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Public procurement distance: analysing European public procurement policy implementation in 27 EU member states

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Innestellen van de overste van
Amsterdam tot den heer
D. van der Elb

Van den van Oudvader
op — 11 l karoline

Mr Bouke de roek — 11 l karoline

Gezondheids van Gerecht met
Een soene op — 11 l karoline

Wet de kapper met E. mede
gefeelen op — 11 l karoline

Goed boek getiteld Bernulst — 11 l karoline

Van de Donkere met E. comfort
op — 11 l karoline

Chapter 1

INTRODUCTION: EUROPEAN PUBLIC PROCUREMENT POLICY

1.1 Central problem

Policy is only finally made when laws or regulations are fully implemented through subsequent processes that cascade from the initial declarations (Michael Lipsky, 2010: 213)

If European procurement policy is not implemented to the letter, a discrepancy arises between the intended policy and its implementation. This is called *public procurement distance*. This primarily concerns the mandatory public procurement policy to which contracting organisations must adhere. Discretionary public procurement policies also exist, which – in principle – contracting organisations implement on a voluntary basis. They cover topics such as socially responsible procurement, innovation, and encouraging participation in public contracts by small to medium-sized enterprises (SMEs). There are also public procurement policies that may be implemented at one's discretion regarding cross-border procurement, promoting purchases in member states other than one's own country to stimulate the use of the harmonised European market. In all of these policies, implementation is problematic. The aim of this research is to identify possible explanations for this distance between intended European public procurement policy and its implementation.

The first policy component to be discussed is mandatory procurement policy. The aim of this policy is to create a uniform legal framework for all member states within which governments can manage the execution of infrastructural works, services, and supply of goods in a common market (hereafter referred to as works, services and supplies).¹ Where this policy is con-

¹ Regulation of government contracts has always taken place. For example, according to Verkerk (1992: 233); King (2000: 1); Hurx (2012: 116-117), for there were tender procedures with bids in writing in the Middle Ages and Renaissance. Until the sixteenth century, a burning candle determined the duration of the bidding, whereby the person who had bid the lowest when the candle was extinguished was awarded the assignment (Janse, 1965: 27). The earliest purchase

cerned², there are persistent complaints about excessive administrative burdens, a lack of transparency, and overly complex regulations, meaning that the implementation of mandatory European public procurement policy is experienced as problematic (Csáki, 2006; Maandag, 2007; European Commission³, 2008c; 2011a: 3; 2017a: 5-6; Volker, 2010; European Court of Auditors, 2015; Arrowsmith, 2012: 96; 2015). A lack of knowledge and professionalism plays a role when it comes to the implementation (Commission, 2017a; 2021a: 5). Procurement practitioners also have to consider that a variety of external stakeholders from politics, social groups, business, and media influence their work (Gordon et al., 1993: 832-833; Commission, 2021a: 5). The result is that fair competition is sometimes lacking, and contracts are not always awarded to parties that should have won the government contract based on their tender (European Court of Auditors, 2015: 8).

Furthermore, several problems are linked with the implementation of the mandatory public procurement policy. For instance, 5% of public contracts are awarded directly after negotiations, without any tender procedure. Between 2006 and 2016, the number of tenders with one bidder increased from 17% to 30%, and the average number of bids per tender procedure declined from five to three (Commission, 2017a: 5). This means that competition between interested suppliers falls short. Mutual cooperation between contracting authorities to share knowledge and capacity is also limited, occurring in only 11% of the relevant tender procedures. Therefore, possible economies of scale are not always realised. Tender procedures are also highly susceptible to improper behaviour (European Court of Auditors, 2015; Commission, 2017a: 2, 5-6, 11). These shortcomings in the implementation of mandatory European public procurement policy mean that there is regularly a significant distance between this policy's intentions and its implementation.

Secondly, regarding discretionary policies the aim is for procurement officers to voluntarily address a variety of policy themes such as sustainability and social return, innovation, and encouraging participation in public contracts by SMEs. There are also persistent problems in this regard. Rather than a lack of European policies, member states do not implement them or only do so partially. The Commission (2017a: 3) comments that "*Member States are not using to their full extent the possibilities of public procurement as a strategic tool to support sustainable, social policy objectives and innovation.*" For example, SMEs win only 45% of

order ever discovered was for "50 pots of oil in exchange for 600 small weights of grain," which stemmed from Syria and dated from the period between 2400 and 2800 BC, according to Coe (1989: 87) in Thai (2001: 11).

² The terms procurement policy, European public procurement policy, tendering, contracting, purchasing and public procurement in this study refer to European procurement policy.

