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

Schermerhorn, A.E.

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BESTEK EN CONDITIEN, volgens welke, in het openbaar, op nadere approbatie in Massa zal worden aanbeleeft:

Alle leverantien en arbeids-loonen, met den aankleve van dien, tot het aanleggen en opwerken van een Aarden-Buitendam, benevens het weder digt maken van het oude Binnen Vingerling, voor en achter de groote Inundatie Hulpsluizen in den Waaldijk te Dalem.

Mitsgaders het droog maken, en gedurende den tijd van drie achtereenvolgende maanden drooghouden, van de ruimte tusschen dezelve dammen of vingerlingen, tot herstelling en vernieuwing der voormelde sluizen.

Art. 1.

Hoofd-Bepalingen der Damwerken en Drooghouding.

De juiste plaats, en strekking van den geheel nieuw te maken Buiten Dam, is door Bakens op het terrein bepaaldelijk te zien.

Alle bepalingen van hoogte en diepte moet worden vergeleken aan de Peilschaal buiten de Waterpoort te Gorinchem, die verdeeld is in Rijnlandsche voeten en duimen, de eenige maatstaf met welke gemeten mag worden.

De kruins hoogte van den Buitendam moet zijn gelijk elf voeten aan het voormelde Peil, en moet, des noodig, bij onverhoopt hoog water, zoo veel worden verhoogd en opgekist, als de omstandigheden zouden kunnen vorderen, om de Sluis-put en Werken droog te houden.

De kruins breedte van denzelfden Dam moet zijn 12 voeten; de wederzijdsche Dofseringen één en één halve voet op den voet; en bijaldien door schuiving of andere omstandigheden, er Bermen noodig waren, moeten die buiten en binnen zoodanig aangelegd en opgetrokken worden, als de soliditeit en volkomene zekerheid des Waterkeerings vordert.

Langs de buitenzijde dezes Dams moet een laag rijzen Zinkstukken, lang 12 roeden, breed 3 roeden, dik 3 voeten, komende ééne roede onder den tée des Dams, gezonken worden.

Tot gemak en veiligheid der pasfagie met Rijnvuisen over den Dam, moeten de noodige Oprellen gemaakt, en ten wederzijden de Kruin, gelijk langs de buitenzijde van het Oprel van den Dijk afkomende, behoorlijke afheiningen worden gesteld.

De voornoemde Kruin en Oprellen moeten vervolgens met Rijs belegd, en daar over 6 à 8 duimen dikte Zand onderhouden worden, gedurende den geheelon tijd des werks.

De Coupures in het oude Vingerling, binnen om de sluizen, moeten ter volkomene zwaarte en hoogte van het oude werk, met Klei-aarden gedigt; en vervolgens zal deze binnen atdamming, gedurende de drooghouding, digt, en in voldoende staat gehouden worden.

De Klei, en Aardspecien, zoo tot den Buitendam, als tot het voormelde Vingerling, zullen, volgens aanwijzing gestoken, en door Kruiwagens, Kar of Vletfchuit, getransporteerd moeten worden.

Chapter 5

RESPONDENTS: DESCRIBING PUBLIC PROCUREMENT IN EUROPE

5.1 Introduction

This chapter revolves around the question of who the respondents are and how they implement European public procurement policy. This descriptive analysis is based on the data from the survey. Together with Chapters 6 and 7, this chapter forms part of the answer to research question 3 on the factors that influence European public procurement policy, i.e. public procurement distance.

It first zooms in on procurement officers based on their work-related data, before shifting focus to the implementation of European procurement policy. The emphasis here will be placed on the views and actions during the procurement process. The chapter will conclude with a brief final reflection and a look ahead to the following chapters.

5.2 Characteristics of the examined units

The first question is what the professional field and the primary work activities of procurement personnel exactly entail. This will be outlined in a description detailing certain features of daily implementation practices as identified in the dataset. Not much is known about this from either scientific research or practice (Csáki, 2006: 872; Fazekas, 2017: 2; Koszewska & Ligte, 2023: 152-153).

Profile

Regarding the occupational content in the professional field and the core job duties of procurement staff within the procurement segments (infrastructure, services and the supply of goods), respondents are most often employed to procure services (over 39%), followed by supplies (over 29%) and infrastructure (25%). When looking at the distribution between public sectors and utility sectors, it is striking that by far the smallest number of respondents work in the utility sectors, with approximately 7% (see also Table C1 in Appendix C). The respondents were also queried about their primary sector, whereby the infrastructure sector ranks first with almost 22%, followed by utilities with 11% and I(C)T with almost 11% (for more information, see Table C2 in Appendix C).

