Support of the internal market policy for growth:

Feasibility study concerning the actual implementation of a joint cross-border procurement procedure by public buyers from different Member States

Written by BBG and SKI
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Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Directorate G — Single Market for Public Administrations
Unit G.4 — Innovative and e-procurement

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Abbreviations and Definitions

Abbreviations

BBG	**Bundesbeschaffung GmbH**
BBT-SE	Brenner Base Tunnel - Societas Europaea
BCL	Banque Centrale du Luxembourg
CA	Contracting Authority
CB	Central Bank
CBA	Cost Benefit Analysis
CEO	Chief Executive Officer
CIP	Competitiveness and Innovation Framework Programme
CPB	Central Purchasing Body
CSR	Corporate Social Responsibility
DACH	Region including Germany, Austria, Switzerland
DKK	Danish Krone
DNB	De Nederlandsche Bank
EC	European Commission
ECB	European Central Bank
EGTC	European Groupings of Territorial Cooperation
EHPPA	European Health Public Procurement Alliance
EO	Economic Operator
EPCO	Eurosystem Procurement Coordination Office
ESCB	European System of Central Banks
etc.	et cetera
EU	European Union
EUR	Euro
FA	Framework Agreement
FAQ	Frequently asked Questions
FHL	Fédération des Hôpitaux Luxembourgeois
GIP RESAH	Groupement d'intérêt Public - Réseau des Acheteurs Hospitaliers
GmbH	Gesellschaft mit beschränkter Haftung
HAPPI	Healthy Ageing – Public Procurement of Innovations
ICT	Information and Communication Technology
ID	Identity
IT	Information Technology
JCB	Joint Cross Border
JCBPP	Joint Cross Border Public Procurement

LB	Lead Buyer
MEAT	Most Economically Advantageous Tender
MercurHosp	Mutualisation Hospitalière
MS	EU Member State
N/A	Not available
NHS	National Health Service
NHS-CS	National Healthcare Service - Commercial Solutions
NUTS	Nomenclature des Unités Territoriales Statistiques
OECD	Organisation for Economic Co-operation & Development
OeNB	Österreichische Nationalbank
PCP	Pre-Commercial Procurement
PO	Participating Organisation
PP	Public Procurement
PPI	Public Procurement of Innovation
RESAH	Réseau des Acheteurs Hospitaliers
RUP	Responsabile unico del procedimento
CSA	Coordination and Support Action (H2020)
SCR	Società di Committenza Regione Piemonte
SE	Societas Europaea
SG	Steering Group
SIGMA	Support for Improvement in Governance & Management
SKI	Statens og Kommunernes Indkøbs Service A/S
SME	Small and Medium-Sized Enterprise
TED	Tenders Electronic Daily
UK	United Kingdom
VAT	Value added Tax

Definitions

Aggregation of demand	Public sector purchasers from within the same body, and/or from different public sector bodies or other entities combining individual requirements to procure common goods and services from the market to achieve cost reduction through economies of scale.
Aggregation techniques	Techniques used to aggregate demand for public procurement.
Awards	Allocation of contracts in compliance with procedures described in EU Directive 2014/24/EU and 2014/25/EU
Call-off	Individual contracts that can be made throughout the term of a framework agreement
Candidate	An economic operator that has sought an invitation or has been invited to take part in a restricted procedure, in a competitive procedure with negotiation, in a negotiated procedure without prior publication, in a competitive dialogue or in an innovation partnership. (Article 2, Directive 2014/24/EU)
Central Purchasing Body	Article 2, Directive 2014/24/EU defines a Central Purchasing Body as a contracting authority providing centralised purchasing activities and, possibly, ancillary purchasing activities.
Centralised purchasing activities	Article 2, Directive 2014/24/EU defines central purchasing activities as activities conducted on a permanent basis, in one of the following forms: (a) the acquisition of supplies and/or services intended for contracting authorities, (b) the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities
Centralized purchasing	An aggregation technique including either activities using centralized procurement bodies (CPBs), purchasing on behalf of others, collaborations between entities and/or using of service providers/entities to manage the purchasing process
Contract	An agreement having a lawful object entered into voluntarily by two or more parties, each of whom intends to create one or more legal obligations and awarded according under Directives 2014/24/EU and Directives 2014/25/EU
Contracting authority or contracting entity	A buyer purchasing under Directives 2014/24/EU. Contracting authority means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law.
Contractor	Economic operator that has been awarded a public contract by a contracting authority.
Coordinating organisation	A coordinating organisation supports the lead buyer by taking over specific tasks, especially regarding cross-border issues like the coordination of the participating organisations.
Customer	Contracting authorities that make use of the services of a central purchasing body.
Economic Operator	Any natural or legal person or public entity or group of such persons and/or entities, including any temporary association of undertakings, which offers the execution of works and/or a work, the supply of products or the provision of services on the market. (Article 2, Directive 2014/24/EU)
E-Procurement	Electronic means of collecting demand information. Often these tools are integrated with the go-to-market and may offer online catalogues, scheduled purchasing of specific items, and links to established contracts with suppliers. The e-Tools may also extend into the post-contract phases and provide support for contract and supplier management.
EU Members States	States which are members of the European Union

Framework agreement	An aggregation technique that is defined by the EC Directive as: "an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged." (Article 33, Directive 2014/24/EU)
Joint cross border procurement	Joint cross border procurement means that two or more contracting authorities from different member states agree to perform certain specific procurements jointly. (Directive 2014/24/EU, Art. 38)
Joint procurement	Two or more contracting authorities that agree to perform procurements jointly (Article 38, Directive 2014/24/EU)
Lead buyer	A lead buyer is acting as contracting authority and is responsible both for the project management (e.g. coordination with contracting authorities) and the execution of the procurement procedure.
Mini-tender	Conducting a reopening of competition under a framework agreement
Negotiated procedure	Negotiated procedure means the procedure whereby the CAs consult the economic operators of their choice and negotiate the terms of the contract with one or more of these.
Open procedure	Anyone interested in a specific contract will be invited to tender the competition in order to ensure maximum competition.
Participating organisation	A participating organisation is acting as a contracting authority in the procurement procedure and is not in charge of the process. It can act as intermediary or final buyer.
Potential bidder	Economic operator interested in the tender procedure without necessarily placing an offer.
Procurement document	Any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents. (Article 2, Directives 2014/24/EU)
Public contracts	Contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services (Article 2, Directive 2014/24/EU).
Public procurements	CAs acquiring goods, services or works from an outside external source under Directive 2014/24/EU and Directive 2014/25/EU
Restricted procedure	The buyers limit the number of suppliers that are invited to tender for a contract.
Small and Medium-sized Enterprises (SMEs)	Independent enterprises or groups of enterprises with less than 250 employees, and with total annual turnover not exceeding 50 million euro, or a balance sheet not exceeding 43 million euro
Supplier	Economic operator that supplies goods or services based on a public contract.
Tenderer/bidder	An economic operator that has submitted a tender. (Article 2, Directive 2014/24/EU)

Introduction

Scope and objective

This study has been prepared on behalf of the European Commission and was carried out from April to December 2016.
The main task of this project is to carry out a feasibility study on the possible implementation of Joint Cross-Border Public Procurement (JCBPP), in particular focusing on the legal, administrative and organisational aspects of four selected JCBPP projects.
The feasibility study also includes a cost-benefit analysis of the procedure, indicating the likely costs of carrying out a joint cross-border procedure and assessing the potential benefits produced by the use of this procedure (for instance, in terms of price gains, contract management, pooling of expertise, reduced transaction costs, etc.).
The study is based on an assessment of four projects in which buyers from different Member States (being individual contracting authorities, or central purchasing bodies as defined respectively in Articles 2(1)1 and 2(1)16 of Directive 2014/24/EU) published the call for tender and received the offers from economic operators. Thus, all cases analysed present the full procedure and are implying the implementation of a single call for tender for all the buyers. Parallel and coordinated procedures across various Member States in which buyers are located was not considered to fall within the definition of joint cross-border procurement proposed for this study.
It is important to mention that all projects analysed were implemented before the new Public Procurement Directives 2014/24/EU and 2014/25/EU were transposed into national legislation; thus, the national laws and regulations applicable at the respective time were different from the possibilities provided by the new directives. Nevertheless, the projects analysed were implemented using similar constructions to those allowed for in the new Directives.

Content

After the executive summary in chapter 1, chapter 2 describes the methodology used in this study.
Chapter 3 provides general information on joint cross border procurement and examines possibilities for conducting joint cross border procurement according to Directive 2014/24/EU.
Chapter 4 then analyses four joint cross border procurement cases:

- Case 1: The first case deals with the joint cross border procurement of standard software of central banks in the Eurosystem. In this case De Nederlandsche Bank acted as lead procurer and launched a tender and awarded a contract for standard software on behalf of itself and for the benefit of a list of thirteen other central banks.
- Case 2: The second case describes a joint cross border procedure for the puchase of innovative goods and services for active and healthy ageing. The tender was launched within the framework of the EU co-financed project HAPPI (Healthy Ageing – Public Procurement of Innovation). The consortium running the joint cross border tender involved five CPBs from different Member States, whereby REASAH, a French CPB, acted as lead procurer.
- Case 3: The third case presents a JCBPP with two CPBs, the BBG from Austria and SKI from Denmark purchasing Citrix software and appliances. In this case BBG acted as lead procurer and SKI as participating oganisation. The two organisations concluded a framework agreement with three economic operators. The contract execution is conducted by both CPBs for their own customers.
- Case 4: The fourth case is the only case dealing with JCBPP of construction works. What is also special in this case is that the JCBPP was conducted through a cross border joint entity, the Galleria di Base del Brennero – Brenner Basistunnel BBT SE, owned in equal shares by an Austrian and an Italian contracting authority respectively. The joint entity tendered drilling works throughout the whole area of the planned tunnel, both on Austrian and Italian territory. The procurement

procedure was implemented under Italian procurement law and was executed under Italian and Austrian contractual law, depending on where the works took place.

Chapter 5 does a cost-benefit analysis of the four cases analysed. This analysis determines the most important costs and benefits identified by the involved parties in the respective JCBPP project. The cost-benefit analysis looks at qualitative and quantitative aspects and shows costs and benefits in terms of 'monetary values'.
In Chapter 6, comprehensive conclusions taking into consideration the outcomes of the case analysis as well at the CBA are presented. This chapter summarizes the findings of the research, highlights the opportunities and challenges of joint cross border procurement and presents a comparative analysis of the four relevant JCBPP projects in defined areas. Moreover, the conclusions reflect on how certain challenges were faced in the described cases.
The last chapter (chapter 7) comprises recommendations for the implementation of JCBPP procedures based on the results of the research. It describes how to carry out joint cross border procurement procedures, how to foster legal certainty and to allow for effective contract management and monitoring. The recommendations take into consideration the three models of JCBPP described in Directive 2014/24/EU, so that contracting authorities can understand the benefits and challenges of each model and are able to assess which method is the most suitable for the envisaged procurement. They also include suggestions for each part of the chronological order applied to a tender procedure, starting from the planning of a tender to the contract management.
Hence, the recommendations constitute guidance from practitioners for practitioners.
The appendices provide the templates for the cost-benefit analysis, the interview guidelines for contracting authorities and the questionnaire for economic operators.

1. EXECUTIVE SUMMARY

Joint procurement refers to a situation in which two or more contracting authorities conduct a procurement procedure together. The key characteristic of this specific procedure is that only one tender is published on behalf of all participating contracting authorities. The notion of joint procurement does not automatically imply any cross-border element as such. Joint cross-border procurement refers to the particular procurement procedure which involves contracting authorities from different Member States conducting a common tender by bundling their demands and acting jointly in the award of the contract.

There have already been some attempts to conduct JCBPP procedures in the European Union, despite the fact that until the implementation of Directive 2014/24/EU there were no explicit legal provisions to facilitate such forms of cooperation. Therefore contracting authorities faced both legal and practical difficulties, mostly due to conflicts between national public procurement rules and barriers preventing recourse to other Member States' central purchasing body or the joint cross-border award of public contracts.

Currently existing literature still offers only a few contributions describing the use and impact of JCBPP and the limited practical experience there is in conducting such procedures has not been presented in an aggregated form so far.

This analysis is intended to help identify the best solutions for implementing JCBPP projects and offers concrete recommendations which should serve as a guideline for all interested stakeholders.

The aim of the study is not to assess theoretical scenarios of JCBPP between contracting authorities in different Member States or to offer a legal analysis of factors that can influence the implementation of such projects. Its scope is to practically analyse projects that have been implemented in the past months or years and to highlight how they have been conducted, the obstacles or difficulties experienced by the participating contracting authorities and how they managed to overcome them.

Centralised – and therefore "joint" – purchasing techniques are successfully used in most Member States and the idea of exploring a cross-border dimension is generating more and more interest as it facilitates cooperation between contracting authorities across Europe and at the same time enhances the benefits of the Internal Market by creating better business opportunities for economic operators.

Thus, this **feasibility study** on the possible implementation of a JCBPP procedure consists of an **analysis** of relevant JCPPP projects, including a **cost benefit analysis,** and draws conclusions based on the main issues which need to be considered when conducting a JCBPP. The results of the feasibility study have allowed the drafting of **recommendations** for the implementation of JCBPP procedures.

The feasibility study focuses on the legal, administrative and procedural aspects encountered in four selected JCBPP projects, taking into consideration country and sector-specific characteristics relevant to the implementation of such procedures.

The analysis of the case studies followed the chronological structure of a procurement procedure:

- **Pre-tender phase**: focusing on the decision making process prior to the implementation of JCBPP
- **Tender phase**: focusing on questions arising during implementation of the JCBPP from the publication of tender until the award of the contract
- **Post award phase**: focusing on questions of operational procurement during the term of the contract

In a separate chapter, the main conclusions address the most important issues which have been identified as relevant when conducting a JCBPP: the contracting authorities and their relationship, the products to be purchased and the respective aspects of the market, the motivation behind conducting a JCBPP project, legal aspects and their implications, procedural considerations, the question of the applicable language, e-procurement related aspects, and the time needed for the implementation. This chapter also includes a summary of the responses received from economic operators surveyed and an overview of the main opportunities and challenges encountered in the projects analysed.

The study includes **a scheme of recommendations** based on these findings with respect to how to carry out joint cross-border procurement procedures, in order to foster legal certainty and to allow for economic measurement, monitoring and their improved practical application.

Main outcomes

The implementation of the analysed projects showed that JCBPP was legally possible even before the transposition of the 2014 Directives into national legislation and now, with the new provisions the legal basis allows even several ways of implementing such cooperations between contracting authorities from different Member States.

Although it seems that contracting authorities involved in the projects analysed had different motivations for the implementation of JCBPP, it can be concluded that they also had common targets which can be summarised as follows:

- Achieving better prices and improved conditions
- Reducing process costs through aggregation of procedures
- Exchanging best practice with other similar institutions
- Creating networks and using the potential of the Internal Market
- Improving knowledge of market, procedures, language, and "thinking outside the box"
- Availing of possibility to work together in order to change a market strategy (pricing)
- Encouraging innovation on the procurer and supplier side
- Gaining access to new markets

The successful implementation of a JCBPP procedure depends mostly on:

- The right partners, which are committed to obtaining good results
- Sound project management
- The markets addressed and their acceptance of JCBPP techniques
- An intelligent and well-designed procurement strategy

The main opportunities experienced by the contracting authorities involved seem to be:

- Lower process costs due to joint procurement
- Economies of scale leading to better prices
- Partnership and exchange of good practice with CAs from other MS
- Creating networks and using the potential of the Internal Market
- Possibilities to work together in order to change a "difficult" market (pricing policies)
- Helping suppliers to discover new markets
- Gaining know-how for future projects

Main challenges encountered in the JCBPP analysed seem to be:

- Legal complexity related to national procurement laws and contractual provisions as well as product specific legislation
- Rigid market structures and pricing policies
- Complex or innovative goods or services, which are difficult to standardise
- Coordination of partners
- Language
- Communication with end-users
- E-procurement tools, since they are designed to fit national requirements

All the projects analysed were able to find adequate solutions to these challenges and were successfully concluded. Even though language was expected to be the biggest challenge, it turned out to be manageable, while coordination proved to be the most time consuming issue to deal with. Overall it can be noted that the evolution of the legal framework dealing with JCBPP is still in progress. A number of questions will eventually need answering by additional case law. Yet, while the relevant legal provisions on the EU level show certain gaps, looking at the cases portrayed in this study, we may also conclude that from a legal point of view JCBPP initiatives are not necessarily only a risky endeavour, but open up various possibilities to explore the ways the various layers of legal provisions involved interplay and which opportunities they provide for optimally achieving the goal of enhancing efficiency in public procurement.

2. METHODOLOGY

In light of the project´s predefined tasks, this feasibility study was structured in three main phases:

- **Phase one: Preparatory research phase**: identification of relevant studies, mapping of relevant stakeholders and analysis of the existing legal, administrative and organisational framework for joint cross-border procurement scenarios at EU and Member State level
- **Phase two: Case study phase**: data collection phase for the selected case studies with the aim of assessing the role and impact of legal, procedural and policy-based tools in order to enable and strengthen joint cross-border procurement for the stakeholders involved
- **Phase three: Analysis of data, including cost-benefit analysis**

Each phase followed an individually designed methodology.

1. Phase one built on conceptual and empirical approaches to establish the connection between legal, administrative, and organisational aspects and their respective significance when carrying out joint cross-border procurement projects. Both general examination of the given legal and factual situation in certain Member States as well as selected case studies produced an overview of the rules and tools governing joint cross-border procurement projects in the present situation. Thus, the methodology for this stage included legal and applied research: a review of the relevant literature, drafting and delivery of online questionnaires for economic operators and structured interview guidelines for contracting authorities as well as the gathering and analysis of contractual models and documents. This work further enabled the determination of benchmarks for critical analysis applied in Work Phase two.

2. Phase two constituted the heart of the study and significantly relied on the case study method, using both legal and empirical data in order to identify, describe, and evaluate the general framework, requirements, and challenges of joint cross-border procurement projects as well as possible costs and benefits arising from JCBPP procedures. The most important aims were (i) to determine how stakeholders perceived and implemented tools to perform joint cross-border procurement projects and (ii) to measure and establish the functioning and efficiency of the procedural, organisational and policy-based actions taken.
The study not only focussed on the experience of contracting authorities using JCBPP but also tried to assess the impact this had on economic operators who participated in the procedures. Empirical data about the joint cross-border procurement projects were gathered from contracting authorities through interviews and from economic operators through online questionnaires.
Representatives of contracting authorities involved in JCBPP were interviewed personally using previously developed, structured guidelines and in cases where this was not possible, via Skype or telephone, using the same structured guidelines. For the interviews, it was envisaged that the most important players in the contracting authorities involved, namely the procurement expert, the legal expert and the respective project leader be questioned.
Before the personal interviews took place, the researchers informed the participants about all content-related questions, so that they could prepare accordingly and gather all relevant information well in advance. This form of interviewing aimed at a comprehensive survey of expert knowledge on the topic of research and was particularly suitable given the fact that research on the topic of joint cross border procurement is extremely rare and therefore not much literature is available, so that it is necessary to collect primary data directly from the practitioners.
A total number of 17 interviews with ten buying organisations and one coordinating organisation were conducted. In addition to this, 7 suppliers and 7 bidders returned questionnaire-based surveys. All interviews and questionnaires were drafted and conducted in English. Interviews lasted between two and three hours and a second round was carried out when necessary for clarification of open questions. As mentioned above, the authors of the study wanted to include not only input from the respective suppliers but also from bidders who participated in the tender, as it is important to collect the feedback of market representatives who could have a more critical opinion of the procedure than the winning bidder. Due to the relatively high number of bidders and suppliers involved, which are based all over Europe, it would have been difficult to organise and conduct personal interviews with their representatives. Therefore, the methodology chosen as the most appropriate in order to obtain as much data as possible was an online survey based on questionnaires. These questionnaires were distributed to the respective economic operators and were filled in electronically via SurveyMonkey, by the person who was directly involved in the preparation of the bid. The assumption was that an online questionnaire with only a few but very

precise questions would be easier to fill in and would thereby guarantee a higher participation rate than an attempt at personal interviews.
The conception of the interview guidelines for surveying contracting authorities and the questionnaires for economic operators was crucial in order to obtain the necessary information for a proper implementation of the comparative analysis of the case studies. Both the guidelines and the questionnaires were developed by practitioners working in a joint cross border procurement project who were assisted by the two academic researchers.
The interview guidelines contained questions relating to legal, administrative and organisational aspects of the study. For the cost-benefit analysis, a separate factsheet was developed (see below).

The analysis of the case studies followed the chronological structure of a procurement procedure:

- **Pre-tender phase**: focusing on questions and significant milestones in the decision-making process prior to the implementation of joint cross border procurement projects and the necessary preparations, such as assessing organisational, administrative and economic benefits, benchmarking, establishing and preparing the tendering process, choice of law, drafting tender documents.
- **Tender phase**: focusing on questions arising during implementation of the joint cross border procurement project, such as aspects of inter-organisational communication, communication with the bidders, opening and evaluation of tenders, award, re-opening of competition, possible review procedures.
- **Post award phase**: focusing on questions of contract management, economic and management-based ex post evaluation and monitoring as well as on questions of legal remedies and competent jurisdiction.

As mentioned above, the case study also includes specific questions referring to **economic aspects** of the procedure **(cost-benefit analysis)**. Cost-Benefit Analysis (CBA) is an instrument for investment appraisal that allows systematic calculation and comparison of the costs and benefits of a decision, (government) policy, or project in general. If the benefits connected with a certain initiative exceed the costs, the initiative is worth implementing. CBA can also help when comparing several alternative projects, in particular to determine the one that yields the highest net benefits.
A 'CBA factsheet' (see Appendix 1) was developed and distributed to the coordinating organisations, lead buyers and participating organisations. The factsheet comprised the following six sections:

1. Quantitative cost-benefit analysis (CBA) conducted within the scope of the JCBPP project.
2. Description of the method that was applied for the CBA.
3. Achieved price/s for the procured product/s.
4. Quantification of the total costs of the JCBPP project for different stages/areas in the procurement process.
5. Expected development of costs in future similar procurement projects.
6. (For lead buyers only:) Total value of the goods and services that were procured within the project, and shares of the project partner organisations.

The factsheet was deliberately designed so as to allow consideration of both cost reductions and cost increases for any particular component. For example, during the stage of searching for the technically best product(s), higher or lower costs could be possible for a procurement scenario within a JCBPP project in comparison to the baseline scenario (e.g. lower costs arising due to a best practice exchange among project partners, or higher costs incurred due to increased coordination demands among project partners). The respondents were also allowed to amend the factsheet if necessary. **In total, eight factsheets were returned.**
The case study method is a **qualitative research method** which provides sufficient tools for researchers to study the complex and new topic of JCBPP. This method allows the usage of a large variety of data in order to describe complex situations encountered while conducting the JCBPP procedure and to offer a comprehensive picture of the situation. By analysing four different projects in different Member States, the topic was not explored through just one lens but rather through a variety of lenses, which allowed for multiple facets of the phenomenon to be revealed and understood. The use of multiple data sources such as interviews, questionnaires and tender documents is also a strategy to enhance data credibility. The multiple sources approach enables a holistic understanding of the JCBPP phenomenon.
The goal of the case study was to describe the case in such a comprehensive way that readers feel as if they had been actively participating in the research. This would enable the readers to work out whether the findings could also be applied to other situations such as their own JCBPP procedures.

Since the four projects analysed are the only known successfully implemented JCBPP projects so far, the study results can be considered representative. Nevertheless, it must be acknowledged that it is particularly difficult to generate consistent conclusions and recommendations applicable to future projects based on the results of four very different case studies.

Interview partners

The initial plan was to analyse three JCBPP projects but during the implementation period of the study, it seemed important to also include an infrastructure project in order to add an additional perspective to the analysis.
For the purpose of analysing the EPCO case from different angles, the experience of the Dutch National Bank (De Nederlandsche Bank, DNB) as lead central bank (= lead buyer) and that of other two participating central banks (Banque centrale du Luxembourg (BCL) and Österreichische Nationalbank (OENB) as well as the perspective of EPCO as coordinator of the procedure were taken into consideration. In total, this procedure actually included the participation of 14 different banks, but a sufficient degree of saturation was achieved through the analysis of three examples.
In the BBG-SKI case, team members from both centralised purchasing bodies were interviewed.
Within the HAPPI project, the coordinator, Resah, as well as the buying organisations Fédération des Hôpitaux Luxembourgeois (FHL), NHS Commercial Solutions and Società di Committenza Regione Piemont (SCR) participated in the study. One of the five participants in this JCBPP procedure, MercurHosp, did not respond to the invitation; nevertheless, sufficient data was obtained from the other organisations.
BBT-SE participated in the interview through its branch in Austria where both the managing director and the project leader were interviewed.

3. Phase three: Analysis of data: once the empirical data was gathered and transcribed, it was analysed by the team members who developed an analysis guideline and **thematically evaluated the results**.
In the course of thematic analysis the team members performed a data reduction procedure by which qualitative data were segmented, categorized, summarized, and reconstructed in a way that captured the important concepts within the data set. Once this was done, they examined the data and drew conclusions. This analysis represents the basis for the scheme of recommendations, which was drafted in accordance with the results obtained.
The **CBA** was also part of phase three. There are multiple methods for CBAs, with different levels of scope and detail (see, e.g. European Commission [2015][1] for an overview of CBAs in different sectors of government). The main interest in relation to the CBA in the present study was to determine the most important costs and benefits identified by the parties involved in a JCBPP project.
As the projects investigated differed in terms of aims and scope, the intention was to conduct a CBA that combines quantitative and qualitative aspects. The quantitative CBA centred upon the measurement and comparison of costs and benefits in terms of 'monetary values' (see below). The qualitative comparison of costs and benefits was targeted at finding 'common patterns' across the projects.

Quantitative Elements of Cost-Benefit Analysis

A quantitative CBA requires the measurement of costs and benefits in 'monetary values'. In the context of this study, costs and benefits were conceived of in either financial terms or time required to fulfil a procurement project. Deviating from a CBA in the 'pure' form, the method that was applied sought to compare the total (undiscounted)[2] costs of a JCBPP project with its total (undiscounted) benefits, focusing exclusively on the effects for the coordinating organisations, lead buyers and participating organisations (i.e. costs and benefits for suppliers and for society as a whole[3] were not considered).
The general approach of the quantitative CBA was to compare the actual values of the JCBPP project with 'baseline'/'business as usual' scenarios. For each stage, directly associated costs and labour hours were determined (one hour being valued at EUR 60, which was based on similar considerations in the German federal administration;[4] this value was used because the German federal administration documents wage rates in detail). The baseline figures represent the costs

[1] *ec.europa.eu/regional_policy/sources/docgener/studies/pdf/cba_guide.pdf*
[2] Discounting is the technique of calculating today's value of a payment/stream of payments that will be received in the future.
[3] For example effects for non-beneficiaries of the procured solutions and other side effects like changes in the market structure due to the procurement.
[4] Federal Ministry of Finance Germany (2016): bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Oeffentliche_Finanzen/Bundeshaushalt/personalkostensaetze-2015-anl.pdf

that would have been incurred if an organisation had undertaken the procurement alone. For all costs, net values [5]were taken into consideration.
For each of the JCBPP projects, the extent to which quantitative cost-benefit considerations were present, and to what effect, was of interest. In order to obtain comparable data within and across the four JCBPP projects, and in order to derive total costs and benefits per project, the 'CBA factsheet' (see Appendix 1) sought to compare costs and benefits in all stages of the JCBPP initiatives, as well as the price(s) for the procured product(s)

Qualitative Elements of the Cost-Benefit Analysis

For the qualitative CBA, organisations were asked in the interviews to describe the most important costs and benefits of the respective JCBPP project, as compared with the 'baseline'/'business as usual' scenario (see Questions 5.1 and 5.2 in the Interview Guidelines/Appendix 2). Additionally, they were asked a question centered on the problem of whether (and to what extent) costs were expected to fall and benefits to increase if the procurement project were continued or repeated. The answers to those questions were examined in the CBA.

Method Applied for the Cost-Benefit Analysis

At the beginning of the study, it was planned to start from the CBAs that were conducted within the scope of the projects. However, despite several reminders, there were relatively few returns of complete factsheets by the organisations, and a CBA was disclosed only by one project (and here only for product price savings). Therefore, the analysis synthesised quantitative and qualitative information for each project, i.e. in order to obtain a more complete picture of costs and benefits, statements from the interviews complement the analysis of the factsheets. There is also comment on the differences between coordinating organisations, lead buyers and participating organisations in terms of costs and benefits
In the context of this study, risks associated with the projects are conceived of in broad terms (e.g. risks that arise from dealing with larger procurement volumes in a JCBPP project than in a 'baseline' setting): They are considered as potential costs and therefore are included as such in the CBA in the sections about risk management, even if they did not actually materialise.
In the following, each JCBPP project is first discussed individually by drawing on the questions in the 'CBA factsheet' and interview data (Sections 5.1-5.4). Second, there is a comparison among the projects and recommendations are given in section 5.5.

Methodological learnings

Since only a few joint cross-border procurements have been completed until now, there is a rather small sample group to work with. If the aim is to look at different types of JCBPP (e.g. the three types identified in Article 39 of Directive 2014/24/EU), the sample group is even slimmer. Therefore, quantitative analysis was not possible. However, it was possible to gain in-depth knowledge of the research topic by means of qualitative analysis.
A quantitative survey directed at the economic operators was developed and implemented, but especially as access to bidders and potential bidders was not provided by all the participating contracting authorities due to data protection reasons, only a limited number of responses was received. As a consequence, only a descriptive and not a proper statistical analysis could be conducted.
Moreover, the plan was also to interview the respective project leader, the legal advisor and the procurement specialist for each project but during the research phase it was found that in some cases the different functions were held by one person or that former persons in charge were no longer part of the organisation. Thus, the number of interviewees was somewhat smaller than originally intended but nevertheless included at least the respective project leaders per contracting authority.
The fact that most of the interviews were conducted in English entailed certain difficulties in the research process, such as misunderstanding of meaning and definition of procurement specific vocabulary.
Data protection reasons also prevented some of the contracting authorities from providing details on certain aspects such as prices and contractual provisions, which also influenced the way the CBA was conducted.
In the case of BBG-SKI however, all necessary data could be accessed and used for further analysis since both organisations were committed to the advancement of the study. In addition to this, it is important to mention that BBG was the only contracting authority with a data management tool in place which allowed the extraction of precise data (such as number of days used for the procedure

[5] i.e. value added tax not included

or providing an overview of all economic operators who downloaded the tender documents) and which provided this data for the study.
At the time these projects were implemented,_JCBPP was still an innovative and rarely used method of procuring. The contracting authorities involved had to take risks and venture into unknown territory, which may have led to a perception of the project as particularly prestigious. It is possible that contracting authorities felt the need to justify their own decisions, potentially leading to the downplaying of problems (choice-supportive bias). In the majority of the case studies, however, concrete problems and challenges were explicitly mentioned and reflected upon.

3. GENERAL INFORMATION ON JCBPP

The phenomenon of joint procurement has gained significantly more attention in the recent past, both within the EU as well as on an international level. Various recommendations highlight its potential to enhance efficiency in public procurement and promote the further development of necessary procedures.
However, as stated in Recital 71 of Directive 2014/24/EU, joint procurement can take many different forms, ranging from coordinated procurement through the preparation of common technical specifications for works, supplies or services that will be procured by a number of CAs, each conducting a separate procurement procedure, to situations where the CAs concerned jointly conduct one procurement procedure either by acting together or by entrusting one CA with the management of the procurement procedure on behalf of all CAs. Furthermore, it may be of an occasional or regular nature, it may rely on centralised procurement through CPBs, and/or it may comprise an element of cross-border collaboration. All of these situations present various challenges, especially as far as the legal conditions are concerned. While some modes of joint procurement have been subject to EU (and transposing Member States') procurement law for quite some time, others have only recently entered the regulatory spotlight.
The latter particularly holds true for JCBPP. Although Directive 2004/18/EC has largely been understood as implicitly allowing JCBPP (see Recital 73 of Directive 2014/24/EU), there were profound legal and practical difficulties involved. Directive 2014/24/EU now for the first time expressly addresses the option of conducting JCBPP. Thus, Article 39 of Directive 2014/24/EU ("Procurement involving contracting authorities from different Member States") is often referred to as a true regulatory innovation. Taken together with Articles 37 and 38 of Directive 2014/24/EU, this set of provisions has established a new regulatory framework for centralised and JCBPP on the EU level. As far as procurement in the utilities sector is concerned, the same applies for Articles 55 to 57 of Directive 2014/25/EU, which are of relevance in view of one joint cross-border case that is analysed below (the Brenner Base Tunnel Project and the BBT SE acting as joint cross border entity), but will however not be discussed separately in the course of this study due to their parallels to Articles 37 to 39 of Directive 2014/24/EU.

Basically, Article 39 of Directive 2014/24/EU acknowledges and provides a legal framework for three different types of cross border procurement: using a centralised body (JCBPP through a CBP), carrying out joint procurement (JCBPP through CAs), and the creation of joint cross border entities (JCBPP through a joint entity). Given their distinctive features, each of these models is governed by specific legal requirements, as will further be described below.
In any case, as Recital 73 of Directive 2014/24/EU emphasizes, the aim of the new rules established was to facilitate cooperation between CAs and to enhance the benefits of the Internal Market by creating cross-border business opportunities for suppliers and service providers by increasing legal certainty. These rules shall "determine the conditions for cross-border utilisation of central purchasing bodies and designate the applicable public procurement legislation, including the applicable legislation on remedies, in cases of joint cross border procedures, complementing the conflict of law rules of Regulation (EC) No 593/2008 of the European Parliament and the Council." Against this backdrop the provisions of Article 39 of Directive 2014/24/EU primarily address the coordination of the public procurement rules that apply to JCBPP situations, yet only selectively also deal with the questions of the public/administrative and the contractual law applicable. On the whole, the Directive sets out important key parameters regarding the relevant PP rules in the various JCBPP situations; the EU legal framework, given the Member States' scope of implementation, nevertheless remains fragmented, leaving significant matters such as aspects of legal review unregulated, thereby again raising a number of questions.

As a general restriction, Article 39 (1) of Directive 2014/24/EU states that CAs shall not apply JCBPP features for the purpose of avoiding the application of mandatory national public law provisions that are in conformity with EU law. Thus, the circumvention of national public law rules – such as the provisions on transparency and access to documents or specific requirements for the traceability of sensitive supplies (see Recital 73 of Directive 2014/24/EU) – cannot be a legitimate objective and renders the measures taken illegal.

JCBPP through a CPB

Article 39 (2) and (3) of Directive 2014/24/EU focuses on cross-border procurement through a CPB. These provisions basically guarantee that CAs can use the centralised purchasing activities offered by central purchasing bodies located in other Member States.

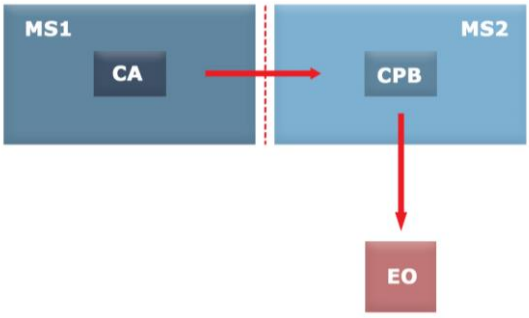

Figure 1: JCBPP through a CPB

In their approach, the provisions are two-tiered. As a first step, Article 39 (2) of Directive 2014/24/EU obliges the Member States not to prohibit its CAs from using centralised purchasing activities offered by CPBs located in other Member States. Member States, when implementing the Directive, are, however, allowed to specify that their CAs may only have access to CPBs of other Member States that act as wholesalers (by buying, stocking and reselling), or as intermediaries (by awarding contracts, operating dynamic purchasing systems or concluding framework agreements to be used by CAs). Consequently, it is for the Member States to determine which centralised purchasing activities may be used by their CAs. A Member State may thus decide that its CAs are allowed to use the services of CPBs from other Member States only if they act as wholesalers but not as intermediaries, or they may restrict the allowance for cooperation to foreign CPBs acting only as intermediaries, leaving out CPBs acting as wholesalers (see Article 2 [1] 14 of Directive 2014/24/EU).
Subsequently, Article 39 (3) of Directive 2014/24/EU stipulates that the provision of centralised purchasing activities by a CPB located in another Member State shall be conducted in accordance with the national provisions of the Member State where the CPB is located. These national provisions shall also apply to the award of a contract under a dynamic purchasing system, the conduct of a reopening of competition under a framework agreement, and the determination pursuant to the rules governing framework agreements concluded with more than one economic operator (see Article 33 [4] of Directive 2014/24/EU). The interpretation of the provision's wording ("shall be conducted in accordance with the national provisions of the Member State …"), however, raises various questions as to its range and the possible claim of exclusive applicability of the respective national law[6].

JCBPP through CAs

According to Art 39 (4) of Directive 2014/24/EU, several CAs from different Member States may jointly award a public contract, conclude a framework agreement or operate a dynamic purchasing system. They may also, to a certain extent (see Article 33 [2] 2 of Directive 2014/24/EU: if the procedures are applied only between those CAs clearly identified for this purpose in the call for competition or the invitation to confirm interest and those economic operators party to the framework agreement as concluded), award contracts based on a framework agreement or on a dynamic purchasing system.

[6] See Albert Sanchez-Graells, Collaborative Cross-border Procurement in the EU: Future or Utopia? pp 31 subsequent

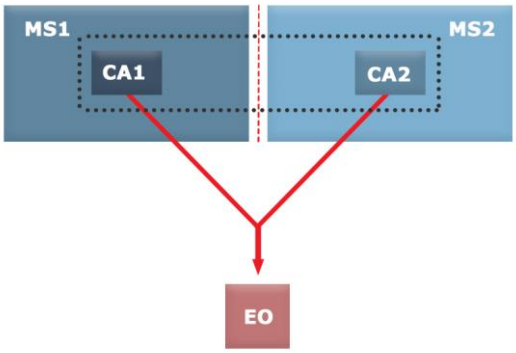

Figure 2: JCBPP through CAs

Based on that, the necessary elements may either be regulated by an international agreement concluded between the Member States, or by the participating CAs themselves. In other words, Member States may agree upon specific JCBPP provisions by way of concluding an international treaty. In case of absence of such a treaty between the Member States involved, the CAs are obliged to establish an agreement. This agreement must determine the responsibilities of the parties, the relevant applicable national provisions, and the internal organisation of the procurement procedure, including the management of the procedure, the distribution of the works, supplies or services to be procured, and the conclusion of contracts. It is thus the CA's duty to determine the applicability of the national rules of their respective Member States and the structure of the procurement procedure.
In that regard, Recital 71 of Directive 2014/24/EU highlights the importance of questions of responsibility: "Where several contracting authorities are jointly conducting a procurement procedure, they should be jointly responsible for fulfilling their obligations under this Directive. However, where only parts of the procurement procedure are jointly conducted by the contracting authorities, joint responsibility should apply only to those parts of the procedure that have been carried out together. Each contracting authority should be solely responsible in respect of procedures or parts of procedures it conducts on its own, such as the awarding of contracts, the conclusion of a framework agreement, the operation of a dynamic purchasing system, the reopening of competition under a framework agreement or the determination of which of the economic operators party to a framework agreement shall perform a given task."
In this context, Art 39 (4) of Directive 2014/24/EU makes it clear that a participating CA fulfils its obligations pursuant to the Directive when purchasing from a CA which is responsible for the procurement procedure. However, when determining the responsibilities in an agreement between the CAs involved, specific responsibilities may be allocated among them. Both the allocation of responsibilities and the applicable national legal rules must be referred to in the procurement documents.

JCBPP through a joint entity

Lastly, the third alternative for JCBPP provided for by Article 39 of Directive 2014/24/EU is the creation of joint entities established under national or EU law. These entities, which may also include European Groupings of Territorial Cooperation under Regulation 1082/2006/EC (EGTC), will engage in procurement activities on behalf of the CAs that are based in different Member States. The provision also expressly mentions "other entities established under Union law", thereby allowing for the establishment of entities that could act as CPBs on the European level.

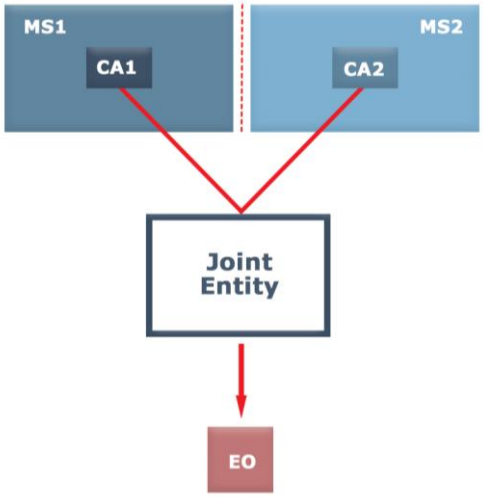

Figure 3: JCBPP through a joint entity

According to Article 39 (5) of Directive 2014/24/EU, the applicable national procurement rules may either derive from the jurisdiction of the Member State where the entity is based or from the jurisdiction of the Member State where the procurement activities will be carried out. The authority to decide upon that matter lies with the competent body of the joint entity. This agreement may then either apply for an undetermined period or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.

While the cases to be analysed in this study were implemented either at a time prior to the entering into force of Directive 2014/24/EU or at least prior to the entering into force of the respectively relevant national legal rules transposing the Directive, they had to a certain extent all been set up with a view towards the EU's new regulatory concept for JCBPP. As will be shown in the analyses below, the four cases at hand can be categorised in the light of the threefold JCBPP-typology as laid out in the Directive. Thus, from a legal point of view, the study will especially engage with the different challenges the implementation of these various forms of JCBPP typically faces, examining the legal problems and questions that were regarded as decisive in each case, and the strategies that were discussed and implemented in order to overcome these barriers.

4. CASE DESCRIPTIONS

4.1. Joint procurement of standard software

4.1.1. Introduction and general framework

In order to better understand the way the joint cross-border procurement procedure was conducted, it is necessary to explain the functioning and role of the coordinator of the procedure, the Eurosystem Procurement Coordination Office (EPCO).
EPCO was founded in 2008 in order to support joint cross-border procurement of the central banks of the Eurosystem / European System of Central Banks (ESCB). The main objective of EPCO is to use the synergies of the different central banks in order to achieve best value for money in the procurement of goods and services so as to comply with the principles of cost efficiency and effectiveness. The joint cross-border procurement initiative of the Eurosystem/ESCB Banks is based on the Decision ECB/2008/17 of the Governing Council of the European Central Bank establishing the framework for joint Eurosystem procurement[7]. More than 30 joint cross-border procedures have already been successfully implemented, while others are ongoing or planned.
There are different types of contracts and framework agreements under the EPCO's umbrella, which can be categorised into two general approaches:

1. Standard joint contracts, where the needs and requirements of the central banks have to be known in depth before the procurement procedure is performed. All participating authorities are closely involved in the procurement.
2. Piggy-backing, where a contracting authority carries out the procurement on its own but allows other contracting authorities the option of utilising the contract.