³ Subsequently referred to as the "Commission."

contracts (Commission, 2017a: 5), even though 99% of enterprises in the European Union fall into this segment (Commission, 2003). Innovation is hindered by aspects such as a lack of knowledge about the subject, risk aversion, and resistance to change (Commission, 2021a: 10). This leads to the intended optional procurement policy frequently falling short in its implementation. The causes might stem – for example – from risk avoidance, insufficient management direction and coordination, a lack of financial resources and adequately skilled staff, insufficient political support and involvement, and restrictive regulations (OECD, 2017: 42-45). Moreover, the focus is often placed on economic (Kingston, 2016: 30) or legal aspects (Semple, 2016).

The third element of the European public procurement policy is the promotion of cross-border procurement by member states on the common European market. Further expansion of this market is an important objective of European procurement policy (Cox, 1993: 9), although this is a discretionary rather than mandatory policy. Concerning cross-border procurement, contracting authorities should use the available possibilities more than at present (Commission, 2017a: 12-13). If member states pay little attention to the common market, this hinders further European integration (Cox, 1993: 9; Börzel, 2016). The Commission already highlighted the importance of breaking down internal borders and promoting cross-border public procurement in 1985, while also noting that this happens to a very limited extent (Commission, 1985: 23-24). This situation has remained over the years; for example, between 2009 and 2015, the share of direct cross-border awards compared to the total number of awards was 1.7% (Commission, 2017b: 29).

The Commission has made several attempts to revise its public procurement policy to address the issues surrounding the poor implementation of mandatory and discretionary policies, albeit without leading to solutions.⁴ This raises questions

4 In 2004, a revision of the guidelines in force since 1992 was published (Commission, 2004a; b). The main objectives of this revision were to strengthen the functioning of the internal market, realise savings in public expenditure, improve transparent understanding of available public contracts, make procedures less administratively burdensome for both public authorities and market parties, allow more strategic policy objectives to be included in tenders and fight corruption (Commission, 1998; 2001: 12, 29). However, the review solved little, as complaints about administrative burdens, a lack of transparency, and regulatory complexity did not disappear. The Commission was aware of the continuing shortcomings. Therefore, in 2014, revised guidelines were issued again to improve the 2004 version. The main objectives of the 2014 revision were to increase the effectiveness of public expenditure by generating more value for money, improve the implementation of strategic policy objectives, and combat corruption as well as preventing the favouring of certain parties (Commission, 2011a). This new set of guidelines was expected to strongly reduce the problem, although the exact same complaints largely persisted (Arrowsmith, 2012; 2015; European Court of Auditors, 2015; Semple, 2016; Commission, 2017a: 6; Andhov et al., 2022: 11, 55-61). In 2024, the Commission expressed the desire to review the guidelines again, given the continuing shortcomings.

about how the issues surrounding the implementation of European public procurement policy are so persistent that they remain so prominently present despite their intentions and numerous attempts at adjustment and revision. Is the failure to align supply and demand because public procurement policy is too complex to understand, or do people not understand each other because they reason and act from different rules or standards? Do the regulations allow insufficient or excessive leeway? What is the role of the member states in the implementation of public procurement policy? Can possible causes of the persistent distance between intention and implementation be found in employees' lack of professional knowledge and motivation? Do they possibly arise from governments' organisational limitations in terms of people and resources? Alternatively, do they lie elsewhere?

1.2 Research question and objectives

This study refers to the difference between the intended European public procurement policy and its implementation in practice as 'public procurement distance'. The intended European public procurement policy ('law in the books') is the policy as prepared beforehand. Implementation means 'law in action,' that is the practical or administrative application of converted European guidelines in practice. This extends beyond the idea that implementation refers only to the formal or legal application of guidelines in the sense of conversion into national legislation (Pound, 1910; Pressman & Wildavsky, 1984: xxi; Versluis, 2007: 53).

This study aims to investigate and explain possible causes of the emergence of distance between the prior intentions of European public procurement policy and its implementation in the 27 member states.

The problems with the implementation of public procurement policy leads to the following problem definition: earlier research has shown that there is a distance between the intended European public procurement policy and its implementation. Due to this distance, supply and demand are not – or only partially – aligned, meaning that European public procurement policy is not implemented according to prior expectations. This means that the procurement outcomes fall short in social, political, policy, and economic terms.

The problem definition is examined based on the following central question:

What can explain the distance between pre-established European public procurement policy and its implementation in the 27 EU member states?

This question will be answered through four research questions:

1. How can the distance between the intended European public procurement policy and its implementation be conceptualised?
2. Which factors potentially influence the emergence of a distance between intended policy and its implementation?
3. Which factors have exerted influence on European public procurement policy (namely the public procurement distance)?
4. What recommendations can be formulated to increase the effectiveness of European public procurement policy?