Zooming in on the profile reveals that the majority (over 64%) of the respondents were male. Over 90% of the overall respondents were aged above 35, with nearly half of this group being 50 years or older. A majority of 86% had completed higher professional or academic education.²⁹

In terms of their experience in procurement, two-thirds of the respondents executed a maximum of ten tender procedures per year, while one-third conducted eleven or more. 69% of the respondents had been working in the procurement field for at least five years. Where the public administration tier was concerned, almost 39% of the respondents were employed by a local government. This is largely understandable because there are more municipal than other governments, and consequently there are also more contracting authorities and procuring officers at this administration level.

Professional group

Apart from procurement segments, sectors and administration tiers, the range of tasks of procurement officers is an interesting aspect in profiling the units under study. The respondents were asked what role they personally played in the procurement process.

A summary is included in Table 3, highlighting that public procurement staff indicated that they are predominantly general procurement staff or part-time public procurement officers.³⁰ The latter group is relatively strongly represented with more than 40% of the respondents. This is also a high percentage compared to the European average of 19% in the age group of twenty- to sixty-four-year-olds who are employed part-time (Eurostat, 2016: 2). The respondents who classified themselves as legal staff were not as strongly represented as the other professional groups, which is noteworthy given the trend towards the legalisation of public procurement as identified in the literature (Telgen et al., 2007: 18-19; Treumer, 2014: 10; Van der Horst & Schenk, 2016: 33), as well as the fact that they were involved in all aspects of the procurement process, as reflecting in Table 5 below. However, the percentages of externally hired consultants were even lower, as shown in Table 3 below. This is striking because tender procedures are commonly experienced as complex processes, which can be a reason to hire external knowledge to oversee a procurement process.³¹ Consultants also performed tasks throughout all stages of the procurement process (Table 5).

29 The tables not included in this chapter are listed in Annex C – Frequency tables.

30 'Part-timers' being respondents who also deal with all the occupational aspects of procurement, in addition to their other duties.

31 External consultants with an email address in TED received a questionnaire.

TABLE 3³²**Distribution of respondents by professional group (n= 6,923)**

Professional group	Percentage
General procurement officer	37
Legal staff	7
Contract manager	12
Part-time public procurement officer	40
Externally hired procurement consultant	3
Externally hired legal consultant	1
<i>Total</i>	<i>100</i>

Education and training

In terms of education and training, Table 4 shows over one-quarter of the respondents had job-specific training and almost half had mastered the procurement profession in practice, without taking any procurement-specific training. The fact that professionals have not always had specific procurement training yet can still perform their jobs well is also highlighted in the literature. Matthews (2005: 392) finds that practical experience is often considered sufficient for procurement officers. Similarly, among a proportion of the procurement professionals who Abutabenjeh and Gordon (2015) surveyed, additional certification was not necessary to perform their work well. Training institutions that question the need for training and educating professionals in public procurement (Thai, 2001: 40-41) might have a valid point, considering the large number of respondents who claimed to have mastered European public procurement in practice. The responses and certain literature could point in the direction of public procurement as a rather routine administrative process without a clear strategic added value. If this is valid, public procurement presumably requires less extensive knowledge acquisition but rather practical experience.

³² Tables rounded to whole numbers. Rounding differences may have occurred when adding percentages. n = number of responses. Measurements based on 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).

TABLE 4

Further training (n= 6,874)

Specific training	Percentage
Procurement training or a course specific to European public procurement	28
Procurement training but not specific to European public procurement	25
European public procurement mastered without procurement training	48
<i>Total</i>	<i>100</i>

Task division

Table 5 shows the division of tasks of public procurement staff over all steps of the public procurement process, showing that about 75% of the time is spent on the specification stage in relation to the overall procurement process. In both the specification and selection stages, externally hired workers spend about the same amount of time on the tasks as the other professional groups.

In the specification stage, legal staff are slightly more concerned with applying rules and case law and less concerned with answering questions from the market compared with other professional groups. Externally hired procurement consultants together with procurement staff are slightly more concerned with providing answers to market questions in summaries of additional information and changes at this stage compared with the other professional groups.