In the majority of cases, the contracts and framework agreements are centrally managed by one of the central banks, which takes the role of "leading central bank" with the support of EPCO, but they are implemented (ordered and paid for) directly by the participating central banks. There are different ways of involving the central banks in the tender procedures, ranging from pre-commitments on specific volumes, to an optional purchase with no commitment in advance depending on the type of procurement.
The interest of the central banks in participating in the different procedures depends very much on the specific product/service to be procured.
EPCO mainly procures the following product/services categories: Information Technology (28 %), Market Data Services (28 %), Banknote related items (12.5 %), Travel services (6.5 %) and a few procurements in other areas of goods and services[8].
In its function as coordinator of joint procurement procedures, EPCO defines itself as sui generis central purchasing body. EPCO, – created by the Governing Council of the European Central Bank (ECB) - does not have legal personality of its own and acts as an office under the legal personality of the Banque Centrale du Luxembourg (BCL). In 2008, the Governing Council of the ECB appointed the Banque Centrale du Luxembourg (BCL) to host EPCO. The current mandate for BCL lasts until 31 December 2019. The mandate for EPCO itself is not limited in time but its activity is reviewed and evaluated by the EPCO Steering Committee. In each case, the ECB Governing Council nominates the bank that will act as hosting central bank.
According to the Decision of the Governing Council, EPCO fulfils the following tasks:

3. identifies potential cases for joint procurement that fall within or outside the scope of this Decision on the basis of procurement needs that central banks address to EPCO;
4. prepares and updates as necessary an annual procurement plan for joint tender procedures based on an assessment under point 1;
5. prepares common requirements in cooperation with the central banks participating in a joint tender procedure;
6. supports the central banks in joint tender procedures;
7. supports the central banks in procurement relating to common projects of the European System of Central Banks, if so requested by the central bank(s) leading the project

EPCO may also carry out tasks other than those specified above, notably to facilitate the adoption of best procurement practices within the Eurosystem and to develop the infrastructure (e.g. skills, functional tools, information systems, processes) required for joint procurement.

[7] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02008D0017-20160112&from=EN
[8] Data from 2015

For the central banks of the ESCB, participation in EPCO is voluntary. Currently, EPCO counts 20 members and is coordinating around 10 procedures per year with an average of about 12 central banks participating in each procedure. The number varies strongly, from 2 central banks in some procedures to 20 in others. The central banks finance EPCO's budget in accordance with the rules adopted by the Governing Council, which are based on a financial envelope or an annual budget proposal and can include incentives to promote leading joint procurement projects. In order to assess and collect information as regards the demand, EPCO conducts surveys among the banks.
Most of the procedures coordinated by EPCO (usually those which can cover the needs of all institutions, for example standard software) are non-exclusive, meaning that the central banks are in general more open to participating as they are not required to commit to specific volumes upfront.
Estimation of demand is a challenge when there are several potential participating central banks. A detailed assessment of the volumes and requirements procured in the past and those planned for the future by the potential participating institutions, among other factors, is key to determining an estimated contract value close to reality.

How does EPCO operate?

As established in EPCO's legal framework (Decision ECB/2008/17), a joint tender procedure is considered to be necessary if either it is reasonable to expect that the joint procurement of goods and services would result in more advantageous purchase conditions, in accordance with the principles of cost efficiency and effectiveness, or the central banks need to adopt harmonised requirements and standards in relation to such goods and/or services.
Each year EPCO prepares an updated procurement plan for joint tender procedures and submits it to the Governing Council of the European Central Bank (ECB) for approval.
EPCO has established a Network of Procurement Experts made up of one person nominated by each central bank, who will be the main contact person for all matters related to EPCO in the respective bank. The role of the Network of Procurement Experts is essential for the functioning of EPCO as its members are the central point of contact within the central banks and promote EPCO's activities internally. The Network also constitutes an essential platform to exchange and develop best procurement practices among the central banks and to reinforce a solid public procurement culture.
EPCO plans and implements each joint tender procedure together with the coordinator of the leading bank. In specific cases, selected experts from other central banks may support the leading central bank and EPCO in the preparation of the tender procedure. For each field of procurement/procurement activity, EPCO invites the banks to nominate experts (for instance with technical, procurement and legal expertise) to create the so called expert groups. Working with these groups, EPCO coordinates the collection of demand, potential estimations of current and future consumption, etc.
For all procurement procedures, EPCO identifies a leading central bank, which acts as the contracting authority on its own behalf and on behalf of the other institutions participating in the procedure. This selection is mainly based on the expertise of the particular bank in a given field but the banks commit to this role on a purely voluntary basis. In some situations a central bank volunteers to run the joint tender as it is planning that specific procedure anyway. In this respect, it can be said that the leading bank, to some extent, plays a similar role to that of a CPB under the coordination of EPCO.

Once the object of procurement and the leading central bank are identified, EPCO launches a call for expression of interest to which banks are expected to respond if they are interested in participating in the procedure and to communicate their potential requirements. In this phase, before the launching of the tender, EPCO drafts a procurement initiation document, where the main scope, the planned process for the procurement, the concrete steps and the contractual conditions as well as information on the market structure are set out. This document is submitted to the banks, and represents a first basis for assessment of interest.
Once there is a list of central banks that have expressed an interest in participating, EPCO requests their formal confirmation. The list of institutions interested in participating in the procurement as well as those having the right to join the agreement (but without committing to a certain volume) is indicated in the tender documents.
All central banks of the EU have full flexibility in deciding whether to use the services of EPCO. The main procurers via EPCO are the banks of the Euro area, but the national central banks of the Member States that have not yet adopted the Euro may also have an interest in participating in EPCO's activities as well as in joint tender procedures, to which they have access under the same conditions as those applying to the central banks of the Members States that have adopted the Euro.

In addition, since 2016, according to Decision ECB/2015/51 amending Decision ECB/2008/17, national authorities of Member States, European Union institutions and bodies, and international organisations may also participate in EPCO's activities and joint tender procedures but their participation is conditioned by a prior invitation of the ECB Governing Council.
The leading central bank carries out the joint tender procedure in accordance with the procurement rules to which the leading central bank is subject, meaning its national procurement law. Concerning the applicable contract law, there are different options available, depending on the tender procedure. In some situations, the contract is subject to the law of the leading bank and the specific contracts/orders are therefore also subject to the same law.
In some cases, parties may decide that the law applicable to the framework agreement is the law of the leading central bank and the law of the specific contracts/orders is the law of the participating institution(s).
The leading central bank is also responsible for drafting the tender documentation and, when necessary, it cooperates for the evaluation of the applications and offers with EPCO and the other central banks participating in the joint tender procedure.
The leading central bank carries out the joint tender procedure in the language(s) laid down in the EPCO procurement plan, which in most cases is English. When another language is used in the tender, the documents are translated into English to facilitate the access to them by the participating institutions.
Once the contract is awarded, EPCO prepares users' guidelines in order to help the banks use the contracts and provide relevant information for the contract implementation in a practical manner.
EPCO also offers support with standard templates for specific contracts, ordering forms, etc. which banks can use when ordering the services via the EPCO contracts. All these documents can be found on an internal platform which was set up to reinforce and facilitate the communication and coordination between EPCO and the leading and participating banks.

e-procurement aspects

Each leading central bank uses its own e-procurement tools, according to the rules applicable in the respective Member State. Some are obliged to use the national platforms provided by their respective governments, and some run their own systems. For the post award phase, there are no specific tools and catalogues in place which cover all contracts, but there are e-catalogues for specific contracts which are provided by the contractors or by the leading central bank and made available by EPCO to the participants.

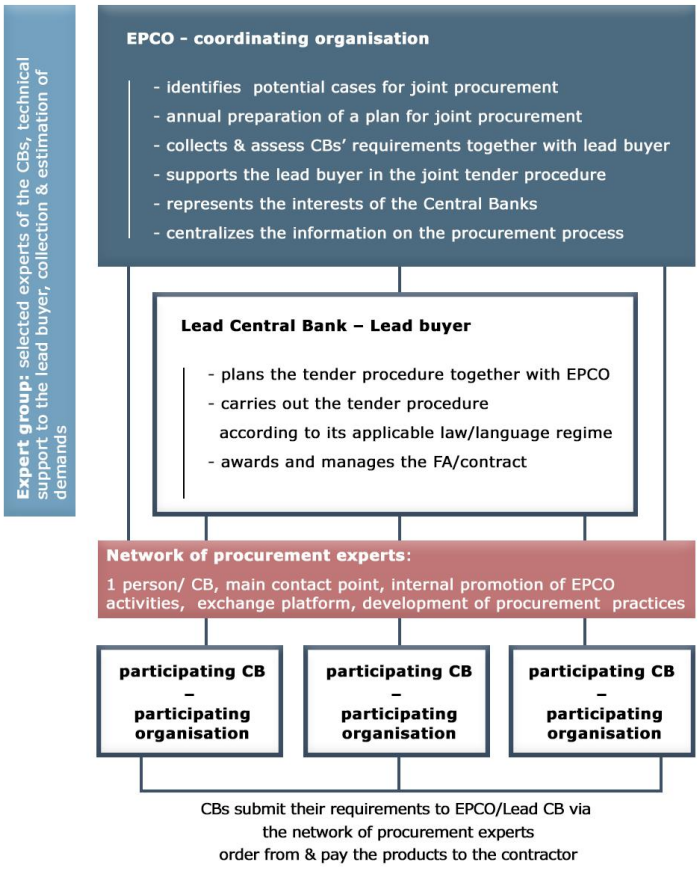

Figure 4: EPCO standard joint contracts

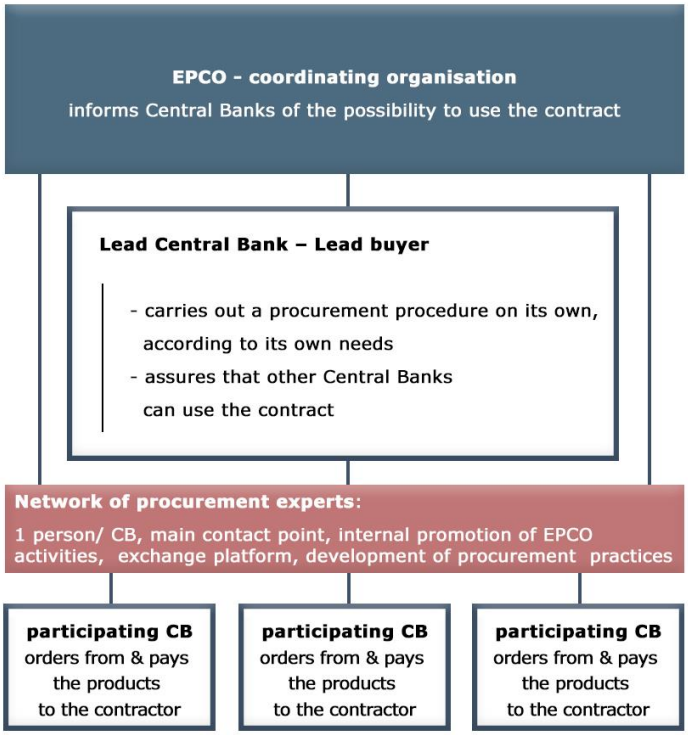

Figure 5: Piggy-backing

Preliminary information on the case at hand

General framework of the JCBPP procedure "Standard IT Software Packages and Maintenance through a reseller", October 2011
In 2011, EPCO coordinated for the first time the procurement of standard IT software as a package. Before that, each bank had its own bilateral contracts covering standard software.
The contract volume for the joint procurement was estimated at 0 to 50 million euros.
The chosen procedure was a restricted procedure for the award of a framework agreement to a software reseller.
The subject of the contract was add-ons and extensions to licences for standard software already purchased and licences for new standard software as well as maintenance of this software if required.
The leading bank was De Nederlandsche Bank ("DNB"), as Contracting Authority, on behalf of itself and for the benefit of a list of thirteen central banks ("CBs" or "Participating CBs") that were members of the European System of Central Banks (ESCB) and participated in EPCO's activities (according to Decision ECB/2008/17), including the central banks of Austria and Luxembourg.
In addition to the aforementioned participating banks, other central banks from the European System of Central Banks (ESCB) that participated in EPCO's activities (according to Decision ECB/2008/17) had the option of joining the framework agreement with prior consent of DNB, before the signing of the contract. All Participating CBs, except DNB, had the right but not the obligation to call off from the awarded contract.
Although there are CPBs in place in most of the Member States in which the participating CBs have their seat, none of the banks had the obligation to make use of the services rendered by a national CPB. For example, the Austrian National Bank, OeNB, uses the services of the Austrian Federal Procurement Agency which is a CPB at national level administration, on a non-regular and voluntary basis. Their non-exclusive cooperation with the Austrian CPB is not an obstacle to a joint procurement via EPCO.
This was the first time, DNB conducted a JCBPP as a leading bank but all three banks that were interviewed, DNB, BCL and OeNB, took part previously in such procedures as participating or leading banks. Outside the EPCO system, none of the interviewed banks conducted any other JCBPP.

4.1.2. The planning phase of the JCBPP procedure

A. The decision making process

Main reason for conducting JCBPP

The motivation for conducting JCBPP is easily inferable from the mandate and scope of EPCO's activity. Nonetheless it is interesting to understand what incentives the leading bank and the participating banks had when they decided to purchase the software package through a JCBPP procedure.
For the DNB, the main reason for choosing to conduct JCBPP was to achieve better prices and conditions through a contract with a large volume and to reinforce cooperation among the ESCB. Not only the prices of the products were relevant but also savings in process costs for individual central banks were essential. DNB estimated the average costs for a tender procedure (including all related costs, for example, external legal advice) at around EUR 50,000 per contracting authority. In addition to the improvement of terms and conditions and the simplification of the administrative processes, administrative benefits from the reduction in the number of tender procedures carried out by each participating institution was one of the essential reasons for conducting a joint procurement.
As a participating bank, for the BCL, the most important driver was to have common contractual terms and conditions better than those an individual bank could achieve on its own via a local/national tender procedure. Another important motivation was the possibility of cooperating with other banks and of learning from each other. The BCL also mentioned the fact that being a participating bank brings the advantage of not having to run a separate procedure which would cost time and resources. They considered it easier to be a participating bank and to benefit from the tendered conditions, even if this implies giving away some decisional power within the procedure.
The OeNB mainly decided to join because of the possibility of benchmarking the achieved prices and conditions of their own contracts as well as it offering an alternative way to procure products under the scope of EPCO to ensure that the bank will always achieve competitive conditions in the procurement of standard software.

The decision on specific project partners

While the participation in EPCO's projects is restricted to the central banks of the ESCB and to a restricted number of additional institutions, the communication about potential and future procurement and contract opportunities among the central banks and other potential beneficiaries was indicated as an essential factor in identifying potential interested parties. Thus, all potential beneficiaries of EPCO's contracts were invited to express their interest in the specific procedure. The decision to participate in the tender procedure and the level of active involvement in shaping and drafting the process is up to each central bank.
It is important to recall at this stage that the central banks members of EPCO finance the activity of EPCO through a yearly lump sum, which may be an additional motivation to take part in the procedures.

The decision on a JCBPP procedure for the specific product

The main reasons to conduct a joint public procedure were the identified needs of the banks for the same types of software but also the fact that standard software is easy to specify and to aggregate without being impacted by transportation costs to the participating institutions. These products did not imply complicated delivery methods and had huge savings potential.

B. Considerations regarding market and product

Market analysis was conducted at EU level and prior to the drafting of the tender documents, as it was important to assess whether the market is able to provide what contracting authorities were searching for as well as the capacity of economic operators to deliver to different contracting authorities in different Member States.
For this activity, in addition to the internal research, information from a company specialised in market reports was used and the information resulting from the analysis was included in the public procurement initiation document, where also the structure of the market was clearly defined.

As the subject of the contract was Standard IT Software Packages, meaning a complete list of standard software, from Microsoft products to IBM, Adobe, IBM, SAS, Citrix and others, the contracting authority determined that only resellers would be able to deliver all the requested software products. Before participating in this JCBPP procedure, the majority of the central banks were purchasing individually and individual products, rather than the whole basket in one procedure. This change of strategy and modus operandi represented a challenge both for the leading bank and for the participating banks.
The economic operators addressed through this tender were companies with branches in different EU countries or those able to find a partner in each of the countries participating in the procedure. Building of consortia was also allowed.
In the market study, the market was assessed as fully competitive. There was no preliminary feedback from the market on the planned JCBPP and the acceptance of JCBPP was not checked in a direct dialogue with potential bidders. No real show stoppers coming from the market were identified in this phase. Several companies were identified as already having a structure able to supply the different participating central banks in Europe (while some of them had a global coverage and others a regional one) and able to supply at least products from the main software producers (e.g., Oracle, IBM, Microsoft, SAS, HP). This led to the assumption that, in principle, there were sufficient potential players on the market in order to ensure competition and to participate in joint public procurement.
Based on reports produced by companies providing advice on the IT market, the market was also assessed, taking into account the services provided by those resellers and the software manufacturers they had in their software portfolios and the ability to provide the services under the scope of the tender.

C. Drafting of the tender documents (legal, procedural, language)/Strategy used in the design of the procedure

Legal framework

This procedure was conducted under Dutch public procurement and commercial law. The Dutch public procurement law, which was applicable in 2011 (based on the 2004 directives) did not specifically provide for any possibility to conduct a JCBPP procedure or procure from a CPB located in another Member State.
The Austrian PP law (Bundesvergabegesetz) provided for the possibility of a contracting authority to purchase from a CPB located in another Member State. According to the Luxembourg Law on Public Procurement contracting authorities may purchase works, supplies and/or services from or through a CPB by applying certain procedures set out in the law. Furthermore, contracting authorities can cooperate by launching a common procurement or by forming a new legal entity.
The DNB carried out the joint tender procedure on behalf of the participating central banks in accordance with the procurement rules applicable in the Netherlands and the internal rules and procedures of the bank. Not only the PP law of the leading bank applied but, for reasons of legal coherence, also the contractual law, meaning that the participating banks used Dutch law when calling off out of the framework agreement, except when otherwise required by national law.
In general, the participating banks did not experience difficulties in applying the Dutch contractual law, very few of them indicated some general legal restrictions in the use of a contract concluded by a contracting authority located in a different Member State, which implied that they could not use the joint cross-border agreement in all cases (e.g. limitations on the orders to be placed via the joint framework agreement depending on their estimated value).
The contracting authority provided in the tender documents that dispute between parties concerning the framework agreement and/or further agreements would fall within the exclusive jurisdiction of the competent court in Amsterdam. By mutual agreement, parties were able to decide to solve a dispute through arbitration or mediation.

Design of the procedure

The estimated volume under the Framework Agreement on standard software packages and the associated maintenance via the Software Reseller was planned to be between 0 and 50 million euros excl. VAT. The duration of the agreement was set for a period of two years with the unilateral possibility for the contracting authority to extend the initial duration of the contract two times for a period of one year each time. The procedure did not foresee the division into lots.
As the exact implementing conditions, quantities and/or delivery times could not be indicated in advance, the contracting authority concluded a framework agreement with a single contractor, which contained the basic terms for a series of orders or further agreements concluded over its duration.

Each participating central bank conducted the call off on an individual basis and concluded further agreements/order forms based on the framework agreement and was directly invoiced by the contractor.
As some central banks were subject to specific conditions (e.g. special deadlines for payment, specific contact persons), the framework agreement provided for the possibility that these needs be specified within the "Further Agreement/Order forms to the Framework Agreement" but without bringing a material change to the conditions of the framework agreement.
The procedure chosen was a restricted procedure for the award of a framework agreement to allow for prequalification, checking the suitability of the bidders and their capacity to cover all participating countries.
Initially, the contracting authority expected to receive a large number of offers and decided to use the restricted procedure as an efficient way to carry out a pre-selection of suitable tenderers.
It was planned to award the contract to the most economically advantageous tender on the basis of the technical and financial award criteria, the weighting being 40% price and 60% quality.

Pricing

In order to evaluate the tenders, the contracting authority asked for pro forma quotations. However, the contract did not include specific prices. The participating institutions were requested to ask for quotations for the different functionalities required (including the price). Based on those quotations, each central bank had the possibility to conclude an order via the issuance of an order form/further agreement directly to the contractor.
Another important point in the strategy was to make it feasible for as many participating banks as possible to use the contract, even if they were not able to commit before the publication of the tender documents to a certain volume to be called off.
At the time of the implementation of the project, it was possible under Dutch law to add additional contracting authorities as beneficiaries of the framework agreement after the publication of tender documents and before the signature of the framework agreement if the identification of those institutions was described in the tender documents and this option was indicated in the tender documents.[9]

Aspects concerning the language of the procedure

According to the legal framework for joint public procurements, EPCO must define in the public procurement plan the language that will be used. As in the majority of cases, this procedure was conducted in English since this was the main communication language for the banks. DNB and EPCO did not consider the language to be an impediment for economic operators as regards participating in the tender procedure or an issue for the participating institutions. Using English was considered to be a suitable tool for facilitating competition between resellers across the EU. The complete process from publication to award was conducted in English and the economic operators were asked to submit offers in English or in Dutch.

4.1.3. The tendering phase

As the restricted procedure was used, the tender was designed in two stages: expression of interest and invitation to tender.
In the pre-selection phase, which lasted two months, four economic operators expressed an interest in participating in the tender and three were invited to place an offer in the second stage. No additional information on this stage of the procedure was provided by the stakeholders interviewed.
The invitation to tender was published on TED on 5 July 2011[10] on the website of the Dutch Official Journal as well as on the EPCO website. Due to the JCBPP character of the procedure, the lead buyer had to deal with a considerable number of questions from bidders, but that did not affect the implementation of the tender.
DNB received three offers and awarded the contract to one reseller. All offers were submitted by international resellers which also had offices in the Netherlands.
The tender board of DNB carried out the assessment of offers and made the award decision. Other banks were not involved in this process. Due to the rather low number of offers received, it was a swift process and no special problem was encountered. Two suppliers did not meet the

[9] Under the current Dutch PP law, all contracting authorities need to be named in the publication of the tender documents. Alternatively, a definition of the category of institutions that will have the right to join the agreement that allows the identification of those institutions can be included.
[10] Contract notice 2011/S 126-209548: NL-Amsterdam: software package and information systems (http://ted.europa.eu/udl?uri=TED:NOTICE:209548-2011:TEXT:EN:HTML)

requirements, either because they submitted a conditional offer or did not agree with the terms of the framework agreement.
There was no complaint filed against this JCBPP procedure.

4.1.4. The post award phase

The contract was concluded with one company, which is a software reseller located in the Netherlands with branches in most of the other relevant countries. The provision of the services was decentralised through the local branches, but the responsibility remained with the main economic operator which was contracted.
After the award of the contract, the participating banks were informed about the possibility to call off by using a purchase order form which was addressed directly to the supplier. Orders were placed via e-mail, e-platform or via other means established in the framework agreement. Before placing the order, the banks had to ask the contractor for a quotation based on the conditions stated in the framework agreements. As established in the contract, the software licences and support services were distributed via the awarded supplier directly or by the local branches in the local language.
The contract management was conducted by the leading central bank together with EPCO, which facilitated the central banks' access to the information and collected input from the participating banks while the contract was in effect. Any relevant information provided by the banks was discussed with the leading central bank and the relevant participant. EPCO prepared the user guidelines for the implementation of the contract, which were first validated by the leading central bank, and distributed for information to the participating banks. The user guidelines were updated on a regular basis when required.
EPCO provided access to all the contractual documentation and assisted the banks in the implementation when necessary, but the implementation as such was decentralised, meaning that each central bank could call off the product directly from the supplier, without the involvement of EPCO or the leading bank.
In case of non-fulfilment of contract or dispute between contractor and participating banks, an escalation process was defined.
The banks can first directly address the contact person nominated by the supplier in its country. The second escalation step would be to bring the issue to the responsible person at the level of the
The second escalation step would be to bring the issue to the responsible person at the level of the framework agreement. In those cases, DNB and EPCO were involved in order to coordinate critical issues linked to the implementation of the agreement that could affect its implementation and other central banks, as well as to support the participating central banks. The reporting and controlling on the use of the framework agreement were conducted through EPCO, which conveyed the information to the leading central bank.
The responsibility of DNB ends with mediation between the supplier and the participating banks. DNB was not involved in the controlling regarding the call-offs from the framework agreement. EPCO was in charge of collecting the reports on the use of the contract by the different participants.
In conclusion, it may be said that to a large extent the leading bank was less involved in the process of contract management for the individual participating central banks as EPCO played a supporting role here, with both parties in regular contact on this matter.

4.1.5. Other relevant aspects concerning the JCBPP project

Role and responsibilities of the partners

Within EPCO, very clear roles and responsibilities applicable to all the procedures were defined.
As leading bank, DNB was responsible for planning and implementing the joint tender procedure with the support of EPCO. Together with the expert group, DNB defined the procurement strategy and the procedures and carried out the planning of the tender. They also created the 'joint procurement committee' consisting of experts from the leading bank and EPCO, as well as a limited number of representatives of the participating banks which supported the leading central bank during the preparation phase of the tender. DNB was also in charge of drafting the tender documents, receiving the bids and organising the opening of tenders, evaluating the applications and tenders and signing the awarded contract for the benefit of the participating banks. In the post award phase, DNB together with EPCO monitored the framework agreement and followed up the implementation of the framework agreement by the participating central banks via the respective call-offs.

EPCO's main roles and responsibilities in this tender were: the preparation of the procurement plan, determining the participating banks' demand, preparing the procurement initiation document for validation by the leading central bank, collecting the information on the commitments from the central banks, supporting the leading central bank in the preparation of the tender documents, informing the participating central banks about the different phases in the procedure, monitoring the use of the contract, drafting of guidelines (including information on the local implementation by each participating central bank and contact persons from the contractors' and central banks' side) and supporting documents, liaising with the leading central bank about issues linked to the contract in relation to the implementation by them of the framework agreement, as well as coordinating the organisation of exchange of information and meetings.
The participating central banks were mostly involved in providing input on their demand and special requirements for the software. They were required to submit a declaration to confirm their participation in the tender and finally they were in charge of the call-off phase to conclude the further agreements with the contractor for their own requirements.

Meetings

Only one physical meeting between participating banks (expert group) was necessary in order to prepare the procedure before its publication. A second expert group meeting was organised after the award in order to present to the participating central banks the results of the tender and the call-off method. The contractor was also present at this meeting to introduce the main elements of the framework agreement and its implementation in a decentralised manner via each participating central bank. After that, taking advantage of an annual meeting with the EPCO central banks on EPCO IT related projects, a presentation about the status of implementation of the contract and potential issues took place, with the contractor also attending.
The leading bank and EPCO had regular contact (by phone, e-mail) and exchanged information on the procurement process, central banks' requirements, etc. Only two physical meetings between the leading central bank and EPCO (one after the identification of the joint tender procedure and one after the award phase) were necessary. Otherwise the contact was via phone calls or in writing.

Staff involved in the project

The implementation of the JCBPP procedure involved the following persons: one coordinator from EPCO and four people from different disciplines from the leading central bank (e.g. procurement specialists, legal experts). The participating banks had one contact person per bank involved in the procedure, whose main role was to provide their requirements and to submit the confirmation of participation in the tender.
Concerning the support received from external staff, it is worth mentioning that the market analysis was conducted with the support of reports from a specialised company in the area of IT advisory and consultancy services.
DNB received external legal support in order to be able to deal with the specificities linked to the scope of the contract, including the international character of the framework agreement. The participating banks interviewed did not need any such support. None of the participating banks interviewed had to use translation services.

Time spent on conducting the procedure

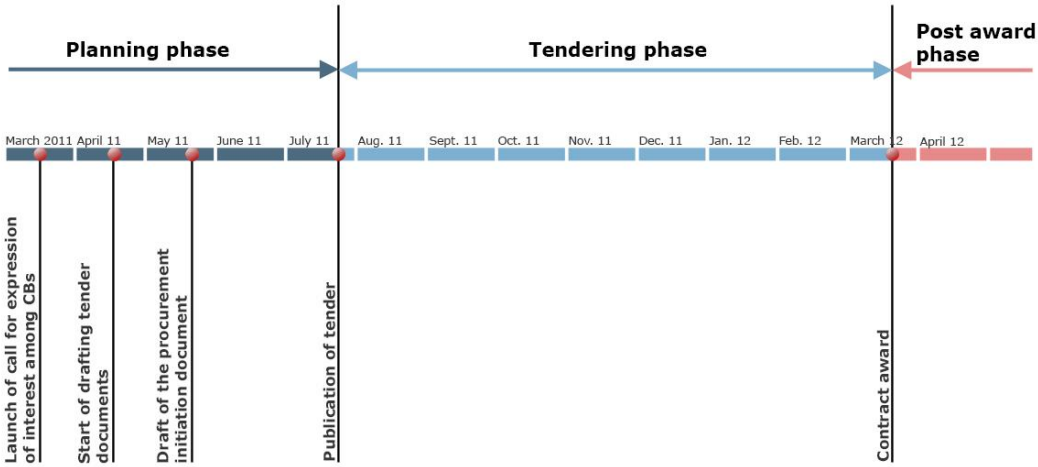

Figure 6: Timeline Joint procurement of standard software

In March 2011 EPCO launched a call for expression of interest among the central banks. In April they conducted an assessment of requirements and determination of demand from the central banks. In May they drafted the procurement initiation document, with all the data collected from the banks and started the planning of the tender.
An expert group meeting was set up, to discuss the subject of procurement and to present the objectives of the tender. The procurement initiation document was then approved and on that basis the banks were asked to submit their declaration of commitment, to participate in the tender. Then, during this period but mostly between April and June, the tender documents were prepared by EPCO and DNB. The contract notice was published in July.
EPCO considers that this was a swift process as the technical specifications for standard software were relatively simple to draft. In procedures with more complex technical specifications, the coordination time can be longer. The drafting of the tender documents was seen to be generally the most time intensive activity, ranging from 1-3 months.
The leading bank considers the time spent from publication to award to be the same as in a national procedure with no cross-border element. The publication of tender documents was in July 2011 and the award decision was signed in March 2012.
The tender procedure lasted one month more than originally planned due to internal issues not caused by the tender.
Given the fact that it was a two stage procedure which is normally more time consuming, the participating banks from Luxembourg and Austria also considered that the time frame was comparable with the time they would have needed to conduct a comparable procedure at national level.

4.1.6. Opportunities and challenges

A. Opportunities

Partnership and exchange of good practice

The fruitful cooperation between the participating institutions and the exchange on procurement practices, the market and technical aspects were considered to be one of the main benefits of the JCBPP project, especially for those banks with less expertise in the specific area.
The successful implementation of this particular project translated into a follow-up procedure which was published in August 2016 and which has been designed taking into consideration all lessons learnt from the previous project.
This first contract on standard software helped to improve knowledge for further procedures. It also helped identify the needs of the banks and thus made it possible to refer to historic volumes and made calculation of the next procedure easier. This represented a huge learning process from one procedure to the next.

Sharing information among the banks led to more interaction between the participants dealing with similar issues and the results of the exchange process were considered to be a good indicator for the way the implementation of the contract really functioned.

Economic aspects

As in most of the joint procedures, there were financial benefits deriving from the pooling of volumes as well as administrative benefits which can be converted into financial ones as a result of the reduction of the number of tenders. The improvement of the contractual terms and conditions was also an important advantage in the JCBPP procedure.

Procedural aspects

It is very important to highlight that one of the most important benefits for the participating banks was the coordination role of EPCO, which considerably simplified the administrative load of contracting authorities.
The participating banks did not experience any particular challenge in the procedure and considered the process very fluent as communication functioned well. The most positive aspects experienced are related to the fact that they did not have to deal with drafting the tender documents themselves and there was less effort involved in drafting specifications. The level of involvement in the procedure was considered to have been rather low.
An important element, which contributed to the high number of participating banks in the procedure, was the rather flexible character of the tender which allowed them not to commit to any certain volume and made it possible for them to use the outcomes for benchmarking with own contracts.
Most of the participating central banks described the tender process as efficient and as a very valuable and flexible tool to procure the goods within its scope.

Legal aspects

From a legal point of view, there was no challenge related to this procedure, mainly because of the fact that the legal strategy was based on clear rules specified in the Decision ECB/2008/17.

B. Challenges

Procedural aspects

From EPCO and the lead buyer's point of view, the most challenging task was to get all potentially interested central banks on board. To this end, it was essential to have a clear and comprehensive flow of information providing enough details about the scope of the tender to attract the majority of the central banks and to clearly explain the obligations that the participation in the tender would entail as well as the different steps and results from the tender. It was essential to have the commitment of the central banks to participate in the tender. The determination of potential needs of the banks referring to several years was rather time consuming.
The local implementation of the contract was one of the main challenges experienced by some banks in the post award phase. In the case of any issue arising in the implementation of the framework agreement by the local branch of the contractor, the banks were able to contact EPCO and DNB to facilitate the contract implementation. Some of the banks even highlighted the fact that in such situations the issues could be shared with the support organisations (DNB and EPCO), which would not be possible in a national environment, where there is no backing offered through a lead buyer or a coordinator.
During the first year of implementation of the contract, a limited number of central banks used it as it was a completely new approach towards buying software solutions as compared with previously "known" or other channels. EPCO and DNB promoted the contract and provided user guidelines to facilitate call-offs and thus, motivated the banks to make use of it. This worked out successfully as the banks started to use the contract on a regular basis, reaching their initial estimated contract value. The success of this tender was also shown by the fact that many central banks that were members of EPCO but had not submitted confirmation of participation prior to DNB signing the framework agreement were interested in participating in the contract. However, as explained before, their participation was not possible after the signature of the agreement.

Market

One of the obstacles encountered in the project was related to the **structure of the market with its rigid distribution channels**. It was a challenge to find suitable suppliers able to provide goods and services Europe-wide.

4.1.7. To Sum up

Standard software tender (EPCO)
Name of the tender: Standard IT Software Packages and Maintenance through a reseller
Year of publication: 2011 (TED number 2011/S 126-209548)
Participants: 1 lead buyer, 1 coordinating organisation, 13 participating organisations
Nationality of the lead buyer: Dutch
Number of Member States involved: 14 Member States
Procurement volume: EUR 0-50 million
Type of procedure: restricted procedure for the award of a framework agreement with a single economic operator
Design of tender: framework agreement concluded for 2 years with the possibility to extend the contract two times for a period of one year each, no division into lots
Number of bidders: 4 expressions of interest in the first stage, 3 offers in the second stage
Nationality of the awardee: Dutch
SMEs (yes/ no): no
Language of the procedure: English
Use of the contract: call-offs directly from the suppliers, monitoring by the coordinating organisation, defined escalation process with the involvement of the lead buyer and the coordinating organisation in case of non-fulfilment
Savings: between 1-18%
Type of agreement between the parties: Decision ECB/2008/17 of the Governing Council of the European Central Bank
Legislation: Dutch law (procurement law & contractual law)
Jurisdiction: competent court in Amsterdam (for disputes concerning the FA & subsequent agreements)

Table 1: Standard software tender

4.2. The HAPPI Project: Purchase of innovative goods and services for active and healthy ageing

Introduction and general framework

The HAPPI project (Healthy Ageing – Public Procurement of Innovation) is an EU co-financed project within the Competitiveness and Innovation Framework Programme (CIP) which aims at detecting and purchasing innovative solutions addressing the needs of an ageing society in order to disseminate them in hospitals and nursing homes across Europe.
It also seeks to establish the conditions for health institutions throughout Europe to collaborate in the purchase of "ageing well" and innovative long-term health products, services and solutions.

Coordinated by GIP Resah (Réseau des Acheteurs Hospitaliers), the French public CPB operating in the health sector, the project brings together ten European partners from France, the United Kingdom, Germany, Italy, Belgium and Luxembourg, as well as three associated partners from Austria, Spain and other EU Member States and includes central purchasing bodies, innovation and procurement experts as well as academic institutions.

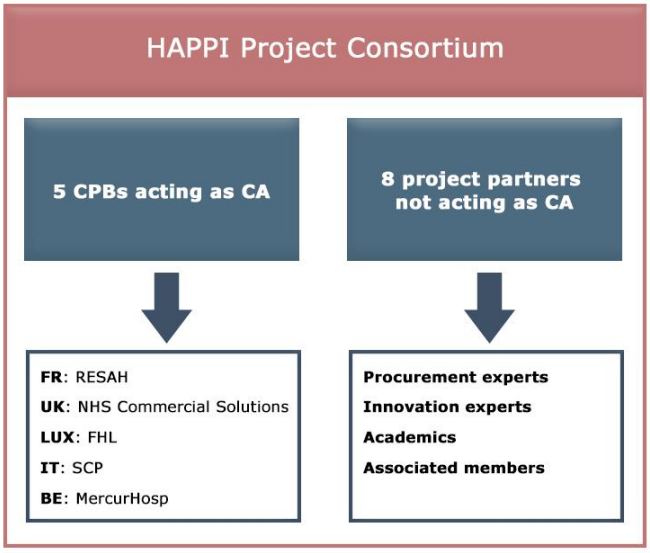

Figure 7: HAPPI Project consortium

The project is focused on the procurement of existing innovation, meaning off-the-shelf solutions which are new to the market and new to the procurer. The innovative nature of the project not only refers to buying innovative goods, but also to using innovative purchasing techniques and processes.
The consortium of public buyers has therefore launched a joint cross-border public tender for the procurement of innovative goods and services for active and healthy ageing.
Through the HAPPI project, public buyers anticipated the solution offered by Directive 2014/24/EU, opening up the possibility for contracting authorities to use a procurement procedure jointly designed and conducted by CPBs of different Member States.
The HAPPI project, which started in 2012, was finished in August 2016 and allowed contracting authorities from across the EU to purchase three different innovative products in the field of elderly care.

Participating institutions

The consortium running the joint cross-border tender involved five CPBs from different Member States. All of the participants in the tender were CPBs. The HAPPI tender was the first joint cross-border procurement for all of them.

GIP RESAH (Groupement d'intérêt Public - Réseau des Acheteurs Hospitaliers) is a French publicly funded institution which was created in 2007 as a public non-profit organisation in order to leverage the purchasing power of hospitals and nursing homes in Ile-de-France (Paris Region).
Historically, RESAH works for the benefit of more than 150 hospitals and nursing homes in the Paris region (public or private non-profit organisations). With 42,000 beds and a procurement volume of EUR 1.5 billion per year, RESAH enables the pooling and standardizing of needs in order to create economies of scale. Today, with the national reorganisation of public procurement in the healthcare sector in France, RESAH is able to make its contracts available for all the public or private non-profit healthcare organisations in France, depending on the procurement segment (whether it is a regional or a national one). With this new national perimeter, the number of Resah's members has increased significantly: 250 + in October 2016 and more than 100 other healthcare organisations will join Resah's network in the coming months.

RESAH is the only central purchasing body (CPB) specialized in both healthcare and medical-social sectors in France. RESAH offers many different procurement segments: medical (pharmaceuticals, medical devices, laboratory consumables and equipment, biomedical equipment) and non-medical (ICT solutions, catering, laundry, waste management...)

RESAH is also involved at the national level with its many engagements. It:

- supports the reinforcement of national purchasing groups within the context of the PHARE program launched by the French Ministry of health.
- coordinates the interregional collaborative platform "www.alliance-groupements.fr"
- participates actively in the development of a new information system to meet the needs of the new hospital procurements organisation with the creation and the management of "Achat-Hopital.com"

Active at the international level, RESAH coordinated the European project HAPPI (HAPPI - Healthy Ageing in Public Procurement of Innovation) and is participating in 4 other European projects : INNOCAT (PPI - Eco-innovative procurement in the catering sector), INSPIRE (CSA - International Network to Support Procurement of Innovation via Resources and Education) and PROEIPAHA (CSA), plus in line with its ambition to become a leader in the Procurement of Innovation in the healthcare sector, Resah is also the lead procurer of the PCP project RELIEF (Recovering Life WellBeing through Pain Self-Management Techniques Involving ICTs) which started in February 2016 and is currently in the need assessment phase. Moreover, Resah is involved in the first innovation partnership linked to the healthcare sector in France
RESAH is also involved in a strategic cooperation/association with other European central purchasing bodies via EHPPA (European Health Public Procurement Alliance), of which RESAH is a founding member. Today, 9 central purchasing bodies from 9 different European countries are members of the association.

Fédération des Hôpitaux Luxembourgeois (FHL) in Luxembourg

FHL acts as a non-profit legal entity to defend the professional interests of Luxembourg's hospitals and facilitate all types of progress and quality in hospitals, notably, patient welfare.
FHL plays a key role in providing support to the hospital sector, advising on the challenges it faces. It works alongside its members in a network involving all healthcare stakeholders, in particular the National Health Insurance and Health Ministry.
The activities of the FHL are very diverse, ranging from lobbying and ad hoc assistance for matters related to law regulation, economic analysis, purchasing and IT development, to issues related to medical physics, safety, hygiene, quality and standards. The FHL also negotiates a collective labour agreement with trade unions for employees of hospitals and runs an occupational health service.

NHS Commercial Solutions, United Kingdom

NHS Commercial Solutions is a non-profit group purchasing organisation based in the South East of England covering Kent, Surrey and Sussex. NHS Commercial Solutions provides a wide range of procurement and commercial services, consistently delivers high quality procurement and supply chain projects, commissioning procurement support, cutting edge e-enablement and wide ranging stakeholder engagement. NHS Commercial Solutions is at the forefront of delivering commercial and procurement initiatives, which have provided cash releasing savings, best practice contracting, efficiencies and benefits to the NHS in the South of England and nationally.

Società di Committenza Regione Piemonte (SCR), Italy

SCR Piemonte S.p.A. is the central purchasing body of the Piedmont Region in Italy. SCR aims to standardize public procurement and optimize selection procedures at the regional level in specific and strategic categories: infrastructure, transportation, telecommunications and the health sector. SCR-Piemonte puts in place framework contracts for goods and services. These framework contracts are mandatory for regional contract authorities and healthcare contract authorities (21 healthcare agencies) and non-mandatory for the other local authorities such as provinces, municipalities, universities and schools.
SCR covers 400 public authorities for an annual procurement volume of EUR 1 billion in both standard categories (energy, natural gas, paper, office stationery) and the health sector (such as medicines, needles and syringes, infusion solutions, vaccines, dressings and bandages)

MercurHosp – Mutualisation Hospitalière, Belgium

MercurHosp is a procurement network of 12 hospitals and 9 nursing homes in the "Wallonie - Bruxelles Region". The pooling of all forces within MercurHosp helps to achieve a high level of skills linked to the technicity of the products and services bought but also to the legislation on public procurement.
The goal is to improve cares and services for patients and to maintain the high level of quality and expertise, while maintaining cost control.
MercurHosp's network covers about 6700 beds in hospitals and 1400 beds in nursing homes and EUR 900 million of annual procurement volume.

4.2.1. The planning phase of the JCBPP procedure

A. The decision making process

Main reasons for conducting a JCBPP

Already back in 2011, during the application process for the HAPPI project, the consortium was planning to conduct the procurement procedure as a JCBPP in order to allow the purchase of an innovative solution in as many Member States as possible. Thus, the decision to conduct a JCBPP procedure within the EU financed project was defined even at the outset and all participating institutions declared their commitment to conduct the procurement procedure in an innovative way to the European Commission.
Once the consortium of partners was set up, the institutions identified some objectives in their respective healthcare systems and learned that the agenda of healthy aging meets keen interest in many EU countries. There was a particular need to address the European market and to search for innovation in this field, thus the HAPPI project was considered the ideal vehicle to achieve this target. Another driver for the participation in the project was the possibility of matching the opportunity offered by an EU financed project with key priorities in health care systems. For the CPBs involved, it was a chance to develop their thinking and look at joint cross-border procurement in an innovative way, via an EU project. In other words, the EU project provided the vehicle for the partners to work together and to test/develop a new purchasing technique.
For the partners, the motivation to conduct a joint procedure was driven by the wish to evolve and to think outside the regional landscape by sharing experiences with other CPBs in the EU.
On the other hand, the driver for the end-users calling off from the contracts was to obtain an innovative product without having to conduct extensive research and own procedures but also the possibility to purchase a solution co-financed through the European Commission.

The decision on the specific project partners

In order to identify the most suitable partners to join the HAPPI consortium, Resah explored which CPBs operating in the health sector had similar structures and sizes and would thus potentially have similar procurement needs. With some of the institutions, the coordinator already had previous exchange experience, meaning that the first steps towards cooperation had already been taken.
The HAPPI project unites eight central purchasing bodies as full or associated members, three procurement and innovation experts and two partners from the academic field. The JCBPP procedure, as such, involved only the five CPBs acting as full members of the HAPPI project.

