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

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Chapter 2

IN PERSPECTIVE: EUROPEAN PUBLIC PROCUREMENT POLICY

2.1 Introduction

Central to this chapter are the background and importance of the mandatory and discretionary European public procurement policies. Together with Chapter 3, this section addresses the first research question of how the distance between the intended European public procurement policy and its implementation may be conceptualised, hereinafter to be referred to as “public procurement distance”.

First, the policy context of European public procurement policy will be described.⁹ Following this, a detailed and in-depth discussion will focus on the mandatory and discretionary European public procurement policies, in particular the discretionary policies regarding socially responsible procurement, innovation and participation in public contracts by SMEs. Discretionary policies on cross-border procurement in the common market will also be addressed, before the concluding paragraph will look ahead to the next chapter.

2.2 Context of European public procurement policy

The European Union has a strong interest in the implementation of European public procurement policy in line with its intentions, owing to several reasons. Smoothly running procurement processes demonstrate that there is a functioning common market without internal borders and trade barriers between the member states (Cox, 1993: 9; Bovis, 2007: viii-ix; Panagopoulos, 2016: 269). This means that – for example – a supplier from Finland can supply a municipality in Cyprus without any problem. The second reason is the economic importance of tender procedures, which arises

⁹ Only public contracts above the thresholds have been examined. In principle, public contracts with a value below the thresholds come under the member states’ national policies and do not have to be put out to public tender at the European level. As examples of some threshold amounts for the 2022/23: the tender threshold for works in both the utility and the public sectors is €5,382,000, central governmental authorities have a threshold for supplies and services of €431,000 for the utility sectors, and a threshold of €140,000 if provided by the public sectors. For decentralised governmental authorities, the threshold is €215,000 (source: Commission, 2021d: 2021/1952 (classical/public); 2021e: 2021/1953 (utilities)).

from the fact that European governments at all administrative levels procure goods and services and have works carried out with taxpayers' money. This involves major economic interests for both government and business (Wiesbrock & Sjøfjell, 2016: 230). Third, there is a social interest: public procurement may be a way of assuring high-quality public services (Commission, 2017a), as reflected in effective infrastructure or adequate educational facilities, for example. The fourth reason concerns procurement, as the common market functions as a large cross-border trading platform that offers plenty of opportunities for supply and demand to meet on the best terms (Cox, 1993: 259). Businesses from different member states can compete on this platform across borders for the public contract in another member state, so that the taxpayers' money goes to the best offer. A policy interest is the fifth reason, which manifests itself in the desire to implement policies in areas such as environmental protection, innovation, support for certain groups in society and industrial politics through public procurement, as well as fighting corruption (Nunes de Almeida, 2016: 4; Wiesbrock & Sjøfjell, 2016: 230-231). A common element in the above reasons is that if the European policy is not implemented as intended, it can have major societal and economic consequences.

This makes public procurement an important instrument for the Commission to manage policy implementation. According to the Commission, "*the management of public procurement is a matter of primary public policy importance – particularly in the context of fiscal consolidation and retrenchment in which member states must now manage public resources*" (Commission, 2011c: iii). Public procurement can also be a flexible policy instrument. For example, in 2015 and in 2020, public procurement was used as a control instrument to combat the refugee crisis and the COVID-19 pandemic, respectively, by using highly accelerated procurement procedures (Commission, 2015b; 2020), making it possible for relief supplies and medical equipment to be purchased at very short notice. Public procurement is also important in terms of numbers, as will be illustrated in the next paragraph.