With more than 10% of the time spent, externally hired legal consultants are more concerned with legal procedures in the selection stage compared with the other professional groups. Indeed, they may possibly be hired for this specific task at this stage. In-house legal staff spend over 9% of their time on procedures. External consultants are deployed more in the specification stage than in the selection stage and they participate in every step of the procurement process alongside their in-house counterparts. Hiring external consultants – possibly influenced by this broad deployment – entails substantial annual costs for contracting authorities. 69% of respondents spend up to 100,000 Euros and 7% of respondents even spend more than 100,000 Euros on hiring (table C16 in Appendix C). These percentages and amounts illustrate the frequent use of consultants from outside one's own organisation to perform procurement tasks throughout the procurement process.

The various professional groups spend at least 10% of their time concluding the contract with the winning supplier(s). Along with the follow-up of contractual agreements, this lies more within the professional domain of contract managers but is handled by other public procurement officers to an almost equal extent in percentage terms. Contract managers are more concerned with closing than

performance. This corresponds with Gutman (2014: 13-14, 21), who states that more attention is paid to closing than to following up on agreements as part of contract management. It is also remarkable that the rate of part-timers following up on contractual agreements is 10%, which is just as high for contract managers. Contract managers do not really stand out when it comes to contract-related tasks, which possibly indicates that the field of contract management is still developing.

In summary, the demarcation of activities between the professional groups in both stages of the tender procedure is less clear-cut than might be expected based on the job titles. Externally hired consultants also play a clear role throughout the entire process, likewise part-time public procurement officers. Table 3 reveals that there are comparatively few hired staff members among the respondents, although they are active throughout the procurement process to the same extent as their in-house counterparts. Since all the professional groups surveyed are involved in all aspects of the procurement process, this may also indicate that the team responsible for the relevant procurement collaborates and coordinates extensively among themselves on the tasks at hand (for more information, see Table 5 below).

The measurements revealed that legal professionals are involved at every stage of the procurement process (see Table 5 above). It is conceivable that the tasks and division of roles within the field have not yet fully crystallised, giving the impression of legalisation, precisely because legal professionals are involved in every stage of the procurement process. The literature also mentions progressive legalisation as one of the not-so-positive consequences of the wide involvement of legal professionals in the public procurement process (Telgen et al., 2007: 18-19; Treumer, 2014: 10; Van der Horst & Schenk, 2016: 33). In this respect, the field is young and has only really been on the map as an independent discipline since the Maastricht Treaty (1992). Until then, procurement was not as strongly subject to European regulations, and it was more common to buy from one's own national industry. Accordingly, cross-border procurement in the European market was given less thought. In other words, this is an evolving field that is searching to ascertain what works and what does not in terms of the regulatory framework. This regularly leads to case law that is eventually codified into the guidelines. Jansen (2018: 5) also shares this perspective when suggesting that rather than legalisation, deficiencies in understanding the practical organisation of public procurement and gaps in knowledge and experience among procurement officers play a role when procurement processes do not proceed as expected. However, a lack of knowledge and experience did not clearly emerge from the measurements carried out for this thesis as having a direct negative impact on the literal application of the rules. Besides the still developing field, the need to interpret rules perceived as ambiguous and possibly not yet fully developed in certain respects might also play a significant role. If this is not done within the regulatory framework,

public procurement distance arises, and dissatisfied market parties may decide to go to court at the selection stage of the procurement process to seek redress. This results in case law and codification and could promote the idea of the increasing legalisation of the field. An example is the now codified standstill period between the provisional and final award of a public contract. This comes from case law and was not previously included in the regulations.³³ Regulations are thus clarified in court and made more effectively enforceable to be subsequently included in the European directives, with less public procurement distance in implementation as an outcome.

TABLE 5

Job duties by professional group (n= 42,899)

Job duties x Professional group (percentage)	Procurement officer	Legal staff member	Contract manager	Part-timers	Externally hired procurement consultant	Externally hired legal consultant
Specification stage						
Preparing tender documentation	14	13	14	16	14	13
Preparing draft contracts	10	11	11	9	11	13
Hiring external procurement and legal consultants	4	5	5	5	3	3
Preparing selection criteria	12	11	13	14	14	11
Preparing award criteria	12	11	11	13	13	12
Answering market parties' questions	10	9	10	9	12	11
Applying public procurement regulations, case law	12	14	10	10	12	12
Total Specification stage	75	74	73	75	79	75
Selection stage						
Overseeing legal procedures	5	9	5	3	4	11
Concluding contract with winner	12	11	13	12	10	9
Following up on contractual agreements suppliers	8	6	10	10	7	5
Total Selection stage	25	26	27	25	21	25
Total	100	100	100	100	100	100

33 Alcatel judgement: 28 October 1999, C-81/98, Alcatel (Alcatel Austria AG et al., Siemens AG Österreich & Sag-Schrack Anlagentechnik AG/Bundesministerium für Wissenschaft und Verkehr).