The decision on the specific products

The decision on the specific area of procurement was arrived at via a demand driven process and was based on a real health care need identified among end users after an important online market sourcing based on the platform which was created in the HAPPI project.
Compared to the procurement of a standard good or service, the decision making process regarding this subject of procurement was very much influenced by the potential solutions offered by the market. The partners did not know from the beginning which type of products and services they wanted to purchase and went through a selection and analysis process covering over 150 solutions.
Finding the right kind of products which also met the innovation requirements (new to the market, new to the procurer) was a challenging mission, especially as the opinions of the various decision makers on the innovative character of particular products were sometimes far apart.

B. Considerations regarding market and product

Given the innovative character of the HAPPI project, the market analysis was conducted in such a way as to detect innovative solutions in the field of elderly care.
As the exact subject of procurement was not known from the beginning, the assessment of concrete demand for innovative solutions turned out to be a cumbersome process. Not only that the CPBs which each represented a multitude of contracting authorities had to determine their customers' demand, they also had to define common needs for all the end users. In a tender for standard goods and services, this process would not have caused any difficulties, but given the fact that the products needed to be in their first phase of application or marketing and also new to the procurer, the contracting authorities were obliged to find an optimal solution for meeting the expectations on the demand and supply side.
The chosen approach was to first reach out to the market and understand its potentials as regards existing innovative solutions in the European healthcare sector. In order to reach as many economic operators as possible and to support the purchasers in the market research process, an online platform was created where every interested company could register and present its innovative solutions.

Parallel to this initiative, special information days in four different countries (Austria, France, Italy and UK) were organised in collaboration with the respective Chambers of Commerce in order to meet the possible bidders and inform them about the project, objectives, the opportunity to share their innovations on the HAPPI platform and how to participate in the tender.
The consortium partners wanted to first understand the possibilities the market could offer and then match these possible innovative solutions with potential needs and finally launch a public tender. The approach chosen was more or less "market to contracting authorities" and not as in most cases, "contracting authorities go to market".
As a result of the promotional activities of the CPBs and the Chambers of Commerce, 150 solutions were submitted on the HAPPI platform and over 600 people participated in the four information days organised, most of them (over 50%) representing SMEs in the healthcare sector.
Out of the 150 solutions registered on the platform, 50% were submitted by companies from the countries where the consortium organised the information days (Austria, France, Italy or UK) and 50 % from other EU Member States.
The challenge in the project was about seeking out innovation which most of the contracting authorities were not aware of. The consortium focused on involving SMEs as they knew that in mainstream health care projects, most of the suppliers are large companies which are not necessarily the ones that could bring forward much of the innovation for which they were looking. Through the online platform, the contracting authorities wanted to give innovative SMEs the chance to become visible. Bidders did not have to be mass producers of the products or services and were given easy access to promote their solution.
Economic operators had been informed in advance about the intention to conduct a JCBPP procedure and about the requirement that their solution would have to be deliverable in all participating countries.
The sector in which the market assessment was performed was extremely broad, as the contracting authorities did not want to restrict the portfolio to elderly care only, but invited economic operators to present innovative solutions for the entire healthcare sector.
In this way, they were able to gain deep insight into the market and learn about solutions and companies operating in the sector. During this market analysis, the contracting authorities were able to understand what the market could offer and, as a result, they were able to modulate their demand.
The fact that economic operators were able to register their solutions on the platform gave rise to a fund comprising a multitude of interesting innovative products from complex software solutions to rather simple but very useful devices.
These solutions were analysed in three parallel, simultaneous sessions in Paris, Torino and London by expert committees consisting of practitioners from hospitals and nursing homes, people working in the field on a daily basis who knew the needs of contracting authorities and understood the technical aspects of the presented solution.
In this way, the expert committees reviewed all solutions presented on the platform, with the objective of trying to find solutions that addressed a need and also to identify whether that solution could be purchased in a cross-border procurement procedure.
Finding innovative goods and services which could address common needs in all participating countries and which could be easily bought, taking into consideration the different languages, the different cultures and the legal requirements was a real challenge for the contracting authorities which were implementing a JCBPP procedure for the first time.
They decided to purchase solution(s) which met the needs in all five participating countries.

After the expert committees decided on the most suitable solutions, the project team clustered the ideas under concrete subject headings for procurement and started to draft functional specifications.
The solutions were short-listed by the expert commission and approved by the steering committee of HAPPI.

C. Drafting of the tender documents

Legal framework

The JCBPP within the HAPPI project was based on an in-depth legal study[11] that analysed the different possibilities offered by Article 39 of Directive 24/2014/EU for conducting the tender and defined the best contractual and organisational solution for the contracting authorities.
By the time of the implementation of the project, the Directive had not yet been transposed into the respective national procurement law of the participating Member States. The chosen solution in the case at hand was a joint procurement in a lead buyer model. As coordinator of the HAPPI project, Resah was designated to act as lead buyer. In order to mandate Resah and to define all the elements connected with the allocation of roles and responsibilities of the partners, the public procurers signed an agreement establishing a European purchasing group: [12] "Innovative Solutions for Healthy Ageing- HAPPI".
In concrete terms, the contracting authorities in this procedure were: the European purchasing group represented by Resah, SCR Piemonte, MercurHosp, FHL and NHS-CS, all acting as regional purchasing bodies that were members of the purchasing group and EHPPA, which is considered to be a European CPB.
At the time of publication of the call for tender Directive 2014/24/EU had not yet been transposed into the national legal orders of the CPBs involved. Yet, the procurement laws of the respective Member States provided various possibilities for joint procurement, particularly allowing aggregated procurement by making use of the activities of a CPB.
According to French law, public purchasers are allowed to aggregate their demands by forming a grouping of contracting authorities. This organisational model allows for coordination between contracting authorities in order to jointly award a contract based on a single procurement procedure. The grouping („groupement de commande") is established by an agreement of the participating partners. Eventually, in the HAPPI project the chosen method took advantage of this form of cooperation as provided by French procurement law.
The framework agreement was awarded in an open procedure under French PP law.
Using French law for awarding the framework agreement did not raise any specific problems for the partners. The decision to use French procurement law was mainly taken due to the leading role of Resah.
Each contracting authority was able to award subsequent contracts on the basis of the framework agreement concluded and executed them according to the respective national legislation.
In this sense, the CPBs managed to harmonize the rules under the different legal systems, both related to PP and to national legal provisions applicable to the execution of the contract.
The framework agreement was designed in such a way that it could be used by the partners of the project and their customers. In this way, both advantages and risks related to the purchase of innovative goods could be shared.
The contracting authorities provided in the tender documents that disputes between parties concerning the framework agreement would fall within the exclusive jurisdiction of the competent court in Paris.
The competent instances for complaints arising from the award of subsequent contracts are the respective national review institutions.

Design of the procedure

As the objective of the project was to purchase innovative goods, the contracting authorities considered that the best way of awarding a framework agreement would be through an open procedure. Even though some potential suppliers were identified before the publication of tender documents through the platform, the buyers' intention was to allow as many economic operators as possible participate in the tender. From this perspective, the open procedure with EU wide publication was essential.

[11] The study was conducted by Prof. Gabriella M. Racca, professor of administrative law at the University of Turin

[12] The French legal institute "Groupement de commande" is an organisational model for PP that allows contracting authorities to conduct a single procurement procedure and to award a contract together.

The framework agreement was concluded for one year with the possibility of renewing it three times for a period of twelve months per renewal period. Its maximum duration was set for four years.
After analysing the solutions proposed by the market, the project partners decided to divide the tender into five technical lots: (1) Fall detection and alert system to optimise management of falls; (2) Treadmill for rehabilitation and analysis of walking disorders; (3) Walking course for preventing falls and maintaining independence; (4) Bed temperature management system;
(5) Chair enabling users to maintain independence and reducing effort for caregivers.
Resah was mandated to conclude a framework agreement with a single economic operator per lot on behalf of the other procurers in the consortium.
The parties in the European purchasing group, which was established for the joint tender, were EHPPA and other central purchasing bodies, as defined under Directive 2004/18/EC; such were thus allowed to acquire supplies or services for contracting authorities or to enter into procurement contracts or framework agreements on behalf of other contracting authorities.
It is important to mention at this point that in the participating Member States there was no obligation for contracting authorities to purchase through a CPB. Hence, this was also the case in the context of this procedure. Healthcare institutions in Luxembourg, France, UK, Italy and Belgium did not have an obligation to use the framework agreement signed by their respective national CPB.
The contracting authorities decided to act as wholesalers as regards their relation to their customers, meaning that the CPBs signed the framework agreement in their own name and subsequently provided access to end users interested in purchasing the innovative solution.
The access to the framework agreement is free of charge and implied the establishment of a contractual relationship between the healthcare institution and the respective CPB in their Member State before they could enter into a subsequent contract with the supplier.
The framework agreement is available to customers of the various central purchasing bodies of the five participating Member States. Some of the CPBs can offer access only to their members, others, like Resah, are able to make the framework agreement available to all healthcare public or private non-profit organisations in France, whereas EHPPA can grant access to all the public and private non-profit healthcare organisations in Europe.
Subsequent contracts were awarded without competitive tendering and within the limits of the terms laid down in the framework agreement; thus, no substantial changes to the provisions of the framework agreement were allowed.
The **award criteria** used were both price and quality.
For each lot, the contracting authorities defined a series of technical criteria which the innovative solutions had to fulfil (e.g. in the case of the fall detection and alert system, the criteria chosen were: adaptability to different fall risks and to personal working conditions, the quality of alerts, the security and confidentiality of collected information, quality of support, etc.). For each technical criterion and the sub criteria, a maximum number of points were set in the tender documents.
As the contracting authorities were purchasing innovative solutions, priority was given to quality over price.
The requirements in respect of the price were defined in the tender documents and bidders were asked to quote price caps. For the award of subsequent contracts, the supplier was not allowed to propose prices higher than those provided in the initial offer for the award of the framework agreement.
It was also defined that, during the performance of subsequent contracts, the prices of services included in the framework agreement could be revised downwards in the context of promotional price proposals made by the supplier.
At each extension of the framework agreement, the supplier was also allowed to propose a price reduction.
As the exact solutions to be purchased were not known from the beginning, the assessment of concrete demand for the innovative solutions was rather difficult; thus, it was also very challenging to estimate the approximate contract volume. The intention of the contracting authorities was to make the contract available for all healthcare institutions in Europe, consequently it was not possible to define an approximate quantity in advance.
As the procurement law applicable to the tender was the French law and the call-offs were made under the respective national legislations, it was necessary to specify in the tender documents all the relevant details referring to the national requirements for subsequent contracts. The tender documents included details on rules for the execution of the contract in each of the participating countries, e.g. provisions on the form of subsequent contracts, terms of delivery, invoicing, etc.
Each call-off from the contract was conducted on an individual basis by the contracting authorities or the institutions they were representing.
Building of consortia was possible either in the form of "joint-liability-only" or "joint-and-several liability" group, pursuant to the specifications of the French PP code.

One of the main challenges in this phase was to define a common contract model in the legal systems of all Member States involved in the project. The contracting authorities agreed to draft the framework agreement using a Resah template and each clause of the template was subject to two analyses:

- A first analysis in terms of its compliance with the law of the five Member States involved in the HAPPI project
- A second analysis in the light of the best contractual practices in order to choose the most efficient clause.

All clauses consistent with the law of the five Member State involved in the project were included in the "Special conditions of contract", whereas provisions specific to each Member State were the subject of an annex to the contract.
Most of the clauses specific to the law of the five Member States relate to performance conditions, e.g. invoicing, delivery of the ordered goods, payment deadlines, etc.

Language

In order to allow as many bidders as possible to place an offer and to encourage their participation, the project partners decided to draft the tender documents and to conduct the procedure in three languages, namely French, Italian and English.
Concerning the language used for drafting the offers, French procurement law obliged bidders to submit the administrative part in French. Nonetheless, they were allowed to draft the technical part (technical response framework, technical brief and technical datasheets for all materials constituting the tender) in either English, French or Italian.
As bidders were able to communicate with the contracting authorities in any of the three languages, the CPBs were confronted with the challenge of translating each piece of correspondence into two other languages. The interview partners admitted that this process was difficult and time consuming and only possible because it was took place within the framework of an EU pilot project, meaning that there was also a certain budget allocated to translation costs.
Initially it was even planned to translate all offers received in order for all partners involved to be able to analyse the bids, but as the number of offers that would be received was not predictable and thus translation could have cost significantly more than the allocated budget, the contracting authorities opted for a more practical approach. They created an analysis procedure where each of the partners analysed the offer received in its own language and wrote the conclusion of the analysis in English in a common analysis report template.
The HAPPI project partners put considerable effort into supporting economic operators with placing bids. As the tender documents had to be uploaded onto a French website, which had no English or Italian version, the team set up a helpdesk in English and Italian to inform economic operators how to create an account on the tendering platform and download the HAPPI tender documents, how to ask a question on the FAQ page and how to read the answers, as well as how to upload an offer on the platform.

e-procurement aspects

The bidders were able to choose between submitting the tender in electronic or paper format[13].
Pursuant to the French public procurement code, tenderers submitting their documents electronically may also send a back-up copy on paper or on a physical electronic medium. The back-up copy will be opened if a malware program is detected in applications or tenders sent electronically or if an application or tender was sent electronically and was not received within the deadline or could not be opened, provided that the back-up copy arrived within the deadline.
Applications sent in paperless format or on physical electronic medium had to be signed by an authorised person using an electronic signature certificate guaranteeing the tenderer's identity.
To be valid, the electronic signature had to comply with the French security regulations or guarantee an equivalent level of security.
At a very early stage, Resah also provided extensive information on how to obtain the e-signature in France, in order to make sure that potential bidders which wanted to submit an electronic tender, could use this option.

[13] For paperless submission, the platform www.achat-hopital.com was used.

4.2.2. The tendering phase

The **publication** of the tender documents was firstly on the French official journal site and then transmitted to the European Union Official Journal.
As the procedure was conducted under French law, it was obligatory to use this platform which was only available in French. In order to overcome barriers resulting from this situation, and to allow non-French speaking bidders to download the tender documents which were available in three languages, as mentioned above the lead buyer created a helpdesk and guidelines for interested economic operators.
Even before the publication of the tender documents, the project partners conducted an important communication campaign in Europe so as to encourage economic operators to take part in the tender.
In order to allow as many bidders as possible to prepare their offers, the project partners decided to extend the deadline for submitting the bids from 42 days, which is the requirement in French law, to two months.
Bidders could ask questions in one of the three languages used in the tender through the procurement platform used for the publication of tender documents. In order to support bidders in this phase of the procedure, as mentioned above the contracting authorities set up a help desk which guided economic operators through the process of bidding. The questions they addressed mostly tackled issues regarding the procedure and not the content of the tender documents as such. No corrections of the tender documents were necessary and there was no complaint addressed at this stage.

As was allowed by the tender documents, economic operators submitted electronic and also paper bids, consequently the opening of tenders was conducted both electronically and physically.
Responsive bids were placed by economic operators in four of the five lots, whereas the only offer received for the fifth lot was considered to be insufficiently good to address the functional need described in the tender documents and was therefore excluded.
In lot one, the contracting authorities received four bids, in lot two there was only one offer and in lot three two economic operators submitted a bid. Lot four did not receive any bid.
The three lots were awarded to three different companies, two SMEs from France and one SME from the Netherlands. It is important to note that one of the winning bidders is not located in any of the contracting authorities' MS.
The project partners set up an evaluation committee to assess all tenders and Resah coordinated the work of this committee.
All offers received were complete and contracting authorities did not have to ask for further specifications or additional documents of proof.

4.2.3. The post award phase

The project leader and the participants created a special document, explaining the call-off procedure for each country, as the execution phase differed slightly from one country to another. This document was sent both to the supplier and to all contracting authorities which were interested in calling off.
The contract management is conducted by each CPB, separately; nevertheless, there is an obligation to report the call-off results to the lead buyer, which centralises the data.
In order to promote the call-off from the framework agreement awarded, the contracting authorities organised information days for the hospitals and health care institutions in order to share with them the most important information on the products awarded and create the link between them and the relevant suppliers. Suppliers had the chance to meet with the contracting authorities and build trust and understanding for the functionalities of the products they are selling.
The table below provides information about the bidders and awardees of the tender as well as the number of contracts that have been concluded so far. Moreover the table shows the amount of CAs which actually called off from the contract (in some cases one contract can be used by several CAs) as well as the called-off volume.

HAPPI Tender	Lot 1: Fall detection and alert system	Lot 2: Treadmill for rehabilitation and analysis of walking disorders	Lot 3: Walking course for preventing falls and maintaining independence
Number and nationality of bidders	4 bidders from France	1 bidder from the Netherlands	2 bidders from France
Nationality of awardee	France	Netherlands	France
Number of call-offs	France: 2 contracts // 10 CAs Belgium: 1 contract // 1 CA	Netherlands: 1 contract // 1 CA Luxembourg: 1 contract // 1 CA Belgium: 1 contract // 1 CA	France: 1 contract // 1 CA Luxembourg: 2 contracts // 2 CAs Italy: 1 contract // 3 CAs
Total called-off volume	EUR 80,000	EUR 150,000	EUR 15,000

As all health institutions purchase within a domestic relation to their CPB, the cross- border nature of the contract was not a problem for the end users; the reluctance of the customers to use the contract is more related to the innovative character of the products.
The end users are accustomed to procuring standard goods and services and it is difficult to convince them to buy new products.
For the call-off phase, the CPBs acted as coordinators since they were providing access to the contract, making sure that the institution calling off understands the terms of the contract, the pricing, delivery conditions, etc. The CPBs were informed about the call-offs from the contract.
The tender documents provided for the obligation to report and monitor the performance in the contract.
Semi-annually, contracting authorities request the suppliers to complete a report informing them of the subsequent contracts awarded and of consumption by all healthcare institutions which awarded a subsequent contract.
The suppliers communicate this information through a file provided by GIP Resah (in Excel format).

4.2.4. Other relevant aspects concerning the JCBPP project

Roles and responsibilities of partners

As consortium leader of the HAPPI project, Resah also acted as lead buyer in the JCBPP tender and coordinated the procedure from an administrative point of view too.
The other participating CPBs contributed to the drafting of the tender documents and offered in particular legal input related to their national legislation.
Once the project team decided on the innovative goods to be purchased, a technical and a legal committee made up of relevant specialists from each CPB were set up to design the common tender documents.
During the coordination phase of the project, it was necessary to organise several physical meetings, especially when the decision on the innovative solutions to be tendered was taken, but most of the coordination work was conducted via telephone conference.
Legal advisors and procurement specialists from each of the participating CPBs worked together on the different parts of the tender documentation.
The HAPPI project as such had a steering committee, which included representatives from each participating institution and which constituted the main decisional body in the project and in the JCBPP procedure.

Lead buyer	Partner CPBs
• Administrative coordination of the tender • Drafting of tender documents • Organisation of partner meetings • Participation in partner meetings • Participation in the steering committee	• Support in drafting of tender documents • Checking the construction of the tender • Bringing in country specific legal input • Participation in partner meetings • Participation in the steering committee

Table 2: Roles and responsibilities of HAPPI partners

Because of the coordinating role of Resah, one of the main benefits the partners saw in the collaboration was the fact that there was no duplication of efforts to conduct the procedure in each country. The tender was run on behalf of all the organisations and the only contributions needed from the partners were related to checking the construction and supplying their own legal input.

Staff involved in the project

Resah involved five persons in the coordination of the JCBPP project, the project coordinator, the management of the institution, one specialised purchaser and a legal advisor.
NHS participated with two persons: the manager of the institution as well as one procurement specialist and considered that as compared to a procedure conducted at national level, fewer staff were involved due to Resah's coordinating role. FHL involved three specialists in the procurement procedure, with legal, technical and economic expertise; SCR participated with two persons.

As all the CPBs involved can rely on specialised staff both in the legal and technical fields, external staff was assigned only for the translation of documents.
The material support offered to the project was a co-financing of 95% of administrative costs through the European Commission and 20% financing of the product costs.
Other support or assistance received in the participating Member States included the backing of the respective Chambers of Commerce in disseminating information on the planned tender and organising the information days.

Time spent on the procedure

As the JCBPP was conducted within the framework of an EU project, the development of the idea to jointly purchase innovative solutions in the healthcare sector was already defined in the application for the project. HAPPI started in September 2012 and the launching of the tender was in September 2014. During these two years, the project partners created the platform, informed the market, set up an expert committee and drafted the tender documents.
The tender documents were designed and drafted over 6 months.
Participating CPBs considered the process until the determination of the innovative solutions to have been rather difficult in terms of invested time. Compared to a procedure conducted at national level, the coordination with all the five partners took longer than it would have taken in a domestic situation.

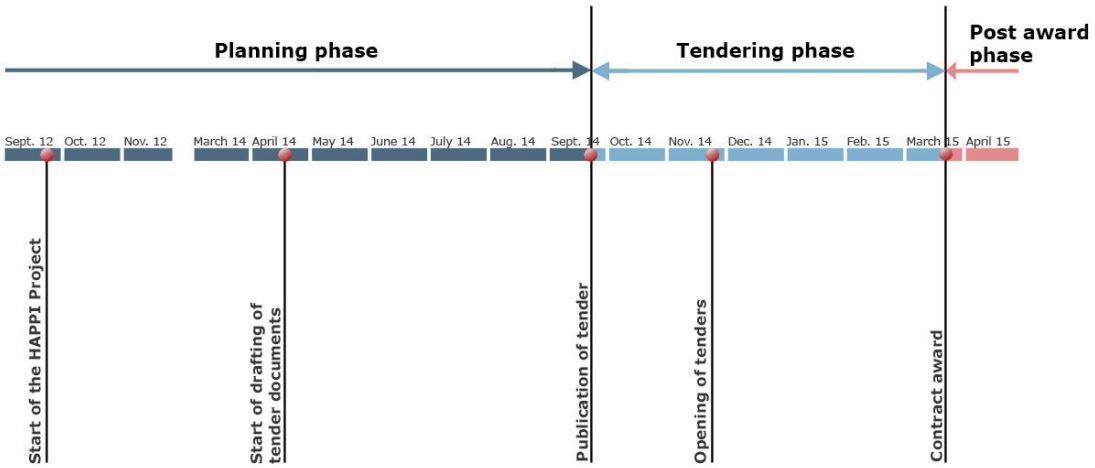

Figure 8: Timeline HAPPI Project: Purchase of innovative goods and services for active and healthy ageing

4.2.5. Opportunities and challenges

A. Opportunities

Partnership and exchange of good practices

One of the most important benefits of the HAPPI project as such and the JCBPP procedure conducted within the project in particular was the possibility of exchanging good practice with the participating CPBs as well as learning about new procurement practices in other Member States.
The staff involved in the project was challenged to be creative and innovative and, on top of broadening their knowledge on public procurement, they had the chance to improve language and project management skills.

One of the sustainable achievements resulting from the cooperation of CPBs within the HAPPI project was the creation of a procurement organisation called EHPPA, an alliance of non-profit Group Procurement Organisations, which promotes cross-border cooperation between healthcare institutions when purchasing goods and services, especially in the field of innovation.
As EHPPA was included on the list of contracting authorities purchasing on behalf of their members, it could provide access to the framework agreement to a multitude of other healthcare organisations in Europe, ensuring that the innovative products are bought on a larger scale.

Procedural aspects

Due to the coordination role of the lead buyer, the participating contracting authorities considered that they had less administrative burdens than in a procedure at national level. There is definitely a benefit in having just one tender procedure for all participating CPBs in terms of time saving, even if there are complexities to deal with.

Implementing a JCBPP procedure for the first time was considered to be more difficult as the contracting authorities had to go through a learning process, but they agreed that once the procedure is conducted successfully, there is a model to build future procedures on.

Having committed partners, with the same aim of achieving the set goals, was one of the most important advantages in the implementation of the project.

The newly created European communication network between CPBs, on the one hand, and contracting authorities and economic operators, on the other hand, was one of the main gains within the HAPPI project.
The platform offered a very good overview on innovative companies on the EU market, not only permitting a selection of the most suitable solutions, but also a vision of other innovative goods and services for future public procurement procedures.

On top of this, the communication platform created within the project inspired the CPBs to set up their own platforms where public procurers can communicate with the market in order to collect innovative solutions[14].

It is important to note that one of the crucial advantages in the JCBPP procedure initiated within the HAPPI project was the financial contribution by the European Commission. The contracting authorities acknowledged that some of the activities, for example the translation of the tender documents into three different languages, would not have been possible without this support. Not only was the administrative process covered by this contribution but also the purchasing of the innovative solutions is supported through EU financing, offering an extra incentive for the buyers to call off from the framework agreement.

Market

Due to the strategy chosen in the market research, the contracting authorities were able to increase their know-how regarding the EU wide landscape of economic operators active in the field of health innovation. Not only did they have the chance to learn about the relevant peculiarities in each of the markets analysed and respond to the actual needs of the buyers, but they also gained knowledge on solutions which could be used in the future.
The pre-award phase offered more awareness and visibility of economic operators and their innovations. Even though not all products presented have been taken forward, they were submitted as part of the tender and have been showcased to buyers. The exposure to suppliers from other countries, which contracting authorities might normally not have dealt with, as well as awareness for product ranges is considered to be of benefit for both economic operators and contracting authorities.
In the context of procurement of innovation, one of the main benefits was to the economic operators as they had the possibility to discover new markets, and new contracting authorities.

B. Challenges

Procedural aspects

One of the main barriers encountered in the HAPPI JCBPP project was related to the process of publication of the tender in conjunction with the problem of language. While the project team drafted tender documents in three different languages, the publication platform of the French official journal and Resah's publication platform were available only in French, meaning that for non-French speaking economic operators, it was rather difficult to access the documents.
As the platform of the European Official Journal, TED, does not technically permit the upload of tender documents, the contracting authorities were forced to publish the tender on national platforms.

Another challenge during the tendering phase was related to the evaluation of the offers. As the contracting authorities agreed to have multi-lingual offers (application documents in French, all other documents in any of the three languages), they had to work out a smooth process of evaluation in order to ensure a transparent and well-founded assessment of the bids.
They created a workflow which permitted the members of the evaluation team to check the documents submitted in their own language. This process was not only difficult because of the different languages but also because it involved a lot of coordination work and the elaboration of a new process for partners in five countries.
In the post award phase, one of the most challenging activities was to promote the contract and encourage buyers to call off from the framework agreement. As most of them were purchasing innovation in a joint cross-border context for the first time, the project team created promotional materials like brochures and videos to present the solution and how to call-off. They also organised different advertising events in Paris, Turin, London and Luxembourg to promote the contract and invited the three suppliers to showcase their solutions.

Legal

The contracting authorities mentioned that conducting a JCBPP procedure is more an issue of legal complexity rather than a legal challenge.

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[14] One example of this is Resah's own online sourcing platform: http://www.innovation-sante-autonomie.fr/

Having a legal study at the basis of the procedure and experienced legal advisors within the participating CPBs helped to overcome the challenge of dealing with different interpretations of legal aspects, especially between the UK and the other Member States.
When it comes to consolidating legal agreements and the technical aspects of the framework agreement, inevitably considerable time has to be invested.
The participating CPBs considered that the work on the drafting of tender documents and strategy was inspiring, as the partners were able to share their views and ways of conducting this phase. Understanding different ways of applying the same rules deriving from the EU directives was a valuable exercise.
The coordination of the complex work was considered a big challenge but at the same time also a chance to understand other perspectives and to find common solutions which are in line with national legislation and at the same time meet the expectations of all contracting authorities involved.

Market

In an incipient phase, one of the main challenges was to win the interest of the market for the procurement of innovation.
As the concrete innovative solution was not defined from the very beginning, the collection of demand from contracting authorities was a cumbersome process, nevertheless, it is fair to mention that this aspect is rather related to the innovative nature of the procedure, and not necessarily to the JCB one.

For the suppliers, selling into several countries was not easy, especially for one of them who was an SME with no selling network developed before.

4.2.6. To sum up

HAPPI tender
Name of the tender: Purchase of innovative goods and services for active and healthy ageing TED number 2014/S 191-336569
Year of publication: 2014
Participants: 5 CPBs: (1 lead buyer, 4 participating organisations)
Nationality of the lead buyer: French
Number of Member States involved: 5 Member States
Procurement volume: n.a.
Type of procedure: Open tender to award a framework agreement with a single economic operator per lot
Design of the tender: framework agreement for one year with the possibility to extend the contract 3 times for a period of one year each, division into 5 technical lots
Number of bidders: Lot 1: 4, Lot 2: 1; Lot 3:2
Nationality of the awardees: Lot 1: French, Lot 2: Dutch, Lot 3: French
SMEs (yes/ no): yes
Language of the procedure: French, Italian and English
Use of the contract: Award of subsequent contracts by CAs, monitoring of the contract by the lead buyer
Savings: n.a.
Type of agreement between the parties: Consortium Agreement and Grant Agreement within the EU co-funded project HAPPI
Legislation: FA under French PP law, contractual law of the CA using the contract
Jurisdiction: competent court in Paris for disputes concerning the FA; competent national review institutions for complaints concerning the award of subsequent contracts

Table 3: Summary of the HAPPI tender

4.3. Citrix Software and Appliances, 2016 – BBG-SKI

4.3.1. Introduction and general framework

BBG and SKI are two CPBs from Austria and Denmark, which in 2016, conducted a JCBPP for the purchase of Citrix software licenses and appliances.
Initially, the joint procurement project involved three contracting authorities. Besides SKI and BBG, the Finnish CPB, Hansel, was also involved in the project but was obliged to step out due to national legal restrictions related to the cross-border nature of the procedure. In order to assess the most suitable area for a JCBPP, the three CPBs started with a benchmarking exercise in respect of different products: office supplies, flight tickets, hardware, copy machines and software and found out that that the most appropriate product for a first JCBPP project is standard software.
For both organisations, it was the first time they conducted a JCBPP procedure and the main drivers to initiate it were to explore the possibilities of conducting JCBPP between two CPBs and also to achieve better prices by aggregating volumes, pushing the software manufacturer to act Europe wide and to eliminate nationally limited strategies.
The subject of the tender was the delivery of Citrix software licenses as well as support and maintenance, meaning that it was a manufacturer specific tender[15], which represents a particular way of designing a tender. Given the special functionality of this software, it was not possible to draft product-neutral specifications. Nevertheless, the competition between bidders was not hindered by this manufacturer-specific element. Given the special situation on the market, the competition was between the distributors and resellers of Citrix licenses on the European market.
Out of the projects analysed, this JCBPP is the only one which was not supported financially through EU funding or did not have any administrative backing from a joint coordination platform set up by the participating parties.

Bundesbeschaffung GmbH (BBG) - Austria

BBG is the Austrian central purchasing body at national level administration. The Austrian Government founded BBG by law in 2001[16] to provide central procurement services to federal Ministries, in particular to negotiate framework contracts and make them available to the contracting authorities at central level administration. Its primary tasks are to bundle requirements to obtain better prices and terms from suppliers and to standardise public purchasing to reduce processing costs and legal risks.
The BBG is a non-profit organisation providing free services to its mandatory customers. Contracting authorities belonging to the central administration are obliged to order from BBG contracts - unless they are able to obtain the same product for better conditions. Other public sector organisations like universities, communities, provinces and state-owned organisations may use BBG's contracts and services on a voluntary basis. BBG is owned by the Austrian Ministry of Finance. It concludes around 200 contracts per year with an average accumulated volume of EUR 1.4 billion (including mini tenders)[17].

Statens og Kommunernes Indkøbs Service A/S (SKI) - Denmark

SKI is the Danish central purchasing body, which is a company owned by the Ministry of Finance and the National Organisation of Municipalities.
Every year the Danish public sector spends approximately DKK 300 billion on goods and services provided by private companies. SKI's role is to help the public sector save money on public procurement.
By centralising the public sector's procurement needs, SKI can obtain larger savings and better contract terms so that each individual public organisation, whether national, regional or local, does

[15] As highlighted in the Guidelines for Public Procurement of ICT Goods and Services, SMART 2011/0044, Europe Economics Chancery House, "the use of brand names in tenders appears to be more extensive than reported in literature (…). Brand names are used to request specific named ICT products or systems, to describe the technical nature of such products or systems, or to specify the technical constraints in terms of compatibility.
The use of brand names in tenders is only allowed under the Procurement Directive in "exceptional circumstances", when there are no other possible descriptions that are both sufficiently precise and intelligible to potential tenderers. Even a functional requirement of compatibility with branded software is not a legitimate functional requirement according to the Directive. Instead, good practice for software procurement suggests that such compatibility requirements should refer solely to compatibility based on standards.
The use of proprietary or restrictive technical specifications also appears to be fairly common in public sector tenders". See the guidelines on: http://cordis.europa.eu/fp7/ict/ssai/docs/study-action23/d2-finalreport-29feb2012.pdf
[16] Federal Procurement Agency Act (BBG Law) link BBG Gesetz
[17] Figures from 2015

not need to invest resources in the long and often complicated process involved in carrying out a tender. A tender process in SKI results in a framework agreement that specifies which goods or services are for sale and the conditions and prices involved.
By using a framework agreement from SKI a public organisation can order its goods or services and be certain that requirements stipulated by the EU directives have been met. SKI's focus is on standardised goods, for example furniture, diapers, pens and information technology - both hardware and software - as well as complex technology services where the public procurement process can be standardised. When SKI uses its resources to deal with these standardised public procurement areas, the public organisations can use their own resources more effectively on submitting tenders in areas where local knowledge and experience are important. The average procurement volume of SKI is EUR 775 million (excluding mini-tenders which are not conducted by the CPB). Each year SKI conducts approximately 20 framework agreements and has around 60 running framework agreements in place.

4.3.2. The planning phase of the JCBPP procedure

D. The decision making process

Main reason for conducting a JCBPP

The main driver for conducting a JCBPP procedure was the two CPBs' aim to explore the practical possibilities of implementing such a procurement technique and to test the legal, organisational and economic aspects that need to be taken into consideration when walking this unknown/new road. As this was one of the first attempts in the EU where CPBs from different Member States tried to purchase jointly, the project had a rather experimental character and both institutions were prepared to deal with challenges and barriers or even show-stoppers.
Both institutions are very experienced CPBs with solid knowledge of strategic, legal and procedural aspects of public procurement as well as market structures.
Both institutions identified Citrix to be an appropriate product to start with and they found out that both were dealing with the same challenges in their tenders, namely the monopolistic market and its extremely fragmented structure influenced by the marketing and selling policies of the software developer and its distributors in the regions.
As prices for the same product differed so much from one country to another, there was a big incentive to explore new ways of procurement in order, at least for one CPB, to achieve better conditions and to push the software developer to act Europe wide by eliminating regional pricing strategies. The primary aim for the CPBs involved was not necessarily to increase their scale or bargaining power for the chosen product, but rather to test the possibilities for conducting this tender in a cross-border manner.

The decision on specific project partners

Initially there were three CPBs interested in running a JCBPP procedure: BBG from Austria, Hansel from Finland and SKI from Denmark. Their decision to work together was taken at management level and was based on previous links within a Network of European CPBs as well as on the similar structures and working cultures of the three institutions. The collaboration between the three CPBs continued up to the point where, due to legal aspects of the Finnish Constitution, Hansel was obliged to withdraw.

The decision on a JCBPP for the specific product

When the partners decided to pilot a JCBPP, they agreed to set a rather "easy target", meaning they intended to find a public procurement object which would not involve a highly complex procurement strategy or complicated technical specifications.
To determine the right product to start with, the CPBs first conducted an internal needs analysis and defined a series of products which they then started to benchmark. The following products were analysed in terms of prices, contractual conditions and specifications: software licenses, laptops, office supplies, office machines (copying machines) and hotel services in Brussels. The most suitable and easiest product to start with turned out to be standard software, specifically the Citrix software, as all the CPBs involved had a demand for this type of software and it does not imply complicated technical specifications or delivery processes.

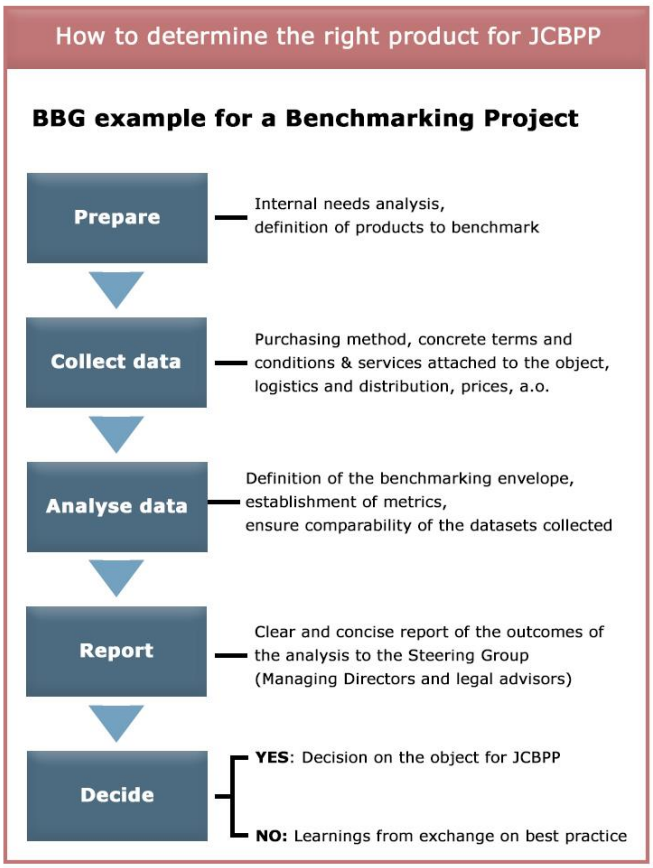


Figure 9: BBG example for a Benchmarking Project

At that point, BBG had a framework contract in place which was still running for one year and would therefore have launched a follow-up tender in near future. For SKI, the conclusion of a framework agreement for CITRIX licenses did not conflict with their internal planning although they had a running framework agreement for various standard software products including CITRIX licenses. In this sense, SKI did not have any time pressure for concluding a contract, while BBG did.
In order to better understand the peculiarities of the chosen strategy, the next chapter describes the market structure as regards CITRIX and its relation to distributors and resellers, all of which had a decisive role on the design of the tender.

E. Considerations regarding market and product

Market analysis

Both participating CPBs are very experienced in conducting complex market analysis for the tenders they are planning, including market dialogues and benchmarking exercises.
In this specific tender, each CPB analysed its domestic market but the situations in other Member States were not taken into account.
Before finally deciding on the specific tender object, the CPBs contacted the software manufacturer to inform it about the planned pilot project and to assess its reaction. Given the structure of the market, the acceptance and support of the manufacturer was of outmost importance for the results of the tender.
Additionally, each organisation entered into an informal dialogue with the national representatives of CITRIX in order to obtain more in-depth information on the product as well as on possible delivery structures in a cross-border situation. Through these dialogues, the CPBs also learned about the manufacturer's local distribution system. These insights were of outmost importance for the design and planning of the procurement strategy.

Distribution structure of Citrix

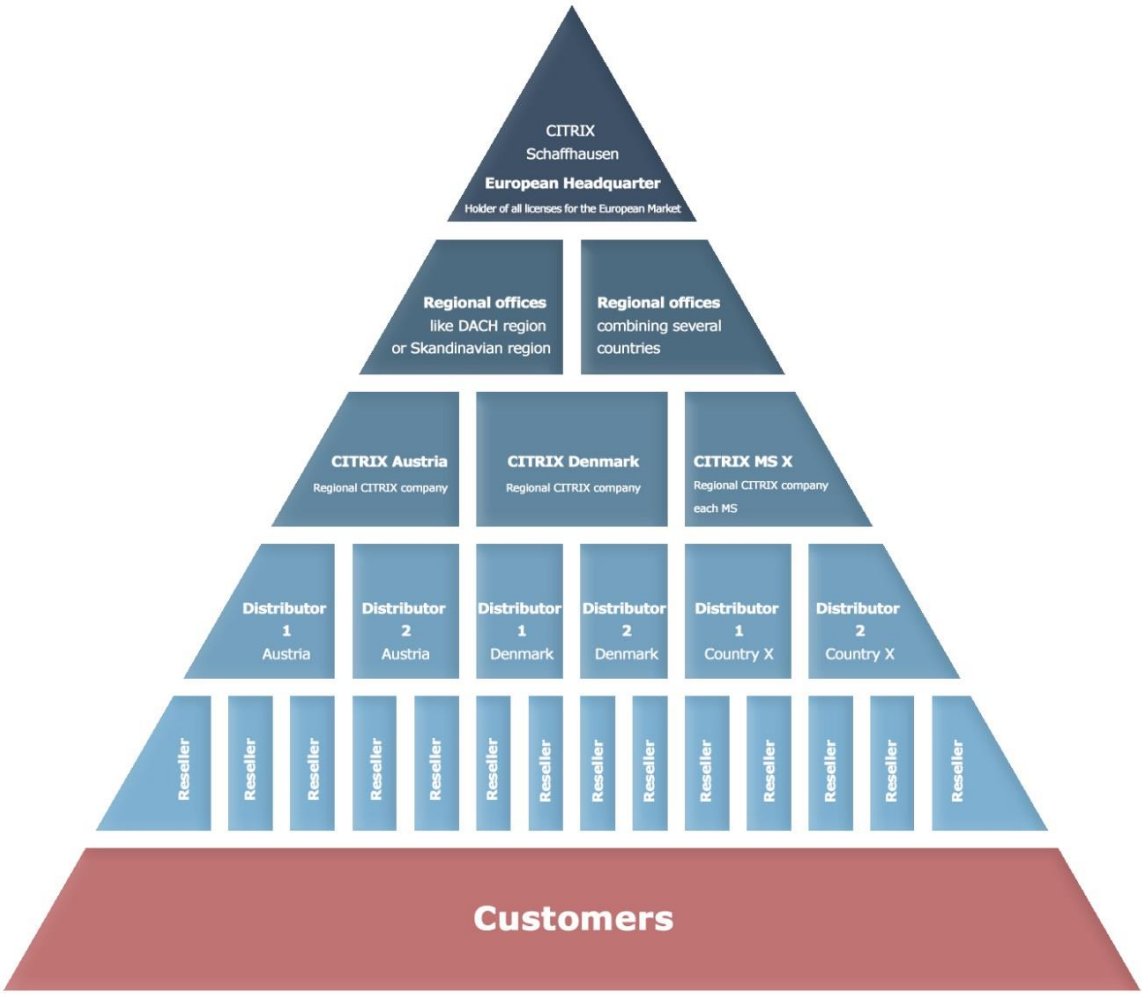


Figure 10: Citrix distribution structure

Citrix Schaffhausen is the European headquarters of the company and is the owner of all European Citrix licenses. One regional branch is located in each Member State and acts as the representative of Citrix Schaffhausen in the respective country. The local branches themselves represent the point of contact for all regional distributors. Depending on the size of the country, there are approximately 2 to 6 distributors per MS. In both Austria and Denmark there are two distributors as well as several resellers (up to 60 in each of the countries).
It is interesting to observe the distribution and business relationship between manufacturer and distributor on one side, and distributors-resellers on the other side and to reflect on the implications these structures have on the customer side.