2.2.1 Numerical importance of European public procurement policy

Procurement by governments based on European regulations has boomed and is still growing. Over 163,000 calls for tenders above the threshold values were published in 2010. By 2013, this had increased to almost 170,000 (Commission, 2015a: 8), and in 2020, more than 250,000 public contracts were awarded according to the TED website. In other words, public procurement represents a major financial interest, comprising approximately 16% of a country's gross domestic product (Van Weele, 2010: 123). The volume of all EU public procurement *above* the thresholds was around €450 billion in 2015 (Commission, 2016b). A more recent indication of the amount spent annually by governments on procurement above

the threshold values is €800 billion (Commission, 2024). Member states have over 250,000 contracting and purchasing governmental entities, 35,000 of which put up contracts for European tenders. The others are too small to publish calls for tenders under the European procurement guidelines (Commission, 2011b: 8). The United Kingdom (UK), France, Spain, Germany, Poland and Italy are responsible for 75% of all procurements in terms of both the number of contracts and their monetary value. The UK tops the list in terms of the highest value¹⁰ and France ranks highest for the number of contracts each year (PwC et al., 2011: 4). The average contract value (mean value) of all measured contracts together – regardless of the procedure used – is €3.1 million, with €390,000 as the median. Many contracts have a relatively low value, and they may run into billions (PwC et al., 2011: 18). An average of three potential suppliers tender for each contract (Commission, 2017a: 5). A tender process takes 108 days on average, and potential suppliers spend about €3,800 and governments €5,500 per tender procedure (PwC et al., 2011: 6, 87).

2.2.2 Mandatory European public procurement policy

European public procurement policy is intended to ensure public services to citizens. To do so lawfully and effectively, it is important that the procurement regulations are implemented effectively. This is based on four underlying basic principles of public procurement (Van Weele, 2010: 10): non-discrimination, whereby the market for public contracts must be accessible to every supplier, and the contracting authority may not impose requirements that exclude certain suppliers; equality, meaning that all (potential) suppliers competing for a public contract should be treated equally; transparency, so that business owners should be able to easily inform themselves about upcoming public contracts, and procurement processes must be unambiguous, visible and verifiable; and proportionality, reflecting that contracting authorities may only impose requirements and wishes that are reasonably proportionate to the public contract in question.

Violation of these principles will result in public procurement distance, with several examples to be found in the literature. For example, regarding the purchase of two speedboats for about one million euros by the Dutch Ministry of Public Works and Water Management, the requirements in the invitation to tender were formulated in such a way that the boats had to be able to operate at high speed and in heavy seas, but not that they had to be able to do both at the same time in rough seas. Even though the chosen supplier met both requirements separately as per the specifications, the boats were still unusable as operating at high speed in heavy seas was not possible (Nauticlink.com, 21-08-2018). It is conceivable that there are

10 Brexit plays no role in this.

suppliers in the market that meet the combination of both requirements, so that the principle of non-discrimination may have been violated. Another example of public procurement distance concerns transport-related infrastructure projects, with nine out of ten projects costing on average 28% more than budgeted. Underestimating costs upfront is many times more common than overestimating them and seems to be a global phenomenon according to Flyvbjerg et al. (2003: 78, 85; 2016: 31). It is apparently quite common for the requirements and preferences for these types of public contracts to significantly mismatch with their actual scope due to such disproportionate underestimation of the costs. In IT projects, governments systematically exceed the predefined budget and scope. The involvement of actors also increases as a project progresses, leading to intransparency in the execution of public contracts in IT (Groen, 2015).

2.3 Non-mandatory European policies

Not all regulations relating to European procurement policy must be adhered to, as some are discretionary. As discussed in Chapter 1, there may be strategic reasons to adopt non-mandatory policy.¹¹

The discretionary aspect of its policy instruments will now first be discussed, before zooming in on their strategic dimension.