Environment

The environment in which purchases are made is crucial for successfully procuring a public contract, with a variety of actors as possible influencers. This leads to a complex force field in which all kinds of players try to realise their goals.

Public procurement staff appreciate a certain degree of autonomy in the workplace because it allows them to personally manage specific aspects of the procurement process as they carry out their duties. Examples include allowing a bidder to correct an unintentional error in its bid, with over 45% of respondents agreeing fully or partially, allowing variants with which more than 38% fully or partially agreed, or having a solution for a current procurement issue presented orally as part of the selection process, with which 25% of the respondents fully or partially agreed.

If we zoom in further on autonomy, the responses show that more than 35% of the respondents fully or partially agreed with the statement that written procedures limited such autonomy. Nearly 49% of respondents believed – fully or in part – that procurement regulations leave little room for manoeuvre.

Contracting authorities may choose to collaborate with other contracting authorities to use scarce resources efficiently or share knowledge, as expressed by more than 41% of the respondents (see also Table C17, 18 and 19 in Appendix C).

Actors in the environment of public procurement staff can influence the procurement process. In the reported data, it is noticeable that the organisation itself played a significant role in the emergence of project effects (over 50%).³⁴ Politics is considered an influencing factor by just over 20% of the respondents. It is an actor that might not be in the immediate vicinity of public procurement staff but wants to influence the public procurement process nonetheless (see Table 6 below).

TABLE 6

Stakeholder influence on project effects (n= 4,154)

Stakeholders	Percentage
People from within the public procurement officer's own organisation	50
Politics	20
Market parties/suppliers	18
Public procurement officers themselves	11
Media (Radio, TV, newspaper, internet, social media)	1
<i>Total</i>	<i>100</i>

34 Project effects that fall within the scope of this study are: 'costs and risks are stated too low and too optimistically'; 'scope is made more extensive than is actually necessary' and 'lead times are deliberately underestimated'.

Almost 6% of the respondents agreed fully or partially with the statement that procurement rules are applied to avoid difficulties with the employer (Table 8 below). Assuming that one's own employer divides the tasks among the employees, more than 32% fully or partially agree with the statement that they sometimes must perform work that is *not* part of their duties. This shows the directing role of one's own employer in the procurement process, if only because not all the work to be performed is always perceived as being part of the public procurement officers' duties.

Regarding politics as an influencing actor, the measurements revealed that over 42% of the respondents said they take full or partial account of what a member state's national politics want to see reflected in a tender (politics refers to the democratically elected administration at the central, regional and local levels (see also Table C18 in Appendix C). This percentage may send mixed signals as it could indicate that some of the public procurement officers subscribe to the politicians' views, although it may also indicate that not so much what should be procured is central to the public procurement process, but rather what the politicians wish to achieve. This latter is also consistent with the literature: if politics engages with the form and content of a tender, it can influence the procurement process (Goldman et al, 2010; Chong et al., 2012; Van Silfhout & Van den Berg, 2014). The Commission has also observed that politics can exert pressure to realise a result that it desires (Commission, 2021a: 5).

As for politics as a potentially influencing actor in the environment of procuring organisations, the respondents sometimes experienced some exertion to discontinue a tender procedure (see Table 12 below). If it was indeed stopped, it was out of 'favouritism' according to almost 35% of the respondents. Approximately 38% indicated that a relationship between the winning supplier and politicians formed the basis for discontinuation, and almost 26% stated that the contract was directly awarded to the preferred supplier (see also Table C12 in Appendix C). A politician is unlikely to approach an operational staff member directly with the instruction to stop a tender procedure, but rather this kind of signal is likely to trickle down to the workplace in a more subtle way. The percentages are a sign that the actor of politics exerts influence on the implementation of the procurement process in an indirect way, as illustrated by the acquisition process of a high-speed train in the Netherlands (Van Silfhout & Van den Berg, 2014).

Other actors can also play an influential role. Where market parties are concerned, almost 43% of the respondents indicated that they fully or partially agreed with the statement that they took the market parties' opinions into account (see also Table 18 in Appendix C). This may carry a potential risk of improper conduct by public procurement officers and confirms the finding in the literature that suppliers try to influence procuring organisations to buy from them instead of a competitor (Schooner et al., 2008: 22). Hence, this echoes Arnáiz's (2009: 107)

observation that procurement is one of the government activities that is most susceptible to corruption.