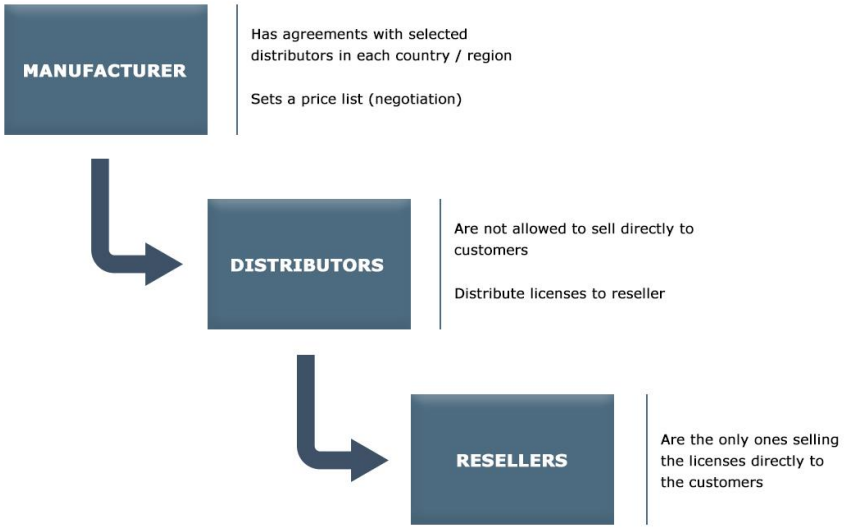


Figure 11: Relationship Manufacturer – Distributors - Resellers

Corporate group internal rules provide that only resellers are allowed to offer price information to customers and sell licenses to contracting authorities. The reseller can only buy licenses from a distributor. There is no direct commercial relationship between manufacturer and resellers. On the other hand, distributors can obtain the licenses from Citrix Schaffhausen, but can only order them from the regional Citrix representatives.

Procurement of manufacturer-specific standard software

In the field of standard software, it is very common that the producer does not sell licenses itself but uses a structure of distributors and resellers in the respective countries (see also distribution structure of Citrix). In this structure, the distributor acts as a link between manufacturer and reseller and the reseller is the interface between manufacturer and purchaser.
Taking into consideration this distribution channel, a framework agreement or contract is usually not concluded with the software manufacturer, but with either a reseller or a consortium formed between a distributor and a reseller. As shown in fugure 11, the reseller level usually generates the highest level of competition as there are many resellers on the market (potential bidders). This does not necessarily mean that the result of the tender is also the most economically advantageous one for the contracting authority as, looking at the distribution model, the contracting authority does not thus address the distributor's margins but focuses only on those of the resellers (see Figure 12).

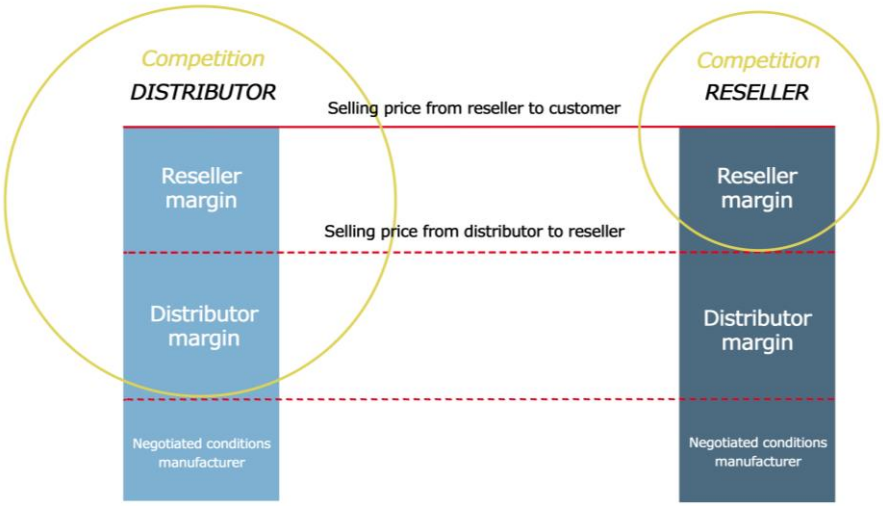


Figure 12: Bidding situation

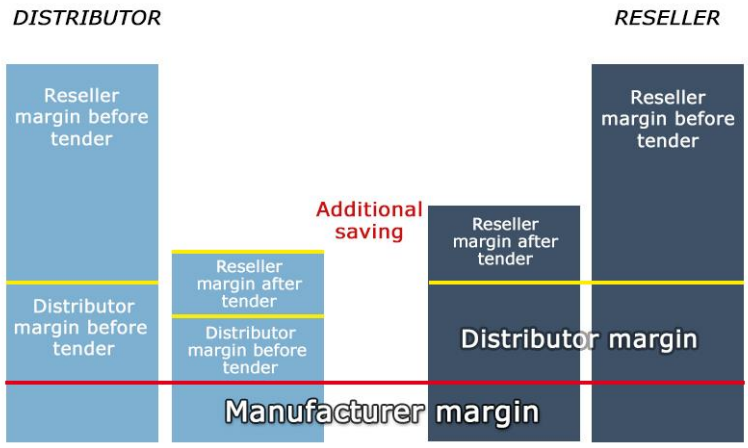


Figure 13: Results after the tender

When procuring manufacturer-specific standard software, the procurer negotiates the basic terms and conditions of the standard license with the software manufacturer before starting the tender procedure. The agreed conditions as well as the negotiated list price are published as part of the tender documents and bidders are requested to submit offers based on those conditions, meaning that they apply discounts on the pre-existent list.
In the tender procedure at stake, the contracting authorities conducted two negotiation rounds with Citrix Austria, which acted on behalf of Citrix Schaffhausen.
Until the implementation of this procedure, negotiations had been conducted only at national level, but due to the cross-border nature of this procedure, the manufacturer was obliged to respond to the request of the contracting authorities and to negotiate in a completely new manner, by including in the negotiations conditions for two different distribution regions.

Apart from the negotiations and talks with CITRIX Austria and CITRIX Denmark, during the market analysis phase, both CPBs informed the national distributors about their intention to conduct a joint cross-border tender. The talks took place only before the publishing of the tender.

Sector/market/country -specific issues

During the market talks conducted with Citrix, the CPBs learned that Austria and Denmark are situated in two different geographic distribution regions of Citrix, with Austria belonging to the DACH region (including Germany, Austria, and Switzerland) and Denmark to the Northern European region. The division of the market into distribution areas is very common in the software sector and it allows the manufacturer to apply different price policies for the same product in each of the different regions.
On the other hand, national distributors are bound by the internal rules of the manufacturer to sell their products only to domestic contracting authorities at a price set for that specific region or state. This strategy makes it impossible for contracting authorities to buy a software license from a distributor or reseller situated in another region, as this economic operator is not allowed to sell Citrix products outside the defined region.
As a consequence of this selling policy, a joint cross-border tender between Austria and Denmark compelled Citrix to find a solution for delivering across the two distribution regions and to adapt the pricing policy so as to offer the same prices for the two countries. From the point of view of CITRIX, the JCBPP translated into one offer for two separate markets. This completely new construct represented a challenge both for the company, which had to adapt to the common demand, and for the contracting authorities, which had to design the tender in such a way that both distribution regions would be addressed (see more details in the chapter on design of the tender).
One of the goals of the JCBPP project in this field was to challenge the market in regard to its selling and pricing policy. The extreme differences in prices for the same product in different regions are often not explicable and thus absolutely not transparent. Selling of software licenses does not require many human or time resources which could justify such price differences between the regions/countries.

Apart from these sector-specific issues, some country-specific matters were also identified. The Finnish CPB, Hansel, encountered not only national legal barriers but, during the planning phase, a national Agency dealing with the IT landscape of the Government was set up and Hansel was obliged to use its services when purchasing software.
Not only legal, market or sector issues occurred in the planning phase, but rather trivial questions like different working cultures and internal administrative steps played an important role in the preparation of the tender. To overcome these issues, steady and open communication was important. Thanks to various personal meetings and many teleconferences the communication between the two CPBs worked excellently, and the participants experienced a very positive international working environment based on mutual trust.

F. Drafting of the tender documents

Legal framework

In Austria the Federal Public Procurement Act (Bundesvergabegesetz) contains specific provisions regarding purchasing activities by and from CPBs. If a CPB intends to award a public contract, it must abide by procurement law as if it were a "regular" contracting authority. (Other) contracting authorities may acquire supplies and/or services directly – without following the rules on the procedures for procurement – from a CPB. This includes CPBs from other Member States as long as the CPB in question followed the rules of the procurement directive. However, there are no specific rules to date regulating JCBPP. Similarly, at the time of the implementation of the project, Danish procurement law did not contain specific restrictions as to the use of CPBs from another Member State.
At the time the CPBs decided to conduct a JCBPP procedure, neither in Denmark nor in Austria had Directive 2014/24/EU been transposed into national legislation, necessitating a thorough analysis of the legal possibilities each organisation had, both related to the applicable PP law but also taking into consideration contractual legislation. Although the Austrian PP law provided for the possibility of a domestic contracting authority to purchase goods and services from a CPB located in another Member State and it would have been easier to apply this rule, BBG and SKI decided to conduct the procedure based on the possibilities offered in the new directive, namely in a joint cross border manner, with BBG acting as lead buyer and to apply Austrian PP law to the tender procedure.
By the time the two partners launched the tender, the new PP Directives had been transposed in Danish law but not in Austrian. Nevertheless, after analysing the advantages and disadvantages of each scenario, it was decided to stick to the decision of using Austrian PP law.
The legal experts involved in the project also identified that it was easier to adjust the Danish law to Austrian legal requirements, than the other way round. Moreover the partners chose to apply Austrian PP-law because BBG was coordinating the tender and naturally was confident with its domestic legal order.
The applicable contractual law was Austrian for call-offs made by Austrian contracting authorities and Danish law for those in Denmark. This approach seemed to be the most appropriate one, as using Austrian law for the contractual relationship would have been impossible for the Danish contracting authorities and strategically it was important for each CPB to offer its customers the legal environment to which they were used.
In the tender documents it was stated that the competent review body for disputes resulting from the tender procedure is the Austrian Federal Administrative Court and for legal disputes arising from individual contracts out of the mini-tender, the respective Austrian or Danish Court. This formulation was used because the CPBs wanted to avoid dealing with Danish court cases in Austria and vice versa.
After deciding on the legal strategy, lawyers and procurement experts started to draft the procurement documents. During the drafting of the documents, legal requirements were analysed and adjusted step by step. This method was the most efficient and convenient because inconsistencies could be discussed as they arose and problems could be solved directly. The legal analysis was often very challenging and time consuming, as both countries often had a different interpretation of the legislation.

Design of the tender

The contracting authorities in this procedure were Bundesbeschaffung GmbH ("BBG" for short) purchasing as central procurement body on behalf of the Austrian Federal Government as well as on behalf of other contracting authorities, named in an attached customer list and Statens & Kommunernes Indkøbs Service A/S (National Procurement Ltd. Denmark), ("SKI" for short) as central procurement body purchasing on behalf of Danish contracting authorities named in an attached customer list, all represented by BBG as lead buyer. The framework agreement was

signed by BBG on behalf of SKI, thus BBG acted as awarding body and coordinated the procurement process under Austrian law.
As already mentioned, the procurement procedure was conducted as a **manufacturer-specific tender** for one specific software. Experience showed that procurement of standard software can be designed in different ways. There are contracting authorities that purchase standard software in packages, meaning one contract that includes different manufacturers and others which conduct separate tenders for each specific software. Both methods have advantages and disadvantages. In the project at stake, the project partners decided to tender only for Citrix licenses and services. For BBG, this represents the ordinary way of procuring standard software, whereas SKI usually uses a different approach with one framework agreement divided into manufacturer-specific lots (four in total: IBM, Microsoft, SAS and SAP).
In order to guarantee the most transparent procedure and to offer the highest degree of competition, the CPBs used the **open procedure** for the award of **a framework agreement concluded with three suppliers** and **using a mini-tender in the second stage.** Another reason for choosing the open procedure was that it does not involve complex administrative work, is the fastest procedure and it is the least expensive one in terms of administrative costs.
The maximum estimated **contract volume was EUR 32 million**, with no obligation to call off from the framework agreement for any of the parties. The framework agreement was concluded for **three years with the possibility to extend it for one additional year.**
The CPBs anticipated that over a certain call-off volume, the discounts offered by the contractors as a result of a mini tender would increase. Therefore, they included in the tender documents a specification stating that contracting authorities could directly call off from the framework agreement up to the maximum net call-off volume of EUR 50,000 from the contractor who was ranked first in the award of the framework agreement. All call-offs over the specified threshold were conducted after a mini tender procedure for which all three contractors had to be invited.
In conclusion, it was specified that all call-offs under the EUR 50,000 threshold had to be directed to the cheapest bidder (the one ranked first after the award).
Bringing together the designed procurement strategy with the information gathered from the market analysis, the two CPBs designed the framework agreement in such a way that potential bidders were obliged to cooperate either within a consortium or in a contractor-subcontractor constellation with Danish and Austrian participants (e.g. Danish/Austrian distributor in a consortium with Danish and Austrian resellers, Danish/Austrian distributor with Austrian and Danish resellers as subcontractor, Austrian and Danish resellers in a consortium of Danish/Austrian resellers with a reseller from the other country as a subcontractor). Obviously, the expectation was that the economic operators of the two countries would have to cooperate and to bid together in order to meet the requirements of the tender. It was clear that for the market this constellation would be a challenge as economic operators from different geographical areas were required to cooperate even though there was no historical relation between them and it represented an absolute novum in the culture of the manufacturer's selling policy.
During the preparation of the tender strategy, the procurement team decided that the division of the tender into **regional lots** would not be useful as it would undermine the common benefit of the project. It would have basically led to two framework agreements, one for Denmark and one for Austria, which would have implied different conditions for Danish and Austrian customers.
As the software procured is a very standardized product which does not require the definition of quality criteria, the partners decided to use the **best price as award criteria**. Both CPBs considered this to be both the simplest and best awarding scheme for standard software.
For the drafting of the tender documents, the project partners used BBG's **templates** which were translated into English. Based on these templates for standard software each paragraph was analysed in terms of differences in legal aspects, structure and processes, and adapted accordingly.
One of the most important differences between the two CPBs related to **e-tendering.** Although BBG had piloted several complete electronic procedures, e-tendering was not yet introduced as a standard purchasing method, while SKI had been using e-tendering for several years.
In the e-tendering phase, BBG used the national procurement platform for electronic publication and communication with bidders including notification of the award. For the post award, BBG has its own electronic purchasing system called e-shop, where Austrian contracting authorities can directly purchase awarded goods and services, while SKI does not have a post award tool in place.
In the light of these procedural differences, the two partners decided to conduct a paper- based tender, in the sense that bidders were required to send printed offers.

Theoretically a complete electronic procedure would have been possible from a technical point of view for both CPBs. After analysing the provisions regarding **electronic signatures**, the project partners decided to use a paper-based tender mainly because of the different approaches related to the level of security with regard to electronic signatures and electronic ID.
While in Denmark and other Member States bidders are not required to use a qualified signature (according to national signature laws), in Austria this is a legal obligation. Thus, all European bidders interested in placing an offer for an Austrian tender are required to be in possession of a

qualified certificate issued by a certification organisation in one of the Member States. The application process for acquiring such a certificate is, in most cases, rather complex.
In order to make sure that bidders are not hindered in placing the offer, the contracting authorities decided to use paper tender.

Another issue concerning e-procurement related to the obligation of Austrian customers to use the **BBG e-Shop** for calling off from the framework agreement. As the SKI customers are not required to use a post award electronic tool and are not able to access the BBG e-shop, the call-off procedure was divided in two different systems according to the national requirements.

The tender was published via the Austrian e-procurement platform Lieferanzeiger.at and on TED. The potential bidders could download the tender documents only from the Austrian platform and ask questions via this tool. The strategy of using only one publication platform was chosen in order to avoid mistakes when updating the tender documents or answering questions. Whenever the contracting authorities use more than one platform, it becomes more difficult to ensure that all versions are identical.

Language

The two partners decided to use English throughout the whole tender procedure, on the one hand, because it was their communication language and, on the other hand, because they assumed that in the IT industry, English was a common language and bidders would not have any difficulties in using it in the tender process. The equal treatment of bidders was also an argument for using English, as this would allow even more economic operators to place a bid. Tender documents were drafted in English and economic operators were allowed to submit their offers, including the requested evidence, in English, German or Danish.
There was no legal restriction in Austrian or Danish procurement law on using English as the main tender language.

4.3.3. The tendering phase

Once the partners had finished the drafting of the tender documents, which was the most intensive and time consuming part of the tender process, they published the tender notice on TED, as well as on their own websites and uploaded the tender documents on the Austrian national platform lieferanzeiger.at . As the procedure was conducted under Austrian law, it was obligatory to use the domestic platform as the main publication medium. At this point, the contracting authorities were confronted with two main challenges which they had not anticipated. One was related to the restriction on the national publication portals on indicating more than one NUTS code[18], making it impossible to include both the Austrian and Danish one, and the other was the fact that the Austrian portal on which the tender documents were uploaded was only available in German. The contracting authorities assumed that this would be a barrier for bidders which needed to register on a German interface before getting to the English language tender documents. The project partners tried to overcome this issue by publishing the tender notice on both SKI's and BBG's website and communicating the publication of the tender to the respective Citrix manufacturer representatives in Denmark and Austria.
The Austrian platform was also used for the electronic communication with bidders.
The contracting authorities expected a rather high number of requests for clarification, but this was not the case. There were a total of three questions and these related to procedural aspects of the tender.
This low number was a potential indicator for the quality of the tender, which was drafted and constructed in a market friendly and understandable way.
One of the bidders pointed out a mistake in the tender documents, which was then corrected by the contracting authorities. As the electronic tool sends a push message to interested potential bidders who downloaded the documents whenever documents are changed or bidder questions are answered, the equal treatment of bidders in this respect was assured.
Before the submission of tenders, the contracting authorities learned that the Danish market was unaware of the tender until very late during the process. Two explanations seemed possible: one was related to the aforementioned problem on TED (as it was impossible to mention the Danish NUTS code as well as the Austrian, the publication platforms in Denmark, which communicate with TED were not aware of the tender) and the other, and probably more relevant reason, was the fact

18 This is possible on TED.

that Citrix Denmark, who initially agreed to inform its distributors about the intended JCBPP project, did not communicate this to the Danish market. This behaviour on the Danish side had a decisive influence on the way bidders responded to the tender.
In order to allow Danish bidders to prepare and submit an offer, the contracting authorities extended the deadline for two additional weeks and, on the due date, BBG received four bids. The opening of tenders was conducted in Vienna, at the premises of BBG in the presence of all economic operators which submitted an offer.
The tenders were evaluated by both CPBs and it turned out that all bidders were Austrian companies (distributors and resellers) with Danish subcontractors, which was a strong indicator that the Danish market was reluctant about the JCBPP procedure, for reasons which are easy to understand.
It is also positive to note that the CPBs received more bids than expected. As the tender was quite complex, the purchasers expected fewer bids. The tender was very well received by the market, even though CITRIX Denmark did not show interest in the tender.
Most of the offers received were incomplete and economic operators were asked to submit the missing documents. This situation is often encountered in national tenders and was not a result of the cross-border character of the project.
As the Danish market did not receive the information on the publication in due time, it was not possible for some of the economic operators to provide all required proofs within the deadline for submission of tenders. For example, it was requested that the criminal records of all the persons involved in the management be submitted and obtaining these proofs may take several weeks. This is why the contracting authorities agreed to accept these proofs during the evaluation of tenders.
None of the tenderers was excluded from the procedure and the first three economic operators which offered the best price were selected for the conclusion of the framework agreement.
The award was signed by BBG on behalf of SKI but the decision to award the contract to the three economic operators was taken by both organisations together. The award notification was published on the online platform lieferanzeiger.at.
It is important to mention that in the tendering phase all processes were more complex in the joint cross-border context as this process involves more intensive coordination between partners.

4.3.4. The post award phase

Once the contract was awarded, BBG placed the framework agreement in its post award tool, the e-shop. Via this tool and from that moment on, Austrian contracting authorities were able to call off directly up to the threshold of EUR 50,000. Over this amount, mini tenders had to be launched.
Contracting authorities from Austria had the option to either conduct a mini-tender on their own or address BBG to do this on their behalf, while Danish contracting authorities were able to launch a mini tender without the involvement of SKI.
Already on the publication date of the award, one of BBG's main customers started the min-tender procedure.
The contracting authorities agreed to manage the contract separately, meaning that each of the CPBs applied different rules for the mini-tender process in its respective country and in relation to its own customers.
Both organisations defined in the tender documents rules on reporting and contract monitoring, which are conducted via electronic invoicing and coordinated by an internal BBG system. The monitoring of the contract is essential in order for both CPBs to have an overview on the total called-off volume, which must not exceed the maximum tendered volume of EUR 32 million.
In order to be able to conduct a correct monitoring process, each of the CPBs nominated a designated person per organisation responsible for exchanging the relevant information. A clearly defined communication guideline outlined which information had to be reported to the other party and included an escalation management system.

4.3.5. Other relevant aspects concerning the JCBPP

Role of the partners

As both CPBs conducted a JCBPP procedure for the first time and the initiative was introduced as a pilot project, it was very important to document each phase of the procedure and to define clear roles and tasks for the partners. Thus, an agreement between the two institutions was signed by the managing directors. SKI mandated BBG to conclude the framework agreement on its behalf.
The decision to use Austrian public procurement law for the common tender automatically put BBG in the position of the lead partner. BBG was also the institution for which there was greater urgency to conclude a new framework agreement for its customers, as the one it had in place was approaching the end.

Tasks of BBG	Tasks of SKI
• Market research • Determination of demand • Coordination of meetings between partners • Organisation of negotiation rounds with manufacturer • Negotiation with manufacturer • Translation of tender documents • Drafting a first version of tender documents • Coordination and consolidation of contributions to the tender documents • Publication of tender documents • Communication with bidders (replying to bidders' questions and correcting the tender documents) • Opening of tenders • Evaluation of offers and request for additional documents • Preparation of awarding proposal • Conclusion of the framework agreement on behalf of all named contracting authorities, including SKI • Making the framework agreement available on the post award tool (e-shop) • Reporting on and monitoring contract	• Market research • Determination of demand • Negotiation with manufacturer • Input to tender documents and drafting of SKI-specific provisions • Final approval of tender documents • Evaluation of offers • Signing of the award proposal • Reporting on and monitoring contract

Table 4: Tasks of partners

Staff

BBG involved four persons in the project:

- 1 project manager
- 2 procurement experts for standard software
- 1 lawyer

In a national procedure, there would have been two specialists involved (one procurement expert and one lawyer).
As it was an innovative way of procuring software, SKI involved four persons.

- 1 procurement consultant
- 1 legal specialist
- 1 head of legal department
- 1 head of ITC procurement

SKI could also have conducted the procedure with 2 persons but their intention was to gather as much experience as possible and to disseminate it internally for future projects.
As both CPBs can rely on specialised staff in the legal and technical field, external staff was assigned only for the translation of documents.

Meetings

For the implementation of the JCBPP procedure, a total number of five face-to-face meetings between the partners took place in Vienna. All the meetings were in the planning phase of the project as it was absolutely necessary for the partners to decide on the exact strategy to follow and to understand each other's approach towards the implementation of a tender procedure. Each of the partners presented their usual purchasing techniques and approaches to conducting a standard software tender. Both partners had to be flexible to bring together the needs of two CPBs in a single tender. It was very challenging to communicate different national laws and different behaviours.
For all the other steps, the team coordinated via telephone conferences and e-mail.

Time spent on the procedure

Compared to a classical, national procedure, the JCBPP procedure needed considerably more time due to the coordination and preparation work needed. Nevertheless, the time elapsed from publication to award did not differ from a "normal" national procedure.

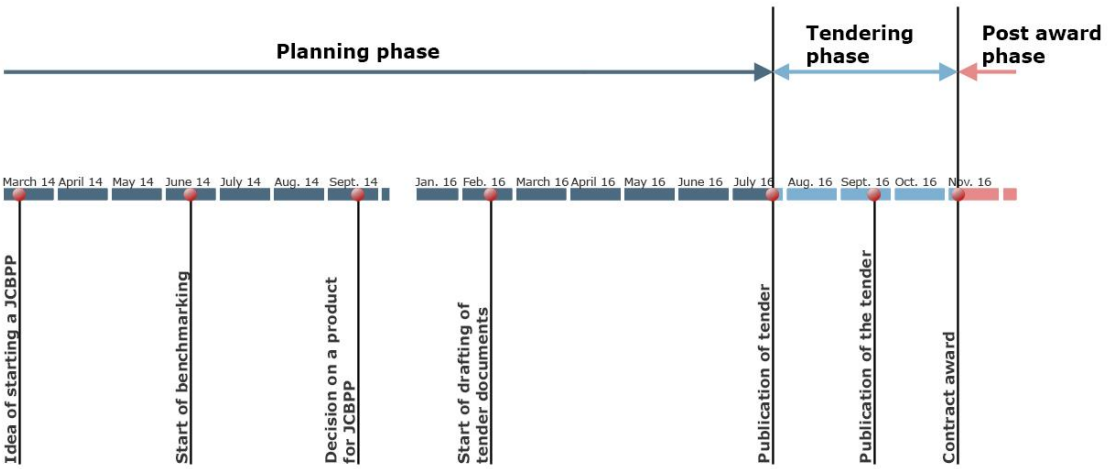


Figure 14: Timeline Citrix Software and Appliances, 2016 – BBG-SKI

4.3.6. Opportunities and challenges

A. Opportunities

Partnership and exchange of good practices

One of the most important benefits derived from the joint procurement of Citrix software and appliances was the exchange of good practices with the other CPBs. The partners learned about different procurement strategies and the legal framework of different Member States. As the participating CPBs had different concepts of how to implement procurement procedures, this exchange of best practice was essential for the success of the project and brings a sustainable benefit to both organisations.
Moreover, the whole project team was very motivated and consisted of experienced procurement experts. Another important point was that the communication with the project partners worked extremely well. The open information exchange and communication were the basis for the profitable cooperation of the partners.

Procedural aspects

The implementation of the joint procurement of Citrix software and appliances was undoubtedly very complex and complicated. Therefore, one of the main positive points to mention is that despite the complexity of the project, the CPBs managed to conduct the joint cross-border tender without major problems. The tender was accepted by the market, the CPBs received several bids. The positive completion of the project was possible because of the great efforts of the lawyers, on the one hand, and because of the experience and expertise of the procurers involved, on the other

hand. As the procurers had a great knowledge of the market and the important players, they were able to mobilise the economic operators to bring in offers even though the procedure was also new and complicated for the bidders.

Another positive aspect was that the two legal frameworks of Austria and Denmark complemented each other very well. Danish law did not provide for any restrictions on using Austrian procurement law for the award of the contract. At the same time, Austrian law did not explicitly prohibit BBG from awarding a contract on behalf of contracting authorities from another Member State. In this constellation it was easy to find the most appropiate legal method to conduct the JCBPP project.
With regard to the determination of demand for the JCBPP, it was an advantage that both contracting authorities were CPBs as for them it was easy to estimate the demand of their customers based on historical figures. Thus, they could set the maximum volume of the framework agreement without necessity for further investiations.

Economic aspects

One of the main advantages of the procedure in monetary terms was that savings on product costs could be achieved in both countries. This is a very important point, as one of the main aims of joint cross-border procurement is to achieve better prices.

Market

The implementation of the project was also very valuable due to the insight the CPBs acquired into the market situation of Citrix. The CPBs gained in-depth information about the different distribution regions of Citrix. This is a main benefit of the international procedure, as in national procedures procurers usually only focus on national markets when conducting the market analysis.
The implementation of the JCBPP was also a chance to challenge the market in terms of enhancing cooperation between distributors and resellers from different "price zones" of the manufacturer. The manufacturer, Citrix, was obliged to give up its pricing policy for Denmark and Austria and to offer a common price for both countries. Moreover, it was possible to achieve a harmonisation of conditions for the licenses in the two different markets because of the joint tender.
Another benefit that resulted from the previous points is enhancement of the transparency in the two markets concerning the conditions the manaufactuer offers to the contracting authority.

Advantages for future projects

A very important advantage that resulted from the JCBPP project was a huge learning effect for the staff involved relating to market issues, procedural aspects and use of a foreign language as a working language. The JCBPP was a great opportunity to "think outside the box" and develop new perceptions. The experts learned a lot for future procedures in this project. These experiences will help them to implement future joint cross-border procedures even more efficiently and professionally.
Beside the know-how gained through the implementation, templates and tender documents for the joint procurement of Citrix software and appliances can also be re-used in further projects. General templates and tender documents were translated into English and can therefore be used for future tenders. Moreover the tender documents were adapted to the joint tender situation. Having these documents and templates available will save time as well as money in any future project.

B. Challenges

Legal

Because of restrictive provisions in the national legislation, the Finnish CPB was not able to participate in the JCBPP. The restriction means both that it is impossible for Finnish contracting authorities to purchase using the public procurement law of another MS, and at the same time it is the legal limitation of the Finnish CPB which explicitly allows them to purchase only for or on behalf of domestic contracting authorities. Given this problem, the project team could not identify any measure to overcome this challenge.
The integration of the country-specific legal conditions for the implementation of contracts into the framework agreement entailed very serious efforts on the part of the legal departments of the two CPBs. The approach taken was to integrate both national legal regimes for the respective national call-offs. Given the fact that the JCBPP involved only two partners and that both could rely on specialised in-house procurement lawyers, it was possible to find a solution.

Procedural aspects

One of the challenges encountered in this procedure was to conduct a benchmarking exercise in an appropriate manner to get the best fitting product for the best value. Conducting such a benchmark is very complex, as different aspects have to be taken into account. To compare a contract, i.e. besides the price also the defined conditions or additional services which might be included in one contract but not in the other one have to be taken into account. Also, different means of contract execution have to be considered, for example when it comes to the use of framework agreements, which can differ from country to country. If this preparatory work is done well, it is easier to choose the best fitting product for a JCBPP and the most suitable procurement strategy for the procedure.
Besides the benchmark, which is conducted to find the appropriate product for a JCBPP, it is also necessary that the joint cross-border tender fits into the overall planning of both CPBs. This is quite challenging, especially when conducting the first JCBPP procedure but in subsequent joint cross-border tenders, it is expected to become less difficult.
It was a great challenge for the procureres to re-think and adjust own processes and procedures in such a way that they could fit both CPBs in. Processes like ordering, billing, complaint management, delays in delivery, guarantees and support, had to be analysed from the perspective of both CPBs, and specified accordingly in the framework agreement. This was the most time consuming part of the entire procedure. For example both CPBs are using different electronic ordering solutions for their customers which are obviously not compatible. Initially the team of procurers intended to offer the BBG e-shop solution, which is mandatory for Austrian customers, also to the Danish contracting authorities but it turned out that this was too complex in terms of technical, organisational and language requirments.
There are also different systems for electronic billing (in Austria the electronic billing is managend via a special service provider). Moreover there aredifferences in various contractual clauses subject to private law concerning the legal consequences of delays in delivery and service (including contractual penalties), the warranty, the complaint management and customer care. These differences are not substential, but have to be taken into account when preparing the tender documents.

The project team also had to deal with the complexity of understanding the peculiarities of the procurement process in each of the participating countries and to handle them appropriately.

Language

Throughout the project, language was not a challenge for the communication between the partners, as all participants had a good level of English. The participating CPBs considered it challenging to draft the tender documents in English as the experts involved had to make sure that legal and procedural aspects were explained correctly, using the correct legal terms. Another problem that was identified with regard to using English as the language of the tender was the translation of documents. BBG contract templates were translated by a translation agency from German into English and served as the basis for the further common drafting. As the translator was not familiar with public procurement, the quality of the translation turned out to be insufficient. BBG and SKI had to revise the documents, which was time and resource intensive.
With regard to the different languages of the participating organisations, it was also very challenging for the team to analyse the provisions of two different national procurement laws because of the different languages. Moreover, the legal provisions were only available in the respective languages but not in English. As the legal meaning of words can vary in different languages, the analysis of two legal provisions from Austria and Denmark in a third language (English) was a great challenge for the legal advisors.

Market and product

As already described in the case study, the Citrix distribution network is quite a complex one. Therefore, the negotiation with the company was a real challenge as many different managers were involved in the process (the manager of the European headquarters, regional managers and country managers). That means that all of these managers had to be addressed and convinced, as otherwise they could have blocked the procedure.
Additional challenges occurred in relation to the complex distribution channels. In the case of CITRIX, only resellers are authorized to deliver the software licenses to the end-customer. Thus, and due to the high procurement volume, bidding was only possible in cooperation between distributors and resellers or in a consortium of resellers. Because of this particular situation, the two CPBs considered it difficult to get many bids. It was therefore absolutely necessary to convince all the country managers that participation in the tender is important. Country managers can very much influence the participation of distributers and local resellers in the tender. What happened in this particular situation was that one Citrix country manager was not committed and subsequently

prevented potential bidders in the country from bringing in offers. This is the reason why most of the bidders were Austrian economic operators in cooperation with Danish subcontractors.

Other challenges arose for bidders because of the joint cross-border nature of the tender. For them it was time consuming to prepare an offer as they needed to find partners for a bidding consortium or cooperate with subcontractors in Denmark or Austria. Therefore, forming such cooperations came along with additional legal and organisational efforf for bidders. Moreover, such cooperations were challenging because the respective Austrian and Danish economic operators did not have any historic relationship. That implied that they had to rely on business partners they did not know before.
Absent international market structures on the software market are another problem identified when it comes to JCBPP of software licenses. For the bidders it was diffcult to adjust to a JCBPP tender and prepare a suitable offer because they are not used to acting internationally. One can say that the market was not prepared for such a JCBPP as bidders and market structures in the software market are not organised internationally. Just like the market structure, the pricing policy of CITRIX also has a national approach. The pricing strategy of standard software vendors only depends on national purchasing power and on the competition situation as there are no production costs that need to be included in the calculation. This fact led to a natural resistance of the software manufacturer when it came to JCBPP as the pricing policy had to be adapted, on the one hand, and designed more transparently on the other hand.

E-Procurement

The CPBs faced problems when it came to electronically publishing the joint cross-border tender, because it was technically not possible to insert more than one NUTS code for the same lot in the electronic publication platform of Austria (lieferanzeiger.at). Therefore, the system did not recognise the tender as a joint one.
Another barrier identified was the use of e-signatures in an cross-border procedure. After analysing the relevant provisions in both countries, the project partners decided to use a paper-based tender, mainly because of the different levels of security of the electronic signatures and electronic ID. While in Denmark and other Member States bidders are not required to use a qualified signature, in Austria this is a legal obligation. Thus, all European bidders interested in placing an offer for an Austrian tender are required to possess a qualified certificate issued in one of the Member States. The application process for acquiring such a certificate is, in most cases rather complex. In order to make sure that bidders are not hindered in placing the offer, the contracting authorities decided to use paper tender.

4.3.7. To sum up

Citrix Software and Appliances, 2016 – BBG-SKI

Name of the tender: Citrix Software and Appliances

Year of publication: 2016 (TED reference: 2016/S 148-267415)

Participants: 2 CPBs: 1 lead buyer, 1 participating organisation

Nationality of the lead buyer: Austrian

Number of Member States involved: 2

Procurement volume: max. EUR 32 million

Type of procedure: open procedure for the award of a framework agreement with three economic operators

Design of tender: FA for the duration of 3 years with the option of prolongation for one year; no division into lots

Number of bidders: 4

Nationality of the awardees: Austrian, subcontractor: Danish

SMEs (yes/ no): no

Language of the procedure: English

Use of the contract: direct call-offs below a certain threshold; mini-tender for call-offs above a certain threshold, monitoring of the call-offs by the lead buyer
Savings: EUR 1,863,200
Type of agreement between parties: cooperation agreement under private law
Legislation: Austrian PP law, mini-tenders under respective national law, contractual law of the respective country of contract implementation
Jurisdiction: for the FA, the Austrian Administrative Court and for the individual contracts, the appropriate court in Vienna or Copenhagen

Table 5: Summary of the Citrix tender

4.4. Joint cross border procurement (AP213 Geologische Versuche) – Brenner base tunnel

4.4.1. Introduction and general framework

The Brenner Base Tunnel is a railway tunnel crossing the collision zone between the European continental margin in the North and the Adriatic plate in the South beneath the Brenner Pass (Brennero). From 2026 on, the world's longest underground railway connection will link Innsbruck Hauptbahnhof (Austria) with Fortezza (Italy). The project is part of Line 1 (Berlin-Palermo railway axis) of Trans-European Transport Networks (TEN-T) and is co-funded by Austria and Italy, with a contribution from the European Union. Construction works started in 2007.
Since 16 December 2004, Galleria di Base del Brennero – Brenner Basistunnel BBT SE, a public limited company provided for by EU law (Societas Europaea), has been planning and building the Brenner Base Tunnel. BBT SE is a fully publicly owned company with Contracting Authorities from Austria (Österreichische Bundesbahnen) and Italy (Tunnel Ferroviario del Brennero Holding) as equal shareholders.

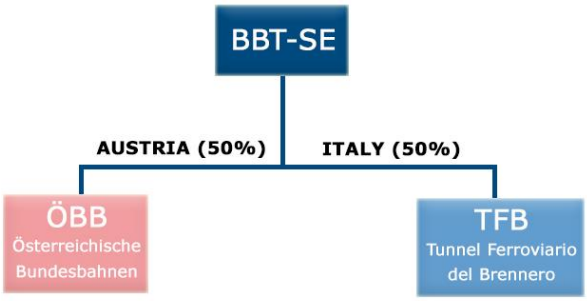


Figure 15: BBT SE Organisation

The company is managed by two CEOs, one located in Austria and one in Italy. Members of the Supervisory board are appointed half-and-half by both the shareholders from both countries. The main headquarters of the BBT SE is located in Bolzano, while the secondary headquarters is in Innsbruck.
The founding of the BBT SE goes back to a state treaty the Austrian and Italian Ministers of Transport signed on 30 April 2004[19]. Among other contents, the treaty provided for the transformation of the earlier BBT EEIG, a European Economic Interest Grouping established in 1999, into the BBT SE as its legal successor and determined the relevant legal order in respect of tax law, labour law and other law.
The parties to the treaty addressed the public procurement topic only insofar as they agreed that procurement projects should be optimised to ensure swift and efficient execution and avoid a separation of tender due to territorial considerations. Beyond that declaration of intent, there are neither clauses in the treaty determining the relevant legal order in view of the applicable procurement law nor in other legal documents.
It was the BBT SE General Assembly which, during the planning phase of the tunnel, decided on applicable procurement rules. The registered office of the SE in the planning phase was in

[19] The German and Italian versions of the treaty can be found here:
https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=BgblAuth&Dokumentnummer=BGBLA_2006_III_177

Innsbruck, with a branch in Bolzano, and during execution phase it changed to Bolzano with a branch in Innsbruck.
BBT SE is a sectorial contracting authority, meaning that it is subject to the provisions of Directive 2014/25/EU.

Thus, we can sum up at this stage that two Member States, Austria and Italy, are engaged in a common project which is the construction of the Brenner Base Tunnel. For this endeavour, the two states have set up a joint entity – the BBT SE - which is implementing the project as such, including also the procurement procedures. The BBT SE is therefore by its nature a joint cross-border-entity, which technically means that all procurement procedures are JCBPP, even though there is only one contracting authority directly involved. This is also reflected in the new Directive 2014/25/EU, which defines procurements through a joint entity as one of the possibilities to conduct joint procurement by contracting authorities from different member states and covers all procurement procedures by such joint entities.
Even so, BBT SE does not define all its procurement procedures as being JCBPP. When a works or a supply contract is realised in one of the two states, applying the law of this state, there is no cross-border element in the procurement apart from the nature of the entity itself. These projects are referred to as national procedures and do not fall within the scope of this study since they do not share many of the specific elements of a classical JCBPP procedure.
For the purposes of this study, only procurement procedures which concern works executed in both countries will be considered a JCBPP procedure.

Applicable procurement rules

From its foundation on 16 December 2004 until 30 June 2011, BBT SE, with its headquarters in Austria, carried out all tenders on Italian and Austrian territory by applying Austrian procurement law (BVergG). According to the provisions of the State Treaty, the headquarters changed to Italy on 1 July 2011. Starting from this date, all tenders were subject to Italian Public Procurement Law 163/2006 and the Italian Presidential Decree 107/2010. This presidential decree contained strong restrictions on the criteria of selection and award and also intervened on issues concerning contractual law. Since up to that point the activities in the Austrian project area were carried out according to Austrian procurement law and building standards, the change resulted in great difficulties.

In response, the shareholders of BBT SE, relying on the provisions of Directive 2014/25/EU regarding joint cross-border procurement, decided in 2015 that cross-border tenders as well as tenders for activities carried out in Italy would fall under Italian procurement law whereas tenders for activities carried out in Austria would apply the Austrian procurement legislation. However, the relevant civil contracts follow either Italian or Austrian law, depending on the location of the specific works; jurisdiction in this matter thus lies with Italian or Austrian Courts respectively.
Hence, whenever there is a construction work of cross-border nature, meaning that this work has to be executed on both sides of the border, BBT SE conducts a JCBPP procedure, applying Italian public procurement law. This rule derives from the specifications of Article 57(5) Directive 2014/25/EU, which stipulates that in situations in which several contracting entities from different Member States have set up a joint entity, the participating contracting entities shall agree on the applicable national procurement rules of one of the following Member States, either the national provisions of the Member State where the joint entity has its registered office or the national provisions of the Member State where the joint entity is carrying out its activities.
When procuring goods or services needed in just one of the two countries, BBT SE is not aggregating the demand. Office supplies for example are procured separately in the two branches through two different procedures, one under Austrian procurement law and one under Italian law. Services carried out on the territory of Austria are subject to Austrian procurement law and vice versa.

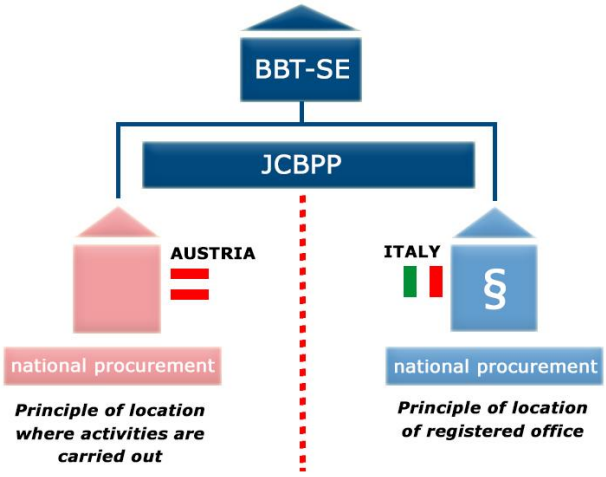


Figure 16 : BBT SE Procurement Structure

Both in Austria and Italy there are one or several CPBs in place and both branches use the services of the respective CPBs for procurements of standard goods under the relevant threshold.
For procurements under EUR 5000, the contracting authority is free to choose any supplier from the market. Thereafter, up to the threshold of EUR 40,000, which represents the Italian direct award threshold, the offices must collect five offers and award the contract to the most suitable one.
All procurements, regardless of their volume and the location of the office, are conducted bilingually and need the approval of both CEOs.

Particularly due to a relatively long history of conducting JCBPP projects and the practical experience coming with that, analysing one of the BBT SE projects seems interesting as a good example for both cross-border procurement cooperation via the establishment of a joint entity and cross-border procurement in the field of public works contracts. The chosen JCBPP procedure to be analysed in detail was the "AP213 – Geological tests" project conducted by BBT SE in 2014-2015, which was one of the first JCBPP projects conducted under Italian law. The concrete procurement subject-matter is work services for the drilling of two deep wells, three exploration drillings including the installation of ground water monitoring wells, hydraulic bore hole tests and the execution of pumping tests including monitoring.

4.4.2. The planning phase of the JCBPP procedure (decision making process, the market and product, the designed concept, strategy)

A. The decision making process

Main reason for conducting a JCBPP

BBT SE conducted several cross-border procedures in the planning phase of the tunnel construction using Austrian public procurement law, but the project at stake was the first cross-border procurement in the execution phase and thus conducted under Italian law. The cross-border character of the procurement procedures in this concrete case derives from the nature of the tendered work services. The drillings were conducted throughout the whole area of the planned tunnel, both on Austrian and Italian territory and it was important that these works were conducted within the same assignment, using the same terms of reference. As the drillings would have an impact on both territories, the project team decided to conduct a cross-border procedure.
In certain situations, where the works are not of cross-border importance or can be executed independently from each other, the contracts are awarded separately in each country. The decision to procure cross-border or at national level is dictated solely by the nature of the works and is taken on a case by case basis.
The reason in the case at hand for a single cross-border tender under Italian law, instead of the running of two separate tenders, was that in the event of a delay or even a withdrawal of one of the tenders, the works conducted only in one country would be technically senseless.