2.3.1 Discretionary policy instruments

The European Commission has long held the position that the use of discretionary policy instruments is left to its member states, thereby applying the principles of subsidiarity and proportionality. Implementation of discretionary European policy is consequently largely determined by the national policy of member states, making it possible to procure more nationally or locally than in the common European market (Commission, 2011c: 155). According to the Commission, the use of policy instruments also varies excessively by market and industrial sector to demand their implementation (Commission, 2014b, consideration 95 and 2014c, consideration 100). The Commission usually limits itself to making recommendations to member states (Commission, 2016a). For example, in the area of sustainability, since 2003 it recommends developing national action plans for green public procurement (Commission, 2008b: 2). One of the few current exceptions to this rule is the

¹¹ This policy is also referred to in the literature by a wide range of other terms, such as 'horizontal policy' and 'secondary procurement policy' (Arrowsmith & Kunzlik, 2009: 9-10), and 'flanking policy' (Grin, 2003: 7). This study has adopted the term as used by the Commission, i.e. 'strategic policy' (Commission, 2017a: 3).

directive on clean and energy efficient vehicles, whose implementation is mandatory (Semple, 2023: 113). However, under the influence of the social debate on climate change, the Commission's attitude is gradually shifting. It is particularly less inclined to leave policy implementation in the area of sustainability to member states and increasingly encourages its active deployment in public procurement, as reflected in the 'Green Deal' initiative – for example – which includes numerous proposals to make compliance with regulations in the area of sustainability and improvement of the living environment mandatory rather than leaving their implementation to the discretion of member states. This is intended to lead to more sustainable economies and market models (Commission, 2019). Given the large volume and financial value public procurement is a powerful tool to achieve behavioural change (Andhov & Muscaritoli, 2023: 21). There have long been pleas in the literature for the Europe-wide mandatory inclusion of certain discretionary policy instruments in tender procedures. For example, Wiesbrock (2016) argues for the mandatory inclusion of minimum standards in social and employment law in procurement procedures (2016: 77, 95-96). Trybus (2016) makes a different assessment and emphasises economic interests, believing that sustainability policies and encouraging SME participation in tender procedures have become so important that they are in fact no longer secondary objectives of public procurement but rather primary ones. Social objectives however still are secondary objectives according to him (Trybus, 2016: 11). There could be some ambiguity in determining which policy belongs to which instrument. For example, support for SMEs can be considered as part of a member state's economic policy, but also as part of social policy due to its potential impact on unemployment (Piga & Tátrai, 2016: 15). Regarding the application of discretionary policy, rulings of the Court of Justice of the European Union (CJEU) have supported the cross-border application of discretionary targets. The CJEU has hereby played a vital role in the Union-wide harmonisation of these policies (Weale et al., 2000: 33-34; Edward, 2003: 490-491). The resulting case law has been codified in procurement directives and used in the member states.

In principle, public procurement officers have the freedom to determine which instrument they use in which tender procedure. As described in Chapter 1, the use of discretionary policy is problematic because member states do not implement this policy or only part of it. It is therefore interesting to consider the aspect of freedom of choice because it may raise certain implementation questions related to the use of such policy. In this regard, Zuckerman et al. (1978) found that people's motivation increases with their degree of control over their environment, whereby having many choices is a contributing factor. On the other hand, Iyengar and Lepper (2000) found that having too many options leads to demotivation: if someone cannot choose, they are inclined to leave the decision to others, such

as somebody who is considered to be an expert on the topic. Likewise, Schwartz (2000) comments that as freedom increases, so does uncertainty, dependence on institutions and on other people. In relation to this research this can negatively affect the use of policy instruments under the influence of third parties. One relevant issue here may be that the European Commission has not made clear distinctions regarding the instruments to be used. For instance, the sustainability instrument has the same policy weight as promoting SME participation in tender procedures, even though they concern different policy areas. This may lead to competition in use between the different policy areas (Fuchs, 2011: 343), which in turn may lead to instruments being used very little or not at all due to indecision. It is also important that market players cooperate in implementing the intended policy, which is not always self-evident. For instance, Brazilian research among 30 construction engineers found that implementing sustainability requirements is obstructed by regulations in this area being perceived as burdensome, not always corresponds well to practice and can cause delays and higher construction costs (de Souza Dutra et al., 2017). Consequently, this may restrict the use of intended policy.