To analyse procurement distance and formulate an answer to the central question, a theoretical framework is developed based on scientific literature on policy implementation with a focus on the public procurement process. This process often comprises two steps, namely specifying the demand for works, services and supplies, and choosing from the bids received (Van Weele, 2010: 29, 117-120; Van der Horst & Schenk, 2016: 105-106). In each of these steps, deviations might arise between the intentions behind the policy and its implementation, making the procurement process part of the analysis.

1.3 Relevance of this study

This study seeks to increase knowledge about the implementation of European public procurement policy in daily practice. While relatively little is currently known about this (Csáki, 2006: 872; Fazekas, 2017: 2), the workplace is where policy is ultimately created (Lipsky, 2010: 213). According to Knight et al. (2007: 1), it is surprising that so little country comparative and country-specific research has been conducted on the realisation of potential savings in public procurement, especially given that public procurement is an important aspect of national economies. While understanding the quality of procurement processes and their outcomes remains in its infancy (Fazekas, 2017: 2), this study aims to provide an impetus to fill these gaps.

The professional implementation of public procurement policy is typically regarded as a predominantly legal and regulatory process (Telgen et al., 2007: 18-19; Treumer, 2014: 10; Hoezen & Volker, 2015: 2; Van der Horst & Schenk, 2016: 33). However, a lack of insight into the practical organisation of public procurement and the optimal mix of control mechanisms to implement procurement objectives in practice might play a more significant role than the increasing legalisation (Jansen, 2018: 5). This public administration study contributes to this intended broadening, will potentially also helping the Commission and member states to answer the question of why distance exists between the intended policy and its implementation.

When there are discretionary policy objectives in public procurement policy, it is claimed that a stronger emphasis is placed on achieving economic objectives rather than sustainability objectives (Kingston, 2016: 30). Use of government procurement to achieve social policy objectives is lagging behind. Also, little research has been conducted on the use of public procurement towards achieving these objectives (Koszevska & Ligte, 2023: 152-153). Cross-border procurement – the third component of European public procurement policy – is not at all common (Sylvest et al., 2011: 10; Commission, 2017a: 4). This study can help to understand why certain discretionary components of European public procurement policy might not be used as frequently as others, and thus promote change in this area.

By gaining more insights into the implementation of discretionary procurement policies related to topics such as sustainability and social return, this policy can be more effectively tailored to address major societal issues such as mitigating climate change, reducing unemployment, and countering social inequality. The stronger involvement of SMEs in executing public contracts can lead to greater economic growth. Encouraging the development of innovative products and services can lead to even more citizen-focused public services, reflecting the interest of the European Union as a whole.

1.4 Scope and research design

This section will focus on the target groups that fall within the scope of this research, while the research design will also be discussed.

1.4.1 Scope

This study examines the implementation of public European procurement policy in public sectors and utility sectors. Public sectors comprise non-utility-oriented public organisations,⁵ while utility sectors include organisations that provide services of general interest, such as gas, water, or public transport (Bovis, 2007: 49-50; Van Weele, 2010: 109; Commission, 2014b; c).⁶ Procurement is all about the actions of procurement officers, as buyers, lawyers and contract managers. Separate regulations exist for special procurement situations such as grant and state aid schemes (European Union, 2012: art. 107.1 TFEU), defence and security (Commission, 2009), concessions (Commission, 2014a), or procurement by the Commission itself (O'Connor, 2010). Such procurement situations lie beyond the scope of this study.

⁵ Also known as classical sectors.

⁶ Also known as special sectors.

All member states use the same European public procurement guidelines, which they have converted into national legislation and apply them in their procurement practice. This means that member states have the same principles of European law regarding public procurement, which offers opportunities for a broad comparative study into the implementation of European purchasing policy in the 27 EU member states.⁷ Country comparative research provides an opportunity to identify possible differences or similarities between member states concerning the implementation of European public procurement policy, as well as reflecting a basis for further research into the possible causes of such differences in keeping with the public administrative tradition and previous research on implementation processes. For example, Versluis (2003) investigated differences among four member states in the implementation and enforcement of a guideline for chemical substances, while Falkner et al. (2005) and Falkner and Treib (2007) explored the implementation of European social policy in nineteen member states and proposed a typology concerning conversion and implementation on this basis.

1.4.2 Research design

This study seeks to find explanations for the distance between the intended European public procurement policy and its implementation in the workplace. Accordingly, this study is explanatory in nature, drawing on the literature to establish expectations about the causes of the possible distance in implementation. These expectations are then tested quantitatively using data collected through a digital survey, aiming to gain insights into why public procurement distance can emerge.

