

## The Threat of Corruption in the European Union's Public Procurement Practices Between 2010 and 2020

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### Abstract

The public procurement market is very large to influence citizenry and organisation in various sectors. It can be argued that public spending will remain to motivate stakeholders at all level be it national, local or region. Hence, this paper analysed the threats to public procurement in the European Union between 2010 and 2020. It used secondary data to present comparable information on the challenges of public procurement practices from the European Union Member States. The finding of the study revealed that the challenges of public procurement practices in the EU is multidimensional, hence, corruption remains threat hotspot in the public procurement cycle.

**Key words:** Public procurement; Corruption; European Union; Organisation

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### 1. INTRODUCTION

The procurement market size, its percentage of the GDP and its interaction between private and public sector actors makes it vulnerable to corruption. This should be a primary area of concern for all public administrations

across the world not limited to the European Union (EU). The procurement system in the EU is guided by “the Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014.” The Directive defines procurement as the purchase by means of a public contract of goods and services, works, supplies by any one the contracting authorities from government choses to provide the services. This is regarded as the common Treaty on the Functioning of the EU. Assessing corruption remain an extensive policy and academic attention as a result of the position the public procurement is holding, the central position it occupies in the provision of quality of goods and services, democracy, and the provision (Fazekas & Kocsis, 2020). Because of this, some organisations at the international level monitor procurement corruption in various dimensions of corruption ratings. Considering inadequate of actionable and reliable corruption indicators, there has been continuous call to develop some governance indicators to better suit policy making and assumptions.

From the foregoing, it has been identified that procurement procedure is very complex, ranging from procurement arrangement to payment and monitoring and evaluation. At each of these stages, there are various interferences from political classes and other stakeholders making it susceptible to corruption. This corruption is inevitable, and no country is immuned to it. Despite the common notion that EU is at the forefront in good governance and democracy, there is still inadequate common agreement in the EU on the format of data leading to highly heterogeneous and technical landscape. To proactively address the issue of corruption in procurement, there is need for scholars to further investigate the form and type of threats that exist at the stages of procurement cycle. Consistent cross-country data and literature could be engaged in figuring out this threats and corruption proxies. However, every public authorities in the European Union spend up to 14% of

GDP on public procurement equal to more than EUR 1.9 trillion (Sokanović, 2020).

Nevertheless, the public procurement market is very large to influence citizenry and organisation in various sectors (Soylu, Corcho, Elvesæter, Badenes-Olmedo, Martínez, Kovacic, & Roman, 2020). It can be reiterated that public spending will remain to motivate stakeholders at all level be it national, local or region. Primarily, this paper sees the need for governments to be efficient in service delivery, ensure transparency and prevent fraudulent procurement. Hence, the objective of this paper is to analyse the challenges and problem associated with public procurement in the European Union between 2010 and 2020. The justification for this is that the Directive 2014 was introduced within this period and many of its content and provision were being put to test.

## 2. LITERATURE REVIEW

As good as the public procurement procedure in the EU sounds, there are some issues observed. Górecki (2020) pointed out numerous restrictions that are affecting the activities. The most severe threats include the low flexibility of other players, imperfect knowledge of development that is sustainable as well as unwillingness to change. There are rigidised public authorities who are not willing to go beyond usual legal framework (Górecki, 2020). From a regulatory perspective, Ruohonen (2019) observed that the conceptual ambiguity of Article 346 has been a major part of the issue or problem facing the EU PPP (Ruohonen, 2019), because there is no common agreement on what security interests is. The member states liberally resorted to exemptions provided. Based on evidence, large military acquisitions and contracts were pushed out of Internal Market often. For instance, some four-fifths of the total estimate of procurement of defense equipment in the EU through the article was exempted in the 2000s.

It is however suspected that the engagement with Article 346 may be difficult nowadays; there are issues in understanding the reality warranting visible traits concerning the line of procurement openness, for instance the military procurement directive is associated with explicit protectionism for bids that are large and those not coming from the EU could be rejected. Scholars have noted that inclusion of bidders from outside of the union for public procurement of this magnitude has remained limited. This is opposing the open nature of EU idea that has made it to be successive than other regions of the world adopted. This will hinder the policy of free movements of goods and services that in turn will cause short- and long-term economic harm (Popescu, Onofrei & Kelley, 2016). As progressive as the electronic adoption in the

EU PPP, there are some disadvantages of e-invoicing which according to Bobowski and Gola (2018) include security issue regarding e-invoicing systems, such as fraud misrepresentation; diversity of rules as regards validity and acceptability of e-invoices in the individual member states; and diversity of e-invoice patterns and formats across the EU is threat to the ease of transferring e-invoice between the member states alongside expected benefits and cost savings.