The literature suggests that primary economic objectives often prevail over secondary discretionary objectives (Kingston, 2016; Trybus, 2016: 10; OECD, 2022). Therefore, it is not unrealistic to ask whether achieving these objectives has some added value in the eyes of executive staff. Kahlenborn et al. (2011) used a survey commissioned by the European Commission to investigate the experiences in the member states with integrating discretionary policy in tender procedures. According to almost 38% of the respondents, the inclusion of sustainability requirements leads to higher procurement costs: procurement costs remain the same in just over 32% of cases. Over 21% of the respondents said that the inclusion of aspects of social policy leads to an increase in costs. Those costs stay the same according to almost 32% of respondents. As for innovation, the increase is almost 23% according to the respondents, while more than 22% of respondents believed that the costs remain the same. According to 55% of respondents, the application of discretionary policies leads to an increase in the complexity of tender procedures, whereas 42% claimed not to experience any change in this respect. Over 43% said that incorporating sustainability leads to an increase in the duration of tender procedures, while 54% experienced no increase in duration (Kahlenborn et al., 2011: XVII-XVIII). This study thus presents a mixed picture of respondents who perceived discretionary policies as either expensive, time-consuming and complex or not at all. Van Orden and Kreeft (2020: 33) examined almost 500 Dutch public contracts for the inclusion of social conditions, which was only the case in one-third of the contracts. Research by Yu et al. (2020: 7) found that green award

criteria play a role in less than 10% of contracts. The cited literature shows that the rate of their use is low, and the exact causes are the subject of this study.

The Commission provides some direction for the decision-making process regarding the rating of primary and secondary objectives in tender procedures. Depending on the type of product and the importance of other non-sustainability-related award criteria, a 15% weighting for sustainability criteria can be considered meaningful according to the Commission (2008b: 5). The remaining 85% can be used to score primary objectives. If this Commission's rule of thumb is indeed applied, is there any public procurement distance if instruments *count for less than 15%*? There is some friction here. As secondary objectives carry more weight in the scoring, primary objectives such as price and quality carry less weight, which may lead to higher purchasing prices because suppliers need more money to implement secondary policies. On the government's side, a higher purchase price could mean that there is less taxpayers' money left to fund secondary objectives. This could affect the effectiveness of the discretionary policy since no one wants to pay too much, and it may well be possible that price awareness leads to governments being less prepared to use it.

2.3.2 Strategic policy instrument

Objectives pursued through discretionary policies are referred to as strategic for several reasons, first because they are often intended to achieve certain effects in the areas of politics, the economy, humanity and society in the long term (Kahlenborn et al., 2011; Commission, 2011c; 2017a; Panagopoulos, 2016: 269). In politics, this is the case because they are about maximising the effectiveness of the use of policy instruments, in economics and society because their use can lead to a boost in the participation of SMEs in public contracts, more employment, the improvement of the quality of the living environment, innovation and digitalisation. Given its volume and financial value, public procurement is an important strategic supporting instrument for implementing discretionary sustainability policies, according to Andhov and Muscaritoli (2023: 21). One point of attention here is the current regulations, given that policy objectives included in tender procedures must always be related to what is being procured. This may limit efforts somewhat, but makes those objectives more targeted (Commission, 2014, b; c; Semple, 2016: 50).

Especially when strategic policy objectives have a cross-border nature, such as measures in the field of sustainability, they touch on the common market. This means that collaboration and coordination between member states are crucial for the effectiveness of the discretionary policy. In this sense, this policy is also strategic. An important aspect of using instruments is that their use often coincides with the duration of the relevant public contract (the contract term). This period usually

only covers a few years and is therefore predominantly short cyclical in nature. This complicates the realisation of longer-term objectives through strategic deployment.

2.4 Policy instruments in more detail

In the remainder of this chapter, the policy instruments that are part of this study will be discussed, further defining and outlining the discretionary policy in terms of content as part of answering the first research question. For each instrument, the relevant European policy is briefly discussed. Certain practical aspects of the implementation of these instruments will also be addressed.

