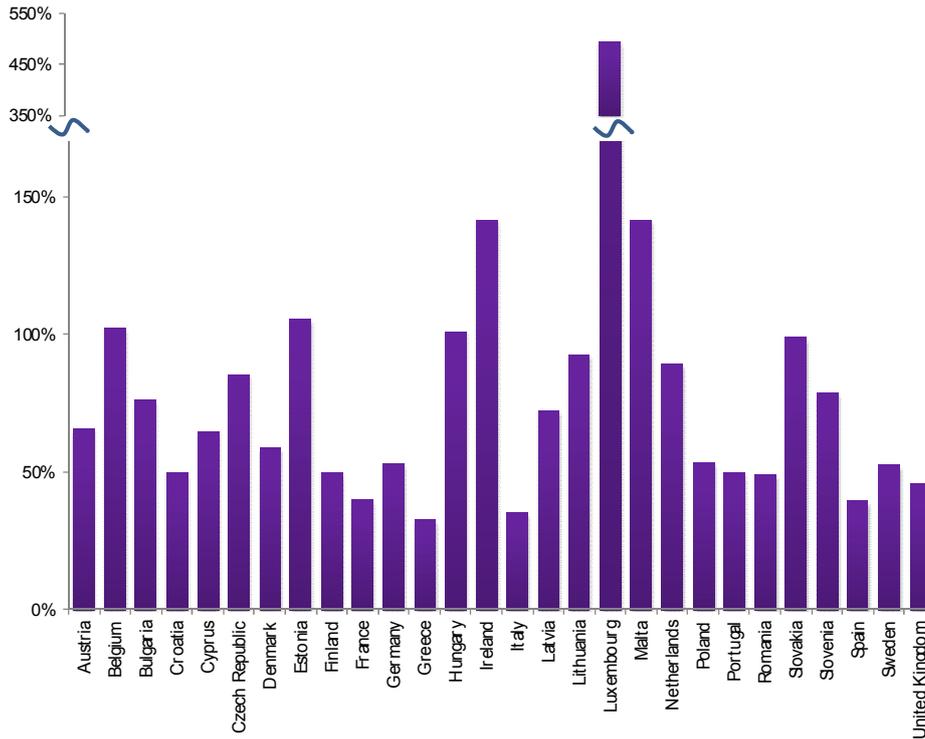
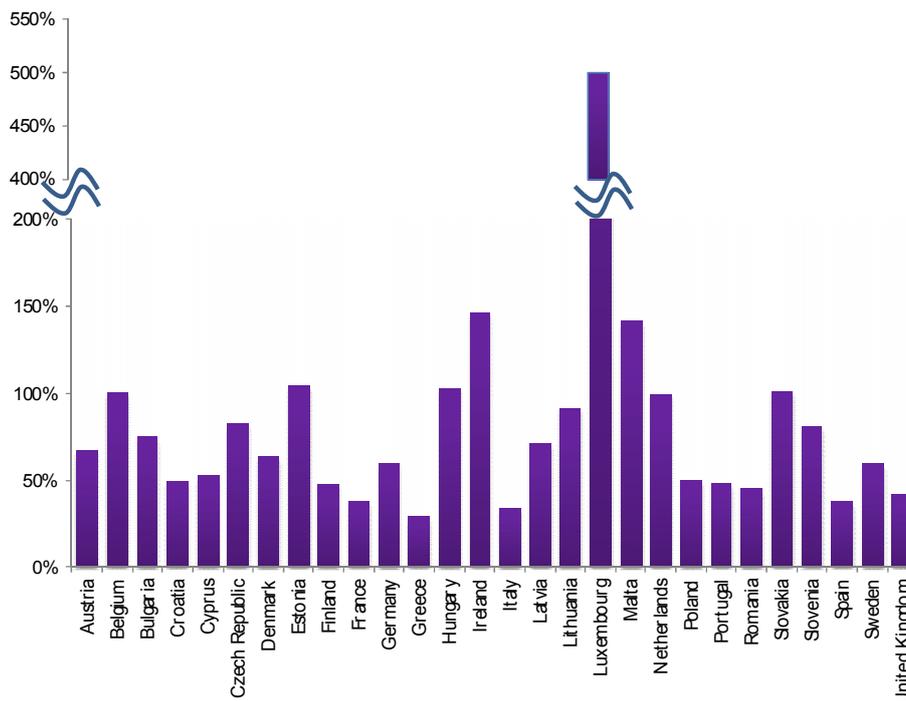


Figure 4: Exports as a percentage of GDP, by Member State



Public procurement characteristics

Figure 5 illustrates differences in public procurement between Member States. Based on the sample of awards provided by DG Internal Market in the context of our 2011 project, the left-hand graph shows the total number of specific awards in each Member State, the central graph shows the total specific award value and the right-hand graph shows the average specific award value.

Figure 5: Procurement by Member State

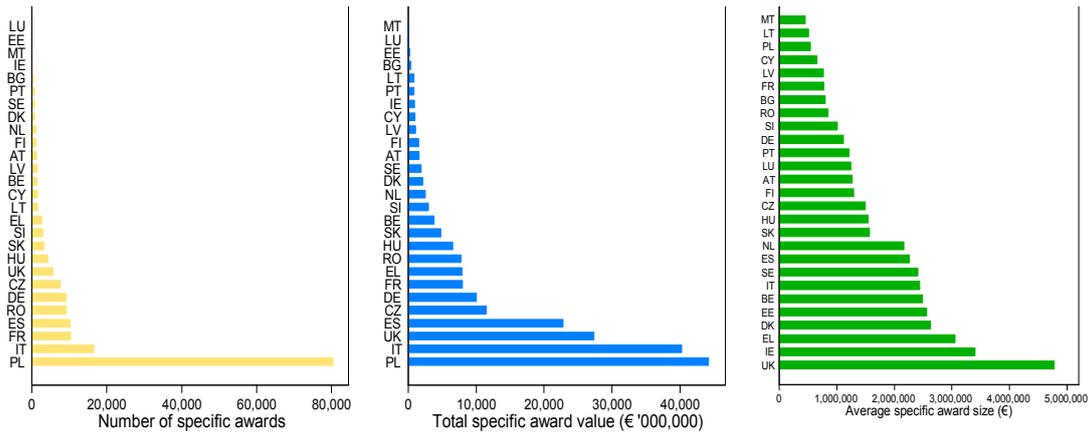


Figure 5 shows that while Poland awarded by far the greatest number of specific contracts and had the highest total value of awards, its average award value was relatively low. By contrast, Denmark awarded relatively few projects and had a relatively low value of total awards but the average value of awards was relatively high. The sample of Member States will include countries from across the ranges of the above charts.

Figure 6: Awarding authority type by Member State

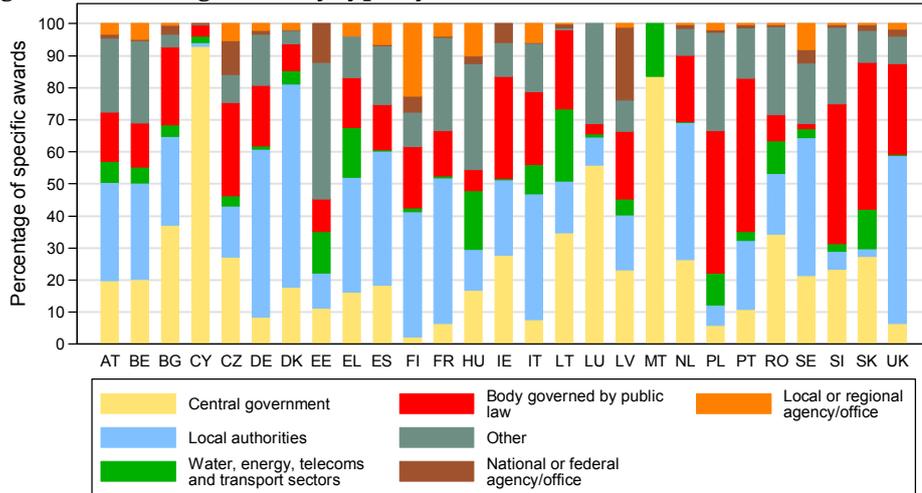
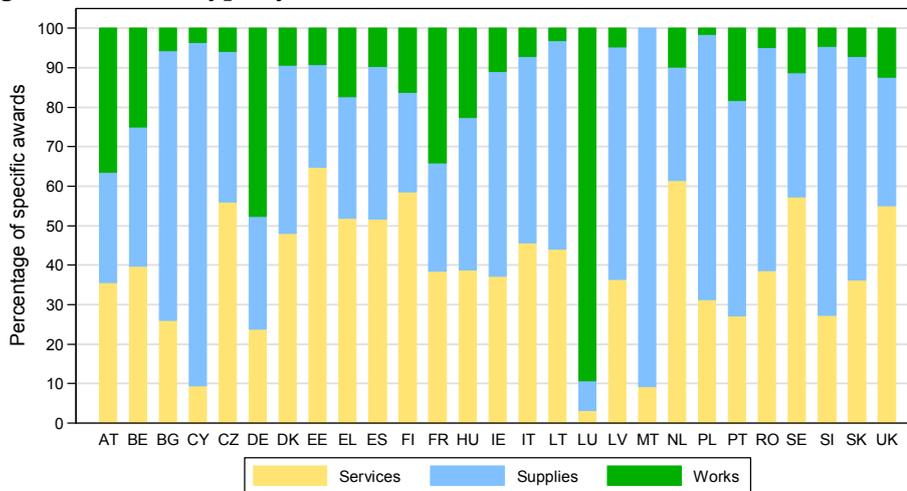