It was then maintained that the EU challenge on public procurement remains the issue on how to enforce public procurement legislation (Popescu et al., 2016). Further, Popescu et al. observed that the failure of legal reforms has predestined that the national operatives are not familiar with EU legislation always, even experienced working with it, this assertion is mostly true for new members that were joining the Union from 2005. In addition, inadequate transparency and publicity, discrimination, contracts being awarded directly and amendment that are not justified still occur (Popescu et al., 2016). Majority of the shortcomings talked about are seen in the construction of road, railway, health, energy, water/sewage, education, and IT products and service contracts. Corruption still occurs, because enough data are not readily provided by the Union and some member states. Forms of corruption identified in the EU according to (Popescu et al., 2016) include “tailor-made criteria for specific companies (57 per cent); conflict of interest in bid evaluation (54 per cent); collusive bidding (52 per cent); unclear selection or evaluation criteria (51 per cent); involvement of bidders in the design of specifications (48 per cent)”. Others are “abuse of negotiated procedures (47 per cent); abuse of emergency grounds to justify the use of non-competitive or fast-track procedure (46 per cent); and amendments to the contract terms after conclusion of the contract (44 per cent)”. To this extent, some scholars (Fazekas & Kocsis, 2020; Muñoz, 2017; Šostar & Marukić, 2017; Tátrai, 2013; Weishaar, 2013; Nyikos & Tátrai, 2012) as likened corruption to a hot spot in the public procurement procedures. This is because the procurement policy sometimes may not fulfil all the policy thrust. For instance, in the EU it was observed that:

The draft European Union Directives on public procurement will not be able to entirely fulfil their objectives of transforming purchasing culture and leading to a more ethical conduct between parties ... public procurement should be grasped not by concentrating on corruption, but, on the contrary, even assuming good intentions. Self-cleaning, probity auditing and the identification of illicit conduct are positive means of prevention. The brute force approach of hard law and penalisation is not the only way. However, the draft directives do not reflect this recognition (Tátrai, 2013).

From the above, it became ideal to suggest that there are still abnormalities in the EU's public procurement

cycle, but such cannot exclude corruption, and it can be reinforced that:

Public procurement is a hot spot for corruption because corruption in public procurement means public funds including EU funds are wasted on an enormous scale. Taxpayers' money to pay for hospital equipment, books for schools or safer roads ends up sitting in the pockets of the corrupt. Calculations are that in the EU Member States around €120 billion is lost each year to corruption, an amount comparable to the European Union's total annual budget. Corruption distorts competition in the Internal Market and can reduce the quality, sustainability and safety of public projects and purchases. When procurement is corrupted by private interests and not directed by the public good, citizens' and companies' trust in governments is eroded. Business representatives therefore echo the call of NGOs like Transparency International for a comprehensive EU anticorruption strategy (Piga & Tátrai, 2016).

Corruption may be a hot spot in the EU just like any other purchasing authority, but this does not mean that other factors are not contributing to it. Apart from corruption, Piga et al. (2016) noted that incompetence is another issue bothering on efficient government purchasing for the purpose of service delivery. Piga et al. (2016) maintained that "EU Member States have not yet seized the potential for savings of a greater professionalisation of their purchasing public sector ... it is estimated that the costs of bureaucratic waste and inefficiency caused by incompetence are even much higher than the cost of corruption. Yet corruption is enormous, it is a flash point. According to Šostar and Marukić (2017), corruption is experienced in the EU procurement. Similarly, Lukács and Fazekas (2015) noted that the control mechanism for corruption in public procurement is weak. Some sources that projected corruption as an hot spot in public procurement include European Court of Auditors (2015); Šostar & Marukić (2017); Vorley & Williams (2016); Muñoz (2017); and Botrić & Božić (2016).