2.4.1 Sustainable public procurement

Sustainable public procurement encompasses two policy themes, namely themes related to the quality of the living environment – ‘green’ procurement’ – and those in socially responsible procurement (Steurer et al., 2007: 3; Commission, 2016a). The latter is referred to in this study as ‘social return’. Both topics will be discussed in this paragraph.

Sustainability policies aim to "*regulate the use of energy and natural resources, or the environmentally harmful emissions from consumptive and productive behaviour or both*" (Haverland, 2003: 204). Haverland places an emphasis on regulating the use of natural resources and hazardous emissions. As discussed earlier in this chapter, the Commission sets the policy but often leaves implementation to the member states, which makes regulating a national policy issue. If it has a cross-border interest such as combating air pollution, agreements should be made between member states. This necessitates a level of coordination that extends beyond the scope of a mere public contract.

Another aspect to consider when implementing sustainable public procurement is the concept of chain responsibility. While an end product can be labelled ‘green,’ to what extent is the underlying production process environmentally friendly? This aspect of a sustainable life cycle and supplier chain – which holds significant importance for public procurement – has received considerable attention in European and member states’ national politics (OECD, 2022: 7-9). The question here is how the chain might be verified by procurement officers. It is not realistic to ask the estimated 35,000 purchasing entities that announce one or more tender procedures each year (Commission, 2011b: 8) to trace the chain of production and distribution after each public tender.

To achieve the successful implementation of European sustainability policies, it may be necessary to include detailed implementation requirements and technical procedures in national legislation to bridge the distance between European policy

intentions through national implementation. European benchmarks thus have a direct influence on the deployment and enforcement within individual member states. This also comes to the fore in the literature by Falkner et al. (2005: 18), as illustrated in Box 1. Latvia has developed specific regulations to translate European sustainability policies into practice in this country.

BOX 1

GREEN PUBLIC PROCUREMENT

Latvia has developed procedures on implementing green public procurement. For certain categories of products, using green public procurement is obligatory, with examples including the procurement of cars with certain emission norms. In the procurement of food, norms for avoiding unwanted additives and the usage of unnecessary packaging material are implemented. In the category of cleaning, norms exist for cleaning products that are used. These provisions are supported by an extensive methodology and guidelines to enable procurement people to implement them in practice. They also provide a legal certainty for contracting authorities and tenderers (Interview Latvian public procurement consultant, 30th January 2018).

Socially responsible procurement (social return) aims to fulfil social policy objectives through the procurement process and mitigate any negative social impacts that may arise from contract execution (Commission, 2021c: 4).

Social return policies often deal with issues such as working conditions, employment and supporting the socially disadvantaged: "*any purposeful action intended to improve the social welfare of the whole or part of the same population*" (Fernandez Martin 1996: 39 in Erridge, 2003: 97). Topics in this area can be included in calls for tenders so that market players are for example encouraged (or obliged) to involve people with a certain distance to the labour market in the execution of the relevant public contract. They may create internships or work experience places, for instance. Realising accessible facilities that cater for people with disabilities is also a component of social return, whereby policy intentions are effectively transformed into practical execution. It is a predominantly short cycle instrument whose effect can become visible quickly.

2.4.2 Innovation

In this study, the Commission's definition of innovation procurement (hereafter referred to as 'innovation') is adopted: innovation is the procurement of a new

process through research and development, or a particular outcome related to a product, service or process that is yet unavailable in the market (Commission, 2021b: 5).