Figure 6 shows the percentage of contracts awarded by different types of awarding authority in each Member State. A relatively high proportion of contracts were awarded by bodies governed by public law in Poland, Portugal, Slovakia and Slovenia while Local

Authorities were responsible for a relatively high proportion of awards in Germany and Denmark. Central government awards were particularly important in Cyprus, Malta and Luxembourg although the total value of procurement in these countries was very low.

Figure 7 shows the distribution of contract awards across Member States by type of contract. Works contracts are particularly significant in Luxembourg, Germany, France and Austria while Supplies contracts account for a high proportion of awards in Poland, Cyprus Bulgaria and Malta. Services contracts account for a high proportion of awards in Poland, Cyprus Bulgaria and Malta. Services contracts are relatively common in the Netherlands, Estonia, Sweden and the Czech Republic.

Figure 7: Contract type by Member State



In addition to considering the data above, our selection of Member States also took into account the extent to which different types of awards procedures and techniques are used.⁴²

In terms of procedures, the most common is the open procedure. All but one Member States use the open procedure in more than half of their procurement contracts and the procedure is used almost exclusively in small countries. The exception to this rule is the UK in which the most common procedure is the restricted procedure, accounting for more than half of all contracts. The restricted procedure is also relatively common in Denmark, which uses it in almost one-third of procurement contracts.

Belgium, Norway and Austria are the top three countries by the share of contracts using negotiated procedure while negotiated procedures without publication are more popular in new Member States such as Lithuania, Slovakia and Hungary. Accelerated restricted, accelerated negotiated and competitive dialogue procedures are used to a much smaller extent.

⁴² This discussion is based on PwC, London Economics and Ecorys (2011), "Public Procurement in Europe: Cost and Effectiveness".

In terms of techniques, framework agreements are particularly popular in Nordic countries such as Norway, Sweden and Denmark while joint purchasing accounts for approximately one-third of total contract values in the UK, Denmark and Austria. Joint purchasing is also popular in the Nordic countries whereas only eight per cent of contracts awarded in Latvia and Greece use joint purchasing. Dynamic purchasing systems and e-auctions are only used in a few Member States (including the Czech Republic, Greece and Romania).

The use of concessions contracts differs between Member States. For example, Poland makes relatively limited use of concessions whereas there are approximately 10,000 concession-type contracts in France, worth around € 80 billion (equivalent to 2.1 per cent of GDP). The value of concessions contracts as a proportion of GDP is identical in Italy, while the figure for Germany is only 0.1 per cent of GDP. Portugal has the highest ration of concessions contract value to GDP: 19.9 per cent.⁴³

In making the final selection of Member States, we jointly considered country characteristics in terms of its economy and society, trade and public procurement. Based on the evidence presented above, the following Member States were selected:

Selected Member States		
Czech Republic	Greece	Portugal
Germany	France	Sweden
Cyprus	Romania	United Kingdom

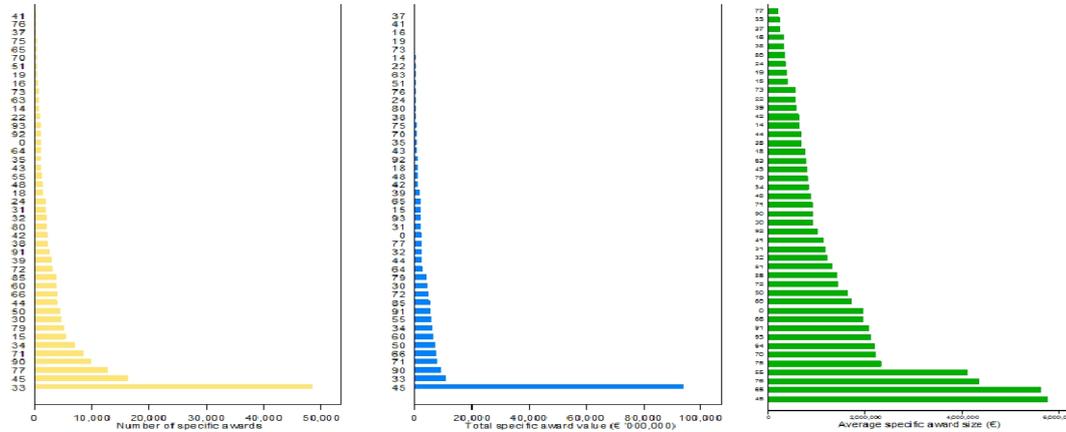
Selection of sectors

For the purpose of this study, we have chosen to define a ‘sector’ as a unique Common Procurement Vocabulary (CPV) division. The CPV is a classification system for public procurement which can have up to nine digits, the first two of which identify the CPV division. The CPV was introduced to standardise the way in which the subject of procurement contracts is described by contracting authorities and its use has been mandatory in the EU since 1 February 2006.

Given that the CPV is used by awarding authorities in all Member States, it is possible to compare the proportion of total procurement accounted for by each sector across Member States. As shown in Figure 8, CPV code 45 (construction work) accounted for the second-largest number of contract awards and the highest total and average award value.

⁴³ Statistics in this paragraph are taken from European Commission (2011), “Impact Assessment of an Initiative on Concessions”, pages 8 and 9.

Figure 8: Procurement by high level CPV code



In addition to considering the data above, our selection of sectors also took into account the extent to which different types of awards procedures are used.⁴⁴ The open procedure is the most common procedure in all sectors. Other than the business services sector, all sectors award approximately 75 per cent of contracts using the open procedure and more than half of the total value of contracts are procured via the open procedure. The business services sector has lower than average use of open procedure and above average use of other procedures.

The restricted procedure is more important element of public procurement when evaluated using value rather than number of awards. The construction sector accounts for 44 per cent of all restricted procedures by value, while the business services sector accounts for 17 per cent. Negotiated procedures are used less frequently than the other two procedures but are relatively popular in the services sector, as are negotiated procedures without publication.

In terms of techniques, framework agreements are most popular in procurement of commodities and manufactured goods and relatively less popular in construction. Joint purchasing is used much less frequently than framework contracts: even the sectors with the greatest use of joint purchasing only employ it for six per cent of all procurement contracts. However, if evaluated based on values, we find that joint purchasing accounts for the procurement of 25 per cent of the total procurement value in the manufactured goods, commodities and service business sectors. Dynamic purchasing is most frequently used in the procurement of agricultural, forestry, horticultural, aquaculture and apicultural services. However, the share is very small both by number and value. E-auctions are most frequently in the procurement of commodities but this technique also accounts for a very small proportion of procurement in terms of number and value of contracts.

Concessions contracts are concentrated in a few economic sectors. In particular, the key sectors in which concessions are used are: water distribution and treatment; road and rail

⁴⁴ This discussion is based on PwC, London Economics and Ecorys (2011), "Public Procurement in Europe: Cost and Effectiveness". The definition of sectors in that report differs from our approach of defining sectors by the CPV division.

transport; ports and airports services; motorway maintenance and management; waste management; energy or heating services; leisure facilities; and car parks.⁴⁵

The sectors selected for our case studies, and the key reasons for selection, are:

- Construction work (CPV division 45): This sector makes significant use of restricted procedures but limited use of framework contracts. It has a very high total value of contract awards and high number of specific awards relative to other sectors.
- Food, beverages, tobacco and related products (CPV division 15): This sector makes has a low total value of awards and a low average contract award value relative to other sectors.
- Transport services (CPV division 60): This sector makes significant use of concessions. It has an average-to-high number of contract awards and an average-to-high total value of awards relative to other sectors.