5.3 Mandatory European procurement policy

While the above discussion concentrated on the job-related characteristics of procurement staff, mandatory and discretionary policies will be discussed next.

Literal application of the rules

The first component of the dependent variable to be discussed is ‘to apply public procurement regulations literally.’ This means that the rules as conceived on paper are put into practice to the letter, so that there is no public procurement distance, reflecting the starting point of this study. In the survey, 73% of respondents said they agreed with this completely or in part, while only 10% said they disagreed completely or in part (see Table 7 below).

TABLE 7
Literal application of the rules (n=9,210)

Literal application	Percentage
Fully disagree	2
Partially disagree	8
Neither agree nor disagree	18
Partially agree	37
Fully agree	36
<i>Total</i>	<i>100</i>

Considering the validity of the high percentage (73%), the question emerges concerning the extent to which it reflects how the respondents think about the literal application of rules. It is quite imaginable that the respondents in their role of law-abiding public servants would not readily admit not to follow the rules to the letter, which is presumably not in their nature. If so, this is reflected in the high percentage. However, since much goes wrong in the implementation of mandatory policies (see Chapter 1), the question is whether this high rate warrants further nuance.

Multiple questions touched upon the topic of the application of rules. The responses show that the motivation to follow the rules literally not only stems from a form of obedience to authority, but that several other reasons clearly play a role.

If the percentages in Table 8 below are taken into consideration, it emerges – for example – that only 46% of the respondents indeed applied the rules to implement the intended policy by obeying the law and implementing government policies, and 36% applied the law to avoid difficulties with actors in the judiciary system, market parties and their own organisation. Professional procurement was chosen by a meagre 18% of the respondents. Based on the literature, it was expected that professionalism would be a significant driving force in the implementation of the policy. However, the literal application of rules is rather a mix of policy implementation, influence from various actors and a certain degree of craftsmanship, and clearly not simply the literal execution of the policy.

TABLE 8
Why apply public procurement rules (n= 25,844)

Reason	Percentage
Because the law must be obeyed	37
Because it helps me avoid legal procedures and lawsuits	19
Because it allows me to procure professionally and effectively	18
Because it allows me to avoid difficulties with market parties	11
Because it allows me to help implement government policies	9
Because it helps me avoid difficulties with my employer	6
<i>Total</i>	<i>100</i>

Looking more closely at the literal application of the rules, it is noticeable that public procurement officers sometimes choose to apply the regulations more strictly or flexibly depending on the number of tenders, probably to avoid running the risk of a tender procedure failing due to a lack of tenders. More than 19% partially or fully agreed with the statement that they are more flexible in applying the regulations with a single submission, while 63% fully or partially disagreed. As for the statement that ‘more submissions means applying the rules more strictly,’ 27% of the respondents fully or partially agreed and 54% fully or partially disagreed (see Table C9 in Appendix C for further details). ‘Literally’ is apparently not always entirely literal, as public procurement officers exercise some degree of policy discretion in their implementation decisions. It is plausible that the successful completion of the procurement process takes precedence over fostering competition to obtain the best offer from the market as a form of *procurement pragmatism*. Accordingly, the conclusion to the question of what extent the high percentage reflects the majority’s thoughts about the literal application of rules is that the picture is much more nuanced than appears.

Project effects

Project effects (Brodkin, 2000: 3; Flyvbjerg et al., 2003, 2012; Lovallo & Kahneman, 2003; Capka, 2004: 6; Cantarelli, et al., 2012: 55) are regarded as a further nuance of the literal implementation of mandatory policy. If rules are not followed to the letter, project effects can arise as early as in the specification phase of a public contract. ‘Stating costs and risks too low and too optimistically’ was recognised in full or part by 46% of the respondents. ‘Extending the scope’ was selected by 25%, and 22% of the respondents agreed with ‘underestimating lead times’ (see also Table 9 below).

TABLE 9
Project effects (n= 7,419)

Project effects (percentage)	Costs and risks are stated too low and too optimistically	Scope is made more extensive than necessary	Lead times are deliberately underestimated
Fully disagree	15	22	32
Partially disagree	16	23	21
Neither agree nor disagree	23	30	26
Partially agree	38	22	18
Fully agree	8	3	4
<i>Total</i>	<i>100</i>	<i>100</i>	<i>100</i>

Infrastructure (works) is the most sensitive to potential project effects (see Table 10 below), according to 50% of the respondents, which is in line with the literature (Flyvbjerg, et al., 2003, 2016; Cantarelli, et al., 2012).