The survey will be distributed among procurement officers within publicly contracting organisations in the 27 member states that publish their calls for tenders on the central European procurement website, Tenders Electronic Daily (TED). This is the website of the European Union where new public contracts within the Union are published daily. The responses provide a large dataset that is subsequently analysed using multivariate techniques.

To interpret these analyses, based on Selznick (1984: 5), two theoretical approaches are selected to explain ‘public procurement distance.’ The first approach adopts the perspective of an administrative organisation in which administrative capacity and possibilities for collaboration play a role in the ability to implement policy, and the

⁷ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. The United Kingdom was a member of the European Union at the time of data collection, while Croatia was not.

second takes the perspective of organisations being regarded as institutions in which various normative ideas and task perceptions are leading in achieving goals.

The administrative organisation approach was mainly developed by Tallberg (2002), who argues that non-compliance in the European Union is not the result of a conscious choice but arises under the influence of a lack of capacity and unclear rules. This can best be tackled through a strategy of capacity strengthening, rule interpretation, and transparency (2002: 613-614). In the context of answering the central research question, this means considering solving capacity shortages by deploying more expertise, people, or resources. This can lead to better policy implementation and resulting in bridging the procurement distance and is therefore included in the theoretical framework.

The other way to give substance to the administrative organisation approach is network oriented. The idea is that contracting authorities can better implement the European public procurement policy by working together. The Commission (2016a: 5-6) believes that this approach to public contracts creates efficiency and economies of scale, while a lack of resources can also drive organisations to collaborate with other organisations (Aiken & Hage, 1968: 927-929). Accordingly, collaboration can reduce public procurement distance and is therefore included in the theoretical framework.

The second perspective is normative. The first theoretical approach addressed here focuses on professionalism as used by Freidson (2004), who considered it from two angles: first, from skills acquired in practice and formal knowledge, and second, from the intrinsic motivation to perform tasks qualitatively well based on a sense of responsibility. This author fits into this study because he approached the issue of professionalism from both practice and training as well as intrinsic motivation, justifying the inclusion of this line of thinking in the theoretical framework.

In addition to values summarised in professionalism, the degree of discretion that the policy leaves to various actors to add and include certain components – if desired – during their performance of their procurement tasks is also examined. Here, the freedom to further implement policy at one's discretion can also be influenced by the environment. This is inspired by Lipsky's (2010) classic work on civil servants shaping public policy implementation at the street level within the discretionary leeway available to them.⁸ Given that policy discretion can affect public procurement distance, it is also incorporated into the theoretical framework.

A final perspective addressed within the normative approach assumes values that might play a role in the implementation of European public procurement policy in terms of possible cultural differences between member states, public

⁸ Originally from 1980.

administration tiers, sectors, types of guidelines, compliance, and geographical location. Culture is understood in this study as a bundle of values, assumptions, and judgements that influence the behaviour of groups of professionals. Evidence in the literature suggests that culture can play a role in how policies are implemented in diverse groups (Le Galès, 1998; Pollitt & Bouckaert, 2000; Falkner et al. 2005; Falkner & Treib, 2007). As the cultural aspect might affect the degree of public procurement distance, it is also included as part of this study.

1.5 Chapter outline

This introductory chapter has highlighted the issues surrounding the implementation of European public procurement policy, forming the basis for the research question and problem. Moreover, it has discussed the importance of targeted European procurement policy, as well as the scientific and social relevance of this research.

In the coming chapters, European procurement policy as applied in practice will be discussed in further detail. The theoretical framework developed in this regard will subsequently be tested and analysed based on the results of the empirical research, with conclusions and recommendations drawn, leading to the following composition of this dissertation:

In chapter 2, the distance between intended European public procurement policy and its implementation will be conceptualised. The context of European public procurement policy will be discussed, whereby mandatory policy will be scrutinised, as well as discretionary policies regarding socially responsible procurement, innovation, and participation in public contracts by SMEs. Discretionary policy on cross-border procurement in the common market will also be discussed. In chapter 3, public procurement distance will be further conceptualised by constructing a theoretical framework on the factors that potentially influence the emergence of a distance between intended policy and its implementation. Based on this framework, expectations about the implementation practice will be formulated. Chapter 4 will concentrate on the operationalisation of the variables from the theoretical framework that could potentially influence the emergence of a distance between intended policy and its implementation. Chapter 5 will describe the results of the data analysis, after which the outcomes of the data testing will be presented in chapter 6. Finally, chapter 7 will focus on the insights gathered and conclusions that emerge from this research. Together with chapters 5 and 6, these three chapters will form the answer to the question concerning which factors exert influence on public procurement distance. Several policy recommendations will also be formulated in the closing chapter.