Final selection of case studies

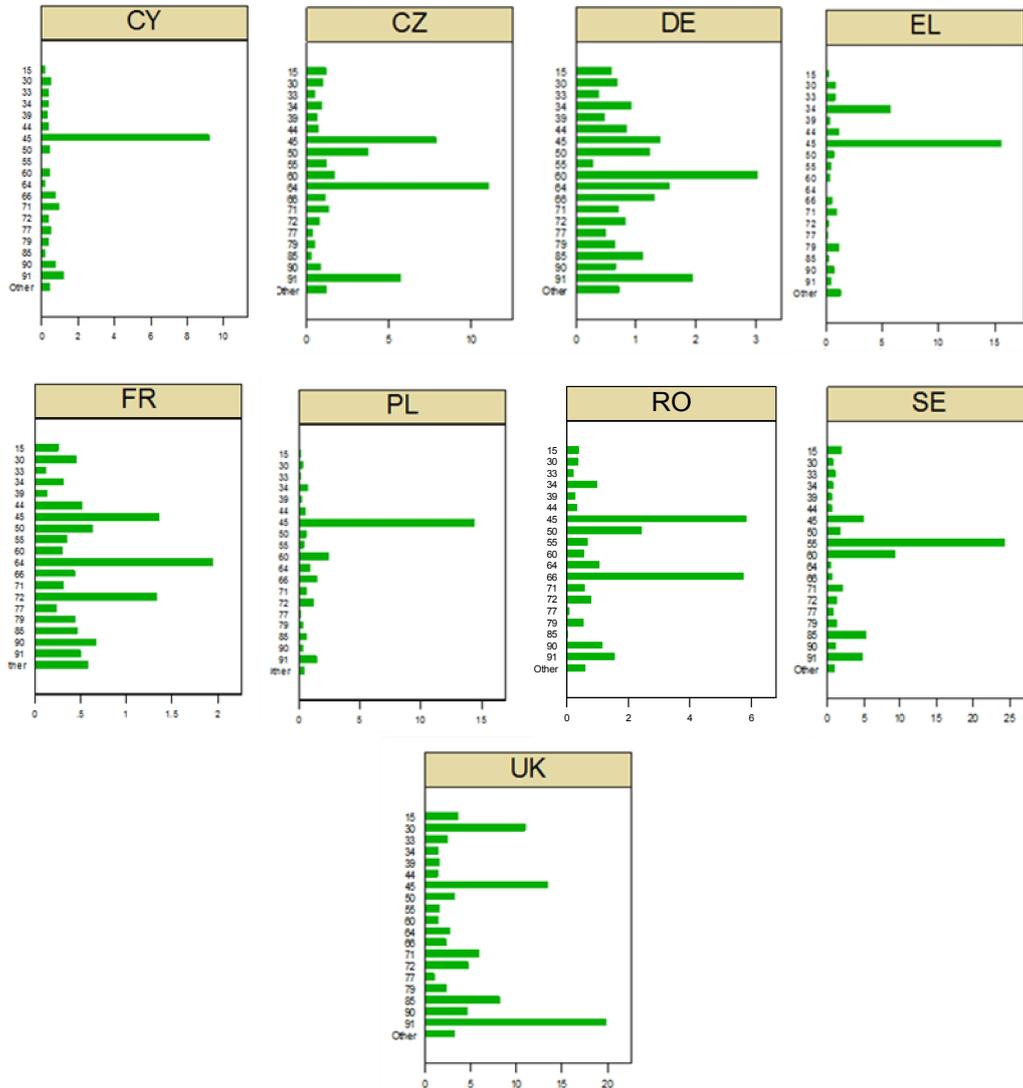
The final task in selecting the sample for case studies is to attach each selected Member State to one of the selected sectors. To do this we analysed statistics concerning the average specific award size by two-digit CPV code and Member State, as shown in Figure 9.

In attaching Member States to sectors, we sought to ensure that the sample for each case study was balanced in terms of the relative importance of the sector in total public procurement and that the sample was geographically diverse. For example, the average value of a public contract in the Polish construction sector is substantially greater than that of any other sector whereas the sector has only the second-highest average contract value in the UK. Similarly, the average contract value of transport services in Germany is higher than in any other sector whereas the average value in the Czech Republic is relatively low compared to other sectors.

Construction work (CPV division: 45)	Food, beverages, tobacco and related products (CPV division: 15)	Transport services (CPV division: 60)
Poland	Cyprus	Sweden
Greece	France	Germany
UK	Romania	Czech Republic

⁴⁵ European Commission (2011), "Impact Assessment of an Initiative on Concessions", page 9.

Figure 9: Average specific award size by high level CPV code and MS (€m)



Case Study 1: Construction work

We have conducted four interviews in the construction sector: two with economic operators (one each in Greece and the UK) and two awarding authorities (again one each in Greece and the UK).

Awarding authorities

The UK awarding authority stated that some strategic objectives had been reflected in previous procurement processes and it plans to include other strategic objectives in future award criterion, based on social benefits such as training for workers. The Greek awarding authority did not report ever implementing strategic priorities.

One strategic objective that the UK authority would like to implement is to support local employment by, for example, restricting competition to companies based in local areas. Implementing a local employment strategic objective may exacerbate the domestic focus of construction procurements, although the past experience of the authority suggests that the key 'losers' from such an objective would be other firms based in the UK as there is relatively little cross-border procurement in the construction sector.

In order to further assess the extent to which awarding authorities could reflect this strategic objective, we interviewed Demeter Development, an economic development consultancy specialising in procurement as a tool for development. It argued that there could be a number of advantages to local procurement, including lower transportation costs and greater scope for monitoring. To avoid undermining competition, it felt that the focus should be on increasing access for local businesses rather than biasing final procurement decisions. Local procurement strategies might then even increase the level of competition by increasing the number of potential bidders.

In light of the relative lack of cross-border activity in the construction sector, the UK awarding authority considered that the thresholds at which it becomes necessary to publish contract notices in the OJEU are too low. Despite this assertion, it is interesting to note that some companies based in other Member States had been awarded framework contracts with the authority. However, following the framework contract award, it was reported that bidders from other Member States had not been successful in mini-tenders, although some cross-border bids had been received. The reasons for this lack of success were not specified but the traditional difficulties faced by cross-border bidders (e.g. language issues, difficulties understanding the local legislation etc.) cannot be ruled out.

The Greek authority, on the other hand, thought that the thresholds above which EU directives became applicable were too high.

The UK awarding authority estimated that the average cost of awarding a public procurement contract was in excess of €120,000 and there is a perception that these costs are difficult to control. The key sources of these costs are drafting the invitation to tender (50 per cent) and evaluating bids for the purpose of awarding the contract (40 per cent).

The UK awarding authority felt that it is necessary to take a cautious approach to procurement in order to avoid legal challenges, indicating that a more resource-intensive procurement procedure may be followed than is required under existing legislation. The authority considered that the costs associated with those procedures are excessive but must be borne given the perceived risk of legal challenges in the context of somewhat unclear legislation.

Despite this legal uncertainty, both awarding authorities were broadly content with the clarity of the Directives, with the exception of the evaluation criterion which the UK awarding authority felt was unclear. Neither reported ever deciding not to publish a contract due to the applicable rules.

The UK authority typically uses the procurement procedure of Joint Contracts Tribunal Design and Build. It has considered alternative approaches but concluded that increasing its use of negotiated procedures, which is already used for some projects, is difficult to reconcile with proving that the process was still competitive. In addition, the authority has tested an approach of dividing projects into lots but found that this strategy can undermine competition for specific lots. This is a significant issue given that competition for the contract as a whole is typically rather weak.

Bidders

The two bidders that were interviewed were SMEs that provide consultancy / design services. In both cases, the majority of the public procurement activity is subject to the procurement directives but neither had been involved in cross-border transactions. Both bidders considered that the main difficulty in bidding for public contracts is the bureaucratic burden of preparing proposals and other documents required by the awarding authorities.