TABLE 10
Procurement segment and project effects (n= 3,044)

Works/services/supplies	Percentage
This usually occurs when tendering out for works	50
This usually occurs when tendering out for services	36
This usually occurs when tendering out for supplies	14
<i>Total</i>	<i>100</i>

It is also notable that according to the respondents project effects can add substantially more costs to the relevant procurement process. Indeed, over 40% of the

respondents indicated that the extra costs could be as high as 25% (see Table 11 below).

TABLE 11

Extra costs of project effects (n= 3,215)

Extra costs due to project effects	Percentage
Between 1% and 10%	53
Between 11% and 25%	40
More than 25%	7
<i>Total</i>	<i>100</i>

The measurements also show that project effects can involve some implementation effects. For example, more than 60% of the respondents found they could lead to extra work and almost 19% claimed to have less influence on the award outcome. Over 45% of respondents reported experiencing higher costs. Almost 50% saw a risk of lawsuits and complaints arising and nearly 38% of respondents indicated that the occurrence of project effects led to lower quality of the procured work, service or supply. Influenced by a variety of factors, not following the rules to the letter leads to the emergence of public procurement distance with an array of effects on implementation (see also Table C13 in Appendix C).

Avoidance

Another aspect of not or partially implementing mandatory regulations is the desire to cancel or delay a tender procedure. Some mechanisms that might achieve this will be briefly discussed here. To avoid or delay the tender procedure, a contract can be split into different lots so that the amounts of the separate lots remain below the European thresholds. Almost 23% of the respondents partially or fully agreed with this. Nearly 21% partially or fully agreed with direct awarding to the preferred supplier, which is also a way to avoid a formal process. Close to 31% partially or fully agreed with ordering just before the end of a term; for example, to have a little more stock so that a European tender procedure can be postponed at least for a while. More than 37% partially or fully agreed with negotiating instead of conducting a public or non-public tender procedure, perhaps because negotiation is perceived as easier than going through a formal written European tender procedure. Procuring directly without a mandatory tender procedure was found to be a strategy for 19% of the respondents, but over 70% said they did not. Furthermore, some respondents were sometimes inclined to

postpone or avoid a tender procedure, if possible, even if it was not allowed. They thus exercised a degree of policy discretion beyond the limits of the legal framework, which also raises questions about the degree to which these respondents act professionally in the execution of their public procurement duties. There can be no doubt about the distance between the intended policy and its implementation here.

It is sometimes possible for procurement officers to steer the outcome of a procurement process in a desired direction. The most common and perfectly legitimate is prescribing the national language as the official language in tender documents, with which almost 54% of the respondents partially or fully agreed. This might be a way to ensure that tendering market parties are based in their language area or perhaps to avoid translation by creating a language threshold (see also box 3 in Chapter 2). ‘Consult with certain suppliers’ ranks second with almost 30%, which is on the verge of what is permissible or not. Too much consultation with a party can create inequality with other bidders and may go against regulations, but sometimes it is necessary to gain the necessary clarification regarding the tender from a particular supplier.

The reasoning may push or even cross the boundaries of what is acceptable by ‘adjusting the terms after the deadline,’ ‘awarding extra points to a preferred supplier’ or ‘sending out the summary of additional information and changes as late as possible,’ for instance. However, the responses reveal that using this kind of trickery to influence the outcome is rarely applied in practice.

The results presented above show that respondents generally wish to apply the rules and do not want to steer the outcome in a certain direction, although they want to prescribe the national language and be able to negotiate (an overview of the measurements mentioned in this paragraph is included in Appendix C, Tables C10, C11, and C20).

Influence

The possible influence on the purchasing process was also measured for the employer, politics, supplier and media actors by presenting the following statement to respondents: ‘You call for tenders but you cannot award it to a winning bidder – why?’ This is set against the dependent variable in Table 12 below. To keep the amount of data to be presented manageable, the table only includes the respondents who partially or fully agreed with the actor in question being an influencer.³⁵ If 10% of the respondents fully or partially agreed with a particular actor being of influence on the dependent variable, this is considered relevant. It makes the

35 For this reason, the sum is not 100%.

difference in outcomes between the highest percentages for employer and supplier and the lowest percentages for politics and media clearly visible. The data in the table will also be used in the next chapter when assessing the possible influence of actors on European procurement policy.