To implement policies to stimulate innovation in practice, a public contract that involves research and development or aims to develop or significantly improve a new or existing product or service might be considered a topic for innovation procurement. This makes innovation a broad concept, which also emerges in the literature. For example, according to Evan (1993: 114), innovation is “*the implementation of a new idea, whether a product of invention or discovery*”. On the other hand, Iossa et al. (2016: 8-9) approach innovation from a more economic perspective in which procurement is a demand-side instrument to solve market failure issues by asking the market for certain products and services. When the public sector calls for innovative products and services, it encourages businesses to invest in innovation, partly because governments often provide funding for a project. According to Telgen et al. (2007: 22) and Nyiri et al. (2007: 12), governments have the ability to leverage their significant buying power to promote the development of innovative products or procedures. Governments can hereby become a ‘launching customer’ to boost demand (Kahlenborn et al., 2011: 2).

2.4.3 SMEs

The Commission wishes to promote the participation of SMEs in public contracts through public procurement. Here, the principle of subsidiarity applies (Commission, 2008a: 2). Because SMEs are limited in size and often operate locally, they know the local situation well and can quickly respond to it. The local aspect and limited size of this types of businesses may also lead to lower transport costs, faster decision-making and less administration. SMEs can thus tackle sustainability and social objectives more quickly (Schoenmaekers, 2016: 168). SME participation may be a secondary policy instrument, although it is very important in supporting the Commission’s primary economic policy objectives given that more than 99% of businesses in the Union are small to medium-sized according to the European definition, which means that they employ a maximum of 250 people and have a maximum turnover of 50 million euros or a maximum balance sheet total of 43 million euros (Commission, 2003; Panagopoulos, 2016: 270). However, there are signs that this policy tool is not being utilised to its full potential. Between 2006 and 2008, SMEs won only 58% to 61% of the public contracts subject to a tender procedure, corresponding to 31% to 38% of the value of all contracts (GHK/DG Enterprise and Industry, 2010: 114). SMEs have disproportionately lower levels of access to markets and public contracts relative to their size and economic impact, as noted by Bovis (1998: 224) and Hatzis (2009: 345).

At the same time, the number of calls for tenders is still increasing (Commission, 2015a: 8).¹²

Box 2 is an example of a discrepancy between the intended policy to promote the deployment of SMEs and its implementation. Risk aversion possibly also plays a role in the division of contracts between large and smaller businesses, whereas the Commission encourages some risk-taking in the deployment of SMEs (Commission, 2008a: 3). The SMEs referred to in Box 2 supply when the large supplier is unable to, as emphasised in the literature: SMEs are flexible and serve that part of the market that is not of sufficient business interest to larger companies (Bovis, 1998: 234; Schoenmaekers, 2016: 168).

BOX 2

PROCURING FRESH FOODS THROUGH SMES

In Sweden a city wanted to procure fresh food for local schools and elderly homes. The contract up for bids was divided into fifteen different lots of product groups. The idea was to award 80% of the assignment to a single large supplier and 20% to two SMEs to fulfil government policy on SME participating in the bidding for public tenders. The smaller ones would also serve as a backup for the large supplier.

This goal was achieved, and all lots were awarded as planned. One positive side effect that emerged was that these SMEs subcontracted local groceries to help them to supply fresh food. At the beginning, the city feared that deliveries and quality would be jeopardised due to the size of the suppliers, although this proved not to be the case. SMEs were given time to grow into the agreement and nowadays delivery takes place with 98% accuracy and supplies are of continuous high freshness.

Dialogues between all stakeholders resulted in largely increased mutual understanding, satisfaction with this way of dividing the markets, increased trust with happy suppliers, procurers and end users as a result (Interview Swedish procurement manager, 5th January 2017).

2.4.4 Cross-border public procurement in a harmonised market

Cross-border public procurement means that a supplier from one country makes a bid for a European public contract that is issued out for tender by a contracting

¹² Encouraging SMEs' participation in public contracts has been a policy focus for the Commission since the 1980s (Commission, 1989: 15; Commission, 2014b: consideration 2 & 124; 2014c: consideration 4). This policy is still in effect after the 2014 revision of the guidelines (Schoenmaekers (2016: 160-161).

authority from another country.¹³ It is a discretionary policy instrument that supports one of the European Commission's key strategic economic policy objectives, i.e. promoting cross-border trade in a common market without internal borders. A fragmented market makes European industries less competitive, reducing their ability to compete in other markets (Martin, et al., 1999: 388). Cross-border procurement also supports the implementation of other policy instruments such as the sustainability instrument, because their deployment is often only effective across borders (Liberatore, 1991: 286).