With respect to identifying opportunities, both bidders rely to some extent on the advertising of tenders by awarding authorities but the UK bidder felt that their ability to bid was limited by a lack of staff time to identify opportunities. The lack of a single portal for advertising opportunities below the OJEU thresholds is perhaps one explanation for this.

The UK bidder estimated that the cost of bidding was approximately £9,200 per contract and a little lower for opportunities below the threshold. Both the UK and Greek bidders reported that the majority of the cost is incurred in drafting the proposal and preparing other administrative documents required by the awarding authorities. Both organisations stated that the main problem with the current process was the amount of time that it took to produce such documentation.

The UK bidder felt that many of the administrative documents are not actually used to filter bids and are therefore seen to be “a waste of time” and place unnecessary compliance costs on bidders. These costs are amplified by subtle differences in the requirements of different awarding authorities which mean that it is necessary to repeatedly revise the presentation and structure of almost identical information. Simplifying and standardising pre-qualification questionnaires could lead to significant savings, as would a requirement to submit evidentiary documents only when a contract is won rather than as part of every bid.

In general, the Greek bidder found tenders to be quite clear but the UK bidder found certain aspects of tenders to be of poor clarity. In particular, its experience suggests that the legal requirements, evaluation criteria and scope are generally clear but the administrative requirements, awarding procedure and scope are not.

Case Study 2: Food, beverages, tobacco and related products

For this case study, we secured interviews with a Cypriot awarding authority and a French awarding authority.

The Cypriot awarding authority is a medium-sized government department (i.e. its number of employees lies between 50 and 250). Each year it publishes approximately 20 procurement notices and the typical annual expenditure on these procurement notices is €10m. It estimates that about 20 per cent of its procurement notices that needs to be conducted repeatedly. The French awarding authority was the administration of a large town.

The Cypriot awarding authority publishes contract notices in seven EU Member States. This may indicate a good integration of the country in the European Union but it is notable that the proportion of contracts awarded to bidders from other Member States remains relatively low at approximately 10 per cent.

Regarding the characteristics of the contract notices, the Cypriot authority stated that all are published electronically. The most commonly used procedure for awarding contracts is the open procedure (80 per cent of awards) and the second most common is the negotiated procedure (15 per cent of awards). However, the authority is somewhat dissatisfied with the negotiated procedure because it feels that the procedure provides greater scope for the awarding authority to be manipulated and the award criteria are more subjective.

More specifically, it was explained that the authority announces two types of competitions:

- lowest price competitions; and
- best offer competitions.

In the first case, no considerations are taken into account other than the price. In the second, a number of other considerations can be taken into account, as specified in the invitation to tender. It is noted that in such competitions the decision becomes more subjective and hence it becomes more challenging to justify the decision in case of a complaint from another participant. The Cypriot authority suggested that the directive should be modified in such a way as to make it compulsory that all awarding criteria are measurable in an indisputable way.

As far as the clarity of the directives is concerned the Cypriot authority believes that they are very clear and the only difficulty they encounter when conducting public procurement is the complication of some projects and hence the time requirement for drafting the invitation to tender. However, the French awarding authority stated that the directives are both too complex and are not clear. It considers this has an impact on the clarity of its instructions to bidders: its own difficulties of understanding are reflected in the tender documents and the awarding authority believes that, as a result, many enterprises decide not to engage because of a lack of clarity in the instructions.

Both the Cypriot and France awarding authorities are dissatisfied with the cost and administrative burden of public procurement. More specifically, the French authority stated that “the administration costs are too high [and so] it becomes too expensive to organise public procurement competitions”. For public procurement contracts that are covered by the Directive, the awarding Cypriot authority stated that approximately 40 per cent of its cost is devoted to drafting the invitation to tender, one fifth on trying to understand the directive and 40 per cent on the evaluation of tenders.

When asked about their experience of strategic procurement, the Cypriot authority stated that they have included other policy considerations in award criteria a number of times. The most common policy criteria that are taken into account are environmental considerations. However, the authority considers that it would not be sensible to mandate that strategic objectives are included in invitations to tender. The authority’s key concern is that such a measure would lead to a reduction in competition as some bidders would either be unable to bid, or would be discouraged from bidding. This would lead to a reduction in competition and so could lead the authority bearing a higher cost (potentially for lower quality) or cancelling the procedure.

Finally, the Cypriot authority did not think that the current legislation should be modified to allow for more cross-border participation because that would mean that Cypriot companies would find it very hard to compete with larger international corporations. This provides an interesting illustration of one reason for the relatively low level of cross-border procurement: a lack of enthusiasm from awarding authorities. Nonetheless, the authority considers that an EU procurement passport would be beneficial as it would reduce the costs of verifying the credentials of bidders from other countries. As a result, the authority considers that it may conduct more cross-border procurement exercises if the passport were introduced.

Case Study 3: Transport services

We have conducted interviews with a Czech awarding authority and a Swedish awarding authority.

The Czech awarding authority is a large organisation with over 350 employees. It issued almost 90 public procurement notices during 2013, of which 65 were below the procurement threshold and 23 were above. The most common procedure used by the authority is a variant of an open procedure in which five bidders were specifically asked to contribute and only the winners were required to submit evidentiary documents. The authority stated that this procurement procedure makes the process quicker and easier but did not make a substantial difference to their costs. The awarding authority has rarely included other policy considerations (strategic objectives) in tenders as it does not see how this can be done fairly.

The Swedish authority is somewhat larger, with around 1,100 employees. It awarded 28 contracts in 2013. Half of them were above the OJEU threshold and all awards were made following an open procedure. They have implemented strategic objectives before, in the form of environmental goals as part of the authority’s climate plan, but had

avoided implementing objectives in other situations as they did not feel the rules were clear. They felt that a compulsory requirement to take other strategic objectives into account would increase costs by around 5 per cent.

They have also collaborated with other awarding authorities, though they cautioned that “it is important to adapt to the market when collaborating so as not to knock out small and medium-sized enterprises.”

The Czech authority’s principal concern with the procurement process is the administrative burden. It considers that this burden is exacerbated by differing interpretations of the rules and frequent changes. It also stated that the directives are often very unclear, particularly with respect to the procedures available and the evaluation criteria. When in doubt about the rules they still issue a tender, but chose the strictest possible interpretation of those rules. This approach is sub-optimal because it places potentially unnecessary costs on bidders and awarding authorities.

The Czech awarding authority estimated that its per-tender administrative cost is approximately €220 below the threshold and approximately €730 above the threshold. The preparation of tender documents was stated to account for 50 per cent of its total costs. Other areas of concern relate to its experience that assigning CPV codes can be difficult, time-consuming and costly. It also considers that some of the administrative documents required are unnecessarily time-consuming for both bidders and awarding authorities as the same information was requested repeatedly. The Swedish authority also reported that their main concern about the public procurement rules was the scale of the administrative burdens created.

The Czech authority is also concerned about its inability to draw on its previous experience when awarding contracts. For example, the fact that it is unable to reject companies with which the authority has had a previous bad experience both increases the cost of reviewing tenders and can lead to future poor experiences, particularly in cases where it is necessary to award new contracts to those companies due to, for example, them offering a particularly low price.

To date, the Czech awarding authority has not received a formal bid from a company based in another Member State. While some foreign companies have previously submitted some of the evidence needed for pre-qualification, no company has ever progressed beyond this stage.

Nonetheless, the authority sees the potential for greater competition with more cross-border bids. Before increased cross-border bidding can be achieved, it believes that two key problems must be overcome: differences between Member States in administrative requirements with respect to evidentiary documents; and language difficulties. The authority is confident that the problems with evidentiary documents could be solved with an EU procurement passport, but considered that language problems would continue to present a constraint on cross-border procurement. In addition, transport costs associated with trading across borders will also continue to present a natural constraint on cross-border procurement.

The Swedish authority has more experience with cross-border bids. Around a third of its awards are made across borders.

Key findings: Case studies

- There is some concern about the lack of clarity of the Directives which has led awarding authorities to choose relatively burdensome procedures to ensure that they are on the right side of the law.
- Awarding authorities and bidders have little prior experience of cross-border procurement.
- Administrative costs are seen to be a key problem and both sets of stakeholders are very interested in measures that might reduce such costs by simplifying the process of searching for projects, writing / reviewing proposals and submitting required documents.
- Additional concerns relate to the use of strategic procurement and the use of award criteria other than price, which may be subject to challenge due to their somewhat subjective nature.
- One possible approach to quantifying the extent to which the Procurement Directives have closed the Cecchini gap (and thereby reduced the realised Cost of Non-Europe) is to focus on the average savings of the case-study sectors. We implement this methodology as 'Approach 2' in the following chapter.

