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

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Summary

PUBLIC PROCUREMENT DISTANCE

Analysing European public procurement policy implementation in 27 EU member states

If the European procurement policy is not implemented to the letter, a discrepancy arises between the intended policy objectives and their realisation, referred to in this study as *public procurement distance*. This means that the procurement outcomes do not align with policy and thus fall short in social, political, policy, and economic terms. Public procurement distance is a wicked problem despite several attempts by the European Commission to solve it. This study aims to identify possible explanations for this difference between intended public procurement policy and its implementation.

European procurement policy comprises three components. The first component is a *mandatory* and uniform statutory procurement framework whereby governments in the member states can purchase goods, services, and works. Where this policy is concerned, there are persistent complaints about excessive administrative burdens, a lack of transparency, and overly complex regulations. A lack of knowledge and professionalism among contracting authorities' employees also plays a role. Furthermore, an array of external stakeholders from politics, social groups, the business world, and the media exert considerable influence.

Next is discretionary strategic public procurement policy, which is essentially implemented on a *voluntary* basis. This covers topics in the fields of sustainability, social return, innovation, and encouraging small- to medium-sized companies to participate in public contracts. There are also wicked problems in this area because member states do not or only partially utilise these policies.

The third component of European public procurement policy is *cross-border* tendering, aiming to encourage procurement abroad in other member states in the harmonised European market. While breaking down trade barriers in favour of cross-border procurement has always been a key policy of the European Commission, only a small percentage of the total procurement and contracting volume can be said to result from cross-border tendering and contracting procedures. Implementation is clearly also problematic for this element of European public procurement policy.

To investigate these problems, the following central research question was formulated: *What can explain the distance between pre-established European public procurement policy and its implementation in the 27 EU member states?*

Two different lines of thought were selected from the literature to answer this question. The first is the perspective of administrative organisation, in which decisions are made in a rational and coordinated way. The second is a school of thought where organisations are considered as institutions in which various normative human interactions influence policy implementation. From these two broader lines of thought, various explanations were set out concerning why public procurement distance might arise.

From the perspective of administrative organisation, contracting organisations must have the necessary capacity in terms of people and resources available to achieve their objectives. Collaboration with other contracting authorities is another way to achieve sufficient capacity. Increased capacity and collaboration might lead to reducing public procurement distance.

From the more institutionally normative perspective, various aspects have been distinguished that could be relevant. The first is *professionalism*, focusing on the performance of policy implementers *within* organisations and their practices. It is expected that professionalism can contribute to the implementation of the various tasks in such a way that this is supportive of implementing the intended policy based on knowledge and practical experience. In this context, it also concerns ideology, with intrinsic motivation to serve the public interest taking centre stage.

The second aspect of this normative perspective is *policy discretion*, reflecting the leeway that actors use to interpret and implement their own policy in certain areas. This study in particular examines public procurement staff (procurement officers, lawyers, contract managers, procurement and legal advisers, and part-time procurement officers), one's own organisation (contracting authority), politics (democratically elected public administrations at the central, regional, and local levels), market parties (commercial contractors who want to carry out public contracts), and media.

The final aspect within the normative perspective is *culture and segmentation*, based on the fact that procurement is embedded in a layered structure. While public procurement policy is established at the European level, the actual procurement is executed by governmental organisations functioning at the local, regional, or national level. This means that regarding European procurement policy, the 'implementation culture' does not necessarily have to be the same across the different segments, regions, or countries.

A survey was conducted among procurement staff within publicly contracting organisations to investigate expectations about how public procurement distance

can arise. This involved employees from 27 member states who had published their calls for tenders on a central European publication website for public contracts, resulting in a dataset with a total of 11,796 observations (a response rate of 52%) that was subsequently used for the empirical analyses. The study reveals three independent factors that influence public procurement distance: the *intrinsic motivation* of procurement officers, which is a factor related to professionalism; as well as *discretionary leeway* and *actors*, which are both elements of policy discretion.

Intrinsic motivation plays a role in the sense that it leads to less public procurement distance when it concerns the *mandatory* European procurement policy to be implemented. The same applies to the policy on encouraging cross-border awarding. Respondents are generally motivated to serve the public interest, and the legal framework encourages this even more. However, for the *discretionary* policy, the influence of intrinsic motivation to want to serve the public interest is negative.

If there is *discretionary leeway* to manage tender procedures in terms of content, this leads to more public procurement distance in the implementation of mandatory policy, as well as a slightly better perceived end result. On the other hand, limited discretionary leeway leads to a less favourable outcome for the mandatory policy and slightly increased deployment of discretionary policy instruments. Being able to act pragmatically when an unforeseen situation arises ensures that the public procurement distance remains limited because procurement officers interpret procurement rules in such a way that they believe they become more applicable in implementation.

The third factor concerns *actors* who are involved in the procurement process and can therefore place their stamp on the contract in line with their own interests. These include procurement officers, one's own organisation, politicians, and market parties. 'Project effects' are a result of this and – according to the respondents – regularly occur. This mainly involves deliberately underestimating project costs and being overly optimistic about the intended project outcome. Projects' ever-expanding scope, size, and complexity, deliberately underestimating lead time, and other planning aspects are also relevant factors.

The study further reveals that the implementation of European procurement policy does not substantially differ across member states. Another finding is that implementing public procurement policy is no different from other government policies in the sense that original policy objectives might deviate from their realisation. Given that part of public procurement policy relies on voluntary efforts by individual procurement staff, implementation is somewhat dependent on the person who instructs the individual procurement officer concerned, and mostly the latter's intrinsic motivation. As a result, the role of the individual in developing public procurement policy holds strong importance.