B. Considerations on market and product

For the special works needed, the market was rather small and the contracting authority was able to identify the possible bidders quite easily. Depending on the depth and complexity of the drillings, the providers available for such works can differ.
One important finding of the market analysis was that the cross border nature of the contract as well as its volume attracted more interested companies than initially expected by the contracting authority, most probably because of the resulting prestige of this construction project.There were between 10 and 12 interested economic operators from EU Member States and one from outside the EU.
The market was considered to be rather small, due to the very specific nature of the procurement subject but despite its size, it indicated a high degree of competitiveness.

C. Drafting of the tender documents

Legal strategy

In accordance with the general principles set down in the decision of the General Assembly, the procedure was conducted under Italian procurement law. At that time, however, the 2014 Public Procurement Directives had not yet been implemented in Italian public procurement regulation. Corresponding to the respective location of execution of the drillings, the applicable law for the works conducted in Italy was Italian contractual law and for those executed on the territory of Austria, Austrian contractual law. The tender documents provided for a very clear distinction between the works which needed to be executed in each of the countries. This was something the contracting authority considered to be extremely important in order for the bidders to understand exactly which services needed to be implemented in each country.
In case of a complaint concerning the procurement procedure, the specifications in the tender documents set out a possibility for the economic operator to address the administrative court in Bolzano (Italy). Any disputes arising from the execution of the contract in Austria fall under the responsibility of the Court in Innsbruck, while those related to the execution in Italy of the Court in Bolzano.

Design of procedure

The procedure used for the procurement of the works contract was the open procedure.
Given that the procurement was conducted by a joint entity, the lead buyer principle did not apply to this procurement. Nontheless, taking account of the internal rules refering to legal provisions applying to the procedure, the Italian office acted as the main coordinator of the project.
The award criteria used was price only. This had several reasons and effects: the intention was to include as many bidders as possible in the procedure and the experience this contracting authority had so far was that quality criteria (MEAT criteria) would reduce the number of interested companies.
On the other hand, the services to be performed had to be described in such detail that it was not possible to define additional technical quality criteria.

Another reason why the contracting authority chose to use the lowest price principle was to minimise the risk of complaints. According to the experience of BBT SE, the application of the MEAT criteria would have increased the chances of a complaint.
In light of the average period for the review body to come up with a decision in Italy, it was essential for the contracting authority to reduce the risk of complaint to a minimum. As the technical specifications and the requirements for the work to be performed were described in detail, the procurement specialists considered it to be easier, both for them and for the bidders, to have the competition based only on price.
The duration of the works was set at 395 days and the total maximum contract value was EUR 3.4 million.
No regional/national or technical lots were used.
One of the most important issues in this project, which actually influenced the whole procedure in terms of strategy and selection of bidders, was the obligation under Italian procurement law to use an indicative maximum volume of the tendered services. The contracting authority was obliged to determine this volume based on a detailed cost analysis and had to calculate it according to standard catalogues which included pre-defined prices.
These prices had to be taken into consideration when calculating the maximum contract volume.

Bidders were asked to offer discounts on the maximum price set in the tender documents and consequently, offers which were higher or equal to the estimated price, were excluded.
The principle of discount on the maximum price is a mandatory provision in Italy but rather unusual in other Member State. Non-Italian bidders found it difficult to adapt to this system.
As the indicative prices are related to the Italian market, where labour costs for example are considered to be less expensive than in Austria, Germany or Switzerland, economic operators from these countries were not able to bid for the maximum price which was determined in advance, as it was too low, while Italian bidders were still able to offer a discount
Another important issue which influenced the outcomes of the JCBPP procedure, was the fact that under Italian law, economic operators which wanted to offer their services in this tender, needed to be in possession of the so-called SOA certification, a certification of qualification to execute public works (Attestazione di qualificazione alla esecuzione di lavori pubblici).
The SOA certification is a document which confirms that the company satisfies all requirements pursuant to Italian law. Based on current regulations on public contracts, the SOA Certification is necessary and sufficient to prove the company's ability to carry out (directly or under sub-contract) public supply and installation works with starting prices of over EUR 150,000.
This makes it difficult for economic operators from other countries which do not have such certificates and are not even familiar with the concept, since they do not exist in other Member States.
The procedure was designed as paper-based procedure.

Language

For each tender procedure conducted by BBT SE, documents are always bilingual (German and Italian). The publication of the tender documents was via the bilingual e-procurement website of the BBT company. Given the high volume of the contract, an EU wide notice was also published on TED .
As most of the BBT SE team is bilingual, the communication with the bidders was in both Italian and German.
As needed, English is also used for communicating with bidders, nevertheless in the procurement project in question this was not necessary.
Bidders were allowed to submit offers either in German or in Italian.
It is worth mentioning that due to the necessity of producing bilingual documents on a day to day basis, BBT SE uses professional translation software,[20] which proved to be very useful for all procurement professionals when drafting tender documents.

4.4.3. The tendering phase (from publication to award)

The tender was published in November 2014 both on the Italian publication platform as well as on the BBT SE website. As mentioned above, an EU wide notice was also published on TED because of the high volumes involved.
Before submitting the bid, interested economic operators were obliged to conduct a site visit in order to assess the environment and to place an offer which corresponds to the conditions on site.
After having identified 10 to 12 interested companies, the contracting authority received only 5 bids, all of them coming from Italian companies. Three out of the five offers corresponded to the price limit, the other two did not and had to be excluded.
The difference between the relatively high number of interested economic operators and the rather low number of bids is due to the fact that most of the non-Italian companies were not able to comply with the maximum price indicated in the tender documents.

A team of Italian and Austrian procurement experts involved in the procurement procedure opened the tenders in January 2015 and conducted the assessment of offers. They awarded the contract to one company which met all the required criteria and offered the higest discount on the maximum price indicated in the tender documents.
The discount offered by the bidder who received the award was of 20%[21]. In this respect, the contracting authority mentioned that very often projects with a certain prestige (international character) are very interesting for companies; therefore, they are ready to offer a higher discount in order to have such reference project. This does not necessarily mean that the quality is worse.

[20] SDL Trados Studio, the CAT tool used by translation professionals, provides a range of sophisticated features to help complete projects more quickly and easily. Translation memory (TM) is at the heart of this software and it works by recycling previously translated content so that translators can complete projects more quickly while maintaining high quality
[21] The maximum price indicated in the tender documents was: EUR 3,459,934.87
and the awarded price EUR 2,764,064.22

It is important to mention at this stage that the asessment of offers took almost six months from the opening of tenders (i.e. until June 2015). This delay was due to a cross-border issue concerning Italian requirements regarding the SOA certificates, which was explained above.

4.4.4. The post award phase

Contract management

The contract was managed under Austrian law for the services provided by the supplier in Austria and under Italian law for those provided in Italy.
Execution of construction work in a state according to the laws and norms of another state (e.g. execution of construction works in Austria according to Italian law) is difficult according to past experience, since in many fields like subcontracting, security rules, technical criteria, commercial processing and contract handling (contract language), there are significant differences between the countries.
For example in Italy, there are legal requirements for safety management on construction sites, which are regulated by procedures that do not have any equivalent in Austria. The nomination of a so called RUP ("Responsabile unico del procedimento")[22] is another requirment in the Italian procurement law for which there is no equivalent in Austria either.

4.4.5. Other relevant aspects concerning the JCBPP procedure

Roles and responsibilities in the project

The contracting authority considered it very important to have a mixed team consisting of both Austrian and Italian experts as well as technicians and legal advisors.
One of the most important learnings out of this project was to have at least one expert who speaks the language of the others as misunderstandings can arise even through professional interpretation and translation, , especially in the field of construction services, where very small technical details need to be understood perfectly by both sides.

The linguistic approach was to give each expert the possibility to draft a certain part of the tender in his or her own language. A professional in-house translator was then asked to translate the specific part into the second language.
There were two technical experts (geologists) and three legal experts involved in the JCBPP procedure. In addition, one translator was included in the team.
The Italian team provided the so-called RUP (responsabile unico procedimento), who acted as team leader and is responsible for the overall management of the procurement project as well as a legal advisor with solid technical know-how. From the Austrian side, a technical project leader as well as a legal advisor were appointed to the project.
As BBT SE has in-house translators, legal advisors and technicians, no extra staff was required to perform the cross-border procurement project.
Given the rather short distance between the two seats of the company, the team frequently travelled to meet in person and work on the tender documents together.

Time spent on the procedure

The tender documents were elaborated by the BBT Team from August to November 2014. During this period 2 geologists, 2 legal advisors and 1 translator worked on the preparation of tender documents, adding up to approximately 70 person working days. Additionally, approximately 20 person working days were spent on evaluating the offers and working out the contract documents.
The tender was published in November 2014, in January 2015 the offers were opened and the award was in June 2015.

22 According to Art 31 of the Italian PP law 50/2016, for every single procedure for the award of a contract, Italian contracting authorities appoint a single person responsible of the procedure (RUP) for the phases of planning, design and execution of the procedure.

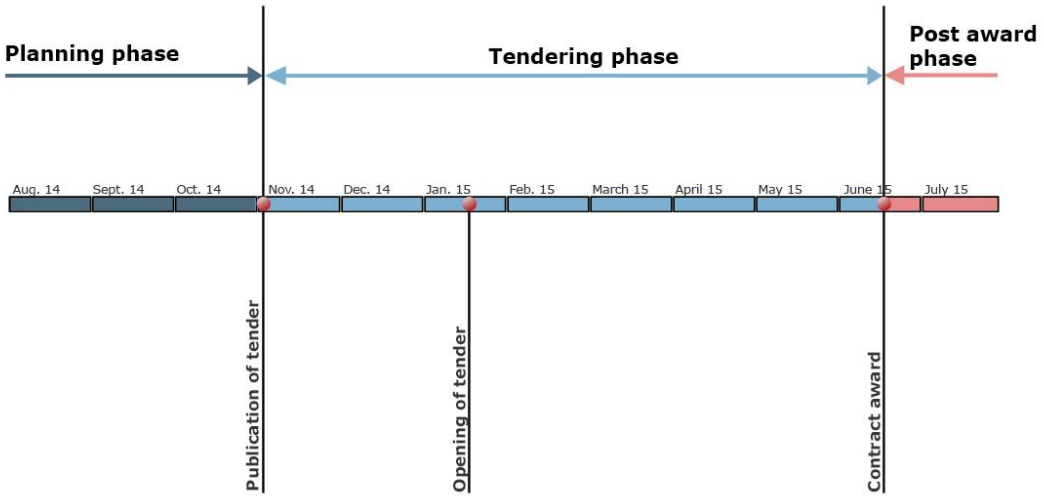


Figure 17: Timeline AP213 Geologische Versuche

4.4.6. Opportunities and challenges

A. Opportunities

One major advantage of this JCBPP procedure was that it was not necessary to decide on applicable laws for the specific tender, since there was a general decision on applicable legislations dating from when the joint entity was set up.
There was one common goal defined from the outset and the team of experts joined forces to achieve it. The definition of clear responsabilities helped the team to structure the work on the tender in an efficient way.

One of the big advanatages was that most of the experts involved within the contracting authority spoke both languages, thus technical mistakes due to wrong translation could be avoided.
Also, some members of the team already had experience implementing a JCBPP procedure, meaning that they could anticipate and overcome difficulties and were able to offer support to the rest of the team. They also stated that each JCBPP procedure implemented helped them to increase the quality of the process as such and also to develop their know-how.
The improved time management was also mentioned as being an advantage of the JCBPP procedure. Two separate procedures in each country would have taken more time than one cross-border.

Having only one entity involved in the procedure means there is the advantage of trust.

Another positive effect of the JCBPP tender was companies' increased interest in participating in the tender due to the prestige of the project.

Another positive issue specific to this project, is the fact that BBT SE had already conducted several JCBPP procedures, meaning that the processes and structures did not have to be drafted from scratch. Nevertheless, as it was the first time conducting such procedure under Italian law, some new challenges did arise.

B. Challenges

Even though there is only one contracting authority in this JCBPP, BBT SE, this institution has two seats with two distinct points of work, in two different countries. Given this situation, it is easy to imagine that certain **administrative issues** may arise when implementing JCBPP projects.
For example, the need to coordinate each step of the procedure within the team in the two countries translated into a slower process. Also, due to the fact that both CEOs needed to agree on certain aspects of the procedure, the decision making process was slightly hindered.
One of the most challenging aspects addressed by the contracting authority was to find solutions to minimize the risk of complaints, an aim which was achieved mainly by choosing the award criteria based on price only.

Another very significant barrier the procurement team had to overcome was related to the **legal requirments** set out in Italian procurement law. As it was the first time the team applied Italian law to a JCBPP procedure, certain difficulties in understanding the complexity of the legal implications arose. Not only the procurement-specific aspects were identified as a burden, but indeed mainly those requirements related to the specific SOA certification needed, which opened an entire series of questions from non-Italian economic operators.
The contracting authority received several objections from bidders which complained about the fact that Italian procurement legislation was chosen for the JCBPP procedure, as they would have prefered Austrian law due to fewer administrative burdens in the implementation of the procedure. Even Italian bidders underlined this preference.
As Italian procurement law did not allow the CA to request reference projects and obliged the economic operators to fulfill the requirements of the SOA certificate, non-Italian companies were obliged to present all documents which would be necessary to apply for this certification, something which naturally involved additional efforts and considerable economic ressources.

One of the most important issues in this project, which actually influenced the whole procedure in terms of strategy and selection of bidders, was the obligation under Italian procurement law to use an indicative maximum price for the tendered services. The contracting authority was obliged to determine this price based on standard catalogues, which included pre-defined prices. This obligation was a guarantee for the contracting authority that the awarded price would be less than the indicated maximum budget, but on the other hand companies from Member States with higher labour costs were not able to comply with the maximum price.

If the procedure had been contested, the applicable legislation would have been the Italian laws. The contracting authority considered that for most of the bidders, but also for itself, this would have been an additional burden as it is known that review procedures in Italy last considerably longer than in Austria.

Language was not mentioned as having been a major barrier in the implementation of the project as most of the BBT SE's staff involved is bilingual and the company has in-house translators working with special translation software, which supports the drafting of bilingual tender documents. The same applied for the bidders, as documents were bilingual and they were allowed to submit offers in either of the two languages of the procedure.

4.4.7. To sum up

Brenner Base Tunnel – Overview

Name of the tender: AP213 Geologische Versuche (Baureifmachung Hochstegenzone)

Year of publication: 2014, (TED reference: 2014/S 246-434978)

Participants: 1 joint entity

Nationality of the lead buyer: no lead buyer as the procedure was conducted by a joint entity

Number of Member States involved: 2

Procurement volume: EUR 3.4 million

Type of procedure: open procedure to award a contract with a single economic operator, no division into lots

Design of tender: contract for the duration of 395 days

Number of bidders: 5

Nationality of the awardee: Italian

SMEs (yes/ no): n.a

Use of the contract: the contract was managed under Austrian law for the services provided by the supplier in Austria and under Italian law for those provided in Italy.

Savings: EUR 0.6 million for the Austrian, EUR 0.1 million for the Italian party

Type of agreement: State Treaty between Austria and Italy

- **Language of the procedure:** German and Italian
- **Legislation:** procurement procedure under Italian PP law, contractual law of the respective county where the works are conducted.
- **Jurisdiction:** administrative court in Bolzano for the procurement procedure; the respective court in Innsbruck or in Bolzano for disputes arising from the execution of the contract in Austria or Italy.

Table 6 : Brenner Base Tunnel – Overview

5. COST-BENEFIT ANALYSIS

Based on the methodology outlined in chapter 2, this chapter first presents the results of the CBA for the four projects separately. A comparison of the projects and lessons learnt are presented in section 5.5.

5.1. CBA "Standard IT Software Packages and Maintenance through a Reseller"/EPCO

The following analysis focuses on the "Standard IT Software Packages and Maintenance through a reseller" project. In this project, EPCO acted as the 'coordinating organisation', DNB is the 'lead buyer' and the other central banks are referred to as 'participating organisations'. Factsheets were jointly returned by DNB (Netherlands) and EPCO (Luxembourg), and separately by BCL (participating central bank, Luxembourg).
The OeNB (Austria) didn't return a fact sheet but did provide some information during an interview. Regarding the other central banks, some conclusions could be drawn from the general information EPCO and DNB gave on the project as a whole.

Summary of responses per question

1. *Was a quantitative cost-benefit analysis (CBA) conducted within the scope of the JCBPP project?*

This question was answered jointly by DNB/EPCO as well as by BCL. Even though quantitative CBAs were conducted for the JCBPP project the results could not be provided due to confidentiality reasons.

2. *Describe the method that was applied for the CBA.*

In their response, DNB/EPCO stated that they (together with all participating central banks) developed their own method for the estimation of procurement savings and savings on process costs deriving from joint procurement. To determine procurement savings, the prices resulting from a joint contract were compared with past 'business as usual' prices (referred to as 'legacy prices'). EPCO's CBA framework consists of the following components:

- Unit prices (comparison of 'JCBPP' and 'legacy' prices)
- Compensation of volume distortions (as 'JCBPP' and 'legacy' volumes most often differ)
- Annual increase of benchmark price
- Qualitative considerations on the certainty of savings estimations (internal ranking system to assign 'quality values' to prices, including variables like timeliness, certainty and source of prices)

The DNB/EPCO referred to three methodological challenges that were faced when conducting the CBA for the "Standard IT Software Packages and Maintenance through a reseller" project. Firstly, not all central banks would have bought the same software under national arrangements as purchased under the joint contract, therefore a comparison was challenging. Secondly, not all participating institutions were able to provide their own benchmark prices for all products. This created difficulties in obtaining 'legacy' prices. A third challenge was the fact that the participating organisations were not required to call off from the framework agreement, so estimations of demand were difficult to achieve.

3. *What was/were the achieved price/s for the procured product/s?*

For reasons of confidentiality, the prices obtained both in the 'baseline'/'business as usual' and the 'JCBPP' scenario were not disclosed by any of the organisations that returned the factsheet. As the tender was conducted in English, it had been hoped they could lower prices due to a bigger market of suppliers (however, in the end, there were only few bidders). On an aggregated level, savings were estimated on average as between 1 and 18 % by DNB/EPCO, depending on the type of software procured. Those savings have been argued to result from the aggregation of volumes and

from the particular conditions that were granted by the reseller. The majority of interviewees referred to the benefit of better prices due to the pooling of volumes.

4. *How would you quantify the total costs of the JCBPP project for your organisation at the following stages/areas:*

The aim of this question was to compare costs and benefits in the different stages of the JCBPP initiatives with the 'business as usual' scenario. For confidentiality reasons, DNB/EPCO and the participating institutions that took part in the study were not in a position to provide detailed replies on the conditions, but commented on some aspects including the differences in costs between the two scenarios. *Table 7* gives an overview of costs and benefits in the EPCO project. As the coordinating organisation established specifically to support JCBPP projects, the costs for EPCO are always higher in a JCBPP setting in comparison to the 'business as usual' scenario (where it would not be involved at all).

Legend: Increased costs: ↘; Neutral: =; Increased benefits: ↗; CO: coordinating organisation: EPCO; LB: Lead buyer: DNB; PO: Participating organisations (e.g. BCL)

Cost component/process stage	**Overall evaluation: Increased costs (↘) Neutral (=) Increased benefits (↗)**
• **Costs of searching for project partners/other procurement organisations:** • BCL: cross border < business as usual • The potential project partners for JCBPP are all central banks of the EU and for this specific project they are the central banks mentioned in the tender documents. The lead buyer and some of the participating organisations commented on the fact that there were some differences in costs in this stage between the two scenarios (mostly attributed to additional time needed), but these differences were not regarded as significant.	CO: ↘ LB: ↘ PO: ↗
• **Coordination among the project partners:** • BCL: cross border < business as usual • According to EPCO, there was a constant need to keep in touch with all project partners to promote the participation of the banks in the procedure. There was some reluctance on the part of the participating organisations, especially at the beginning of the project. Due to the governance structure of the project, coordination activities would always involve the buying organisations, the lead buyer and EPCO. The points mentioned above indicate that additional time resources were required for EPCO and DNB. Participating organisations reported time savings, however.	CO: ↘ LB: ↘ PO: ↗
• **Travel:** • BCL: cross border > business as usual • Two physical meetings were held during the whole project. Although connected with some limited extra expenses for travel, they were regarded as essential for building trust among the partners and sharing know-how.	CO: ↘ LB: ↘ PO: ↘
• **Searching for the technically best product(s):** • BCL: cross border < business as usual • The smaller central banks in particular commented favourably on the pooling of expertise in EPCO procurements, and on being able to draw on the knowledge of the central banks in larger Member States, which was reflected in less time needed for market research. EPCO referred to the fact that only minor additional time resources were required, as the tender was for standard software, meaning that there were no complex requirements for specifications.	CO: ↘ LB: = PO: ↗

• **Preparation of the tender documents:** • BCL: cross border < business as usual • As the tender was prepared by the lead buyer under their national legislation, no additional costs were reported by the participating organisations which, on the contrary, commented positively that this constellation actually meant less effort for them in terms of time spent. • The lead buyer would have drafted tender documents for its own procedure, anyhow. EPCO had only limited additional efforts during this stage.	CO: ↘ LB: = PO: ↗
• **Legal costs:** • BCL: cross border< business as usual • There was some external legal advice required, which was paid for by the lead buyer. However, those costs exceeded the costs for a national tender only marginally.	CO: ↘ LB: = PO: ↗
• **Translation:** • BCL: not applicable • Translation services were provided in-house by the lead buyer, but the financial impact was described as rather minor in the interview. Language barriers that would possibly lead to additional costs were not seen as a big issue by EPCO for the central banks.	CO: ↘ LB: = PO: =
• **Award and preparation of the contract:** • BCL: cross border = business as usual • Some (but minor) additional costs were incurred for EPCO due to some last-minute decisions by organisations to participate in the tender.	CO: ↘ LB: = PO: =
• **Managing costs of the contract:** • BCL: cross border = business as usual • According to the interviewees at EPCO and DNB, the enforcement of the contract went generally smoothly, with only minor issues arising, but with no significant financial or time implications connected to this. The participating organisations reported no major issues either.	CO: ↘ LB: ↘ PO: =
• **Risk management:** • BCL: cross border = business as usual • Potential risks can be seen as arising from, on the one hand, the bigger project volume, and on the other hand, from applying Dutch public procurement law. Due to the JCB nature of the project, DNB reported that slightly more time was necessary to conduct the procedure and manage the risks related to this procedure.	CO: ↘ LB: ↘ PO: =
• **Legal enforcement of the contract:** • BCL: not applicable, as no litigation issues were experienced either with previous contracts or in the EPCO 2011 project. • There were no legal issues in the "Standard IT Software Packages and Maintenance through a reseller" project that would have financial or time implications, according to the interviewees. In the interviews, no comparisons were made between the baseline and JCBPP scenarios.	CO: ↘ LB: = PO: =
• **Fewer tenders required:** The average costs for one public tender were estimated at around EUR 50,000 by DNB and EPCO. Interviewees reported a substantial reduction of process costs for the 13 participating central banks due to tender procedures 'saved on', leading to a reduction of processing time and costs that would otherwise have been required for those tenders.	CO: = LB: = PO: ↗

• **EPCO membership fees/charges for participation:** EPCO charges its members annual fees (on a lump sum basis), which, in turn, provides an incentive for them to participate in JCBPP projects (especially when there is no obligation to call off from the framework agreement). Since the fee is paid as an annual lump sum, the specific project had no influence on it. • However, one participating organisation commented that if there would be charges to participate in a JCBPP project, they would decide on a case-by-case-basis whether or not to participate	CO: = LB: = PO: =
• **Role of external funding:** It is noteworthy that it was stressed in the interviews that obtaining external funding for JCBPP projects was not seen as option because of the central banks' wish to keep independence from governments.	CO: = LB: = PO: =

Table 7: Overview of costs and benefits in the EPCO project

5. *Would you expect costs to fall and benefits to increase in **your** organisation for future similar procurement projects (i.e. if the project were repeated)?*

This question was answered by both DNB/EPCO and BCL. In the factsheets and in the interviews, it was remarked that some of the costs would be expected to decrease in future similar procurement projects. Such (non-quantifiable) savings would be reached by an increase of knowledge within participating institutions, less effort for coordinating project partners and less time required for drafting tender documents. Also, EPCO has developed some template forms that could easily be adapted for use in further tenders (time savings).
In addition, other costs were expected to either decrease or remain at a similar level to before. For example, it was pointed out that a certain amount of time for coordination among project partners would still be required. Of the four initiatives analysed, EPCO has the greatest experience in JCBPP projects, and consequently it can be assumed that some learning effects have already taken place. Therefore, further potential savings in terms of process costs and time might be more limited in comparison to other JCBPP projects, as learning benefits would be expected to decrease the more often a project is repeated.

6. *If your organisation is the **lead organisation** in the JCBPP project, what was the total value of the goods and services that were procured within the project, and what were the shares of those purchased goods and services for your organisation and the project partner organisations (percentages of value)?*

DNB, as the lead buyer, completed this question. Its share of the total value of the purchased software was around 45 %. For confidentiality reasons, the respective procurement volumes of each participating bank could not be disclosed; however, it did mention that the percentages varied considerably.

Summary

Figure 18 summarises the costs and benefits of the "Standard IT Software Packages and Maintenance through a reseller". In essence, the reduction of the number of tenders (the costs for one public tender were estimated to amount to around EUR 50,000) and the economies of scale achieved due to the larger procurement volume (savings were estimated in average as between 1 and 18 % on an aggregated level for the central banks) can be seen as important benefits of the "Standard IT Software Packages and Maintenance through a reseller" project. Those benefits seem to offset additional coordination costs and increased efforts used by the coordinating and lead buying organisations even though enhanced requirement for communication between them was reported.
As the coordinating organisation, EPCO always faces higher costs in a JCBPP project in comparison to the 'business as usual' scenario (where EPCO would not be involved). If future JCBPP projects use a similar governance structure with a coordinating organisation, special attention must be directed at the question of whether the benefits of such an arrangement exceed the costs that occur when involving a coordinating organisation.
Moreover, additional costs for one partner (coordinating organisation or lead buyer) might result in additional benefits for the other parties (participating organisations) and contribute to minimising costs, especially as the latter can draw on the expertise of the former: According to DNB as lead buyer, there were additional time costs (about three months in terms of time elapsed, not in terms of working hours) and some additional staff resources required in comparison to a 'business-as-usual' procurement, yet especially smaller organisations with less expertise in-house reported

benefits, as the project required less input of financial and time resources by them. Therefore, smaller central banks seemed to benefit from the EPCO 2011 project in particular.
If risks are conceived of in broad terms (as in the present study), potential issues in JCBPP projects might be that contracts have larger volumes than in the 'baseline' setting and that for some participating organisations the tender and contracts are made under the law of a different country. A lesson from this for future JCBPP projects would be that there has to be a fair division of risks among the partners involved, i.e. additional risks should not be left primarily with the lead buyer.
The lessons learnt from this project influenced the follow-up project in 2016, which is estimated to be even larger in terms of procurement volume. In comparison with the other three JCBPP projects that are analysed within the scope of this study, EPCO has the most experience in such projects. Thus, further potential savings in terms of costs and time might be limited, as learning curves usually have a degressive character.

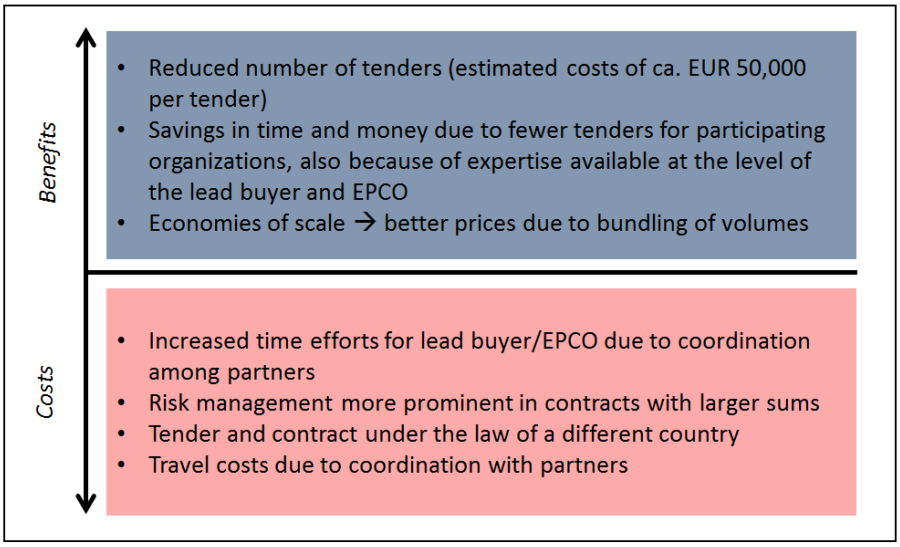


Figure 18 : CBA Summary "Standard IT Software Packages and Maintenance through a reseller"/EPCO

5.2. CBA HAPPI

In relation to the HAPPI project, CBA factsheets were returned by (a) RESAH (France, lead buyer), (b) SCR Piemont (Italy, participating organisation) and (c) NHS Commercial Solutions (UK, participating organisation). There was no 'coordinating organisation' involved in this project.

Summary of responses per question

1. *Was a quantitative cost-benefit analysis (CBA) conducted within the scope of the JCBPP project?*
2. *(Describe the method that was applied for the CBA.)*

All of the three organisations replied to the first question in the negative.

3. *What was/were the achieved price/s for the procured product/s?*

The prices obtained for the procured products are listed in *Table 8*. The respondents pointed out that due to the fact that the solutions procured within the HAPPI project were innovative and not yet available on the European market, finding values for the 'baseline'/'business as usual' scenario was difficult. It is noteworthy that the price criterion accounted only for 30 % in the evaluation grid of the HAPPI project.

Product	Net unit price as result of JCBPP project	Net unit price in 'baseline'/ 'business as usual' case
Product 1: Fall detection system (price per sensor)	EUR 667*	no reference prices due to innovative character of the project
Product 2: Treadmill	EUR 52,000	no reference prices due to innovative character of the project
Product 3: Walking course	EUR 2,667	no reference prices due to innovative character of the project

* While products 2 and 3 are bulk products, product 1 is a customised product. The price reported here reflects the value estimated by RESAH for one sensor for the fall detection system.

Table 8: Prices obtained for procured solutions within the HAPPI project

4. *How would you quantify the total costs of the JCBPP project for **your** organisation at the following stages/areas:*

All three organisations that returned the factsheet completed this question (*Table 9*). RESAH, as coordinating organisation, kept a record on an aggregated level where the actual costs that occurred during the project were assigned to the corresponding stages (Period 1 – *preparation stage*: open market consultation, market research, legal study; Period 2 – *joint tender*: design of tender documents, analysis of bids; Period 3 – *market execution*). However, detailed results could not be disclosed by RESAH before a validation by the EC.

Legend: Increased costs: ↘; Neutral: =; Increased benefits: ↗; LB: lead buyer (RESAH); PO: Participating organisations (all other organisations); not answered: –

Cost component/process stage	**Overall evaluation: Increased costs (↘) Neutral (=) Increased benefits (↗)**
• **Costs of searching for project partners/other procurement organisations:** • RESAH: not answered in the factsheet • SCR Piemont: EUR 1,200 (JCBPP) vs. EUR 300 (baseline) • NHS: not answered in the factsheet • In the interviews, there was no comment on the financial or time implications of searching for project partners.	LB: – PO: ↘
• **Coordination among the project partners:** • RESAH: EUR 130,095 (JCBPP) vs. EUR 0 (baseline) • SCR Piemont: EUR 1,440 (JCBPP) vs. EUR 1,440 (baseline) • NHS: EUR 95,123 (JCBPP) vs. EUR 0 (baseline)	LB: ↘ PO: =/↘
• **Travel:** • RESAH: EUR 61,796 (JCBPP) vs. EUR 0 (baseline) • SCR Piemont: EUR 11,300 (JCBPP) vs. EUR 2,260 (baseline) • NHS: EUR 12,980 (JCBPP) vs. EUR 0 (baseline)	LB: ↘ PO: ↘
• **Searching for the technically best product(s):** • RESAH: not answered in the factsheet • SCR Piemont: EUR 960 (JCBPP) vs. EUR 480 (baseline) • NHS: not answered	LB: – PO: ↘

• In the interviews, while it was explained that the focus was on searching for innovative products which are standardisable (i.e. that are 'compatible' with legislations and needs in different countries), there was no comment on the financial or time implications of this.	
• **Preparation of the tender documents:** • RESAH: not answered in the factsheet • SCR Piemont: EUR 4,600 (JCBPP) vs. EUR 2,880 (baseline) • NHS: not answered in the factsheet • RESAH mentioned in the interviews that the preparation of the tender documents took more time than in the 'business as usual' scenario.	LB: ↘ PO: ↘
• **Legal costs:** • RESAH: not answered in the factsheet • SCR Piemont: EUR 7,800 (JCBPP) vs. EUR 0 (baseline) • NHS: not answered in the factsheet • In the interviews, RESAH mentioned that the legal part was more time intensive than in the case of a 'business as usual' scenario.	LB: ↘ PO: ↘
• **Translation:** • RESAH: not answered in the factsheet • SCR Piemont: EUR 9,360 (JCBPP) vs. EUR 0 (baseline) • NHS: not answered in the factsheet • Translation of the documents was described by RESAH in the interviews as more time consuming than in the case of a 'business as usual' scenario.	LB: ↘ PO: ↘
• **Award and preparation of the contract:** • RESAH: not answered in the factsheet • SCR Piemont: EUR 960 (JCBPP) vs. EUR 240 (baseline) • NHS: not answered in the factsheet	LB: – PO: ↘
• **Managing costs of the contract:** • RESAH: not answered in the factsheet • SCR Piemont: EUR 960 (JCBPP) vs. EUR 240 (baseline) • NHS: not answered in the factsheet • The contract had to be promoted by the participating organisations among the final buyers. This was stated to be time intensive and involved, e.g., the costs for roadshows or information days. While the promotion of products offered is a task that CPBs also have to fulfil when they procure in a non-JCB setting, it was remarked in the interviews that informing potential buyers about the solutions in the HAPPI project required more time and financial resources than in the 'baseline' setting.	LB: – PO: ↘
• **Risk management:** • RESAH: not answered in the factsheet • SCR Piemont: 0 € (JCBPP) vs. 240 € (baseline) • NHS: not answered in the factsheet • In the interviews, the costs for risk management were classified as either minor or irrelevant. Potential risks might arise from the governance structure of the project that involves multiple partners.	LB: – PO: =
• **Legal enforcement of the contract:**	LB: – PO: –

• RESAH: not answered in the factsheet • SCR Piemont: not answered in the factsheet • According to the interviews, there were no legal complaints, thus no additional costs related to the legal enforcement of the contract were registered.	
• **Dissemination of the contract (this point was added by SCR Piemont):** • SCR Piemont: EUR 5,940 (JCBPP) vs. EUR 240 (baseline)	PO: ↘
• **Role of external (co-)funding:** The project was largely funded by the European Union (the requested contribution from the EC was 95%), leading to a substantial benefit in financial terms (up to EUR 1,912,597 for the project in total). Also, the purchase of the final products was co-financed by the EC.	LB: ↗ PO: ↗

Table 9: Overview of costs and benefits in the HAPPI project

5. *Would you expect costs to fall and benefits to increase in **your** organisation for future similar procurement projects (i.e. if the project were repeated)?*

According to the factsheets returned from RESAH and SCR Piemont (this question was not completed by NHS Commercial Solutions), costs would be expected to decrease in future similar procurement projects in the following areas:

- Time spent on concluding the legal framework agreement in a JCBPP project with a number of partners.
- Market research via an online platform
- Mapping of the market
- Identification of efficient communication channels
- Analysis of the bids received
- Preparation of supporting documentation
- Set-up of a European suppliers' helpdesk
- Travel

In addition, RESAH commented that costs were likely to remain on the same level for launching the tender, publication of the Prior Information Notice and preparation of the supporting communication documentation. With regard to the translation of the tender documents and other supporting documents, there were mixed responses (while RESAH would expect costs to remain on the same level, one of the participating organisations expected a decrease in costs).
Last, it was also pointed out in the interviews that costs would be likely to increase if the procurement area was a new one. Understanding the market and gaining expertise in the new procurement area would be the most challenging issues.

6. *If your organisation is the **lead organisation** in the JCBPP project, what was the total value of the goods and services that were procured within the project, and what were the shares of those purchased goods and services for your organisation and the project partner organisations (percentages of value)?*

RESAH, as the coordinating organisation, answered this question, but it did not procure any of the products itself. Data were disclosed only on an aggregated level for all participating organisations (*Table 10*). So far, products with a total value of EUR 252,000 have been procured. In its initial budget, RESAH disclosed an estimate of EUR 2,500,000 for the solutions procured, so the actual demand has not met the planned demand yet. This might reflect the challenges that the organisations were faced with in the promotional activities.

Total net value of procured goods and services (in €)		
	Percentage ↓	Name of organisation ↓
Percentage of goods and services purchased by your organisation (lead organisation)	0%	RESAH
Percentage of goods and services purchased by project partner organisation	100%	(figures for all participating organisations) **Product 1:** 12 fall detection systems (with about 120 sensors), totalling EUR 80,000 **Product 2**: 3 treadmills, totalling EUR 156,000 **Product 3**: 6 walking courses, totalling EUR 16,000

Table 10 : Shares of purchased products in the HAPPI project

Summary

The most relevant costs and benefits for the HAPPI project are compared in *Figure 19*. The project has shown that besides finding innovative solutions other benefits could also be realised.
The financing of the project by the EC (with almost EUR 2 million, including 95% of project costs and co-funding of final products) can be regarded as an incentive to participate in a JCBPP project. Therefore, one policy recommendation would be that co-financing can be seen as a suitable measure for stimulating interest in projects that are deemed relevant.
The promotion of the products which they offer is a task for which CPBs require some resources, also in a non-JCB setting. However, informing potential buyers about the solutions in the HAPPI project required more time and financial resources than in the 'baseline' setting according to the interviewees and returned factsheets. This might be because of both the innovative character of the products and the innovative character of the project (with information days and roadshows). The actual demand for the solutions procured in the HAPPI project has not yet met the planned demand, which may reflect the challenges that the organisations were faced with in the promotional activities.
If the project was to be continued, there are potential learning effects (leading to decreased costs and/or less time spent) in the areas of market research. Also, a reduction in costs for travelling could be expected, as the project partners already know each other, and potential buyers are already aware of the solutions that have been developed in the HAPPI project. A recommendation in this respect would be that JCBPP projects should be repeated, as some of the benefits cannot be realised in a one-off project.
Last, one methodological learning is that due to the fact that the solutions procured within the HAPPI project were innovative and not yet available on the European market, finding values for the 'baseline'/'business as usual' scenario was difficult. For the future, the suggestion would be that in JCBPP a set of criteria should be defined for how to define the costs and benefits of a project.

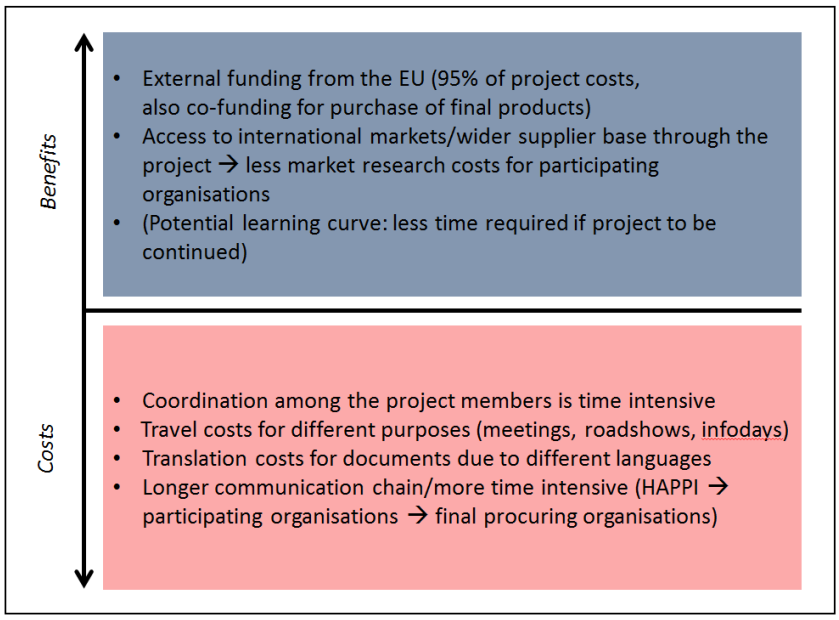


Figure 19 : Costs and benefits of the HAPPI project

5.3. CBA "Software Procurement BBG-SKI"

Both partners in the "Software Procurement BBG-SKI" project (BBG as lead buyer in Austria and SKI as participating organisation in Denmark) completed a CBA factsheet. In comparison to some responses for the other projects, the responses were detailed and the data provided allowed for a quantitative CBA in the manner which was initially planned for all projects.

Summary of responses per question

1. *Was a quantitative cost-benefit analysis (CBA) conducted within the scope of the JCBPP project?*

While SKI did not carry out a quantitative CBA, BBG conducted a CBA (in the form of a calculation of potential savings) for both the Austrian and Danish project partner (see next question).

2. *Describe the method that was applied for the CBA.*

In its CBA, comparing a 'baseline' and 'JCBPP' scenario, BBG focused exclusively on the prices for the software, leaving other stages of the project out. As six different product categories were tendered within the scope of the project, a 'weighted basket' approach was used. BBG compared the conditions for end users in relation to the previous and new tenders, separately for the Austrian and Danish project partner (as the conditions in the previous framework agreements differed). This was done only for call-offs below EUR 50,000, as bidders had the option of changing the conditions for requests above this threshold in a mini-tender. Therefore, the savings were extrapolated to the full tendered volume, also taking into consideration the different discounts depending on the volume of call-offs.

3. *What was/were the achieved price/s for the procured product/s?*

BBG provided an overview of tender volumes and total savings in the context of the "Software Procurement BBG-SKI" project (*Table 11*).

Project partner	Tender volume	Total savings
Austria – BBG	EUR 8,000,000	EUR 104,000
Denmark – SKI	EUR 24,000,000	EUR 1,759,200

Table 11 : Prices obtained for solutions procured within the "Software Procurement BBG -SKI" project

4. *How would you quantify the total costs of the JCBPP project for your organisation at the following stages/areas:*

Both organisations completed this question (*Table 12*). In addition, BBG commented on reasons for the differences in costs/time spent for the two procurement scenarios.