Updating the Cecchini estimates

Earlier empirical estimates

There have been several attempts to estimate the scale of the potential savings in public procurement with a more complete Single Market, or the savings produced by the procurement directives.

The most important was produced for the Cecchini report, discussed in Section 0. The report found that potential savings were between €8bn and €19 billion in 1984 in five Member States (Belgium, France, Germany, Italy and the United Kingdom). Its estimate was based upon detailed analysis of the significance of public sector procurement in a large number of sectors (using published Input-Output tables), the structure of key markets and relative prices for representative goods. Those goods ranged from typewriters and paper shredders; to vans and buses; to electrical equipment such as transformers; to pharmaceutical supplies.

In this study we have updated the Cecchini estimates to reflect the current (i.e. as of 2012) size of the EU and levels of government expenditure – producing a current “Cecchini Gap” – and estimated the extent to which the Cecchini Gap has been closed by the existing directives by looking at previous estimates of the savings they have generated.⁴⁶ Two reports by Europe Economics for DG Internal Market made a key contribution to that literature:

- *Evaluation of Public Procurement Directives* in 2006 was based on 100 in-depth interviews across the 15 Member States then subject to the directives and found clear patterns in the responses. That report found that although the directives had increased costs for bidders and awarding authorities, prices paid (including quality improvements) had been reduced by between €6bn and €24 billion in 2002. That contributed to an overall net welfare benefit from the implementation of the directives between €4.25bn and €23.4bn.
- *Estimating the Benefits from the Procurement Directives* in 2011 was based on detailed procurement data from the MAPPs database, which includes all notices published to the OJEU. Several different approaches were taken to estimating the benefits of the directives. In one of those approaches a model was constructed that linked compliance with the directives to outcomes and “based on pooled data from the UK and Germany, [the report estimated] that by requiring the provision of prior information, the Procurement Directives between 2006 and 2009 reduced the value of [winning bids] by an average of one per cent.”

⁴⁶ It is important to emphasize, as noted repeatedly throughout this study, that the figures quoted are those prior to the enactment of the new January 2014 legislation – we have no basis as yet for an ex post evaluation of the impact of these measures.

Unfortunately the more recent report did not find consistent results among Member States. The pooled result described above is essentially an average between no impact in the UK and a two or more per cent reduction in prices in Germany. When an attempt was made to construct a similar model for the European Union as a whole, it was found that the regressions were mis-specified; and drawing “meaningful conclusions at the EU wide level is not possible”. The report warned that since “the samples used in the analysis are not representative drawing wider inferences from the estimates provided above must be approached with great caution”.

There have been constant changes to the procurement directives since they were enacted, resulting from amendments and court decisions, but many of those changes have been attempts to clarify or simply the rules, rather than to increase the level of Single Market savings. We therefore feel that it is still possible to use those 2006 results, so long as the limitations introduced by the age of the survey are borne in mind and the results are properly adjusted for inflation and changes in the real value of public sector procurement. We therefore used a re-calculated version of the 2006 report’s results, updated to current (i.e. 2012) inflation and public procurement levels, as the basis for our analysis of the Cecchini Gap closure.

Updating the Cecchini Estimates: Approach 1

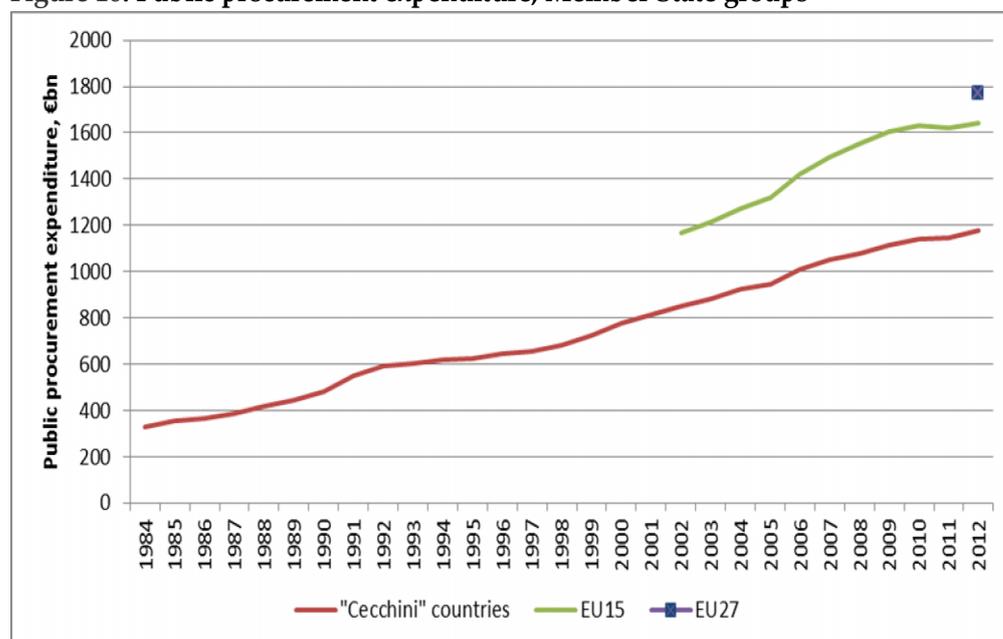
The first approach we have taken is to compare the original Cecchini estimates of the potential gains from a Single Market in public procurement (the “Cecchini Gap”), updated for current levels of public procurement and the modern EU membership, with the most robust estimates available of the extent to which the directives have fulfilled that potential. This approach results in an estimate of the potential gains if some of the gaps discussed earlier in this report are closed.

In order to do that, we first adjust the 2006 estimates for inflation and the changing level of public procurement spending. There is an established methodology for estimating the level of public procurement expenditure from national accounts data, used by the OECD in constructing its public finance statistics.⁴⁷ It is estimated using the sum of intermediate consumption (goods and services purchased by governments for their own use, such as accounting or IT services), gross fixed capital formation (acquisition of capital excluding sales of fixed assets, such as building new roads) and social transfers in kind via market producers (goods and services produced by market producers, purchased by government and supplied to households).

We have used Eurostat national accounts data to produce estimates for changes in the level of public procurement expenditure in the five “Cecchini” Member States from 1988, for the 15 Member States covered in the 2006 study from 2002 and for the EU27 for 2012. Figure 10 shows the two series and the comparison to public procurement expenditure in 2012 for the entire EU27.

⁴⁷ For example, in OECD (2011) *Government at a Glance 2011*, IX: Public Procurement, 40: Size of public procurement market.

Figure 10: Public procurement expenditure, Member State groups



We scaled up the original Cecchini range and the savings estimated in the 2006 study in line with rising nominal public procurement expenditure. We then scaled the results for both groups of countries up on the same basis to reflect the entire EU27.

The calculation is shown in Table 1, based on the mid-points in the Cecchini report and the 2006 study.

Table 1: Calculation of Mean Extent to which Cecchini Gap has Closed

Inputs		
A	Annual public procurement expenditure, Cecchini countries, 1984	€ 329.8
B	Annual public procurement expenditure, EU15, 2002	€ 1,167.5
C	Annual public procurement expenditure, EU27, 2012	€ 1,769.6
D	Low Cecchini Gap, per annum (1984)	€8 bn
E	High Cecchini Gap, per annum (1984)	€19 bn
F	Low value of gains from Directives, per annum (2006 study)	€4.25 bn
G	High value of gains from Directives, per annum (2006 study)	€23.4 bn
Calculation of Mean Cecchini Gap in 2012 values		
H	Ratio of public procurement expenditure (2012 : 1984) (= C/A)	5.4
I	Mean Cecchini Gap, per annum (1984) (= (E - D)/2)	€ 13.5 bn
J	Cecchini Gap, per annum (2012) (= H x I)	€ 72.4 bn
K	Ratio of public procurement expenditure (2012 : 2002) (= C/B)	1.5
L	Mean value of gains from Procurement Directives, per annum (i.e. Cecchini Gap Closure as of 2002) (= (G - F)/2)	€ 15.0 bn
M	Savings from Procurement Directives, per annum (i.e. Cecchini Gap Closure as of 2012) (= K x L)	€ 22.7 bn
N	Share of Cecchini Gap Closed (2012) (= M / J)	31%

Note: Means are calculated as the average of the relevant low and high estimates

As both the original Cecchini study and the 2006 report gave ranges, Table 2 shows the remaining gap on the basis of combinations of the high and low estimates produced by each study. As shown in the table below, these results are based on exactly the same calculations as outlined in the table above: the only difference is that rows I and L take the relevant high or low value rather than the mean.