Cross-border public procurement has been encouraged since the creation of the first procurement directives in the 1970s and 1980s. At that time, 0.14% of EU countries' gross domestic product was procured cross-border from other EU countries (Cecchini, et al., 1988: 16). In 1999, according to Martin et al. (1999: 400), less than 0.32% of the total number of contracts were awarded to companies from other EU member states. In a study conducted by the Commission in 2004, cross-border awards accounted for 3% of contracts (Commission, 2004c: 9-10), while over the 2009-2015 period this percentage was 1.7%, according to the Commission (2017b: 29). It is conceivable that there are sufficient national businesses available in national markets for works, services and supplies, which reduces the necessity for cross-border transactions. It may also be an indication of the limited degree of success of European policies to promote the deployment of 'cross-border procurement' as a policy instrument. There is also evidence suggesting that larger member states utilise this tool less frequently than smaller member states (Sylvest et al., 2011: 8). It is therefore imaginable that larger member states have a greater degree of influence on the emergence of public procurement distance than smaller member states. According to the same authors, language, geographical location and the type of directive could also play a role. Countries that share a language are more likely to award each other contracts compared to those with different languages. For example, contracting authorities from Malta regularly award public contracts to market operators in the UK as well as the Irish, and Austrians are more likely to award to Germans (Sylvest et al., 2011: 11-13, 78-80).¹⁴ The percentage of cross-border public procurement among utility sectors is also higher than for public sectors, i.e. 4.3% compared to 1.3%, according to Sylvest et al. (2011: 12). Cross-border purchasing could theoretically rise to over 18%, according to the same authors (2011: 8-9), caused in

13 In this study, cross-border public procurement refers to direct public procurement by a governmental buyer in one member state from a supplier in another member state as opposed to indirect procurement sourcing from a local branch of a foreign organisation. In the words of the Commission (2017a: 4), the percentage of the latter happening in public procurement is "above 20%."

14 When this study was conducted, the UK was still a member of the European Union.

part by the further globalisation of production processes as this leads to an increasing spread of production chains across countries.

The example of Luxembourg in Box 3 brings together multiple aspects of cross-border procurement policy. According to the guidelines, the use of the national language in tender procedures is permitted. This case prescribed hiring a person who was proficient in the local language to overcome a possible language barrier, which is usually the case for bidders who are not from Luxembourg. The policy of promoting the cross-border public procurement instrument is hereby implemented and public procurement distance is avoided, although on the other hand the requirement to employ such a person may be a barrier to tendering for a Luxembourgish public contract and result in public procurement distance.

BOX 3

CROSS-BORDER PARTICIPATION

Given that Luxembourg finds itself in between three larger member states, many cross-border companies participate in tender processes in this country. Like in many other countries, procurement above thresholds will be published on a central website in an official language.

If published in another language than Luxembourgish, the obligation to hire somebody who speaks Luxembourgish can be included in the specifications to overcome possible language hurdles. This can also be a constraint towards foreign companies to tender for a contract in this country (Interview Luxembourgish public procurement officer, 22nd March 2018).

2.5 Conclusion

This chapter has discussed the importance of the mandatory and discretionary European public procurement policy against the background of the common market between the member states of the Union. The discretionary strategic policy instruments that passed review in this study were presented. This chapter also explained why these instruments were not only discretionary but also strategic. The discretionary policy on cross-border awarding was also addressed.

The next chapter will elaborate on the concept of public procurement distance. Using the literature as the point of departure, a theoretical framework will be developed to identify the potential influence of wide-ranging factors on the emergence of disparity between intended policies and their implementation.