Legend: Increased costs: ↘; Neutral: =; Increased benefits: ↗; LB: Lead buyer (BBG); PO: Participating organisation (SKI); not answered: –

Cost component/process stage	**Overall evaluation: Increased costs (↘) Neutral (=) Increased benefits (↗)**
• **Costs of searching for project partners/other procurement organisations:** • BBG: EUR 864 (JCBPP) vs. EUR 0 (baseline) • SKI: EUR 1,053 (JCBPP) vs. EUR 0 (baseline) • BBG explained that the project partners initially met at a meeting of the 'CPB Network' (a network of centralised purchasing bodies in the EU), where they agreed to initiate a procurement project involving multiple organisations. After several options were considered, it was decided to start a JCBPP project.	LB: ↘ PO: ↘
• **Coordination among the project partners:** • BBG: EUR 13,176 (JCBPP) vs. EUR 0 (baseline) • SKI: EUR 9,900 (JCBPP) vs. EUR 0 (baseline) • According to additional information provided by BBG, there were six project meetings and a number of telephone conferences required for coordination.	LB: ↘ PO: ↘
• **Travel:** • BBG: EUR 0 (JCBPP) vs. EUR 0 (baseline) • SKI: EUR 11,263 (JCBPP) vs. EUR 0 (baseline) • BBG added that there were no travel expenses on behalf of their side, as the project partners from SKI always travelled to Austria.	LB: = PO: ↘
• **Searching for the technically best product(s):** • BBG: EUR 864 (JCBPP) vs. EUR 540 (baseline) • SKI: EUR 0 (JCBPP) vs. EUR 0 (baseline) • It was explained by BBG that at the kick-off meetings several products to be procured in a JCBPP exercise were reviewed. During those meetings, Citrix software licenses were found to be the easiest products for the scope of the project.	LB: ↘ PO: =
• **Preparation of the tender documents:** • BBG: EUR 32,400 (JCBPP) vs. EUR 5,400 (baseline) • SKI: EUR 9,000 (JCBPP) vs. EUR 12,000 (baseline) • BBG stated that a lot of time resources were required at this stage, due to taking English as the working language of the project and the necessity to take the terms and conditions of the Danish partner 'on board'.	LB: ↘ PO: ↗

• **Legal costs:** • BBG: EUR 14,444 (JCBPP) vs. EUR 920 (baseline) • SKI: EUR 4,800 (JCBPP) vs. EUR 12,600 (baseline) • In their comment on the costs involved at this stage, BBG pointed out that legal advice had to be sought, as the requirements of two legal systems had to be considered.	LB: ↘ PO: ↗
• **Translation:** • BBG: EUR 2,212 (JCBPP) vs. EUR 0 (baseline) • SKI: EUR 0 (JCBPP) vs. EUR 0 (baseline) • BBG clarified that the template for the framework agreement contract and other tender documents were translated into English by an external translation office.	LB: ↘ PO: =
• **Award and preparation of the contract:** • BBG: EUR 1,620 (JCBPP) vs. EUR 1,620 (baseline) • SKI: EUR 1,500 (JCBPP) vs. EUR 3,000 (baseline) • BBG reflected that the award (including the preparation of the necessary documentation) was entirely carried out by them. They estimated the effort to be the same as for other tenders.	LB: = PO: ↗
• **Managing costs of the contract:** • BBG: EUR 2,700 (JCBPP) vs. EUR 1,620 (baseline) • SKI: N/A • BBG commented that they required more time to monitor the contract, due to increased coordination with SKI.	LB: ↘ PO: –
• **Risk management:** • BBG: EUR 0 (JCBPP) vs. – (baseline) • SKI: N/A	LB: – PO: –
• **Legal enforcement of the contract:** • BBG: EUR 0 (JCBPP) vs. – (baseline) • SKI: N/A	LB: – PO: –
• **Costs for any other stages/areas:** • BBG: EUR 0 (JCBPP) vs. – (baseline) • SKI: N/A	LB: – PO: –

Table 12 : Overview of costs and benefits in the "Software Procurement BBG-SKI" project

5. *Would you expect costs to fall and benefits to increase in **your** organisation for future similar procurement projects (i.e. if the project were repeated)?*

Both BBG and SKI answered this question. According to SKI, costs would possibly remain at the same level if a new partnership were established. According to BBG, translation costs would possibly decrease for future similar procurement projects, as templates would already have been translated. They additionally commented that they were already able in this project to draw on previously translated documents, which helped to save costs. SKI declared that as long as the partners were the same, the costs of similar projects would most likely decrease as the partners would know each other and many of the initial costs of establishing a joint procedure could be saved.

6. *If your organisation is the **lead organisation** in the JCBPP project, what was the total value of the goods and services that were procured within the project, and what were the shares of those purchased goods and services for your organisation and the project partner organisations (percentages of value)?*

This question was answered by BBG (*Table 13*). While the volume of the tender is EUR 24 million, (75%) for SKI, the share of BBG being EUR 8 million (25 %):

Organisation	Net value (percentage)
Percentage of goods and services purchased by BBG	8,000,000 € (25%)
Percentage of goods and services purchased by SKI	24,000,000 € (75%)

Table 13 : Shares of purchased products purchased in the "Software Procurement BBG-SKI" project

Summary

The most relevant costs and benefits for the "Software Procurement BBG-SKI" project are mapped and compared in Figure 20. Several observations can be made based on the comparison:
First, the financially by far most significant benefits are derived from savings achieved in terms of product prices. While the benefits for SKI are estimated to be about EUR 1.75 million, the savings for BBG are more than EUR 100,000, which outweighs its additional costs as lead buyer for the JCBPP exercise (about EUR 60,000) by far. This suggests that a bundling of requirements can indeed lead to the realisation of benefits, at least in procurement areas with standardisable products like software.
Second, the major portion of additionally incurred costs is in the areas of coordination among project partners and preparation of the tender documents. For the latter, challenges were the fact that English was the working language of the project and the requirement to implement the terms and conditions of the Danish partner, which was time-intensive. Other additional costs (e.g. for travel and translation) were considered as less important. If the project was to be continued, transaction costs like coordination of the project partners and translation (as some documents could be re-used) would be expected to decrease. It can be concluded that JCBPP projects should not be one-off exercises, but should be repeated, as some of the benefits are to be realised only in a follow-up project.
Third, additional costs for one partner (the lead buyer) might result in additional benefits for the other party and contribute to minimise additional costs. For example, while BBG reported an increase in costs for preparing the tender documents, SKI stated a relief in relation to process costs for this stage. The same holds true for legal costs, in which BBG pointed out that legal advice had to be sought, as the requirements of two legal systems had to be considered, while SKI emphasised a decrease in legal costs.

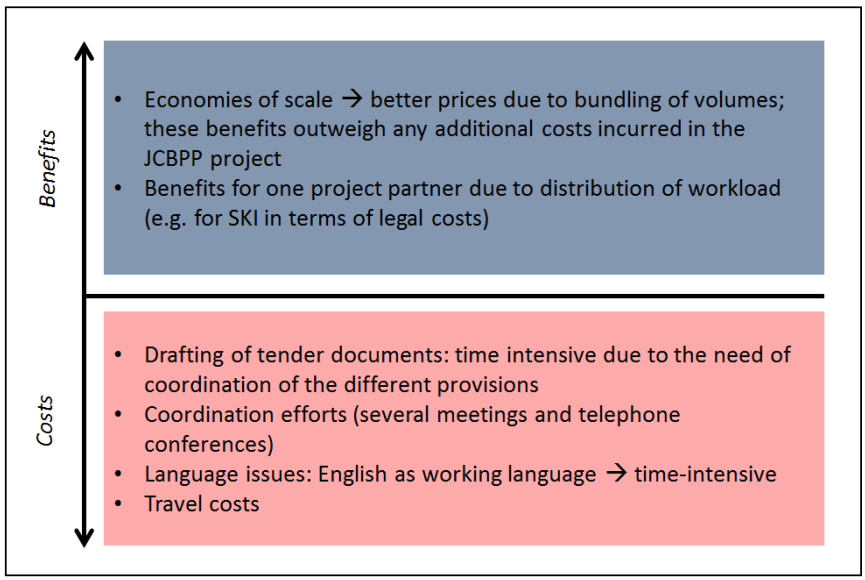
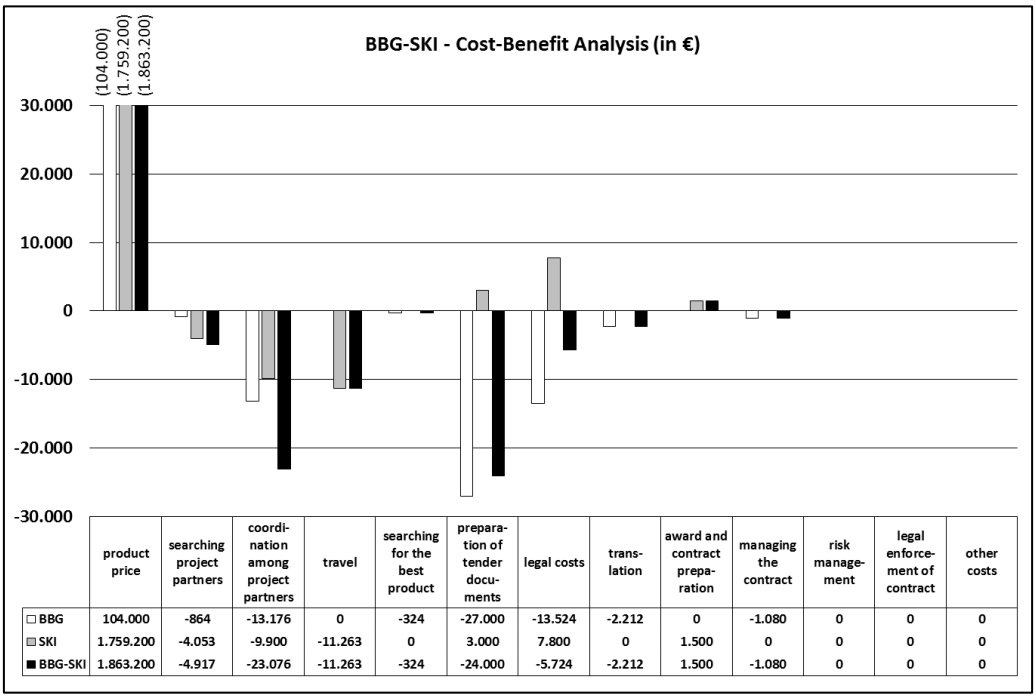


Figure 20 : Costs and benefits of the "Software Procurement BBG-SKI" project

To summarise, Figure 20 indicates the lessons learnt from the CBA for the "Software Procurement BBG-SKI" project.



	product price	searching project partners	coordination among project partners	travel	searching for the best product	preparation of tender documents	legal costs	translation	award and contract preparation	managing the contract	risk management	legal enforcement of contract	other costs
BBG	104.000	-864	-13.176	0	-324	-27.000	-13.524	-2.212	0	-1.080	0	0	0
SKI	1.759.200	-4.053	-9.900	-11.263	0	3.000	7.800	0	1.500	0	0	0	0
BBG-SKI	1.863.200	-4.917	-23.076	-11.263	-324	-24.000	-5.724	-2.212	1.500	-1.080	0	0	0

Figure 21 : Quantitative CBA of the "Software Procurement BBG-SKI" project

5.4. CBA "Geological Tests BBT SE"

For this project, a completed CBA factsheet was received from BBT SE. Due to the particular governance structure of the project there is only one organisation involved, i.e. there is no lead buyer or coordinating organisation involved in the project. This analysis focuses on the "AP213 – Geological Tests" project conducted by BBT SE in 2014. The specific subject of the public procurement procedure was work services for the drilling of two deep wells, three exploration drillings including the construction of ground water measurement points, drilling and borehole trials and the execution of pumping trials. In addition to the "Geological Tests" project, comparisons for the overall project (i.e. the tunnel as a whole) draw on the full set of experience that has been gained in cross-border procurements in BBT SE.

Summary of responses per question

1. *Was a quantitative cost-benefit analysis (CBA) conducted within the scope of the JCBPP project?*
2. *(Describe the method that was applied for the CBA.)*

No dedicated quantitative CBA was conducted for this project. However, a risk assessment was carried out, i.e. the decision for a cross border tender was taken after the option of having two tenders with two separate contracts was rejected.

3. *What was/were the achieved price/s for the procured product/s?*

The following table compares the prices obtained in the JCBPP project with previous prices for similar works conducted from 2008 to 2011 and that were procured only in the context of one country (Austria). Only prices for the main works of the site preparation project were reported.

Product	Net price as result of JCBPP project (in Euro)	Net price in 'baseline' scenario (in Euro)	Variance (in %)	Which type of price is referred to in the 'baseline' scenario
Mobilisation and construction areas	243,970	617,701	373,731 (60.5%)	Estimation based on prices of similar works conducted from 2008 to 2011

Core drillings	414,300	647,350	233,050 (36.0%)	Estimation based on prices of similar works conducted from 2008 to 2011
Wells	760,550	909,265	148,715 (16.4%)	Estimation based on prices of similar works conducted from 2008 to 2011
Percussion drillings	42,800	70,329	27,529 (39.1%)	Estimation based on prices of similar works conducted from 2008 to 2011
Wells and groundwater	309,325	344,705	35,380 (10.3%)	Estimation based on prices of similar works conducted from 2008 to 2011
Economics	37,100	51,610	14,510 (28.1%)	Estimation based on prices of similar works conducted from 2008 to 2011
Geophysics	**128,150**	**114,180**	**-13,970 (-12.2%)**	Estimation based on prices of similar works conducted from 2008 to 2011
Structural logs	47,650	79,860	32,210 (40.3%)	Estimation based on prices of similar works conducted from 2008 to 2011
Borehole direction	19,412	20,645	1,233 (6.0%)	Estimation based on prices of similar works conducted from 2008 to 2011
Packer tests	198,650	220,685	22,035 (10.0%)	Estimation based on prices of similar works conducted from 2008 to 2011
Short pumping tests	**99,000**	**40,000**	**-59,000 (-147.5%)**	Estimation based on prices of similar works conducted from 2008 to 2011
Datalogger	**37,950**	**21,261**	**-16,689 (-78.5%)**	Estimation based on prices of similar works conducted from 2008 to 2011
Step test and constant rate	94,895	108,403	13,508 (12.5%)	Estimation based on prices of similar works conducted from 2008 to 2011
Pumping test large scale	**209,600**	**69,204**	**-140,396 (-202.9%)**	Estimation based on prices of similar works conducted from 2008 to 2011
T-control of water	68,548	99,000	30,452 (30.8%)	Estimation based on prices of similar works conducted from 2008 to 2011
Geodetic monitoring	**15,000**	**4,200**	**-10,800 (-257.1%)**	Estimation based on prices of similar works conducted from 2008 to 2011
Final report	29,000	36,000	7,000 (19.4%)	Estimation based on prices of similar works conducted from 2008 to 2011
Security	8,163	8,163	0 (0.0%)	Estimation based on prices of similar works conducted from 2008 to 2011
Total	**2,764,063**	**3,462,561**	**698,498 (20.2%)**	

Table 14 : Prices obtained for solutions procured within the "Geological Tests BBT SE" project

Overall, cost savings of about 20% were obtained, although there are both positive and negative variances for the individual products. The highest favourable absolute variances were in the areas of (1) mobilisation and construction areas, (2) core drillings, and (3) wells (the first two also with considerable relative savings), while the highest adverse variances (both absolute and relative)

were reported for the pumping tasks of (1) pumping test large scale, and (2) short pumping tests. In the interviews, it was pointed out that the savings were achieved because an Italian company that could offer a lower price was successful in the bidding (mostly due to lower labour costs in Italy).
It can be argued that the prices were (also) driven down by the procedures imposed by Italian legislation, i.e. having to offer a discount on the maximum price. While bidders from other countries were not able to bid for the maximum price, as it was too low, Italian bidders were still able to offer a discount. Another aspect connected to the achievment of a lower price was the fact that BBT can be considered a prestigious project which potentially increases the reputation of the successful bidder.
In comparison to other JCBPP initiatives, economies of scales can probably not be easily realised in this project due to its one-off character.

4. *How would you quantify the total costs of the JCBPP project for **your** organisation at the following stages/areas:*

BBT SE did not complete this question on the factsheet. Therefore, the following results (*Table 15*) are based on statements made during the interviews and report on more general issues of JCBPP projects in the area of infrastructure.

Legend: Increased costs: ↘; Neutral: =; Increased benefits: ↗

Cost component/process stage	**Overall evaluation: Increased costs (↘) Neutral (=) Increased benefits (↗)**
• **Costs of searching for project partners/other procurement organisations**: Due to the clear scope of the project, there were no costs involved in searching for project partners as there is only one entity involved both in a cross border and in a national context.	=
• **Coordination among the project partners:** As one of the CEOs of BBT SE is based in Innsbruck and the other one in Bolzano, coordination requires additional time, especially for signing documents. In a JCBPP procedure, there is more coordination between the two offices necessary than in a baseline scenario since both offices are equally involved in the implementation of the project. While this is not specific to this JCBPP project, but rather applicable to any joint procurement exercise (even if conducted on a sole national basis), a SE would have allowed for bundling at a single headoffice. Therefore, these additional coordination efforts are regarded as leading to increased costs.	↘
• **Travel:** For travel, the same holds true as in the case of coordination.	↘
• **Searching for the technically best product(s):** BBT SE did not comment in the interview on the differences between the 'JCBPP' and a 'baseline' scenario in searching for the best products.	=
• **Preparation of the tender documents:** The preparation of the tender documents was more time intensive in the cross-border situation than in a baseline scenario as details of the legal and technical requirements of both countries had to be considered.	↘
• **Legal costs:** There were additional costs due to the necessity of dealing with complex regulations in Italian PP law with especially big impacts on non-Italian bidders.	↘
• **Translation:** Translation services were provided in-house by BBT SE and were reported to have no financial implications. Both JCBPP tenders and national ones are conducted using bilingual tender documentation.	=

• **Award and preparation of the contract:** In the interview, there was no comment on the differences between the 'JCBPP' and a 'baseline' scenario in this stage.	=
• **Managing costs of the contract:** In the interview, no specific issues were reported regarding differences in managing costs of the contract.	=
• **Risk management:** In the interview, there was no comment on the differences between the 'JCBPP' and a 'baseline' scenario in this stage.	=
• **Legal enforcement of the contract:** So far, there have been no legal issues reported with the contract.	=
• **Fewer tenders required:** There is only one instead of two tenders required (costs were reported to be EUR 53,000 instead of an estimated EUR 72,000 for the Austrian part).	↗
• **Role of external funding:** The project is co-funded by the European Union (50% of costs), leading to a substantial benefit in financial terms.	↗

Table 15 : Overview of costs and benefits in the "Geological Tests BBT SE" project

5. *Would you expect costs to fall and benefits to increase in **your** organisation for future similar procurement projects (i.e. if the project were repeated)?*

BBT SE indicated that costs would be expected to decrease in future similar projects in the area of contract management due to increasing experience with cross-border procurements. For the tendering stage, no changes in costs would be anticipated. The interviews revealed no additional information.

6. *If your organisation is the **lead organisation** in the JCBPP project, what was the total value of the goods and services that were procured within the project, and what were the shares of those purchased goods and services for your organisation and the project partner organisations (percentages of value)?*

The total net value of procured goods and services in this particular project was EUR 2.8 million, with an 85% share for the Austrian and 15% for the Italian party. This means that the savings achieved were around EUR 0.6 million for the Austrian, and around EUR 0.1 million for the Italian party.

Summary

The costs and benefits of the "Geological Tests BBT SE" project are summarised in *Figure 22*. The following conclusions can be drawn:
The project has shown that the co-funding by the EU (50% of costs) can be seen as a major benefit. While similar projects for developing major European routes are usually co-funded at 25-30%, the particular transnational character of the project was regarded as a contributing factor for achieving a higher co-funding rate.
In addition, savings of around 20% in terms of prices were achieved in this project – mostly in the area of labour costs. From this, it can be concluded that JCBPP projects yield benefits particularly in areas where costs differ between countries. JCBPP projects can make use of these lower costs.
The reduced number of tenders (only one here instead of one for each country) can be seen as a further benefit of the project. Tenders have been pointed out to be time-intensive and are connected to risk and uncertainty. JCBPP projects reduce the number of tenders and costs.
Additional costs arise as a consequence of the governance structure of BBT SE with two CEOs based at two different locations and the fact that procurements are conducted in two languages and need the approval of both CEOs. Here, further potential for the bundling and reduction of costs is seen.
According to the interviewees, the lessons learnt from this project will be valuable for future JCBPP tenders in the legal context of a joint entity carrying out the procurement.

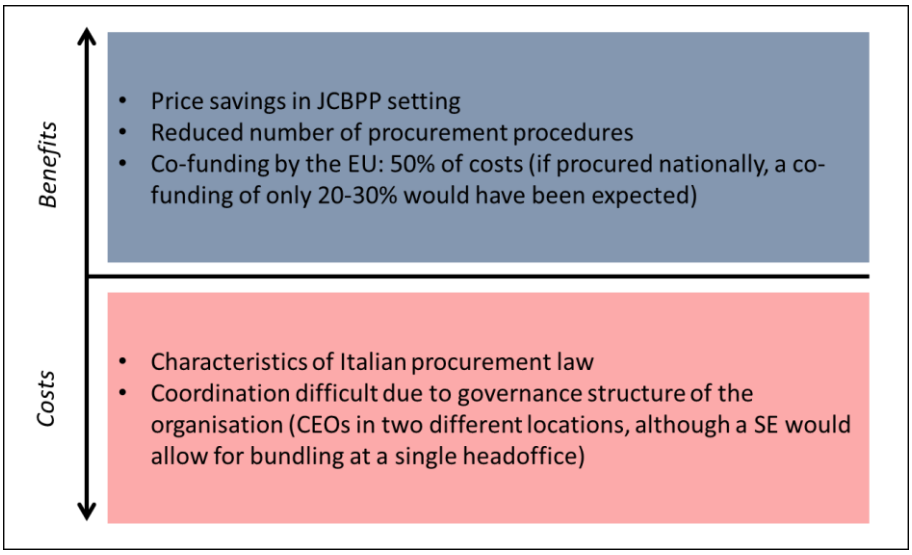


Figure 22 : CBA summary "Geological Tests BBT SE

5.5. Comparison and Lessons Learnt from the CBA

The following chart (*Figure 23*) gives an aggregated overview of the most frequently mentioned costs and benefits of the four JCBPP projects analysed:

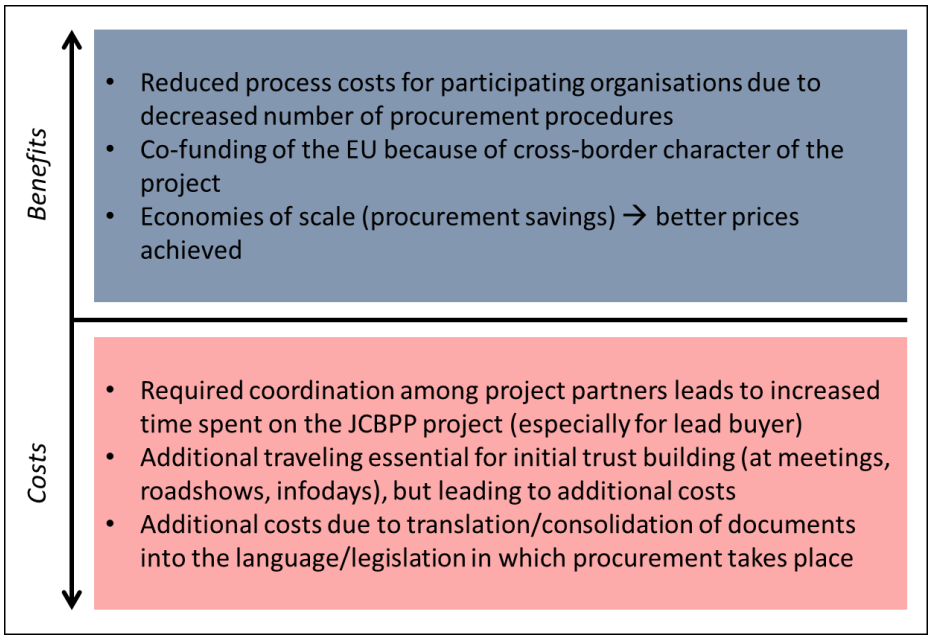


Figure 23 : Overview of costs and benefits of the four JCBPP projects

Several general conclusions and lessons learnt can be taken from the analysis of the projects:

- *Most important advantages of JCBPP projects:* Three major advantages can be deduced from the case studies:
    - Price savings due to **economies of scales** (**procurement savings**) are a main driver of benefits. In the "Software Procurement BBG-SKI" project, economies of scale due to the bundling of requirements from two organisations were the most important benefit component. Also in the EPCO "Standard IT Software Packages and Maintenance through a reseller" project, price savings due to higher volumes were reported, but not to the same extent as in the BBG-SKI project, since the procurement volume was already significant in the 'baseline' scenario. These results are in line with economic principles: An increase in production and sales volume leads to an increase in efficiency. This allows for lower prices due to lower variable costs. However, this effect is limited, as variable costs cannot be decreased infinitely (see *Figure 24*). With an increase of sales volume, the positive effect per additional unit gets smaller and smaller. Therefore, procurement savings have a degressive character. This leads to the conclusion that the lower the 'excess' volume in a JCBPP project is in comparison to the 'baseline' scenario, the lower the economies of scale will be .

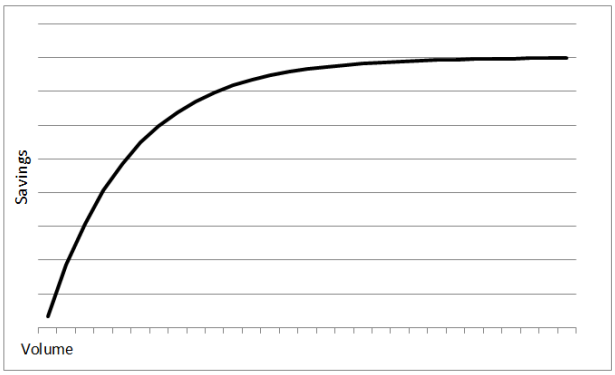


Figure 24 : Degressive development of procurement savings due to economies of scale

- There is another aspect resulting from the bundling of demand, which relates to the point above. It may happen that the supply capacities of the average economic operators in a market segment are exceeded through a (further) bundling of demand. This leads to a situation where the establishment of bidding consortia becomes necessary, with additional coordination requirements and risks on the part of the bidders, with the consequence of a narrowing of the market (few bidding consortia instead of many 'standalone' bidders). In further consequence, this might even have a negative impact on the prices obtainable.
- Hence, benefits arising from realising economies of scale are relevant only to a certain point. This point depends on the specific situation in a market segment, as capacities and the development of product costs are different in each segment of the market.
    - The generation of **savings on process costs** (as a consequence of a decreased number of tenders) was named as the main benefit in the EPCO project and also as a relevant benefit for the "Software Procurement BBG-SKI" project. In these projects, while the coordinating organisation (in the first project) and the lead buyer (in both projects) faced higher coordination and process costs, the participating organisations reported decreased efforts. Savings on process costs are primarily the result of central coordination, i.e. the lead buyer or the coordinating organisation takes responsibility for the essential parts of the procurement procedure and the other organisations are relieved from those tasks. From this, it can be concluded that the higher the number of participating organisations in a project, the higher total savings on process costs can be achieved (if the additional effort for the lead buyer/coordinating organisation is smaller than the overall benefits for participating organisations that are derived from central coordination).
    - Although the CBA that was conducted within the scope of this study did not focus on the perspective of the suppliers, it has to be noted that also EOs can potentially benefit from savings in process costs, as they participate in fewer tenders. This, however, is the case for any form of joint procurement (not only in JCBPP).
    - Innovative projects that are carried out as JCBPP projects might benefit from **increased external (co-)funding**. While the HAPPI project was subsidised with almost EUR 2 million, one of the reasons for the co-funding rate of 50% for the BBT SE project (instead of a co-funding of 25-30% for similar projects developing major European routes) was the innovative character of the project (legal form of a SE using JCBPP procedures).
- However, it must be pointed out that this advantage is not derived from procuring within the scope of JCBPP, but rather is dependent on the political will of a funding body. Therefore, it is difficult to draw general conclusions from this. Assuming that JCBPP procedures will be increasingly used in the future (or may even become standard operating procedure), it will get more and more difficult to obtain (co-)funding for projects. Nonetheless, taking a medium-term perspective, such (co-)funding will play an important role, especially for generating know-how.
- Most important challenges faced by JCBPP projects:

Challenges connected to JCBPP relate to the areas of coordination and communication, risk management and the organisational structure of an initiative:

- The major portion of the additional costs are incurred in the areas of **coordination and communication among project partners** (especially at the beginning of the project). This issue is closely associated with other issues that require additional financial or time resources in JCBPP projects (e.g. travel, language/translation, and the integration and consolidation of legal systems/terms from partner organisations in different countries).
- Both **communication and coordination can lead to major risks**: If the participants in a JCBPP project cannot agree on main points, some organisations may decide to withdraw from the project, which can lead to wasted expenditure by the remaining participating organisations or even to the failure of the whole project, with the danger of even more losses of time and money. Therefore, the risk management for JCBPP projects must anticipate potential costs for this.
- **Projects' governance structures** may also result in additional costs, due to possibly increased requirements for communication and coordinating activities among partners. In this respect, quite different governance constellations can be observed:
  - *Active participating organisations:* In this constellation, all participants are involved in all of the procurement steps and decisions. This, on the one hand, ensures that the interests of all participants are considered to the largest possible extent. On the other hand, such a project structure increases coordination efforts in particular for the lead buyer (and for a possible coordinating organisation), and for all participating organisations.
  - *Passive participating organisations:* Here, the lead buyer holds a strong position in the project and acts autonomously to a great extent. This greatly reduces requirements for coordination, as the other participants are only involved in decisions on fundamental issues. This governance constellation requires a great deal of trust by the participating organisations in the lead buyer. It is unlikely that contracts with a high level of liability and risks for the participating organisations can be concluded within the scope of such a project structure, as few public organisations can delegate competencies to conclude such contracts without being thoroughly involved themselves. Therefore, framework agreements are preferred as the outcome of such projects, since they usually do not involve many enforceable obligations on the part of the contracting authority. An extreme case of a passive participating structure would be the customers of a CPB (see above) that are the participating organisations in a JCBPP initiative in a formal sense (or at least can be seen as such), but in most cases are not involved in coordination activities and instead have delegated their representation rights to a CPB.
  - *Mixed forms of involvement* can occur in many ways. For example, EPCO uses different forms of cooperation depending on the type of procurement, and it even allows for different degrees of participation by the organisations within the same procurement procedure.

- *Role of CBPs in JCBPP projects:* It is noteworthy that in two of the analysed projects CPBs were involved in the roles of lead buyer and participating organisation. The task of a CPB is to conduct procurements for other CAs. Therefore, when a CPB participates in a JCBPP procedure, so to do their customers – either directly as a contractual partner mentioned in the tender documents (BBG-SKI project) or indirectly as customer of a CPB (HAPPI project). However, in the context of this study, customers of CPBs were not perceived as participants in a JCBPP initiative.

  This can be explained by the fact that the bundling of requirements and the coordination connected to this is usually carried out by CPBs on a national level and is nothing specific to JCBPP projects. In the context of this study, the demands of the CPBs' customers were therefore completely attributed to the CPB and any necessary peculiar coordinating activities between CPBs and their customers (e.g. more complex promotion of contracts) were also regarded as costs or benefits of the CPB.

- *Results of JCBPP projects from the perspective of the organisations involved:* Additional costs for one partner might result in additional benefits for the other party/-ies and contribute to minimising overall costs. For example, in the "Software Procurement BBG-SKI" project, BBG mentioned an increase in costs for preparing the tender documents, while SKI reported a reduction of process costs at this stage. The same holds true for the

legal costs of this project, where BBG pointed out that legal advice had to be sought, as the requirements of two legal systems had to be considered, SKI reported a decrease in legal costs. In the EPCO project, smaller partner organisations referred to the fact that they had less costs as they could draw on the expertise of bigger organisations (while DNB as the leading organisation faced higher costs). These results show that the organisations participating in a JCBPP project are not all impacted in the same way by the project results. Here, several levels can be differentiated:

- The **lead buyer** is responsible for conducting the procedure and for the overall project coordination. While the lead buyer can realise savings of process costs only to a very limited extent, it has to bear the largest share of additional efforts (e.g. coordination). However, the lead buyer profits from product price savings and co-financing (only) in the same way as the other participants. Therefore, the individual benefits for the lead buyer are in sum smaller (or even negative) than the individual benefits for the other participants.
- A **participating organisation** benefits in terms of procurement savings and savings on process costs. It benefits from lower prices and from not being involved in the negotiation of the contract. On the other hand, additional costs arise from coordination requirements. Those additional costs, however, depend on the degree of involvement of the participating organisation in the procurement process. In the projects analysed, participating organisations were involved in very different ways (see above).
- The **coordinating organisation** always faces additional costs in a JCBPP, as it is not involved in the final contract and therefore does not benefit if lower product prices are achieved.
- From the perspective of the **overall project**, costs and benefits are the aggregated costs and benefits of the participants. The aggregated costs or benefits are a crucial figure: As long as benefits exceed costs, benefits can be distributed among participants so that possibly unequal distributions can be offset. In particular, the lead buyer and the coordinating organisation can be compensated for their additional efforts that arise from conducting a JCBPP project. Several approaches have been developed in relation to such compensation, as shown also in the EPCO project:
  - *Rotation:* Different organisations take on the more time and resources intensive role as lead buyer. This requires long-term cooperation among project partners.
  - *Annual lump sum payments:* One organisation is responsible for particular tasks (typically a coordinating organisation) and it receives a lump sum payment from the other participants. This also requires long-term cooperation among project partners.
  - *Compensation payments per tender*: One organisation that faces extra efforts (typically the lead buyer) receives payments from the other organisations *involved* for each dedicated project. This form of cooperation can also be used for one-off projects.

- *Role of learning effects for follow-up JCBPP projects:* A further result of the analysis of the four cases was that some form of learning was expected in follow-up projects. If a JCBPP project is to be continued, there are potential learning effects (leading to decreased process costs and/or less time spent) in the areas of market research, translation of standard documents or travelling, as procedures have been established and project partners know each other already. Furthermore, potential buyers would already be aware of the procedural steps that have to be taken. A recommendation based on this would be that JCBPP projects should be repeated, as some of the benefits cannot be realised in a one-off project. Learning effects are potentially higher for the coordinating organisation and the lead buyer than for the participating organisations. However, as for the economies of scale, the potential benefits from learning would be expected to decrease with the number of repetitions of the project (*Figure 25* illustrates this development).

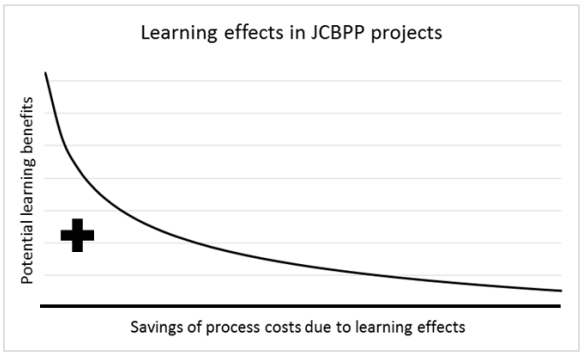


Figure 25 : Savings of process costs due to learning effects

- *Costs and benefits depending on the number of participants of a project:* Another important question in JCBPP projects is the relationship between the number of participants that are involved in a JCBPP exercise and costs and benefits. *Figure 26* illustrates the savings for an individual organisation involved in a JCBPP initiative (here for a participating organisation) depending on the number of project members. Although no detailed conclusions can be drawn from the case studies assessed in this study, the following considerations explain the fundamental rationale. Firstly, as pointed out above, all organisations that are involved in a project can realise procurement savings due to economies of scale. As more goods or services are procured when more organisations are involved, a degressive curve can be assumed. Secondly, while savings on process costs for the individual participating organisation remain unchanged, collective savings (i.e. for the project as a whole) increase, as the individual advantages accumulate. Thirdly, the coordination effort increases for all participants. The fewer participating organisations are involved in a JCBPP procedure, the smaller this effect will be.

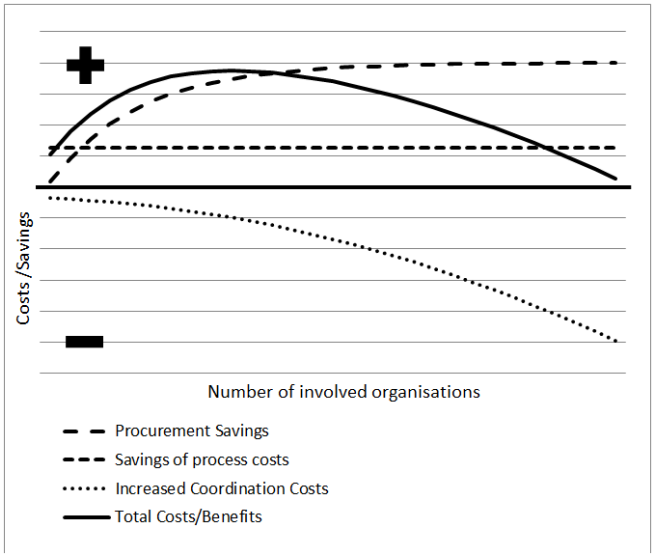


Figure 26 : Savings for an individual participating organisation depending on the number of project members

- In *Figure 26* it can be seen that although the total result increases at the beginning due to the high procurement savings that can be realised, the increasing effort for coordination becomes more relevant with an increasing number of participants (as potential risks for disagreement become more prevalent), leading to decreasing overall savings. If the participating organisations are more or less passive, the curve for coordinating effort is flatter.
- *Quantification of costs and benefits of JCBPP projects:* The study has shown that it is not always easy to quantify the costs and benefits of JCBPP projects, which makes JCBPP difficult to evaluate in monetary/time terms. Two reasons are seen for this in the case studies: Firstly, in the HAPPI and BBT projects, two of the JCBPP initiatives procured

innovative solutions or operated in new contexts, which made it difficult to establish 'baseline' values. And secondly, some of the organisations analysed did not disclose data (e.g. EPCO did not disclose any data detailing the savings achieved for the participating organisations). Therefore, the analysis at hand merely drew on a combination of detailed and general data from the returned factsheets and interviews. This was a problem not only for the methodology of this study but also for the conception of a JCBPP strategy by the involved CAs themselves.

- *Overall comparison:* Summarising the points above, *Table 16* presents an overview of costs and benefits for organisations involved in JCBPP projects:

Legend: Increased costs: ↘; Neutral: =; Increased benefits: ↗

	Lead buyer	Participating organisation (active)	Participating organisation (passive)	Coordinating organisation	Overall project
Coordination	↘↘	↘	=	↘↘	↘↘
(Co-)funding	↗	↗	↗	=	↗
Economies of scale	↗	↗	↗	=	↗
Savings on process costs	=	↗	↗↗	=	↗
Learning effects	↗↗	↗	↗	↗↗	↗
Total	↗/↘	↗	↗↗	↘	↗

Table 16 : Overview of costs and benefits for organisations involved in JCBPP projects

6. CONCLUSIONS

The projects analysed in the previous chapter are some of the first JCBPP procedures implemented so far in the EU and thus, each seems to have a certain pioneering character, either in the area of procurement or in the design of cooperation. Even though they have some common features such as the aim of achieving savings or the subject of procurement, they differ a lot from each other and therefore, it is not feasible to compare them against each other. Some examples are easy to replicate, other constructions like the case of EPCO are very specific and most probably difficult to reproduce in any other environment. Nevertheless, this chapter tries to present some conclusions as regards the main subjects which need to be considered when conducting a JCBPP: the contracting authorities and their relation to each other, the products to be purchased and the respective issues of the market, the motivation to conduct a JCBPP project, legal aspects and their implications, procedural considerations, the question of the applicable language, e-procurement related aspects, and the time needed for the implementation. It also includes a summary of the responses received from the economic operators surveyed as well as an overview of the main opportunities and challenges encountered in the projects analysed.

6.1. General information on the projects analysed

It is interesting to observe that the cases analysed allow a complex examination of different models of JCBPP, as described in Article 39 Directive 2014/24/EU[23], namely: cross-border joint procurement between two or more contracting authorities from different Member States (HAPPI, EPCO and the BBG-SKI project) and cross-border procurement through a joint entity (BBT SE project). Each of these models raised specific questions both in terms of legal and in terms of practical conditions and necessities and each case offered a wide view of the peculiarities of the relevant models.

The JCBPP project implemented by BBG and SKI, two CPBs from Austria and Denmark was the first attempt by two CPBs from different Member States to jointly procure software licences. The project was implemented in 2016 and its main attainment was to obtain better prices by bundling of volumes but at the same time to challenge the software developer, which is a monopolist, to negotiate an agreement covering two different countries, thus pushing him to act Europe wide and transparently.

The HAPPI project (Healthy Ageing – Public Procurement of Innovation) sought to establish conditions for health institutions throughout Europe to collaborate in the purchase of "ageing well" and innovative long-term health products, services and solutions. Co-funded by the European Commission and coordinated by RESAH, a French CPB operating in the health sector, the project (comprising 10 partners and 6 countries) aimed at creating a network of public buyers of innovation in health and launched a joint cross-border procurement of innovative solutions for ageing well at the end of 2014. The project focused on the procurement of existing innovation, meaning off-the-shelf solutions which were new to the market. Ranging among the most advanced and innovative joint procurement experiences, the HAPPI project stands out as having combined product innovation ("what to buy") with a significant innovation of the procurement procedure jointly designed and conducted by CPBs of different Member States.

The EPCO JCBPP case chosen for the analysis was, similar to the BBG-SKI case, for licenses for standard software as well as maintenance. Coordinated by EPCO and implemented by the Dutch National Bank on behalf of other 13 central banks in the EU, the procedure was already conducted in 2011. For the central banks, joint cross-border procurement with the support of EPCO was not the first project of this kind. EPCO has been coordinating JCBPP projects since 2008 and implements around 10 procedures per year.

BBT SE has a relatively long history of conducting JCBPP projects and stands out as a good example for both cross-border procurement cooperation via the establishment of a joint entity and cross-border procurement in the field of public works contracts. The chosen JCBPP procedure to be analysed in detail was the "AP213 – Geological tests" project conducted by BBT SE in 2014, which was one of the first JCBPP projects conducted under Italian law. The concrete object of procurement was work services for the drilling of two deep wells, three exploration drillings including the construction of ground water measurement points, drilling and bore hole trials and the execution of pumping trials.

[23] Or in Article 57 (5) Directive 2014/25/EU which has the same content

6.2. The contracting authorities

Taking a closer look at the contracting authorities involved in JCBPP projects, one can observe that both the HAPPI and the BBG-SKI project were implemented by central purchasing bodies. In addition to this, EPCO defines itself as a sui generis CPB, but without legal personality it can only act as a coordinator in the cross-border procurement procedures implemented by the central banks.

BBT SE is one of the joint entities defined by article 57 of Directive 2014/25/EU and was set up through a state treaty which defined the roles and responsibilities of both partners.

BBG and SKI are CPBs operating at central level administration, purchasing on behalf of their customers, while the CPBs participating in the HAPPI project were specialised in the field of health and in this particular framework agreement they were acting as wholesalers, giving their respective healthcare institutions access to the framework agreement.

Given their specialised knowledge of markets, needs of contracting authorities and legal and procedural aspects concerning centralised purchasing techniques, CPBs seem to be ideal stakeholders for the implementation of JCBPP procedures. In-house professional procurers and legal experts can contribute significantly to greater legal and contractual certainty of JCBPP procedures, consequently mitigating the risk of legal challenges. Furthermore, CPBs' detailed knowledge of procedural aspects allows them to take a more strategic approach to JCBPP and handle complex procedures with a greater sense of risk. The use of JCBPP techniques requires in-depth preparation for all parties involved since many complex practical and legal questions arise throughout the projects. In this respect, procurement specialists working in CPBs seem to be well equipped with the right know-how.

When two or more CPBs in the EU aggregate the demand of a multitude of contracting authorities they have greater bargaining power than individual CPBs or single contracting authorities, due to the volumes purchased. This is particularly important to strengthen buyer negotiating power to match oligopolistic markets, for example in the case of procurement of software licenses.

When contracting authorities are not CPBs, for example in the situation of central banks purchasing together, the presence of a body which coordinates and assists the process seems to be very useful. This is the case especially when one of the contracting authorities acts as lead buyer for a multitude of other contracting authorities and has considerable additional work.