Table 2: Calculation of Ranges of Extent to which Cecchini Gap has Closed

	Low gap, low saving	Low gap, high saving	High gap, low saving	High gap, high saving
Inputs are the same as in the previous table and so are not reported				
H	5.4	5.4	5.4	5.4
I	€ 8.0 bn	€ 8.0 bn	€ 19.0 bn	€ 19.0 bn
J	€ 42.9 bn	€ 42.9 bn	€ 102.0 bn	€ 102.0 bn
K	1.5	1.5	1.5	1.5
L	€ 4.3 bn	€ 23.4 bn	€ 4.3 bn	€ 23.4 bn
M	€ 6.4 bn	€ 35.5 bn	€ 6.4 bn	€ 35.5 bn
N	15%	83%	6%	35%

The most plausible scenarios are the low-low and high-high scenarios, as it is likely that the savings obtained are to some extent a function of the potential for savings. This implies that between 15 per cent and 35 per cent of the Cecchini Gap had been closed as a result of the Public Procurement legislation.

These estimates may be seen as lower bounds. In particular, the fact that the Treaty on the Functioning of the European Union has an influence even on contracts which are not covered by the EU Procurement Directives (via the principles of transparency, equal treatment and non-discrimination, proportionality and mutual recognition) means that the avoided cost of non-Europe is likely to be greater than that outlined above. It has not been possible to quantify this effect, however.

Key findings: Approach 1

- Cecchini estimated that the Cost of Non-Europe lay between €8 billion and €19 billion in 1984 prices, for six EU countries.
- Updating this figure to 2012 prices for the EU27 indicates the equivalent gap to be between €43 billion to €102 billion.
- We estimate that procurement legislation has eliminated between 15 per cent and 35 per cent of this cost.
- This delivered annual savings to the EU of between €6.4 and €35.5 billion, with a central estimate of €22.7 billion.
- On this basis the remaining 'Cost of non-Europe' (as per Cecchini's definition) therefore lies between €36.5 billion and €66.5 billion.

Updating the Cecchini estimates: Approach 2

In a 2011 report to DG Internal Market, one approach employed by Europe Economics to estimate the benefits from the Procurement Directives used data on the 'average savings' achieved by Awarding Authorities. More specifically, our analysis considered the difference between the initial estimated total value and the total final value of contracts that were included in the MAPPS database.

DG Internal Market kindly granted permission to Europe Economics to use the MAPPS database for the present study. In common with our 2011 study, we used data on the estimated and final values of contracts to estimate savings at the contract level. Data were obtained only for our three case-study sectors and for 2012 only.

Before analysing the data, it is important to understand what the initial estimated value and the final value of the contract represent.

The total final value of the contract is the actual price paid by the Awarding Authority for the fulfilment of the contract. This reflects the winning contractor's estimate of the cost of fulfilling the contract and his judgements about competing bids.

The correct interpretation of the initial estimated total value of the contract is less clear. A theoretical argument based on auction theory can be made that the initial estimated total value represents the value of the contract to the AA. However, it is also possible that the initial estimated total value of the contract is simply the AA's estimate of the actual price they will have to pay for the good/service - in other words, a budgetary forecast.

Which of these reflects the most likely situation? When completing the Standard Forms AAs are provided with no guidance on how to define the initial estimated total value, so it is difficult to know exactly how they interpret this question. The interpretation of these values probably varies from country to country (and in all likelihood by AA too). In some countries this value may represent an overall budget (analogous to their maximum willingness to pay) and in others an estimate of the cost of the contract. Consequently it is possible that in some cases the total final value is greater than the initial estimated total value and in others, that it is less. This possibility is borne out in our data.

Moreover, the data showed evidence of some significant outliers in estimated savings which, in many cases, appear to have arisen from errors in data entry. To ensure that our modelling results are not biased by such extreme outliers, we omitted observations in which the estimated saving was more than 80 per cent of the original estimate. For the same reason, we also excluded cases in which the final contract value was more than three times the estimated value. Finally, we excluded observations in which the estimated or final value was listed as less than or equal to €0.

Following this data cleaning process, we completed our analysis on a sample of 1,593 awards. The average saving in this sample was 21 per cent.

The mean value in 2012 of the gap estimated by Cecchini, adjusted for inflation and the expansion of the EU, was €72.4 billion.

Under the assumption that the estimated average saving may be attributed entirely to the Public Procurement Directives, and applying this figure across all sectors, we find that the legislation has delivered savings of €15.1 billion per annum in 2012 prices. This lies within the range estimated using Approach 1.

Key findings: Approach 2

- We estimate that procurement legislation has delivered savings of €15.1 billion per annum in 2012 prices.
- The remaining 'Cost of non-Europe' (as per Cecchini's definition) is approximately €57.3 billion per annum.

Potential for further closing of the gaps

The analysis presented in this chapter suggests that there has been some success in closing the gaps originally estimated by Cecchini and thereby reducing the realised Cost of non-Europe. Some of those gaps remain somewhat open, however, and could potentially be tackled through incremental legislative action, such as the new public procurement regulations discussed below. Closing other gaps (e.g. those resulting from the threshold) would require more substantial legislative action but could, in principle, be tackled through this mechanism. Indeed, the Cecchini report did not envisage that a threshold would be applied to cross-border procurement rules and hence its estimate was based on the full potential of cross border procurement. For this reason, we consider that it is appropriate to define this gap as an area in which Europe may have a role.

Still other gaps will remain irrespective of legislative action (e.g. language challenges will place a constraint on the extent to which gaps in public procurement can be closed). Furthermore, the following factors will constrain the extent to which gaps in the single procurement market can be closed:

- some services need to be provided from nearby and so domestic bidders may be the only realistic suppliers; and
- some products and works are best purchased from nearby suppliers for better after-sales service from people who speak the same language and so, again, domestic bidders may be the only realistic suppliers.

These constraints are 'natural barriers' to the completion of the Single Market and so could not be tackled through legislative action at European level. The extent to which these factors were considered in the production of the Cecchini report is not clear: it is not possible to identify whether the estimated savings were adjusted for language

challenges, or whether the authors based their analysis on an assumption that language difficulties would be seamlessly overcome.

If the latter applies, it would be reasonable to state that a proportion of the remaining Cecchini gap could not be closed through further legislative action.

In addition, important revisions to public procurement legislation were approved by the European Parliament on 15 January 2014. This new directive should help to close some of the gaps identified above, as described in the following section.

Potential impact of the new Public Procurement Directives on gaps

The evidence-based analysis of this report has focussed on the past experience of stakeholders in the field of public procurement. Such a focus is appropriate – and to some extent necessary – given that a core objective of this project was to provide an evidence-based quantitative estimate of the gaps in public procurement legislation.

However, it is important to consider current reforms to the rules governing public procurement in this context, and to assess the extent to which these rules might be expected to address the gaps identified in this report. More specifically, the European Parliament approved new public procurement rules⁴⁸ on 15 January 2014 which, to a great extent, have been welcomed by both awarding authorities and bidders.⁴⁹

The new Directive seeks to simplify procedures, give greater flexibility to awarding authorities (e.g. by allowing the exclusion of suppliers with a poor performance record) and providing greater consistency of treatment between economic sectors (e.g. the removal of the distinction between Part A and Part B services will ensure that education, rail transport and forestry services are procured in the same manner as other services).

In the table below, we identify the key elements of the Directive with respect to tackling the gaps identified in this report and assess the extent to which each gap is likely to be affected by the Directive.

⁴⁸ European Parliament legislative resolution of 15 January 2014 on the proposal for a directive of the European Parliament and of the Council on public procurement (COM(2011)0896 – C7-0006/2012 – 2011/0438(COD)),
<http://www.europarl.europa.eu/document/activities/cont/201401/20140121ATT77946/20140121ATT77946EN.pdf>

⁴⁹ Supply Management (2014), “EU Procurement”, page 24.