TABLE 12
Policy influence by actors

Dependent variable ⇔ ⇓ Independent variables	Always apply procurement regulations literally	Costs and risks stated too low and too optimistically	Scope made more extensive than necessary	Lead times deliberately underestimated	Satisfaction with the procurement result	Sustainability	Social return	Innovation	SME participation	Cross-border awarding
n-total>	8,050	7,419	7,419	7,419	8,050	7,988	7,988	7,988	7,988	6,943
Partially or fully agree³⁶ (percentage)										
Expectation 4c Because my employer wanted it that way	10	8	5	4	10	11	8	10	9	5
Expectation 4d Because of political pressure to stop the tender procedure	7	6	4	3	7	8	6	7	7	3
Expectation 4e Because of the potential supplier's threat of a complaint or legal proceedings	13	11	6	5	13	14	10	13	12	5
Expectation 4f Because of publication in the media	2	2	1	1	2	2	1	2	2	1

Regarding the employer, the 10% figure in Table 12 above shows that respondents fully or partially agreed with the statement that their own employer has some degree of influence on the literal application of procurement regulations. It is conceivable that procurement distance increases under the influence of one's own employer. Given that the result is also deemed important by 10%, it is imaginable that employers also believe that the outcome should prevail over a procedurally correct path towards the end result.

36 For the instruments, this is 'always' or 'sometimes'.

The data in Table 6 – included earlier in this chapter – could also point in this direction since it reveals that more than half of the respondents experienced that individuals from within their own organisation had an influence on the emergence of project effects. Where discretionary policies are concerned, sustainability and innovation in procurement hold some importance to their employers. It is imaginable that employers exercise influence in these respects due to government policy that they aim to adhere to, for instance.

In terms of suppliers, the literal application of the rules is important, as is understating costs and risks. This may provide some advantage over the competition. Moreover, a good procurement result is important for a supplier because it is an indicator that they have properly matched their supply to the demand. What is striking is the importance that employers attach to the deployment of discretionary strategic instruments according to the respondents. This is an interesting point because the literature also shows traces of employers perceiving sustainability as a cost-increasing, complexity-raising and project-delaying concept (De Souza Dutra et al., 2017). Innovation also stands out as a topic perceived as important by the market. The threat of a complaint or legal proceedings may lead to additional motivation for procurement officers to implement both mandatory and discretionary public procurement policies regarding the use of the instruments in such a way that market parties can agree with it. It is plausible that this form of monitoring the implementation process could lead to a better implementation of the rules and fewer complaints or procedures. Threatening with a complaint or procedure has no visible influence on discretionary policy regarding cross-border awarding.

Regarding politics and media as possible influencers of the procurement process, it appears that politics plays no visible direct role in the procurement process at all. The actor of politics as an indirect influencer behind the scenes of procurement has been discussed in the environment section in paragraph 5.2. Media play no significant role in the procurement process.

End result

Whether respondents are satisfied with the outcome of the tender procedure and achieve what they expected to procure beforehand is also part of the dependent variable. Over 8% of the respondents were fully or partially dissatisfied and more than 70% were satisfied with the end result, with the latter have felt they had acquired what they expected to procure. This indicates that mandatory European public procurement policy is generally well applicable according to the respondents. However, the high percentage may partly also be due to socially desirable answers, although it cannot be ascertained whether and to what extent this is the case.

TABLE 13

Satisfaction with procurement outcome (n=9,210)

Satisfaction	Percentage
Fully disagree	2
Somewhat agree	6
Neither agree nor disagree	21
Partially agree	55
Fully agree	16
<i>Total</i>	<i>100</i>

5.4 Discretionary strategic procurement policy

Central to this section is discretionary strategic instruments, whose deployment is presented in Table 14 below. Sustainability – in the sense of environmental related issues – emerges as the most frequently applied instrument compared with the others, while social return is used the least. The percentages of respondents who indicated never to pay attention or never to have experienced to the deployment of instruments is striking, reaching more than 44% of respondents for social return.

TABLE 14

Deployment of instruments (n= 7,988)

Instruments (percentage)	Sustainability	Social return	Innovation	SME* participation
Always	41	17	20	24
Sometimes	39	39	53	40
Never	5	13	7	11
Not experienced yet	16	31	20	24
<i>Total</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>

* Small to medium-sized enterprises

Table C14 in Appendix C reveals that according to 42% of the respondents, the inclusion of discretionary instruments in the areas of sustainability, social return, innovation, and the participation of small- to medium-sized enterprises increases costs. It also leads to more complex tender procedures, according to almost 53% of the respondents. Interestingly, 15% indicate that including discretionary strategic instruments is eventually a waste of time. According to 54% of respondents, it leads to a better society, 44% believe that the inclusion of the instruments results in more satisfied end users, and 43% think that it leads to a better procurement outcome.