In general terms, it can be pointed out that the number of contracting authorities participating in a procedure is an important factor which can influence the level of complexity of a JCBPP tender. In the above-described BBG-SKI case, it was so complicated for the original three partners to find a common structure of cooperation which fitted with all national legal requirements that in the end, one partner had to step out. The coordinator in the HAPPI project indicated that managing the communication and coordinating the inputs of six partners was a true challenge due to language, legal and procedural aspects of the tender. The same applied to the EPCO project, where the lead bank had to deal with 13 different banks. As mentioned above, the support of the EPCO office was essential in all the procurement phases from assessment of demand to the management of the contract. Cooperation between two partners seems to be less complex and can thus contribute to swift implementation of a JCBPP procedure.

In all projects analysed, the institutions involved entered into official cooperation agreements of different types and forms, defining structures and clear competences in each step of the procedure. Within the HAPPI project, not only was there a partnership agreement establishing all terms of cooperation within the project as such, but the coordinator also drafted an agreement concerning the purchasing group to define the roles and responsibilities of each partner in the JCBPP process. From the outset of the cooperation, BBG and SKI defined working principles and working methods, which then translated into a cooperation agreement between both partners. In the case of BBT SE, all relevant aspects related to the cooperation between the two establishing railways companies were included in a state treaty signed between Austria and Italy. The cooperation between the European central banks and EPCO is also stipulated in an accession agreement as well as in a special legal act, the Decision of the Governing Council of the ECB.

Setting up an agreement between the contracting authorities involved seems to be a very important factor in the cooperation process as the delegation of the procurement processes of one institution to another is a sensitive issue for most contracting authorities. A clear mandate and clarification from the beginning on the roles of each party and the responsibility of the contracting authority are therefore essential.

Thus, it can be concluded that trust and partnership are the most important pillars in a JCBPP procedure. More trust results in less coordination work and better functioning of communication.

It is worth mentioning that one of the sustainable achievements resulting from the cooperation of CPBs within the HAPPI project was the creation of a new procurement organisation called EHPPA, an alliance of non-profit procurement organisations which promotes the cross-border cooperation between healthcare institutions when purchasing goods and services, especially in the field of innovation. The positive experience of the JCBPP implemented within HAPPI, motivated the partners to continue the cross-border cooperation beyond the framework of the project.

Setting up a joint procurement entity such as BBT SE or in one of the forms described in the PP directives is a rather complex process as it involves either a state treaty between the Member States involved or a decision of the competent bodies.
Before starting their cooperation, BBG and SKI analysed the different scenarios for collaboration offered by the new Directives and decided that for the first common JCBPP which had the character of a pilot project, the outlay for the creation of a joint entity would have exceeded the benefits. Nevertheless, it was envisaged that the option be reconsidered at a later point, after the successful implementation of at least one project and when further subjects of procurement are defined.
It is important to mention that all participating contracting authorities stated that they would be interested in continuing the JCB cooperation and even extending the scope of the procurement.

6.3. Products and services purchased

All the projects analysed involved the application of a single call for tender for all the buyers involved and covered different sectors.
Both the BBG- SKI project and the EPCO procedure dealt with the procurement of software whereas the HAPPI project concentrated on procurement in the healthcare sector and has an additional interesting component, namely innovation. The BBT SE JCBPP project covered the area of construction services.
It is noteworthy that in the case of HAPPI and BBG-SKI, the decision to conduct a JCBPP procedure preceded the decision on the product. Consequently, these institutions did not decide on how to procure a given demand but actively analysed which kind of goods or services are suitable to be procured in a JCBPP procedure.
In the cases of EPCO and BBT SE it was the other way around. They searched for the most suitable type of procedure for a pre-existing demand, with JCBPP being one of the possible options.
Interestingly, these differences in the described approach did not seem to have any impact on the criteria considered in the decision making process.
The most important factors were:

1. Delivery/transport
   Goods and services that have to be delivered or need to be executed on site are less suitable for JCBPP, as costs for logistics would arise.
2. Complexity of Specifications
3. Works and supplies with complex specifications and a big variety of available options are less suitable for JCBPP, as there are more decisions to be taken, on which partners would have to agree. Especially innovative solutions are difficult to procure in a JCBPP due to the lack of established standards and templates but also due to different needs on the side of end users.
4. Similarity of demands and timing
   JCBPP is not feasible if the participating CAs do not have a demand for the same kind of product at the same time. The decision to aggregate demands can conflict with running contracts or framework agreements established by participating CAs; this can prevent them from participating in a JCBPP or from using a joint contract right from the start.
5. Market
   JCBPP is difficult to implement if there are few (or no) economic operators which can supply the goods or services in different Member States. Established distribution networks that entail different standards per country can be a challenge for a JCBPP procedure.

Both EPCO and BBG-SKI dealt with the same questions before deciding on the object of procurement. These reasons were less prominent in the decision making process of HAPPI or BBT SE. However, that does not contradict the importance of these criteria, since these projects were dealing with specific circumstances.
HAPPI was committed to procuring innovative products given the contractual relationship with the EU; therefore this aspect of the product was more important than its suitability for JCBPP. In general, it can be stated that JCBPP in the field of innovation is more difficult to implement, mainly due to different needs of end users.
Likewise BBT SE was bound to the decisions of the General Assembly which provided for JCBPP for the individual case at stake. The project involved works in two different Member States. Conducting a national tender would have meant splitting a unitary task, which might have caused difficulties with the execution of the contract. These difficulties would not arise in a classic JCBPP procedure where demands which are not materially linked are aggregated.
Standard goods and services seem to be more suitable for a JCBPP procedure as their procurement does not require complicated technical descriptions and contracting authorities do not need to define (many)additional product requirements.

Standard software could be one of the most suitable products to be purchased jointly and cross-border as it is easy to specify and to aggregate**,** without being impacted by transportation costs to the participating institutions.
In addition to this, if procured jointly and cross-border, software products could have considerable saving potential.
Especially in monopolistic and oligopolistic markets, the increase of purchasing and bargaining power was a very crucial point. By carrying out large scale cross-border purchases, public buyers like BBG and SKI were in a better position to match the market power of Citrix. In general, IT and pharmaceutical companies have different contractual arrangements in different Member States. In some cases suppliers will not allow the same product to be sold at the same price in different countries because certain market agreements on national levels might be in place. Even though these market agreements do not reflect the spirit of the Single Market, they are very common and one of the important aims of the BBG-SKI project was the abolishment of these practices.
The strengthening of the demand power was an important point and incentive for joint cross-border procurement in all analysed projects, especially in those where CPBs were involved as they were able to achieve better prices.
Benchmarking is an important tool to assess the suitability of a JCBPP procedure for certain goods or services. The results of such exercise will offer details on certain services attachable to the object of procurement, concrete contractual terms or certain demand patterns coming from end users. It also gives good insights into the supply markets in the different MSs and most of all it provides the possibility to compare prices.

6.4. Motivation/reason to conduct a JCBPP project

It is interesting to observe that each of the contracting authorities which implemented a JCBPP procedure had different motivations to get involved in such projects.
The motivation for conducting a JCBPP is easily derivable from the mandate and scope of EPCO's activity. Nonetheless, it is interesting to understand the incentive that the leading bank and the participating banks had when they decided to procure the software package through a JCBPP procedure.
For the DNB, the main reason for choosing to conduct a JCBPP was the aim of achieving better prices and conditions through a contract with a large volume and to reinforce the cooperation among the ESCB. For the participating banks, the most important driver was to have common contractual terms and conditions better than those an individual bank could achieve on its own via a national tender procedure. Another important motivation was the possibility to cooperate with other banks and to learn from each other. For both the leading bank and participating banks, not only the prices of the products were relevant but also savings in process costs for individual central banks were essential.
The main driver for conducting a JCBPP procedure for BBG and SKI was the aim of the two CPBs to explore the practical possibilities of implementing such a procurement technique and to test the legal, organisational and economic aspects related to such type of procurement. As this was one of the first attempts in the EU where CPBs from different Member States tried to purchase jointly, the project had a rather experimental character and both institutions were prepared to deal with challenges and barriers or even show-stoppers. Obtaining better prices by bundling of volumes was also a motivator, but not the main reason for their decision. It was more important for the CPBs to challenge the software developer, to negotiate an agreement covering two different countries thus pushing him to act Europe wide and transparently.
In the HAPPI project, at the basis of the decision to conduct a JCBPP procedure was the possibility of matching the opportunity offered by an EU financed project with key priorities in the healthcare systems of the participating Member States as well as the common target of procuring innovative products in an innovative way. On the other hand, the driver for the end-users calling off from the contracts was to obtain an innovative product without having to conduct extensive research and their own procedures but also the possibility to purchase a solution co-financed through the European Commission.
All contracting authorities interviewed mentioned that the main motivation to conduct a joint procedure was driven by the wish to evolve and to think outside the regional landscape by sharing experiences with other institutions in the EU.
The reason for a single cross-border tender in the case of BBT SE, instead of having two separate tenders, was that in the event of a delay or even a withdrawal of one of the tenders, the works conducted only in one country would have been technically senseless.
Although it seems that contracting authorities had different motivations for the implementation of a JCBPP, it can be concluded that they had common targets which can be summarised as follows:

- Achieving better prices and improved conditions
- Reducing process costs through aggregation of procedures

- Exchanging best practice with other similar institutions
- Need to develop a project requiring implementation across the borders
- Creating networks and using the potentials of the internal market (EHPPA)
- Improving knowledge of market, procedures, language, and "thinking outside the box"
- Possibility to work together in order to change a market strategy (pricing)
- Encouraging innovation on the procurer and supplier side
- Gaining access to new markets

6.5. Support given to the projects

Some of the JCBPP projects implemented, such as HAPPI and BBT SE, received EU funding which allowed the contracting authorities to cover the relevant costs and, to some extent, facilitated the testing of JCBPP projects. The material support offered to the HAPPI project was a co-financing of 95% of the administrative costs through the European Commission and 20% financing of the product costs. Other support or assistance received in the participating Member States included the backing of the chambers of commerce in disseminating information on the planned tender and organising the information days. The infrastructure project implemented by BBT SE was financed 50% by the European Union.
The BBG-SKI project did not receive any funding or any other support and was implemented purely at the expense of the two CPBs involved.
Within EPCO, the central banks finance EPCO's budget in accordance with the rules adopted by the Governing Council. With these funds, EPCO can support the implementation of joint procurement projects.
It may be observed that most of the projects involved financial support either through EU funding or through a contribution by its members, which allowed the contracting authorities or coordinating organisation to cover relevant costs like translation, coordination of partners (mostly travel costs), external legal support, etc. On the other hand, the BBG-SKI project proved that a JCBPP procedure can also be implemented without external financial support.

6.6. Procedural aspects

- In order to design a sound procurement procedure it is crucial to have good information on both the demand and the market.
- In JCBPP this information has to be gathered and aggregated from different sources, in different Member States. This can prove difficult, since many contracting authorities (and end users) consider detailed information on previous procurement procedures to be confidential and are not willing to provide more than rough numbers. It is also necessary to take into consideration the contracting authorities' different methods used to procure, different cultures and different ways of working, in order to avoid misinterpretation of the figures given. It often also proved difficult to consider the needs of key players like the end-users themselves.
- Moreover, many contracting authorities are reluctant to get involved with any kind of concrete commitment since they cannot anticipate the outcome of the procedure and have very limited control over the conduct of the procedure as they are only one of several organisations involved. The best example for this situation is EPCO, where the lead buyer has a very dominant position and therefore, is more likely to give a specific commitment, while participating banks avoid entering into legal obligations to the supplier.
- Therefore, it is not a surprise that three out of the four projects analysed resulted in a framework agreement instead of a more specific contract. The only exception was BBT SE, which did not face these challenges as there was only one legal entity participating in the JCBPP.
- EPCO conducted a restricted procedure which was designed in two stages: expression of interest and invitation to tender.
- Conducting a two stage procedure as a joint cross border tender also involves additional coordination work.
- Since only those economic operators invited to the second stage can submit offers, the number of the bids is limited as is the effort needed for the evaluation of offers, which can

be very time consuming, especially when a lot of offers are received. A low level of language skills on the side of the economic operators or the contracting authority can make this even more difficult.

- On the other hand, the restricted procedure entails a longer process time than an open procedure. As EPCO pointed out, the procedure can be further delayed when bidders ask a considerable number of questions and issue requests for clarifications or when corrections of tender documents require the postponement of the deadline. This can be the case in both phases. As mentioned in point 3 of these conclusions, the complexity of the tender specifications has a great impact on a JCBPP procedure because it can impact the number of decisions which need to be taken. The same is true for the procedure. In a restricted procedure the contracting authorities have to define more criteria and procedural provisions than in a procedure with only one phase.
- EPCO chose the restricted procedure because they anticipated an increase in tenders submitted due to the cross-border nature of this procedure and the resulting participation of additional economic operators from all over the EU; thus they considered the expected effort to evaluate the offers to be the higher risk. They pointed out that they did reconsider this strategy when planning the follow-up procedure, since the expected surge in bidders did not happen.
- In all other cases analysed, an open procedure was chosen since it was considered to be the simplest.
- The need to keep the documents as simple and clear as possible proved to be a must throughout the design of the procedure and the drafting of the tender documents. BBT SE for example not only chose to conduct an open procedure but also settled for price as the only award criterion.
- One of the projects analysed decided to use technical lots for the same reason as they would have in any national procedure. However, none of the interviewed contracting authorities chose to divide the tender into geographical lots as this would have contradicted the effects of JCBPP.

It is noteworthy that the phase after the publication of the tender documents is, in most of the JCBPP cases, very similar in terms of length to that in national procedures, as the different deadlines until the award of the contract are stipulated in the procurement laws and are very similar in each Member State. Two contracting authorities extended the deadlines to submit the bids in order to allow the economic operators enough time to prepare the offer.

6.7. Language

Before conducting this study, language barriers seemed to be the most common challenge standing in the way of JCBPP. The experience of EU CPBs shows that purchases from other Member States are almost non-existent, even in cases when suppliers from a MS speak the same language as the CPB. The assumption still exists that in some countries it would be politically difficult to publish a call for tender, for example, in English to attract suppliers from other Member States and some economic operators would feel discriminated against, due to not being able to address a tender in their own working language.
In the majority of cases analysed, the procedures were implemented in English as this was the main communication language between the contracting authorities. These did not consider English to be an impediment for economic operators to participate in the tender procedure but rather a matter of equal treatment and a suitable tool for facilitating competition between companies across the EU. The analysis of the cases supports this view as many economic operators from the domestic market of the lead buyer participated in the procedure and no major language barriers were reported by any of them.
In the case of EPCO, the complete process from publication to award was conducted in English and economic operators were asked to submit offers in English or in Dutch. The same applied to the BBG SKI project, where bidders were allowed to place bids including proofs in either English, German or Danish.
In order to allow as many bidders as possible to place an offer and to encourage their participation, the HAPPI project partners decided to draft tender documents and to conduct the procedure in three languages, namely: French, Italian and English. This was, on the one hand, a great possibility for economic operators but, on the other hand, a difficult and time consuming process for the contracting authorities and indeed only possible due to the EU funding received by the contracting authorities. The only restriction encountered in relation to language was in French pubic procurement law, which laid down the obligation of bidders to submit a certain part of the tender in French.

One of the major challenges encountered in the HAPPI and BBG-SKI projects was the obligation to use the respective national publication platform for the tender notice and the upload of tender documents, these platforms being only in the official language of the Member State.
Thus, although the tender documents were available in several languages, bidders were obliged to download them from monolingual platforms in languages they did not necessarily understand. It was not possible to upload the tender documents on TED.
For each tender procedure conducted by BBT SE, documents are always bilingual (German and Italian). It is worth mentioning that due to the necessity of producing bilingual documents on a day to day basis, BBT SE uses professional translation software, which proved to be very useful for all public procurement professionals when drafting tender documents.
It can be concluded that using English as a communication language between contracting authorities but also in the communication with bidders is the most common solution in JCBPP projects. The option of translating all documents is cost intensive and, if bidders are asked to formulate offers in a language which is not their own, this effort will be reflected in the price of the product or service. On the other hand, working in an unaccustomed language can be difficult for contracting authorities as well. In particular the formulation of accurate tender documents poses serious challenges. Nevertheless, in areas of public procurement like software products or medical goods, English is commonly used and language barriers should be easier to remove.

6.8. E-Procurement aspects

One of the most important expected benefits of e-procurement and especially the electronic submission of bids was the avoidance of the necessity for physical transmission of documents and the risks associated therewith. Due to the geographical implications in JCBPP procedures, e-procurement can obviously simplify procedural aspects.
European standards for electronic tools, such as a standardised European e-tendering tool, or a standardised electronic signature would be a great asset for JCBPP as it would facilitate JCBPP for contracting authorities as well as for bidders.
Although none of the contracting authorities implemented a complete electronic procedure, from publication until the call-off from the framework agreement and the invoicing, all the projects analysed did use certain e-procurement tools in the different phases of their tender.
All projects used the electronic publication functionality and had to comply with publication rules of the respective Member State, which meant using a national publication platform. This requirement raised several challenges in both the HAPPI and the BBG-SKI projects. First, both the French and the Austrian publication platforms were only available in one language, which made it more complicated for bidders from other Member States to obtain the tender documents. As it is not possible to upload tender documents on TED, interested economic operators were obliged to download them from the national publication platforms. Also, the Austrian platform did not offer the possibility to include more than one NUTS code for the contracting authority responsible for the procedure, something which was foreseen on the new TED publication forms.
The JCBPP procedure conducted within the HAPPI project was the most advanced one in terms of e-procurement as bidders were allowed to place an electronic offer which was then opened and evaluated electronically.
Different levels of uptake of e-procurement led to different solutions in the way JCBPP procedures were implemented. Although BBG had piloted several complete electronic procedures, a complete e-tendering procedure had not yet been introduced as a standard purchasing method, whereas SKI had been using e-tendering for several years. For the post award phase, BBG had its own electronic purchasing system in place while SKI did not have one. Given these procedural differences but also taking into consideration barriers related to the different approaches related to the level of security with regard to electronic signatures and electronic ID, the two partners decided to conduct a paper-based tender, in the sense that bidders were required to send printed offers.
While in most of the Member States bidders are not required to use a qualified signature, in Austria this is a legal obligation; thus, all European bidders interested in placing an offer for an Austrian tender are required to be in possession of a qualified certificate issued in one of the Member States. The application process for acquiring such a certificate is, in most cases, rather complex.
In the HAPPI project, bidders had the possibility to choose between submitting the tender in electronic or paper format and Resah provided extensive information on how to handle the e-signature in France, in order to make sure that potential bidders which wanted to submit an electronic tender could use this option.
In the case of EPCO, each participating central bank used its own e-procurement tools, according to the rules applicable in the respective Member State. Some were obliged to use the national platforms provided by their respective governments, and some were running their own systems.

The specific case of JCBPP which was implemented in 2011 was a paper-based one but there is evidence that a follow-up tender conducted by DNB in 2016 was a complete electronic procedure.
BBT SE also used certain e-procurement elements like electronic publication of tender documents, electronic communication with bidders and electronic notification of the award.
It is obvious that one important challenge relates to different e-procurement practices across the EU and most importantly to different requirements or standards in respect of electronic signatures, making it often very difficult to conduct a complete electronic process. Some Member States require the use of a secure qualified signature which obliges the bidder to first travel to that Member State in order to personally register in a national system before submitting his tender. The lack of a common European approach towards the security level of e-signatures is one of the main barriers for the implementation of an electronic joint cross border tender.
It can be concluded that all of the projects analysed used different electronic tools according to the requirements in the respective national legislations.
Using e-procurement in a JCBPP context did pose some difficulties to most of the contracting authorities involved but all stakeholders interviewed said that a common European platform for JCBPP procedures would be more than welcome.
E-procurement procedures are well suited to supporting centralized purchasing practices and tools because of the possibilities they offer to re-use and automatically process data and to minimize information and transaction costs.

6.9. Time invested

The main question the study tried to examine was whether a JCBPP procedure necessitates more time invested in its implementation than a similar national procedure. This was assessed in the interviews conducted and it can be concluded that lead buyers definitely spend more time on the procedure, given their role, and that participating institutions experienced a reduction in their efforts, both in time and in money invested in the procedure. A closer look into the functioning of each contracting authority also revealed that most of the institutions do not use a tool to measure the time invested in the procedure; thus, it is difficult to draw specific conclusions.
The most time intensive phase of the procedure seems to be the preparation phase, especially in the cases in which partners collaborate for the first time and thus additional coordination work is needed.
Drafting common tender documents and deciding on the public procurement strategy were also indicated as being activities which require considerable time resources.

6.10. Opportunities and challenges

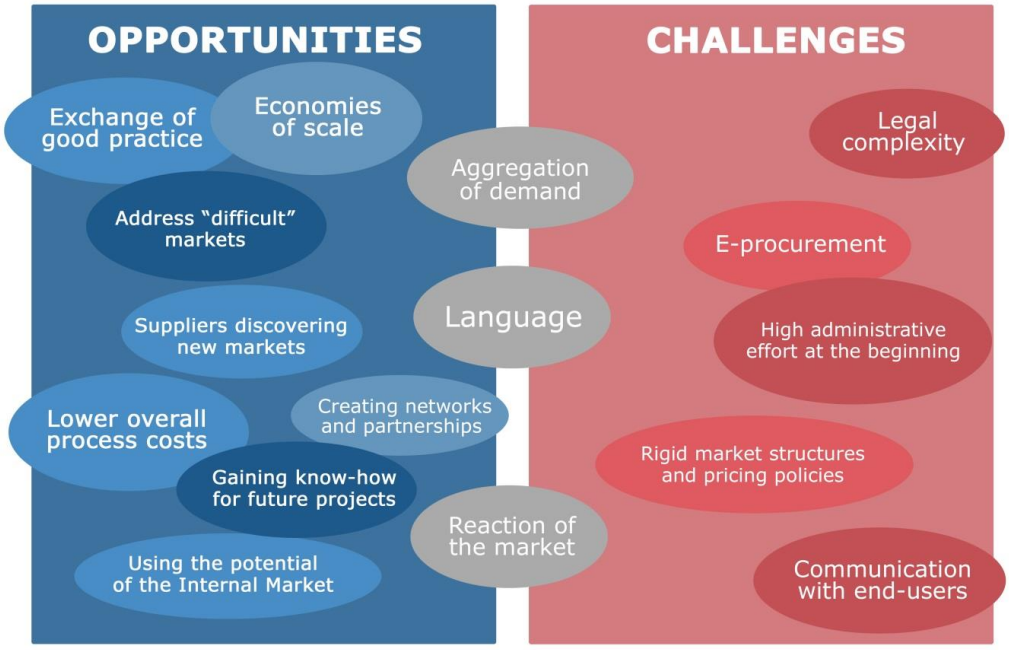


Figure 27: Opportunities and challenges

6.10.1. Opportunities

Partnership and exchange of good practices

All JCBPP projects analysed – except for BBT SE which did not involve more than one entity – mentioned the good partnership as a major benefit.
Besides the know-how gained by exchanging strategies and best practice examples during the JCBPP procedure itself, the contacts established during the project were used for further cooperation beyond the scope of the initial project. This effect ranges from consultations in individual cases to the establishment of a new joint entity in the case of HAPPI. All contracting authorities reported a steep learning curve on procedural aspects, markets and legal aspects and mentioned that they felt challenged to think outside the box.

Economic aspects
In most of the joint procedures there were financial benefits deriving from the pooling of volumes as well as administrative benefits (saving of process costs) which can be converted into financial ones as a result of the reduction of the number of tenders. The improvement of the contractual terms and conditions was also an important advantage in the JCBPP procedures.
It is noteworthy that the support given to JCBPP projects through EU funding has been mentioned as one of the most important benefits.

Procedural aspects

One of the major benefits of a JCBPP is the fact that most of the procedural work is done by the lead buyer and – in the case of EPCO – by a coordinating organisation, which makes for considerable savings of resources on the part of the other participating organisations.
Despite the complexity of a JCBPP procedure, it is possible to conduct such tenders without major problems, increasing efficiency in business processes. All the tenders analysed were accepted by the market and none of them was contested.
Implementing a JCBPP procedure for the first time is considered to be more difficult as the contracting authorities naturally go through a learning process. Nevertheless, once the procedure has been conducted successfully, there is a model to build future procedures on.

Aspects concerning the market

In many national procurement procedures, a market analysis is conducted only on the CA's domestic market, even though EOs from other Member States have the right to participate and could be potential bidders.
In the JCBPP analysed, a market analysis on a broader area was conducted, considering all of the participating CA's domestic markets or even the whole internal market. This was mentioned as a benefit since it provided the contracting authorities with insight into the relevant markets. This broader knowledge was mentioned as useful not only for the procedures in question or possible future JCBPP projects, but also for national tenders. Furthermore, a market analysis of this extent can raise awareness on the side of potential bidders. On rather difficult markets, a JCBPP procedure may bring changes in business policies and distribution networks.

Advantages for future projects

The implementation of a JCBPP procedure generates a lot of experience and provides the CA with templates and contacts that can be used in similar JCBPP projects in the future. In particular the cases of EPCO and BBT SE demonstrate how JCBPP can become an effective part of a CA's tool kit when the participants are familiar with it.

6.10.2. Challenges

Procedural Aspects

Coordination with potential contracting authorities is essential, yet quite challenging.
When planning the tender, all participants need to contribute with vital information on their demand to the benchmarks and submit their commitment in some certain form. This entails a lot of time and effort but without this information it is not possible to draft a practical strategy.
Since this study only analyses JCBPP projects which were ultimately implemented, there are no examples for situations where the coordination failed completely. However, there are several

examples of contracting authorities withdrawing from the project before the actual tender, after a lot of effort has been put into the procedure.
EPCO appears to be least exposed to that risk, since a broad network of potential participants and standardised rules for communication are already established. Thus, even if a number of CAs decide against participation, the wasted effort is limited and the tender can proceed with those contracting authorities which did commit. On the other hand, in the case of BBG-SKI only three CAs were involved in the coordination and when one dropped out it had a much greater impact. Nevertheless, the procedure was successfully implemented with two partners.
If a CPB is conducting or participating in a JCBPP procedure on behalf of their clients, they need to promote the contract to the final buyers and support them in the process. While this is also true for national tenders conducted by the CPB, additional issues can arise due to the cross-border nature of the original tender, such as questions of the applicable law, the overall strategy of the procedure or the original language of the contract.

Language

Surprisingly, language was – for most contracting authorities – not considered a major challenge. This could partly be attributed to exaggerated apprehensions, since language appears to be the most obvious hindrance for cross-border projects. In fact, most of the communication worked well because of the relevant staff's good command of English.
Nonetheless, for most of the experts involved it was still a challenge to accurately deal with delicate issues like drafting legal documents or evaluating offers in different languages.
If there are people with the needed skills available within one of the participating entities, they can be involved in the project. However, if there are several different languages used in a procedure (e.g. HAPPI), then staff from different entities and countries with different skill-sets may have to be coordinated, which takes additional time.
If none of the participating organisations can provide staff with sufficient skills in a language used for the tender, it is also possible to draft the documents in the language of the lead buyer and have them translated, which would result in additional costs. BBG mentioned that it can be a challenge just to find a translator not only proficient in both languages but also experienced with the technical and legal terms in the field of public procurement.

Legal aspects

Even though the procurement laws of all Member States are based on a common directive, there are major differences in the national implementation of these provisions. At the time when the procedures analysed were implemented, there were no explicit regulations on how to conduct a JCBPP in the directive and very few on a national level. Thus, it proved rather difficult to find a legal basis for a joint procurement and ensure the procedure's compliance with all legal regulations relevant for the participants. For example, the Finnish CPB was meant to participate in the BBG-SKI project, but had to drop out because they could not find a way to justify a JCBPP under Finnish procurement law.
It can be concluded that JCBPP is more a matter of legal complexity than of legal barriers.

Aspects related to the market and products

Many market-related challenges encountered have to be attributed primarily to the nature of the product in question rather than to JCBPP aspects. These relate for example to challenges in defining innovative products or the large market power of a monopolist. However, such specific problems can be especially troublesome in a cross-border context. For example, the JCBPP of software proved to be both worthwhile and challenging at the same time because of the distribution networks used by the software companies which are specific for national markets and are therefore in conflict with any kind of cross-border sales.
As regards the economic operators, if cross-border sales to the participating countries is not already a common activity for them, they might need to find partners or subcontractors to cover the scope of a tender– resulting in additional effort needed to prepare a valid bid and more risk.

E-Procurement considerations

E-procurement tools can be a challenge for JCBPP because they were designed for national procedures only. The contracting authorities interviewed explicitly mentioned problems with national platforms for publication of tender, which were not available in different languages or would not allow them to declare more than one state as place of performance of the activity.
Since there are no technical and only minimum legal standards for e-procurement tools, it can be an obstacle for potential bidders to use platforms in other Member States which they are not familiar with.

6.11. Economic operators

For the study, potential bidders, actual bidders and suppliers in the four cases analysed were asked to offer feedback on the JCBPP procedure they participated or were interested in. Fourteen economic operators responded to the online questionnaires and their answers are summarised below.

The survey conducted illustrates that companies of different sizes showed interest in the joint cross-border tenders, ranging from small companies with <50 staff to medium sized companies <250 staff and large companies >250 staff. The majority of companies interested in the JCBPP procedures were SMEs (10 out of 14).

Most of the companies, 11 out of 14, were involved in international business before participating in the tender at stake and all had previous experience in bidding for public tenders. 13 of the companies had participated in more than 5 procedures before they showed interest in the JCBPP tender.

It is important to point out that the majority of companies which showed interest in the JCB tender were located in one of the countries of a participating contracting authority. Only two interested companies were from another Member State.

Most of the economic operators got to know about the tender after publication. They learned about it either through a national publication platform or TED. Only four economic operators indicated that they were informed about the envisaged tender by a contracting authority before the publication of tender. Two economic operators were informed after publication by one of the participating contracting authorities or by the market.

Out of 14 companies which returned the questionnaires, 7 submitted an offer. Four of them won the tender, and 3 were rejected either because they did not hand in the best/cheapest offer or they were excluded due to formal reasons.

The main reasons for bidding was the expected turnover but also the increasing of the market share as well as the opportunity to expand to new markets.

On the other hand, the most important reasons for not submitting a tender were complexity because of the JCBPP procedural aspects, not enough resources or the public procurement law applicable.

Those companies which submitted offers stated they faced various challenges:

- Complexity involved in the fulfilment of international contracts (4 companies)
- Contractual law applicable (2 companies)
- Public procurement law applicable (2 companies)
- Complexity because of the JCBPP procedural aspects (1 company)
- Law applicable to the product/service (e.g. certificates, permits, etc.) (1 company)
- Language barriers in reading the tender documents (1 company)
- Competency of review bodies or courts (1 company)

It is interesting to observe that none of the companies which submitted an offer needed external expertise for the preparation of the offer and all were able to prepare a bid with their internal staff.

Economic operators did not feel discriminated against by the cross-border nature of the project, nevertheless one pointed out that cooperation with a company from another Member State as asked for in the tender documents bears a higher risk, thus he found the requirement unfair.

Ten of the participating economic operators consider JCBPP to be a good purchasing procedure in general, nevertheless four economic operators stated that it is a good purchasing procedure but there are many risks and challenges to deal with. Moreover, three economic operators think that it is a good purchasing procedure, but consider the legal situation unclear. Two companies, one operating in the IT sector and one in the field of construction services, stated that JCBPP is a good purchasing procedure in general but not in their industry.

Four economic operators did not considered JCBPP to be a good purchasing procedure.

Out of the 14 economic operators, 12 would participate in a future JCBPP and 2 economic operators stated that they would not due to the challenges encountered in the process.

6.12. Conclusions on legal aspects

6.12.1. General remarks

With respect to the potential of and challenges posed by JCBPP, the analysis of the projects already put into practice has made it clear that the legal framework guiding JCBPP is a key factor for the successful implementation of JCBPP initiatives. The cases at hand illustrate in particular how JCBPP situations, in terms of the relevant legal conditions, are located not only at the intersection of EU law and Member State law, but are to some extent also influenced and governed by international treaties between Member States.

From an overall perspective, it may be observed that the interplay of the various layers of legal rules that have to be taken into consideration typically results in a notable degree of legal complexity which is likely to manifest itself at one point or another throughout the process of the JCBPP project, but, however, shows an eminent impact even in the planning phase. The difficulties arising mostly trace back to conflicts of national public procurement regulations including questions of applicability as regards legal remedies. They may furthermore also be owed to uncertainties relating to the relevance of other legal requirements stemming from national law, such as constitutional and/or administrative law restraints, and due to needs for clarification as to the substantial contract law. While in all of the cases described in this study some basic legal issues had to be dealt with in the course of setting up the general strategy of the project, the insecurities that emerged in the concrete situations not only went back to a number of different – and partly very specific – causes, they also varied in intensity and in the gravity of their consequences. All in all, legal uncertainties did not in any case render the JCBPP procedure as such impossible, but rather led to a number of adjustments and accompanying measures which have already been described in detail.

As far as EU procurement legislation is concerned, the projects described were either implemented at a time prior to the entering into force of the 2014 EU Procurement Directives (as was the case in the EPCO project), or they were conducted after the entering into force of the Directives but prior to the entering into force of the national legal rules transposing the 2014 Directives into the legal order of all of the relevant Member States (as was the case in the BBG-SKI, BBT SE and HAPPI projects). *Consequently, the new regulatory regime for JCBPP as provided by the 2014 EU Procurement Directives has not yet come into full effect in the cases at hand.* The projects discussed have, however, to a certain extent all been set up with a view towards the EU's new procurement legislation and the new possibilities emerging for JCBPP projects thereby served as important points of orientation for the partners involved in the respective cross-border procurement initiatives.

This holds especially true for the BBG-SKI project. Although at the time of implementation, Directive 2014/24/EU had not been transposed into the relevant national legal order in Austria, the two CPBs decided to proceed by leaning closely on the Directive´s legal framework for JCBPP. Prior to that, the HAPPI project already drew on a comprehensive legal study that aimed to identify the optimal techniques and instruments for JCBPP at the national and European level and, by doing so, somewhat anticipated the legal possibilities offered by the 2014 Directive by implementing a PP procedure jointly designed and conducted by CPBs of different Member States. In line with that, the case of BBT SE also shows the influence of the 2014 EU Procurement framework regarding JCBPP projects. Despite the absence of national procurement law transposing the latest EU legislation at that time, BBT SE decided in 2015 to rely on the concept set out by Directive 2014/25/EU when determining the applicable procurement law for joint cross-border entities.

Unlike the other cases, the EPCO JCBPP project analysed in this study was able to draw upon a specific legal framework for joint Eurosystem/ESCB banks procurement. While the relevant legal provisions established by Decision ECB/2008/17 still took the 2004 EU procurement legislation as a reference point, the new Decision 2016/21/EU (ECB/2015/51), amending the previous act, had already been issued in view of the rules for JCBPP set out in the 2014 EU procurement legislation and took account of the rules provided therein.

Thus, at the time the projects analysed in this study were implemented, the relevant national procurement rules for the most part did not contain a specific set of provisions expressly dealing with JCBPP scenarios.[24] Nonetheless, taking into account the legal situation on the basis of the 2004 EU Procurement Directives, most of the national procurement regulations contained some basic provisions regarding whether public purchasers were allowed to aggregate their demands by making use of services provided by CPBs. As of today, although many Member States have already transposed the 2014 EU Procurement Directives into their national legal order, only small parts of the directives have been implemented so far in other Member States, e.g. in Austria. Especially as

[24] An exception was Danish procurement law, which at the time of the implementation of the BBG/SKI-project, in transposing the 2014 EU Procurement Directives, already contained detailed provisions for procurement procedures involving contracting authorities from different EU Member States.

far as Austria is concerned, the BBG-SKI case study shows that it is still possible to successfully conduct JCBPP projects notwithstanding the still missing implementation of the 2014 EU Procurement Directives.
With a view to the typologies of JCBPP which the EU Procurement Directives lay out, the cases at hand illustrate some of the main forms of mechanisms for joint procurement: JCBPP with two or more CAs from different Member States jointly conducting a procurement procedure, including also CPBs jointly acting as CAs,[25] and cross-border procurement through a joint entity[26]. It must be noted that a significant number of CPBs from different Member States were involved in the concrete projects (see the HAPPI and the BBG-SKI project, whereas in the EPCO JCBPP case EPCO acts as a coordinator but without legal personality); at any rate the respective joint procurement scenarios rather accentuated the CPBs involved in their capacity as cooperating partners from different Member States.

6.12.2. Findings of the study

Taking a closer look at the legal strategies and the issues that needed to be dealt with in that regard, the study reveals a broad spectrum of aspects that were of relevance in the cases described.
Within the group of JCBPP projects with CAs (including CPBs) from different Member States jointly conducting a procurement procedure (HAPPI, BBG-SKI and EPCO projects), in their relevance for the legal construction of the JCBPP the following topics stand out.

- Legal restrictions on cross-border procurement cooperation:

First, one basic issue is that national laws restricted in different ways the activities of national CAs in their relationship with foreign CAs and/or CPBs.
The problems deriving in that sense were especially prominent in the BBG-SKI JCBPP project. Initially, a third CPB operating in Finland should have participated in the cooperation. However, national legal rules restricted the spectrum of activities of the Finnish CPB in significant ways. These restrictions derived among other things from the impossibility for Finnish CAs to purchase using a foreign public procurement law (or to make such an agreement). Moreover, when dealing with IT procurement for the government, which was the matter at hand, the Finnish CPB had to use the services of a specific national agency. Taken together, and not least with a view towards problems concerning the application of foreign procurement rules in procedures before Finnish review bodies, these restrictions forced the Finnish partner to step out of the collaboration at a very early stage of planning.
In contrast to that, in the HAPPI project the partners in the consortium could benefit from the fact that the respective Member States did not oblige their CPBs only to apply their respective domestic procurement law.
The same applies to the EPCO system and the concrete case discussed above. The participating central banks interviewed were neither bound by restrictions as regards the applicability of foreign procurement law for the joint procurement procedure nor by national legal obligations to exclusively cooperate with their respective national CPBs. They could, thus, participate in the joint procurement system without hindrances in this regard, which supported their flexibility in the initial decision to use the services of EPCO.

- The choice of a lead buyer / coordinating institution:

A core element of JCBPP is determining the roles and tasks of the participating parties, especially the task of the overall coordination of the project, and/or allocating the role of lead partner throughout the procedure. The case analysis showed that legal aspects particularly in view of the applicable public procurement law can impact the decisions to be taken in this regard.
In the HAPPI case, Resah operated as lead buyer. This decision was closely intertwined with the applicability of French procurement law for the conclusion of the framework agreement.
The BBG-SKI project approached the topic from a somewhat different perspective. The Austrian BBG was designated to be the lead partner, basically due to two motives: The greater urgency for Austria to conclude a new framework agreement and far more importantly the fact that it had already been decided to apply Austrian procurement law to the common tender. This naturally led to the BBG's stepping forward and taking the leading role.

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[25] See Article 2 (1) 16 of Directive 2014/24/EU.
[26] As pointed out earlier other forms of JCBPP are possible – e.g. a simple cooperation in order to issue common technical specifications in parallel procurement procedures (see Recital 71 of Directive 2014/24/EU). However, these are not covered by the present study.

Regarding the ECPO JCBPP case, due to the specific legal provisions of Decision ECB/2008/17, the selection of the lead partner generally appears to be based more on questions of expertise and concrete capacities, not primarily focussing on the applicable procurement law aspect. Yet, it has to be taken into account that EPCO, a coordinating body without legal personality, is deeply involved in identifying, preparing and supporting joint tender procedures and thus makes a substantial contribution to the support of the central banks and particularly to that of the relevant lead bank in each case. EPCO's coordinating function considerably simplifies the administrative load for the CAs.

– The establishment of a cooperation agreement:

In the cases discussed, the necessary elements of the joint procurement project were mostly regulated through agreements by the participating CAs/CPBs.
The HAPPI project can be regarded as an outstanding example in that respect. The CPBs involved in the project concluded an agreement in order to establish the European purchasing group as such. Within this agreement, Resah was mandated to act as lead buyer and the necessary framework as regards the allocation of roles and responsibilities of the partners was defined.
Along the same lines, but on a smaller scale of participants, BBG and SKI established an agreement regarding the legal strategy and the basic features of their cooperation, particularly entailing the definition of the roles and tasks of the partners. In this agreement SKI also mandated BBG to conclude the framework agreement on its behalf.
In contrast, the JCBPP initiative of the Eurosystem/ESCB Banks was distinctive in that it was based on a specific legal framework set out by Decision ECB/2008/17, now Decision 2016/21/EU (ECB/2015/51). The Decision contains a clear definition of the roles and responsibilities of EPCO itself, the leading bank and the other banks involved, and sets out the main steps in the joint tender procedures.

– The applicable procurement rules and contract law:

Based on a detailed legal analysis, BBG and SKI decided to apply Austrian PP law for the award of the framework agreement, as Danish law was regarded as more flexible, meaning it would be easier to adjust this to Austrian legal requirements than the other way around. The legal analysis showed that under Danish procurement law it was not only possible to engage in a JCBPP but also to use Austrian procurement law in doing so. At the same time, Austrian law did not explicitly allow but did not expressly prohibit either that BBG award a contract also on behalf of CAs/CPBs from other Member States. Mini tenders and call-offs made by Austrian CAs were subject to Austrian contractual law, for those made by Danish CAs Danish contract law would apply. As regards disputes resulting from the joint tender procedure itself, Austrian courts were identified as exclusively competent. Legal disputes arising from individual contracts (call-offs) should however fall into the jurisdiction of the competent Austrian or Danish courts respectively. One reason behind this division was to avoid Austrian courts having to deal with Danish contract law – and vice versa.
In the HAPPI project, the decision to use French procurement law for the award of the framework contract was mainly seen as a consequence of the decision to mandate Resah as lead buyer. Based on the framework agreement concluded, each CA was however able to award subsequent contracts according to their respective national legal provisions. This made it necessary to define a common contract model in all the national legal systems involved in the project. In view of the chosen model, however, disputes between parties concerning the framework agreement were to fall within the jurisdiction of the competent French court exclusively, whereas complaints arising from the award of subsequent contracts were to be dealt with by the respective national review institutions.
In this respect, the models chosen in the BBG-SKI and the HAPPI project were very similar.
In the EPCO system, the relevant legal framework specifically governing JCBPP situations contains guidelines as to the questions at hand: Pursuant to Decision ECB/2008/17[27] the leading central bank carries out the joint tender procedure in accordance with the procurement rules to which the leading central bank is subject. In the contract notice the leading central bank also specifies the structure of the contractual relationships. Based on that, in some cases the contract is subject to the law of the leading bank and the contracts/orders are thus also subject to the same legal order, whereas in other cases – especially if required by the national law governing the participating bank – the individual contracts/orders are governed by the national law of the participating institution.
The concrete project analysed in this study shows that in particular reasons of legal coherence may be regarded as crucial for the decision to act wholly under the same national legal rules: The participating banks used the relevant national law of the leading bank (Dutch law) also for their calling offs from the framework agreement. Accordingly, in this project the jurisdiction to decide upon disputes between parties was also exclusively allocated to the respective national (Dutch) courts. By mutual agreement, parties could solve a dispute through arbitration or mediation.

[27] The same applies for the new Decision 2016/21/EU (ECB/2015/51).

The BBT SE case analysed above illustrated various aspects of an example of JCBPP through a joint entity:

- While cross-border procurement scenarios via joint entities were at the time of implementation not subject to explicit regulation according to the respective national procurement rules, the State Treaty between Italy and Austria regarding the Brenner Base tunnel laid out the relevant legal framework for the founding of BBT SE.
- Nonetheless, beyond a declaration of intent that procurement projects should be optimised to ensure efficient execution especially by avoiding a separation of tender based on territorial considerations, the treaty provided no further guidelines as to the applicable relevant procurement law and/or contract law. Ultimately, the BBT SE General Assembly decided on the applicable procurement rules.
- Although BBT SE is a joint cross-border entity by its very nature, interestingly not all procurement procedures carried out by it are defined as JCBPP. Projects conducted only in one of the two states involved, applying the law of this state, are instead referred to as national procedures because there is no cross-border element in the procurement itself. Only procedures which concern works executed in both countries are regarded as "true" cross-border situations.
- Given that the main headquarters of BBT SE are currently located in Italy, cross-border tenders as well as tenders conducted in Italy are subject to Italian procurement law, while, depending on the country where the works are conducted, either Italian or Austrian contract law applies. Thus, in the case at hand, complaints against the procurement procedure were to be directed at the competent Italian court, whereas disputes arising from the execution of contract were to be dealt with before either Austrian or Italian courts. Tenders conducted in Austria, where the secondary headquarters are located, are generally governed by Austrian procurement law.