Table 3: Potential Impact of new Directive

Gap	Key elements of new Directive for addressing gap	Potential impact of new Directives
Scope	Directive has clarified some case law	
	Greater clarity over contract amendments	?
	Wider range of options for non-central governmental bodies	
Procedures	Simplified regime for services with limited cross-border dimension	
	Reference to award on basis of 'lowest price' has been removed	
	Greater opportunity for negotiation	★ ★ ★
	Broader exclusion criteria	
	Reduced time limit for responses	
	Mandatory e-procurement and e-invoicing	
	Innovation Partnership allows greater flexibility in tender specifications	
Strategic procurement	Opportunity to reserve certain contracts for mutuals	★ ★
	Provisions for environmental, social considerations and innovation to be taken into account	
Access	Self-certification by bidders allowed	
	Administrative burden on bidders reduced: evidentiary documents for winning bidder only	★ ★
	Revision to turnover requirements to help SMEs	
	Required explanation by awarding authority where tender not divided into lots	
Governance	This issue concerns the implementation, monitoring and enforcement of the Directives by Member States and so is not affected by new EU rules	N/A
Concessions	Common EU standards on concession contracts introduced for the first time	★ ★ ★

Key: one star = low impact; two stars = medium impact; three stars = high impact.

As indicated in the table above, we consider that the strongest impact is likely to arise in the field of concessions because of the fact that there was previously no common European legislation in this area. The Directive contains a number of measures that will help SMEs to access the public procurement market but we consider that language issues and the lack of an EU procurement passport will continue to exert some constraint on access. The fact that strategic procurement is specifically permitted under the Directive is likely to lead to an increase in its usage but it is not yet clear how significant this uptake will be, or whether there may be unintended consequences (e.g. if it creates an additional administrative burden). The greater flexibility in procedures should help to reduce the over-use of the full procedure and thereby reduce administrative costs for awarding authorities and bidders, while ensuring a more efficient and effective procurement process. However, much depends on the extent to which awarding authorities are confident that they will not face legal challenges as a result of using these procedures and are therefore willing to change their current procurement practices. Finally, the impact of the Directive on the 'scope' gap is unclear because it depends significantly on the extent to which awarding authorities and bidders understand the new rules. As such, the impact will only become clear once stakeholders have had time to digest and reflect on the new rules.

Conclusions

This study has explored the costs that gaps in the current European public procurement and concessions legislation place on a range of stakeholders and has assessed the benefits that could arise from completing the Single Market in the field of public procurement and concessions. In line with the European Parliament's objectives for the study, we have not provided a comprehensive assessment of costs and benefits for all European stakeholders but have instead provided concrete examples, from different areas, of the costs incurred by citizens and business. Nonetheless, we have used economic data to estimate the extent to which the gaps in public procurement legislation identified in the Cecchini report have been closed.

The estimates presented in this report should be treated as indicative: a more substantial project would be required to produce a robust, comprehensive estimate of the scale of gaps in public procurement legislation. Nonetheless, with this caveat in mind, the following conclusions can be drawn:

- The key pre-January 2014 legislative gaps related to scope; procedures; strategic procurement; access; governance; and concessions;
- Prior to the enactment of the new public procurement legislation approved by the European Parliament in January 2014, the key quantitative results are as follows:

	Low	Central	High
Annual savings to date	€6.4 bn	€22.7 bn	€35.5 bn
Annual CoNE remaining	€36.5 bn	€49.7 bn	€66.5 bn

- Some of the remaining gaps may not be possible to close through further European legislation because they are 'natural' rather than legislative. For

example, differences in languages between Member States place a constraint on the potential for cross-border bidding. It is not clear that such challenges were considered during the production of the Cecchini report.

For this reason, we consider that the magnitude of the pre-2014 **legislative gap** was lower than our estimate of the Cecchini gap that remained open at the start of 2014. Furthermore, the new Public Procurement Directives are expected to have a significant impact on the remaining legislative gaps:

- the strongest impact is likely to arise in the field of concessions because of the fact that there was previously no common European legislation in this area;
- a number of measures will help SMEs to access the public procurement market but language issues and the lack of an EU procurement passport will continue to exert some constraint on access;
- strategic procurement is likely to be used more widely following the implementation of the Directive;
- the greater flexibility in procedures should help to reduce the over-use of the full procedure and thereby reduce administrative costs for awarding authorities and bidders, while ensuring a more efficient and effective procurement process; and
- the impact of the Directive on the 'scope' gap is unclear because it depends significantly on the extent to which awarding authorities and bidders understand the new rules. As such, the impact will only become clear once stakeholders have had time to digest and reflect on the new rules.

Overall, we consider that the gaps identified in this report will be closed, in part, by the new legislation. While further intervention may be possible in the future (e.g. to introduce an EU procurement passport) we consider that it is important to allow sufficient time for the 2014 legislation to be implemented and take effect before considering further legislative action.

Appendix 1: Economic Operators Interview Guide

Background information

Organisational characteristics

- Which sector does your firm operate in? (please select one option)

Type of organisation	Selection
Construction work	
Leather and textile fabrics, plastic and rubber materials	
Transport services	
Other (please specify)	

- In which Member State is the headquarters of your company? (please specify)

- How many people were employed by your company during 2013? (please specify)

Number of Employee	Selection
0 - 50	
51 - 250	
250 - 1000	
Above 1000 (please specify)	

- What was your company's turnover during 2013? (please specify)

Turnover	Selection
0 - EUR 10m	
EUR 10m - EUR 50m	
EUR 50m - EUR 500m	
Above EUR 500m (please specify)	

Involvement in public procurement

- What proportion of your business is accrued through public procurement? (Please specify)

- What proportion of your company's public procurement is covered by the procurement directives (i.e. where the contract value exceeds the threshold)? What percentage of that are below-threshold contracts? (Please specify)

- Please rate your company's proficiency level in bidding for public contracts overall and for the following types of procurement/using the following procedures.

	1 (No experience at all)	2	3	4	5 (Very skilled)
Public procurement overall					
Non e-procurement					
E-procurement					
Cross-border					
Above threshold					
Repetitive purchasing					

Difficulties with current public procurement legislation

- What would you describe as the main difficulty of bidding for public contracts?

- What is your biggest difficulty in identifying tender opportunities?

Costs and administrative burdens

- Could you estimate the average cost incurred by your organisation in bidding for public procurement contracts (i.e. the total cost borne by your organisation in bidding for a typical tender opportunity)? Does this differ between below- and above-threshold contracts?

- For public procurement contracts that are covered by the Directive, please estimate the percentage of your total procurement cost accounted for by each of the following stages of the bidding process.

	Percentage
Shortlist potential business opportunities from different sources	
Deciding if to proceed with the particular tender	
Drafting proposal	
Preparing the relevant documents required	
Awarding procedure	

- In your opinion, are your procurement costs typically higher for contracts covered by the Directive than those that are not covered by the Directive?

- Please estimate how much more/less (depending on your answer to the previous question) each of the following stages cost for contracts covered by the Directive than for those not covered by the Directive.

	Percentage
Shortlist potential business opportunities from different sources	
Deciding if to proceed with the particular tender	
Drafting proposal	
Preparing the relevant documents required	
Awarding procedure	

- What is your main dissatisfaction around the cost and administrative burdens of public procurement, if any?

- In your opinion, is the administrative cost of bidding for public contracts reasonable? If no, please elaborate.

Clarity of tenders / ease of bidding

- In general, how would you rate the clarity of the following criterion stated in tenders?

	1 (Very unclear)	2	3	4	5 (Very clear)
Administrative requirements					
Scope					
Legal requirements					
Coverage					
Evaluation criterion					
Awarding procedure					

- To what extent has each of the following factors discouraged you from bidding?

	1 (No influence)	2	3	4	5 (Strong influence)
Threshold					
Language					
Legal requirements					
Requirement on company size					
Administrative documents					

- Have you ever decided not to bid for a contract due to uncertainty over the applicable rules / contract requirements? If yes, please elaborate.

- Has your company encountered any difficulties in using e-Procurement? If yes, please elaborate.

- How would you describe the current level of competition in your sector? How do you think an increased use of repetitive purchasing would impact the competition?

Cross-border

- Do you typically need external assistance (e.g. legal or linguistic) in bidding for public contracts? Does this depend on whether the contract is issued by an awarding authority based in another Member State? Please explain.

- Does your company bid for contracts issued by an awarding authority based in another Member State? If yes, what proportion of your cross-border bids are to European Union institutions and what proportion are to public authorities of other Member States?