A related topic is the weight of each individual discretionary policy instrument in the policy. The Commission considers the instruments equivalent while they are meant to achieve different policy objectives. This makes it difficult to understand what Commission policy aims to achieve regarding mutual coordination and alignment between policy areas and where it wants to place emphasis in the implementation of its policy. This seems to be a reason for a form of deployment competition in which policy instruments compete with each other – as it were – to be used in tender procedures (Fuchs, 2011: 343). Iyengar and Lepper (2000) found that when decision-makers are presented with choices, they may believe that they can no longer decide without expert assistance and are more inclined to defer decision-making to others rather than making choices themselves. Having too many options actually leads to demotivation in operational staff. Herein lies a paradox, namely that increased freedom of choice to make a decision as an individual leads to a greater dependence on institutions and other people (Iyengar & Lepper, 2000: 1004). Indeed, this suggests that the public procurement distance can perhaps only be bridged when other procurement officers assist in deploying instruments. Since capacity does not directly increase voluntary policy implementation in general, the individual will have to be sufficiently intrinsically motivated to implement discretionary policies. This means that intrinsic motivation is part of the answer to the central research question.

5.5 Discretionary cross-border procurement

Implementing the – not mandatory – European policy on cross-border procurement is important for promoting the use of the harmonised market between member states (Commission, 1985: 23-24; Cox, 1993: 9, 259; Bovis, 2007: viii-ix; Panagopoulos, 2016: 269). Therefore, the respondents were questioned about the frequency of cross-border procurement in relation to their awarding contracts. For ‘awarding *within* the EU,’ more than 25% of the respondents said they partially or fully agreed with the statement about occasionally accepting a tender from a supplier from another member state. For ‘awarding *outside* the EU,’ more than 14% of the respondents said they partially or fully agreed with the statement about occasionally accepting a tender from a supplier from outside the EU (see Table 15). The measured percentages are substantial, whereas this was not expected in advance based on figures from other sources. For instance, measurements for the extent of cross-border awarding within range from 1.6% between 2007 and 2009 as found by Sylvest et al. (2011: 10) to 1.7% of the contract value in the period between 2009 and 2015 as ascertained by the European Commission (Commission, 2017b).

TABLE 15

Cross-border awarding (n= 6,943)

Cross-border awarding (percentage)	Occasionally awarding to supplier from other member state	Occasionally awarding to supplier from outside the EU
Fully disagree	30	37
Somewhat agree	8	9
Neither agree nor disagree	38	41
Partially agree	12	7
Fully agree	13	7
<i>Total</i>	<i>100</i>	<i>100</i>

Motivation to make cross-border purchases can mostly be traced back to substantive technical aspects of public procurement, due to the better quality according to almost 39% of the respondents, the lower price according to more than 40%, and the specific knowledge according to almost 40%. In such purchases, almost 39% of the respondents said that they fully or partially agreed with the statement about experiencing language problems. This may be why almost 22% of the respondents said that they fully or partially agreed with the statement that English is the main language for cross-border procurement and almost 19% said that they did not speak or write English. The levels of these percentages indicate that both the relevant main language and the proficiency in English play significant roles in the degree of cross-border procurement. Delivery issues were also referred to by over 20% of respondents and quality issues by nearly 13% (for further details, see Table C15 in Appendix C). Overall, it is striking that cross-border procurement in the harmonised market appears to mainly happen when it is deemed more beneficial for procurement-related reasons.

5.6 Conclusion

This chapter has described the field of work and main activities of procurement officers in the procurement process, zooming into some key features of the implementation of mandatory and discretionary European procurement policies. It is striking that all professional groups are involved in all aspects of the procurement process. According to many respondents, practical experience plays a greater role than professional training. Regarding the implementation of mandatory policy, the majority of respondents claimed to implement the regulations to the letter.

Further analysis of this percentage revealed that this is not simply because the policy needs to be implemented, but rather that a variety of actors influence it. Several mechanisms play a role to occasionally avoid or postpone the implementation of mandatory tender procedures, such as division into small parcels, negotiation or direct awarding. Discretionary instruments are not deployed very frequently because procurement officers do not always see the benefit, and according to the respondents they come with higher costs. As for discretionary cross-border procuring, one-quarter of the respondents indicated that they do so occasionally, mainly for procurement-related reasons, such as a foreign supplier offering better quality, lower prices or specific knowledge.

The next chapter will look into the independent variables that may influence the dependent variable and why. The findings will help to decide whether and which of the expectations about implementation practices specified in Chapter 3 will be upheld or rejected.