<u>The new framework for JCBPP according to the 2014 EU Procurement Directives – clarifications and questions</u>

Against this backdrop, the rules for JCBPP scenarios set out in Article 39 of Directive 2014/24/EU[28] on the one hand provide further clarification and contribute overall to legal certainty, but on the other hand also leave significant aspects unregulated and therefore entail certain risks as to the actual implementation of JCBPP projects.

- The provisions laid out in Articles 37 to 39 of Directive 2014/24/EU established a newly composed regulatory framework for centralised and joint cross-border procurement on EU level. Embedded therein, particularly Article 39 significantly contributes to the tool-kit for CAs engaging in cross-border procurement cooperation. This, even in itself as compared to the previous legal situation where EU procurement legislation had been understood only to provide an implicit allowance for cross-border joint public procurement, creates a certain amount of legal stability for JCBPP projects - which should not be underestimated.
- As has become clear through this study, legal difficulties arising in the context of JCBPP are often due to uncertainties concerning the relevant legal parameters that guide and may also pose restrictions on the cross-border project in the respective national (Member State) legal order. Additionally, they often trace back to conflicts between national public procurement rules, including the applicability of national measures of legal protection.
- Taking a look at the scope of scenarios for JCBPP that Article 39 of Directive 2014/24/EU provides for, the Directive seeks to clarify questions regarding the applicability of national measures, determining the applicable procurement legislation. Yet, even in that regard the new EU legislation leaves some noteworthy vagueness leading to further questions. Some of these shall be addressed briefly in the following.
    - As for mechanisms of cross-border centralised purchasing, Article 39 (3) of Directive 2014/24/EU stipulates that the provision of centralised purchasing activities by a CPB located in another Member State shall be conducted in accordance with the national provisions of the Member State where the CPB is located. These national provisions shall also apply when awarding a contract under

[28] See also Article 57 of Directive 2014/25/EU.

a dynamic purchasing system, to reopening of competition under a framework agreement, and to determining the rules governing framework agreements concluded with more than one economic operator.

- While, based on this, it can be assumed that the national law governing the CPB´s activities shall in any case be applied as far as national procurement rules are concerned, if call-offs carried out by CAs in other Member States are operated based on the procurement law applicable to the foreign CPB, questions may easily arise in case of review procedures. In particular, it remains to be clarified whether the actions taken by the CAs have to be challenged before the courts of the CPB's Member State or those of the CA´s Member State, and, if the latter is the case, if and to what extent these courts will have to and are according to their domestic legal order entitled to apply the procurement law of another Member State.
- Secondly, the scope of the obligation to act "in accordance with the national provisions" needs some further clarification, as the provision may also be understood as a duty to always "only" act according to the national law, which could in itself pose a hindrance to JCBPP.[29]

- As far as cross-border joint procurement projects in the narrower sense (several CAs from different Member States jointly awarding a public contract) are concerned, Article 39 (4) of Directive 2014/24/EU refers to the necessity of either an international agreement concluded between the respective Member States and/or by the participating CAs themselves. Thus, Member States may agree upon specific JCBPP provisions determining the essential factors for a concrete cooperation. If there is no such treaty, the CAs will have to establish an agreement which must determine, inter alia, the relevant applicable national provisions; in other words it is for the CAs to ultimately determine the applicability of the national rules of their respective Member States and the structure of the procurement procedure.
  - From this perspective, the Directive in a way refers the possible conflict of law problem back to the Member States, but mostly to the CAs involved, as Member State's treaties on that matter are still rarely to be found. This, again, leaves the risks in determining the relevant procurement law with the CAs and per se provides no certainty as to the question of dealing with matters of jurisdiction in cases of review/legal remedies.
- Regarding cross-border procurement scenarios involving a joint entity, Article 39 (5) of Directive 2014/24/EU specifies that the applicable national procurement rules can either derive from the jurisdiction of the Member State where the entity is based or from the jurisdiction of the Member State where the procurement activities will be carried out. The authority to decide upon that matter lies with the competent body of the joint entity.
  - Once again, this gives rise to a number of questions and yet again it is especially the problem of determining where the actions taken by the joint entity have to be challenged and whether decisions may also be challenged before the courts of the Member State where the entity is based even if the procurement procedure was to be carried out according to the procurement rules of the Member State where the procurement activities were to take place.

- In view of the above, it is however also noteworthy that the Directive expressly addresses the legal significance and the possible future operating range of treaties between Member States willing to involve in JCBPP situations, thereby also highlighting their role as a stimulus for CAs to engage in JCBPP initiatives. This tallies with the impression gained from the case-studies at hand. Generally, it can be said that agreements between Member States dealing with JCBPP situations, such as the treaty between Austria and Italy regarding the Brenner Base tunnel, and/or other specific legal provisions such as – now – Decision 2016/21/EU (ECB/2015/51) regarding the EPCO system, show a significant potential to facilitate JCBPP projects because they create stability and – at least to some extent – contribute to the necessary legal certainty for the participating parties.

[29] For further insight into these topics see Albert Sanchez-Graells, Collaborative Cross-border Procurement in the EU: Future or Utopia? pp 16 subsequ.

Overall and finally, we must be aware of the fact that the evolution of the legal framework dealing with JCBPP is still in progress and that the regulatory approach towards the complex theme of JCBPP has not wholly settled yet in all its details. Just as in other areas of EU harmonisation legislation, a number of questions will have to be dealt with by the Member State's legislation and jurisdiction, but may eventually also need answering by the European Court of Justice. However, the relevant legal provisions on the EU level show some gaps, are not always fully coherent and definitely pose a number of interpretational problems of their own. Nontheless in looking at the cases portrayed in this study, we also see that from a legal point of view JCBPP initiatives are not necessarily only a risky endeavour, but also open up opportunities for achieving the goal of enhancing efficiency in public procurement.

7. RECOMMENDATIONS

This chapter comprises recommendations for the implementation of JCBPP procedures based on the results of the case studies. It offers a practical approach on how to carry out joint cross border procurement procedures, how to foster legal certainty and how to allow for effective contract management and monitoring. The recommendations take into consideration the three models of JCBPP described in Directive 2014/24/EU, so that contracting authorities can better understand the benefits and challenges of each model and are able to assess which method is the most suitable for the envisaged procurement. The suggestions are structured based on the chronological order applied to a tender procedure starting from the planning of a tender to the contract management. Hence, the recommendations consitute guidance from practitioners for practitioners.
The following graphic shows a possible structure for a JCBPP procedure including phases and activities.

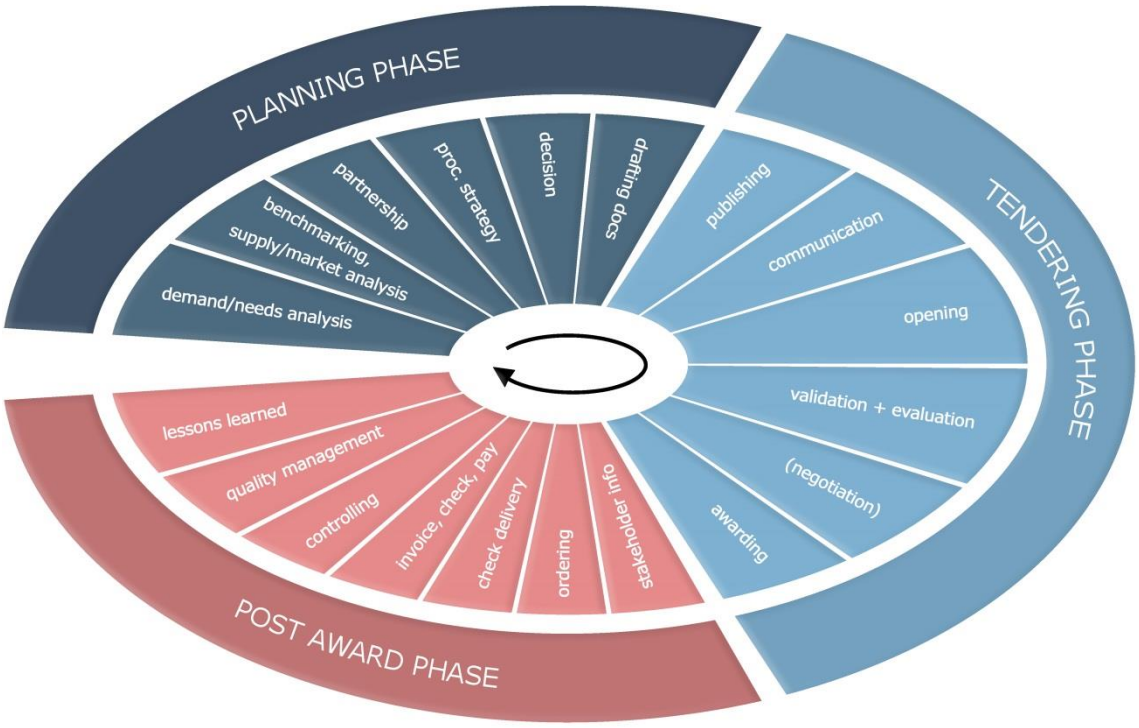

Figure 28: Structure for a JCBPP

It is important to mention that the activities in any particular phase as shown here can not be separated out completely and are often conducted in parallel with each other from a chronological point of view.

7.1. Planning Phase

7.1.1. Demand and needs analysis

It is important to first analyse the demand in order to understand whether it is feasible to procure the respective good or service in a JCBPP procedure.
This type of procurement can be recommended for:

- Standardized goods or services (international standards) as there is no need for complex specifications or a common choice on the individual requirments of a product.
- Goods and services that do not involve a high proportion of delivery services or works on site - as costs for logistics would make cross-border services more difficult.
- Products which are identified as having potential for achieving better prices and improved conditions (economies of scale, price differences between countries)

Standard software may be one of the most suitable products to be purchased jointly and cross-border as it is easy to specify and to aggregate without being impacted by transportation costs to the participating institutions.
When conducting a needs analysis, it is very important to address the end users and therefore to conduct the analysis in a very detailed manner and to integrate the know-how of all the stakeholders in the tender.
Elements of such analysis can include:

- Information on already existing contracts and their duration including exit scenarios and clauses stipulated in the contracts
- Estimated volumes for future contracts (per year or total)
- Available budgets (if applicable)

If the contracting authorities are not planning to purchase standardized goods or services, it is important to differentiate between essential needs of end users and expectations deriving from previous practices in the different countries involved in the JCBPP procedure.

7.1.2. Market Analysis and Benchmarking

When procuring in a JCB manner, contracting authorities should:

- obtain a good overview of the market including distribution channels of suppliers and to conduct and in depth market analysis. In order to better understand the market and if contracting authorities are not able to conduct a comprehensive market analysis with their own resources, advisory services should or may be used in support and to provide a coherent overview of the landscape in the field of procurement.
- engage the market as early as possible in the process. When it comes to joint cross border procurement, suppliers from more than one Member State should be informed about the envisaged procedure as soon as contracting authorities have agreed on the procurement topic.
- remember that it is absolutely necessary to include the results of the market analysis in the drafting of the procurement strategy.

It is recommended that JCBPP is used if the markets show:

- strong market power of suppliers at national level
- large and implausible price differences between Member States (including a rigid pricing policy)
- a sufficient number of economic operators who can supply the goods or services in different Member States
- established distribution networks that entail the same or similar standards in each country

For the **benchmarking exercise,** the procurement officers should analyse and assess the following:

- exact object of procurement
- services attached to the object
- concrete contractual terms and conditions
- demand patterns (from customers)
- the supply market
- logistics and distribution
- (SMEs and CSR) if possible
- prices
- evaluation scheme for the offers

The benchmarking process should follow 5 main steps:

- **Step 1:** Preparation and planning. In this step it is important to recognize the need for benchmarking, determine the methodology which is going to be used, and identify the participants in the project.
- **Step 2**: Data collection. This stage involves deciding what is going to be measured and how it will be measured. It is important to define the benchmarking envelope - what is to be benchmarked and what is to be excluded. At this point, the metrics that will be used need to be established. They must be clearly and unambiguously defined in order to ensure comparability of the datasets that will be collected. Data collection should be via e-mail.
- **Step 3**: Data analysis. The key activities here are the validation and standardization of data. Before performing any meaningful analysis, it is essential that all data is validated to establish its accuracy and completeness. Without this, direct comparisons of performance are normally impossible and the process may lead to misinformed conclusions.
- **Step 4**: Reporting. The analysis must then be reported in a clear, concise, and easily understood format via an appropriate medium.
- **Step 5**: Learning from best practices to the mutual benefit of all of the benchmarkers. Planning and implementing cross-border procurement actions.

7.1.3. Partnership

When intending to procure jointly and cross-border, contracting authorities should consider two main aspects related to partnerships: the choice of the partners and the way they can communicate and cooperate with each other.

A. Choice of partners

- When it comes to planning a JCBPP, it is advisable to look for contracting authorities which potentially have same needs at the same time. It is important to follow the same objectives in order to successfully implement a JCBPP.
- Contracting authorities planning to conduct a JCBPP should primarily address institutions they already have a history of collaboration with (not necessarily concerning JCBPP) so that they can build on an already established basis of trust. More trust results in less coordination work and better communication.
- If possible, contracting authorities should consider cooperations with partners from neighbouring Member States with whom they share a common language, legal tradition and/or possible bidders already acting on both markets.
- Having a large number of partners which can bring in extra volume and know-how can lead to positive effects in the tender. However, it must also be acnowledeged that this can have different effects. On the one hand, it affects the market as aggregating the procurement with an excessive volume may exceed the capacities of potential bidders and generate a lock-in of the market. On the other hand, it also generates more coordination work for the contracting authorities, which can exceed the commercial benefits the JCBPP procedure might generate.
- Thus, it is recommended that the contracting authorities take into consideration the capacities of potential bidders and their own capacities in handling administrative and coordination tasks when deciding on the number of partners.
- If JCBPP is conducted for the first time, it is recommended it be implemented with fewer partners in order to avoid complicated coordination.
- If possible, it is recommended that contracting authorities which have previous experience with JCBPP procedures be included. CPBs may be suitable partners as well, given their in-depth knowledge of aggregation of demands and coordination of a large number of stakeholders.
- Contracting authorities can participate in JCBPP procedures in different forms.
- The role of lead buyer should be taken by the organisation which has the most expertise in the field of procurement and possibly in JCBPP if it has enough resources to conduct this procedure. If an organisation has little expertise and not enough resources available, it would be better off to choose a less active role.

- It is advisable to avoid unnecessary travelling and to use e-communication whenever it is possible to save time and money. If the team is working together for the first time, it is important to plan at least one personal meeting in order to build trust between the partners.

B. Partnership agreement

Before becoming involved in a procurement procedure, the partners should define clear roles and responsibilities in a cooperation agreement. This agreement should include at least the following provisions:

- **Goals and non goals** of the joint tender procedure
- **Definition of terminology**, as in a JCBPP procedure conducted in a foreign language missunderstandings are otherwise very likely.
- A clear **commitment from the parties** to collaborate and delegate procurement activities to the lead buyer. This does not necessarly include the obligation to use the awarded contract but to cooperate throuout the entire JCBPP process.
- **Communication rules** within the team as well as with economic operators and other stakeholders
- **Definition of project bodies** (e.g. procurement expert group, legal expert group, steering group, etc.) and concrete roles and tasks of members of these bodies in each procurement phase.
- **Information on the envisaged procurement procedure** including procurement strategy, time and working plan
- **Design of a process** to be followed by all involved parties
- **Expected risks** like review procedures which translate into delays or complete "show-stoppers", unexpected results like higher prices than anticipated or no cooperation from the market. Risks must be shared fairly among the partners involved, i.e. additional risks should not be left primarily with the lead buyer.
- **Liability**
- **Potential costs** and their coverage by the partners
- If necessary, provisions on **fees and other incomes** generated by the common tender
- Provisions on **confidentiality and code of conduct**

Possible tasks and roles of contracting authorities including a lead buyer and one or several participating organisations could be:

Tasks	Lead buyer	Participating organizations
Planning Phase		
Determination of demand	responsible	input
Benchmarking	responsible	responsible
Market research	responsible	input
Preparation of partnership agreement	responsible	input
Detailed planning of the procedure and strategy	responsible	input
Coordination of meetings between partners	responsible	
Drafting a first version of tender documents	responsible	input
Translation of tender documents (if needed)	responsible	responsible (if in their language)
Coordination and consolidation	responsible	

of contributions to the tender documents		
Tender Phase		
Publication of tender documents	responsible	cooperation (if additional publication on own websites)
Communication with bidders (replying to bidders' questions and correcting the tender documents)	responsible	cooperation
Opening of tenders	responsible	participation if necessary
Evaluation of offers and request for additional documents	responsible	cooperation
Preparation of awarding proposal	responsible	
Conclusion of the framework agreement on behalf of all named contracting authorities	responsible	
Post award phase		
Making the framework agreement available, e.g. on a post award e-tool (ordering); stakeholder info	responsible	cooperation
Conducting call-offs/ mini tenders (if applicable)	responsible only if foreseen in the tender documents	responsible only if foreseen in the tender documents
Calculation of savings	responsible	input
Reporting and monitoring of contract (call-offs and supplier)	responsible	
Lessons learnt	responsible	responsible

Table 17: Tasks of partners in a JCBPP

C. Cooperation scenarios

When there is a **multitude of contracting authorities cooperating on a long term basis to conduct repeated JCBPP procedures**, it is recommended a **coordinating body** be established to offer administrative support and pool expertise. Special attention must be given to the question of whether the benefits of such an arrangement exceed the costs that involving a coordinating organisation entails.

When contracting authorities are cooperating to achieve a **common goal which involves multiple tender procedures over a longer period of time**, it is recommended that they establish **a joint entity** as provided for in Article 39 of Directive 2014/24/EU to take over all tasks related to the achievement of that goal including the tender procedures. JCBPP via the establishment of joint entities requires the participating contracting authorities to agree on the national procurement rules that shall be applicable, either in general or for a specific period or contract. This allows for a significant amount of flexibility, yet involves some challenges that must be considered. In particular, questions of jurisdiction in cases of review/legal remedies will have to be dealt with, and contracting authorities will have to examine in advance how suitable the respective national procurement rules are when it comes to applying them for the award of contracts in another Member State.

For short term and non-repetitive JCBPP, it does not pay off to establish a coordinating body or a new joint entity, thus contracting authorities should use one of the other possibilities for JCBPP provided for in the directive (i.e. joint procurement or procurement from or through a CPB located in another MS).

If JCBPP projects are to be carried out by contracting authorities from different Member States by **jointly awarding a public contract**, it must be verified as a first step whether the Member States concerned are parties to an international treaty that provides for a special cross-border

procurement regime. As in practice such treaties are scarce, the partners should then especially consider the necessity to establish an agreement to determine the roles and responsibilities of the parties, the relevant applicable national provisions and the internal organisation of the procurement procedure. Again, the freedom of legal arrangement thereby allocated to the participating CAs entails a significant amount of flexibility, yet also bears some risks especially as far as questions of conflicting legal provisions and jurisdiction in cases of review/legal remedies are concerned.
Regarding **cross-border procurement from a CPB located in another Member State**, the participants will especially have to examine if and to what extent the relevant national legal orders impose restrictions on contracting authorities as regards using the services of CPBs from other Member States. With respect to the applicable law when purchasing from a CPB in another Member State, the directive indicates that the national legal provisions governing the CPB's activities have to be applied. If call-offs carried out by CAs in one Member State are operated under the law of another Member State, questions of the jurisdiction of the respective national courts will have to be dealt with.
As a general recommendation, it can be added that if contracting authorities are conducting a **JCBPP procedure for the first time but are considering future common projects**, it is advisable to involve more staff than in a national procedure, so that the experience gained is disseminated more quickly within the institutions.
Each JCBPP team should decide on the **composition of its team**, given the available capacities of the institution and the sensitivity of the procedure envisaged. Nevertheless, it is recommended that the team includes **legal and technical specialists** but also, ideally, a **lawyer linguist**.

7.1.4. Procurement Strategy

The drafting of a procurement strategy is of outmost importance in a JCBPP as it allows the project partners to determine the pillars on which the procedure is built. Putting considerably effort into the tender strategy will pay off during the entire process.
Even though the implementation of national procurement procedures might be very similar in terms of processes, it is advisable that at the beginning of the cooperation, each of the partners makes a short presentation of their own methods and steps so that a common model can be defined.
The strategy must have regard at least to the following: legal, economic and procedural aspects such as provisions on e-procurement, language, etc.
All relevant facts and information deriving from the market analysis such as the number of potential suppliers and the competition on the market as well as those resulting from the benchmarking exercise need to be considered in the strategy.
From a **legal** point of view the following must be considered:

- which of the three possible JCBPP scenarios is the most suitable one for the envisaged procedure. In order to decide, partners should evaluate the potentials and risks attached to each of the types of JCBPP arrangements and procedures (see recommendations above).
- which **national public procurement law** will apply to the tender procedure and which respective **contractual law(s).** The possible options depend on the type of JCBPP scenario chosen and are defined in Directive 2014/24/EU. Partners with more flexible national legislation should adapt to the more restrictive procurement law, ie the more restrictive law should be applied.
- which **other legal provisions** could affect the successful implementation of the project. E.g. constitutional law, administrative law, laws and regulations related to the specific products or services, which might be very specific for one country, specific case law, international law etc.
- which **procedure** is the most suitable for the envisaged procurement (open, restricted, negotiated, etc.). It is advisable to choose an open procedure if possible as it is the most transparent one, it allows competition and is shorter in terms of implementation time. When the landscape of bidders shows there may be very high participation, a restricted procedure might present a good solution to pre-select a number of qualified bidders. This would considerably reduce the work of evaluating the tenders, on the other hand it implies a longer process time. A negotiated procedure is not necessarily recommended for JCBPP as it is more complex and time intensive. This type of procedure is more appropriate for complex and individual products or services, which are usually not very suitable for JCBPP anyway.

- the legal implications for the contracting authorities if represented in the procedure by a CPB.

From an **economic** point of view, it is essential to decide upon the price structure to be used. This refers to pricing models such as price per unit or discounts on a pre-defined price list. Also, it is recommended to consider possible adjustments to the price during the entire period of validity of the framework agreement.
It must be carefully considered how costs that differ from one Member State to the other, e.g. logistic costs can be integrated in the pricing model.
Procedural aspects to be considered include

- **Working language** in the team and languages to be used in the tender procedure. When drafting documents, contracting authorities not speaking the same language have to take into consideration translation work, which involves additional time and money. The ideal situation would be to have experts who speak both languages or more, depending on how many countries participate in the project. Technical mistakes due to wrong translation could have a negative impact and should be avoided.
- Considering the importance of the tender documents, it is advisable to use the services of a professional translator specialised in either legal or economic translation.
- **Procurement language** used in the communication with bidders. This includes the language(s) of the tender documents as well as those used for the offers submitted by bidders, for the communication during the tender submission phase, etc.
- If procuring in markets where contracting authorities want to attract as many bidders as possible, using English and additional languages as procurement languages should be considered. In this case, an additional workload for the contracting authorities is to be expected. Therefore, if generating additional interest on the supplier side is not a high priority, it is recommended to use English as the exclusive procurement language (only if allowed by national legislation).
- **Workflow of internal approvals and signatures** (who signs what and when?)
- **E-procurement aspects** such as publication on different platforms in order to guarantee visibility of the tender documents, possibilities to conduct a complete electronic procedure and the compatibility of systems, including that of e-signatures.
- **Call-off modalities**. If applicable, it should be clearly defined who conducts mini-tenders and under which conditions.
- The procedure for **evaluation of tenders**
- **Award criteria,** which need to be handled similar to a national procedure
- **Division into lots.** Technical lots can be used like in any national procedure, whereas geographical lots diminish the desired effects of JCBPP, thus they are to be avoided.
- JCBPP procedures usually imply a **longer implementation period**, therefore it is recommended that enough time be planned in for conducting them and that this model not be used in projects which are critical in terms of time.
- Where and how to **publish the tender documents**. It is important to analyse the different possibilities in order to detect potential barriers well in advance.
- **Proof documents** required in the Member States involved. The contracting authorities should draft a list of mandatory proofs in each of the participating Member States and consider the implications connected with obtaining them. If the applicable procurement law offers some leeway, it is recommended that the effort on the side of the bidders be kept as low as possible and therefore that the CAs not ask for documents that offer little added value and are difficult to obtained.

7.1.5. Decision making

It is important to define a **milestone** in the procurement project when all partners formally agree on the designed strategy and rules and can proceed to the next phase. If there is no agreement reached at this point, there should be a clear exit strategy for the stakeholders involved in order to avoid unnecessary additional effort and provide for a "clean cut".

7.1.6. Drafting of tender documents

If longer cooperation between CAs is envisaged, it is recommended that **standard procurement documents and templates** be drafted in the language(s) used in the JCBPP tenders instead of translating tender documents specific to a certain procedure.
Starting from pre-existing samples/templates or from tender documents used by one of the contracting authorities in a former procedure might help but can at the same time be difficult to understand for partners which are used to different document structures or content. Therefore, designing tender documents from scratch and inviting all partners to contribute to a common template is the recommended option.
All steps defined in the strategy, especially those related to coordination between partners need to be applied in the process of drafting tender documents. The different legal or technical project groups provided for in the partnership agreement should be working closely together in this phase, indicating possible difficulties or risks and reporting them to the whole team.
In this phase, special attention needs to be given to the **coordination of the legal aspects** to ensure that the provisions in the tender documents have the correct meaning in the language(s) used.
Involving staff with **excellent linguistic abilities**, who are experienced in drafting or translating, checking or revising legal texts is highly recommended.
The drafting of tender documents is one of the most **time intensive** activities in the procurement process, where the team needs to work very closely and intensively together and to respect a well determined work flow in order to avoid mistakes.
If it is possible to set up, it is highly recommended that a **common platform (share-point)** for document management be used, where all partners can access the documents and can work independently from each other.
As a general rule, it is important to consider keeping the tender documents **as short as possible and to avoid complicated formulations** which are difficult for the bidders to understand.
Depending on the chosen design of the procedure, contracting authorities can choose to add specific attachments to the tender documents, as relevant to the national requirements of a specific Member State (e.g. rules on invoicing, delivering, etc.).

The tender documents can include:

- general terms and conditions
- commercial terms and conditions of procurement (framework agreement or contract)
- the price sheet
- cover letter for the tender including tenderer declarations
- subcontractor form
- statistical information form
- declaration of commitment
- table of contents (complete listing of the tender components)
- list of customers (if one or more CPBs are involved)

7.2. Tender Phase

7.2.1. Publication of tender documents

Already when devising the strategy, it is important to deal with the question of **how and where tender documents can and should be published** as unexpected barriers like the language of the publication platform or restricted functionalities may arise.
As some Member States oblige contracting authorities to use a specific national publication platform which usually is available only in one language, it is important to think about alternative publication media like the involved partners' own websites where tender documents can be made available.
As TED only offers the possibility to indicate a link where tender documents are to be found and does not have the option to upload tender documents on its site, it might be difficult to give economic operators easy access to the documents, especially when the platform where they have been made available is accessible only in one language. In this situation, the contracting authority

should be prepared to offer support to the potential bidders by either installing a help desk or drafting guidelines.
In addition to this, it is crucial to check in advance if the envisaged national publication platform is **compatible with JCBPP** (e.g. whether more than one NUTS code can be indicated for the contracting authorities from different Member States acting jointly in the award of the contract). If this is not the case and in order to guarantee the access to information for all economic operators in the EU, the publication of a parallel notice on TED might be envisaged. From a legal point of view, this is not the best solution as technically there would be two different publication notices and therefore two tender procedures.

7.2.2. Communication with bidders

The communication with potential bidders has to be **transparent**, avoiding misunderstandings deriving from the use of different languages.
Contracting authorities should be prepared to **answer more questions** than in a national procedure as JCBPP might generate additional demands and different expectations on the side of the economic operators. In this phase, it is important to use the findings from the market analysis in order to better understand the nature of the questions and requests of potential bidders.
The questions received should be relayed to the JCBPP team in the shortest time possible in order to avoid additional delays in answering. It is recommended that only the competent project group provided for in the partnership agreement handles the questions received from bidders. It is not advisable to split this responsibility between the contracting authorities involved based on language or origin of the question.
If corrections to the tender documents are necessary, it is absolutely essential to **publish the revised documents on all platforms** which have been used for publication.

7.2.3. Opening of tenders

If the procedure does not foresee the possibility to conduct a complete electronic tender, bidders will submit a paper-based offer which is opened on the respective deadline by the designated committee, mostly in the presence of the bidders. It is not absolutely necessary that all contracting authorities are physically present. If the tender documents allow for placing an offer in different languages, it is important to consider the participation of the respective partners, so that no mistakes deriving from linguistic misunderstandings arise.
In case of the electronic opening of tenders, partners could be connected to the system (if this is technically possible) and participate at the opening of tenders without having to travel to the place of the opening.

7.2.4. Validation and evaluation

The offers need to be evaluated by the project group consisting of experts from the different contracting authorities with specific legal and technical know-how. It is not advisable that individual team members evaluate according to the respective language of the offer. The competent team should prepare an evaluation report, select the successful bidder(s) and notify them.

7.2.5. Award

This milestone is common to a national procedure and does not involve any special procedural requirements within a JCBPP project.

7.3. Post Award Phase

The post award phase consists of different actions which can vary from one case to the other and which may be very specific to respective national legislations, practices and cultures or the specific strategies chosen in the tender. Nevertheless, it is important to address several recommendations:
Due to the cross-border nature of the tender, various uncertainties may arise among end users with regard to the **implementation of the contract** since they may be unfamiliar with the specific system chosen in the tender. Therefore, it is crucial that all relevant stakeholders are informed about the modalities of call-off, concrete conditions in the contract and how they will be implemented in practice. If CPBs are involved they should use their pre-existing communication channels to disseminate the most important elements of the contract to their customers.

It is important to have a **body or a person explicitly responsible for operational procurement,** which includes **contract and quality management**.
This ensures the sound and transparent implementation of the contract, the identification of possible structural problems and allows all stakeholders involved to have the same level of understanding during the entire term of the contract. This would not be possible if every contracting authority involved handled this phase on an individual basis.
Therefore, it is crucial to **establish a well-functioning system for communication** between the stakeholders. Contracting authorities should also develop a **methodology for the monitoring and reporting obligations** of each partner involved. The input from end users of the framework agreement should flow directly into the common monitoring system so that contracting authorities can better understand the usability of the contract and react accordingly if a problem arises.
In the monitoring process, it is advisable that the competent body observes the **overall use of the framework agreement** by the end users (through the respective call-offs if applicable). In this way, it can react in due time in case of extensions or modifications of the framework agreement.
The **performance of the supplier(s)** should also be closely monitored and escalation scenarios should be defined in order to ensure that problems can be identified early and that individually recommended solutions are taken into consideration in the further performance of the contract.
It is equally important that contracting authorities have a tool in place which **collects data related to the implementation of the JCBPP procedure** (e.g. working hours in each phase) in order to be able to compare the results with those of a national procedure and to understand the benefits or disadvantages the procedure has generated. This data should be included in an overall **cost benefit analysis**. Underlying the calculation of savings resulting from the JCBPP procedure, contracting authorities should also consider drafting a set of criteria which refer to what should be considered to be the benefits and costs of a JCBPP project.
It is equally advisable that, after each procedure conducted, **lessons learnt** are summarised and analysed in order to allow contracting authorities to improve future procedures.

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Further literature

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Appendix 1

Factsheet for the Analysis of the Economic Efficiency and Effectiveness of the Project (Cost-Benefit Analysis/CBA)

Name of project:
Name of Contracting Authority:

Please fill in the boxes as required. Please refer to the **net** values for any prices. Any additional information and comments are very valuable and appreciated.

1. Was a quantitative cost-benefit analysis (CBA) conducted within the scope of the JCBPP project?

☐ Yes, a quantitative CBA was conducted

☐ Another instrument was applied (e.g. a *qualitative CBA* or a *scoring model* for comparing alternatives, describe which instrument was used and how) – please skip to question 3: _____
_____
_____

☐ No – please skip to question 3

2. Describe the method that was applied for the CBA.

Indications: Please focus on the description of the method (i.e. which types of costs and benefits were considered), no figures are required. Also comment if you applied a single- or a multi-year perspective (including if you used discounting techniques).

3. What was/were the achieved price/s for the procured product/s?

Indications: Please provide the figures which are relevant for **your** organisation. Provide both the net price(s) per unit for each product (in Euro) and the amount of units procured. Column (4): For the 'baseline'/'business as usual' figures, state the net price(s) per unit that would have been paid if your organisation had made the procurement alone and indicate in Column (5) which of the following types of prices is referred to in Column (4). For obtaining unit prices, (i) use the price that was previously paid by your organisation for the product (e.g. price paid in 2012, preferably adjusted for inflation). If there are no previous prices available, use market prices ((ii) preferably catalog prices which reflect bulk discounts that would have been achieved; (iii) if not possible: the price for a private sector buyer, possibly already adjusted for the amount of units in Column (2) and possible alterations). Please comment in Column (5) in brackets on any price fluctuations.

(1) Product	**(2)** Amount of units procured in JCBPP project	**(3)** Net unit price as result of JCBPP project	**(4)** Net unit price in 'baseline'/ 'business as usual' case	**(5)** Which type of unit price is referred to in in column (4) (e.g. price paid in 2012 without adjustment for inflation)
Product 1				
Product 2 (please amend table if required for further products)				

4. How would you quantify the total costs of the JCBPP project for **your** organisation at the following stages/areas:

*Indications: Please refer to the **net** values for any prices. Column (1): If you consider any other types of costs in addition to the given types as relevant, amend the table accordingly (use a separate row for each type of costs). Please report each type of costs only once (for example, while translation costs might be incurred during the preparation of the tender documents (item e), they should be reported separately (item g)). Column (2): Indicate any estimated labour hours ((2a), e.g. 10 hours required to prepare a contract with a project partner) or directly associated costs ((2b), e.g. bill of 500€ (net) for interpreting). Column (3): In the 'baseline' figures, indicate any estimated labour hours (3a), or directly associated costs (3b) that would have been incurred if your organisation had made the procurement alone, and indicate in Column (3c) which type of price is referred to in Column (3b). Similar to question 3, for obtaining 'baseline' prices, (i) use the price that was previously paid by your organisation (e.g. price paid in 2013 for legal enforcement of the contract, preferably adjusted for inflation and a possible changed amount of units procured; risk management: use empirical values of contracts with similar values and types of risks). If there are no previous prices available, use (ii) market prices (e.g. searching for the technically best product: cheapest price after a comparison of three providers; translation of a text with technical specifications: length of document × price per line). Costs that are assumed to be zero have already been indicated in the cells (but can be changed). For both Columns (2) and (3), include all the costs related to an item (e.g. for translation: internal hours for obtaining offers for translation plus the direct translation costs), but do not include costs that arose due to externalities (e.g. time to train new members of staff that were involved in the JCBPP project).*

(1) Type of costs	**(2)** Costs (in Euro) incurred as result of the JCBPP project		**(3)** 'Baseline'/'business as usual' costs (in Euro)		
	(2a) Estimated labour hours	(2b) Directly associated costs (net values)	(3a) Estimated labour hours	(3b) Directly associated costs (net values)	(3c) Which type of price is referred to in column (3b) (e.g. price paid in 2013, price comparison of providers)
a) costs for searching project partners/other procurement			0	0	

organisations (e.g. issuing/searching calls for collaboration, contacting potential project partners)					
b) coordination among the project partners (e.g. e-mails, telephone conferences)			0	0	
c) travel (e.g. costs for face-to-face meetings with the project team)			0	0	
d) searching for the technically best product(s) (different costs in columns (2) and (3) might be e.g. due to a best practice exchange among project partners)					
e) preparation of the tender documents (different costs e.g. due to taking different national procedures of different project partners into account or pooling of expertise from partners)					
f) legal costs (different costs e.g. due to dealing with different national legislations of the partners)			0	0	
g) translation (different costs e.g. due to translating product specifications from the language of one partner to another)			0	0	
h) award and preparation of the contract (different costs e.g. due to pooling of expertise from partners)					
i) managing costs of the contract (different costs e.g. due to e.g. coordination among partners after the award)					
j) risk management (different costs e.g. due to sharing costs for monitoring risks like potential corruption among partners)					
k) legal enforcement of the contract (e.g. costs for litigation)					
l) costs for any other stages/areas (please amend table)					

5. Would you expect costs to fall and benefits to increase in **your** organisation for future similar procurement projects (i.e. when the project would be repeated)?

Indications: Where possible, differentiate between directly associated costs and estimated labour hours for each type of costs/benefits (for example. d)-hours for searching for the best product reduced, and i)-costs for managing the contract at the same level). Monetary values are not required for this question.

☐ Costs would possibly remain at the same level for the following stages/areas:
_____
_____

☐ Costs would possibly decrease for the following stages/areas:
_____
_____

☐ Costs would possibly increase for the following stages/areas:
_____
_____

☐ No changes would be expected.
☐ Other (please specify):
_____

6. If your organisation is the **lead organisation** in the JCBPP project, what was the total value of the goods and services that were procured within the project, and what were the shares of those purchased goods and services for your organisation and the project partner organisations (percentages of value)?

Total **net** value of procured goods and services (in €)		
	Percentage ↓	Name of organisation ↓
Percentage of goods and services purchased by your organisation (lead organisation)		
Percentage of goods and services purchased by project partner 1		
Percentage of goods and services purchased by project partner 2 (please amend table if required for other project partners)		

Thank you very much for your participation!

Appendix 2

Interview Guidelines for contracting authorities

1. Basic Framework (not refering to the specific project)
- Short description of the Contracting Authority (CA)
- Relation of the CA with Central Purchasing Body/ies (national and from other Member States)
- Legal framework in your country

2. Concept
- The main reasons for choosing the option to conduct a JCBPP project
- The way the market analysis was conducted
- Product or country specific issues which were encountered
- Legislation under which the JCBPP procedure was conducted
- Construction of the procedure (language, award criteria, etc.)
- Time spent from the moment the idea was born until the publication. How much longer compared to a "classic procedure" (national procedure) did it take?

3. Coordination Phase
- Roles and responsabilities of each partner
- Staff involved in the project and additional external expertese needed
- National or EU support of the project
- The main administrative challenges in the coordination of the project and ways to overcome them

4. Procurement Phase
- Time spent from publication to award. How much longer compared to a "classic procedure" did it take?
- The main organisational/administrative challenges and ways to overcome them
- Contract management
- Pre-award/post-award electronic tools used. Mutual influence of e-procurement and JCBPP

5. The economic efficiency and effectiveness of the project (cost /benefits analisys)
- Main costs and benefits (qualitative factors).

Note: the cost-benefit analysis is an extra target of the study and will be examined in more detail through a sepparate questionnaire, therefore in the interview, we are not interested in numbers and detailed figures.

6. Lessons learnt
- Main gains and benefits
- Main obstacles and challenges
- Expectations/challenges/concerns regarding the implementation of the new directives

Appendix 3

Questionnaire for Economic Operators

Joint cross border tender

Welcome to the survey joint cross border procurement

Thank you for your participation in the survey on joint cross border procurement.
This survey is conducted anonymously. The results will be evaluated and integrated in a feasibility study on joint cross border procurement, financed by the European Commission. In order to simplify and facilitate the implementation of joint cross border public procurement procedures the feedback of economic operators is of outmost importance.

Joint cross border tender

General Information

* 1. Company category

- ◯ Micro (<10 staff)
- ◯ Small (<50 staff)
- ◯ Medium-sized (<250 staff)
- ◯ Large (>250 staff)

* 2. Field of company activity

* 3. Experience in bidding for public contracts prior to the project at stake

- ◯ 0 procedures
- ◯ 1-5 procedures
- ◯ > 5 procedures

* 4. Is your company involved in international business?

- ◯ No
- ◯ No, but part of an international corporation/global enterprise
- ◯ Yes

* 5. Is your company located in the same country as the contracting authority/one of the contracting authorities who published the tender?

- ◯ Yes
- ◯ No
- ◯ I don't know

Joint cross border tender

Specific questions on the tender

* 6. When did you learn about the tender?

- ◯ Never
- ◯ Before publication
- ◯ After publication but within the deadline for submission of tenders
- ◯ After the deadline for submission of tenders

* 7. How did you learn about the tender?

- ☐ TED
- ☐ National publication platforms
- ☐ International other than TED
- ☐ From the market
- ☐ From an involved contracting authority directly

* 8. Did one of the participating contracting authority inform you about their intention to conduct a joint cross border procurement?

- ◯ Yes
- ◯ No

* 9. Did you submit a tender?

- ◯ Yes
- ◯ No

Joint cross border tender

Specific questions on the tender

* 10. What were the challenges you encountered?

- [ ] Language barriers at reading the tender documents
- [ ] Language barriers at bidding
- [ ] Language barriers at fulfilling the contract
- [ ] Complexity because of the JCBPP procedural aspects
- [ ] Complexity because of fulfilment of international contracts
- [ ] Public procurement law applicable
- [ ] Contractual law applicable
- [ ] Law applicable to the product/service (e.g. certificates, permits, etc.)
- [ ] Competency of review bodies or courts
- [ ] Resources (personnel)
- [ ] Time to submit the tender was very short
- [ ] No challenges encountered
- [ ] Others (please specify other challenges)

Joint cross border tender

Specific questions on the tender

* 11. Why did you not submit a tender?

- [ ] Language barriers at reading the tender documents
- [ ] Language barriers at bidding
- [ ] Language barriers at fulfilling the contract
- [ ] Complexity because of the JCBPP procedural aspects
- [ ] Complexity because of fulfilment of international contracts
- [ ] Public procurement law applicable
- [ ] Contractual law applicable
- [ ] Law applicable to the product/service (e.g. certificates, permits, etc.)
- [ ] Competency of review bodies or courts
- [ ] Not enough resources
- [ ] Not according to the company strategy or portfolio
- [ ] Not enough time to submit the tender
- [ ] Others (please specify other reasons)

Joint cross border tender

Specific questions on the tender

* 12. Did you need external staff to prepare the tender as a consequence of the JCBPP?

- ( ) Yes
- ( ) No

Joint cross border tender

Specific questions on the tender

* 13. Did you feel discriminated by the cross border nature of the project?

- ◯ No
- ◯ Yes. Why?

* 14. What were the reasons for bidding in a JCBPP tender?

- ☐ Expected turnover
- ☐ Expected market share
- ☐ Expected profit
- ☐ Expansion to new markets

Joint cross border tender

Specific questions on the tender

* 15. Did you win the tender?

- ◯ Yes
- ◯ No

Joint cross border tender

Specific questions on the tender

* 16. Why not?

- ◯ Not considered best/cheapest offer
- ◯ Excluded because of formal reasons

Joint cross border tender

Specific questions on the tender

* 17. If yes, which staff did you need?

- [ ] Legal staff
- [ ] Technical staff
- [ ] Translator
- [ ] Other

Joint cross border tender

Conclusions

* 18. Do you consider JCBPP as a good purchasing procedure?

- [ ] Yes
- [ ] Yes but legal situation is yet unclear
- [ ] Yes but many risks/challenges to deal with
- [ ] Yes but not in my industry
- [ ] No

* 19. Would you participate in a future JCBPP tender?

- ( ) Yes
- ( ) No

Joint cross border tender

Other comments

20. Are there any other comments you would like to share?

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