- Has your company encountered difficulties in proving the validity of your evidentiary documents in a cross-border bid? If yes, please elaborate.

Suggestions for improvements and potential impacts

Administrative burdens and procedures

- How do you think the current legislation could be simplified to reduce the administrative burdens? If this is implemented, what percentage saving of your current administrative costs could be saved?

- Please estimate the savings (in terms of average monetary saving per bid and percentage of your typical procurement cost per bid) if only the winner were required to submit evidentiary documents.

- In your opinion, how would your company benefit / lose if the Directives were to permit a more flexible procurement procedure which allows for negotiation?

Accessing tender opportunities / cross-border bidding

- What do you think could be done to simplify the process of identifying tender opportunities?

- Please estimate the savings (in terms of average monetary saving per bid and percentage of your typical procurement cost per bid) you could obtain if all authorities were to publish their tenders in a single portal.

- How do you think the current legislation could be improved to include more cross-border participation?

- Would you consider bidding for more cross-border contracts if there is an “EU procurement passport” where evidentiary documents are recognised across the EU? Could you please quantify how much more (in terms of absolute number of bids and percentage of your current bids)?

- Would you consider it more beneficial for you if contracts are divided into smaller lots? Please estimate the potential percentage increase in participation.

Appendix 2: Awarding Authorities Interview Guide

Background information

Organisational characteristics

- In which Member State is your organisation based? (please specify)

- How many public procurement notices did your organisation publish during 2013? (please specify)

- How many people were employed by your organisation during 2013? (please specify)

Number of Employees	Selection
0 - 50	
51 - 250	
250 - 1000	
Above 1000 (please specify)	

Involvement in public procurement

- Could you please provide the following information on your public procurement activities?

Answer
Typical annual expenditure
Typical number of contracts awarded
Percentage of procurement that needs to be conducted repeatedly/periodically
The number of websites/places where the notice is published
The number of Member States where you publish contract notices
The proportion of contracts awarded to bidders from other Member States
Typical length of a procurement process

- Regarding contract notices, could you estimate the proportion of notices that you published in each category during 2013? (The top two rows should sum to 100% and the bottom two rows should sum to 100%).

Percentage
Non e-procurement
E-procurement
Above-threshold
Below-threshold

- Regarding contract notices, could you estimate the proportion of notices published in each category? (The rows of should sum to 100%.)

	Own Country	Cross-Border
Total Public procurement		
E-procurement		
Above-threshold		
Below-threshold		

- For your organisation, what are the three most commonly used award procedures (e.g. open procedure, restricted procedure, negotiated procedure etc.)? Please estimate the percentage of all contracts for which each of the specified procedures is used.

	Percentage
1.	
2.	
3.	

- Have you ever included other policy considerations (e.g. promoting environmental aspects, adhering to certain social and ethical standards or promoting innovative goods, services or works) in your award criterion? If yes, please explain how, if no, please elaborate why.

Difficulties with current public procurement legislation

- Overall, what is your biggest difficulty in conducting public procurement and awarding contracts?

Clarity of Directives

- How would you rate the clarity of the following criterion stated in the Directive?

	1 (Very unclear)	2	3	4	5 (Very clear)
Identify applicable rules					
Understand which regime each procurement contract falls under					
Identify which procedures					

**are available for your
procurement
Evaluation criterion**

- Have you encountered circumstances where you decided not to publish a contract due to uncertainty over the applicable rules? If yes, please elaborate.

- Do you think the Directive provides a clear understanding of which procedures are available for the type of procurement you would like to conduct? If no, please elaborate.

- Have there been instances where you would have liked to implement other strategic objectives (e.g. promoting environmental aspects, adhering to certain social and ethical standards or promoting innovation), but chose not to due to legal or other uncertainty regarding the validity and/or process for doing this? Please elaborate

Content of Directives

- What is your main dissatisfaction around the content of public procurement legislation (e.g. in terms of the procedures permitted, specific requirements, administrative burdens etc.)??

- Do you consider the range of procedures currently available is flexible enough for your purposes? Please elaborate.

- Has your organisation encountered difficulties in confirming the validity of evidentiary documents submitted by an economic operator in a cross-border bid? If yes, please elaborate.

- Do you feel the existing public procurement legislation allows you to effectively express what you need and attract the relevant pool of tenders?

- Has your organisation encountered any difficulties in using e-Procurement? If yes, please elaborate.

- Do you think the use of repeated purchasing will reduce the competition for the contracts that you award?

Costs and administrative burdens

- Could you estimate the average cost incurred by your organisation in awarding public procurement contracts (i.e. the total cost borne by your organisation in issuing an ITT, evaluating proposals etc.)? Does this differ between below- and above-threshold contracts?

- What is your main dissatisfaction around the cost and administrative burdens of public procurement?

- For public procurement contracts that are covered by the Directive, please estimate the percentage each of the following stages represent in terms of total procurement costs.

Percentage
Drafting the invitation to tender
Trying to understand the Directive (e.g. see which part of the Directive is applicable etc.)
Evaluating whom to award the contract to
Others (Please specify)

- Please estimate how much more/less each of the following stages cost for contracts not covered by the Directive when compared to public procurement contracts that are not covered by the Directive.

Percentage
Drafting the invitation to tender
Trying to understand the Directive (e.g. see which part of the Directive is applicable etc.)
Evaluating whom to award the contract to
Others (Please specify)

- In your opinion, is the administrative cost of awarding a public contract covered by the Directive (including issuing the ITT, reviewing tenders etc.) acceptable? If no, please elaborate. Does your view differ for contracts below the threshold?

- How much more or less would it cost you if it became compulsory to take other strategic objectives into consideration when publishing a public procurement notice?

- Do you see any scope of collaboration with other CAEs in the procurement process? Have you collaborated before? If yes, please elaborate.

Suggestions for improvements and potential impacts

Admin burdens

- How do you think the current legislation could be simplified to reduce the administrative burdens? If this is implemented, how much do you think you would save on the typical cost of a procurement procedure?

- Do you think there is scope to streamline your current procurement process? If yes, how? (e.g. repetitive purchasing? E-procurement?) How much do you think this will save (in percentage terms)?

- Please estimate the savings (in terms of average monetary saving per bid and percentage of your typical procurement cost per bid) you could obtain if only winner is required to submit evidentiary documents? How significant do you consider the risks to be (e.g. if the winner is proven to be unqualified)?

- How do you think the Directive could be adapted to encourage more collaboration among different CAEs? Would such collaboration create additional savings?

- Please estimate the saving (in terms of average monetary saving per bid and percentage of your typical procurement cost per bid) you could obtain if you published all tenders in a one portal.

Scope of Directive / procedures

- Is there any part of the definition/scope of the Directive you think should be clarified further? How would you benefit from such clarification?

- In your opinion, how will your organisation benefit from a more flexible procedure which allows negotiation? Please quantify the saving if possible.

- Do you think the current threshold is reasonable? Please elaborate.

- Would you consider it more beneficial for you if contracts are forced to be divided into smaller lots? Please estimate the potential percentage increase in participation/loss due to less economies of scale.

Cross-border

- How do you think the current legislation could be improved to include more cross-border participation? If this is implemented, how do you think you might benefit?

- Do you think that an increase in cross-border bidding would lead to greater competition for contracts, particularly with respect to price? If so, could you estimate the percentage cost saving per contract?

- Would you consider conducting more cross-border procurement exercises if there is an "EU procurement passport" where evidentiary documents are recognised across the EU and the process of verifying the credentials of bidders from other countries were thereby simplified? If so, can you estimate the percentage increase in the number of contracts that would be issued on a cross-border basis?

Cost of Non-Europe Reports identify the possibilities for economic or other gains and/or the realisation of a 'public good' through common action at EU level in specific policy areas and sectors. This Cost of Non-Europe Report seeks to analyse the costs for citizens, businesses and relevant stake-holders of remaining gaps and barriers in the European Single Market, building on and updating the 1988 Cecchini Report, which quantified its potential benefits.

One of the key benefits of the Single Market was expected to arise in the context of public procurement. This particular study - the fourth in a series - updates the analysis presented in the Cecchini Report, estimates the value of savings to the public purse that have been achieved to date through European legislation on public procurement, and discusses the extent to which future savings might be achieved (in particular following approval of the proposals for new public procurement directives in January 2014).

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