Another challenge noticed in EU Public Procurement Practices is the bidding system, it was documented that between 2006 and 2016 tenders that bid only once increase from 14 percent to 29 percent (EU, 2017). This showed that the process of competition is getting loose of intensity or not right there present. Generally, the potential bidders are facing more challenges in accessing the markets provided by procurement. In some cases, the value of procurement advertisement by the Member State in relation to GDP is largely below the EU average of 4.25 percent obtained in 2012 and 2015 (EU, 2017). However, in many Member States reliable data on the number of contracting authorities is readily available, and therefore this number is significant to be indicative (EU, 2017). In addition, monopoly over and asymmetry of information is another key challenge in EU procurement (Weishaar, 2013; Bovis, 2012). Other challenges are unlawful act (ECA, 2015; Muñoz, 2017), public procurement error

(ECA, 2015; Mendez & Bachtler, 2017), criminal and social justice problem (ECA, 2015), bribery (ECA, 2015; Vorley & Williams, 2016; Franić & Kojouharov, 2019), failure to comply with public procurement rules (ECA, 2015), and diversity of e-invoice format across the EU (Bobowski & Gola, 2018). According to Bobowski and Gola, e-invoicing is an issue because of security concerns including "misrepresentation in fraud - diversity of national rules determining validity and acceptability of e-invoices in both legal, administrative and financial terms, and diversity of e-invoice formats across the EU threatening the smooth transfer of an e-invoice between the Member States, then, the expected benefits and cost savings".

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### 3. MATERIALS AND METHODS

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This paper used secondary data to present comparable information on challenges of public procurement practices from the European Union member states including Belgium, Germany, France, Italy, Luxembourg, Denmark, Netherlands, Greece, and Ireland. Others are Spain, Portugal, Austria, Sweden, Finland, Cyprus, Estonia, Czechia, and Hungary. The rest are Malta, Latvia, Lithuania, Slovenia, Poland, Slovakia, Bulgaria, Croatia, and Romania. The design holds that the situations in member states are comparable. Information used is based on case study provided by various authors or literature related to EU's public procurement practices between 2010 and 2020. The justification for this scope is that the currently used public procurement guidelines in the EU (2014 Directives) came up within the selected period. Hence, the paper engaged secondary data. In addition, some indicators for measuring procurement challenges within public administrations were identified from the literature reviewed; each of the indicators were crosschecked against each member state to know if the situation "occurred or not" in each of the economy under study. However, a deductive (content) analysis was used to analyse and interpret data gathered.

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### 4. RESULT AND DISCUSSION

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The finding of the study revealed that the challenges of public procurement practices in the study area is multidimensional, and is characterised alongside peculiarity, that is each member state within the EU has its own restriction(s) or problems. Hence, Table 1 revealed that limitations occurred in the market of public procurement, especially monopoly over information. During the public procurement process, it is not impossible to commit unlawful acts, including acts of criminality, a very complex criminal and social justice issue, particularly in transition countries such Croatia and Romania. Literature has showed that none of the

EU Member States is immuned to corruption in public procurement and therefore it can be said that the public procurement is corruption “hot spot”. In reference to the European Commission statistics, widespread corruption exists in Croatia, Bulgaria, and Romania. In the Czech Republic, Spain, and Italy high numbers of public procurement errors had been detected in the Court’s statement of assurance audits in the period 2009 to 2013. Failure to go by public procurement regulations is a reason for error in the area of cohesion policy. This error occurs when EU public procurement rules were not respected or complied with. However, diversity of e-invoice formats across the European Union is another form of threat in smooth transferring of an e-invoice between the member states, then, the expected cost savings and benefits. Public procurement is a market, explicitly characterised by large transactions, complexity of roles by the participants and risk pricing especially in the situation of limited competition. Hence, frequent reason for procurement errors and failure.

**Table 1**  
**The challenges of public procurement practices in relation to service delivery**

Challenges of public procurement practices	Is it applicable to the European Union as a whole?	Which member state(s) is/are included?
Public procurement as a corruption “hot spot”	Yes	All
Monopoly over and asymmetry of information	Yes	All
Unlawful act	Yes	All
Criminal and social justice problem	Yes	All
Widespread corruption	No	Croatia, Bulgaria, Romania
Bribery	No	Croatia, Bulgaria, Romania
Corruption as an obstacles in business	No	Croatia, Bulgaria, Romania
Public procurement errors in cohesion policy	No	the Czech Republic, Spain, Italy, Greece
Failure to comply with public procurement rules	No	the Czech Republic, Spain, Italy
Diversity of e-invoice format across the region	Yes	All

Source: Authors’ compilation, 2022

From the above, corruption in procurement procedure is applicable to all the member states. This could be as a result of the conflicts of interest during the award phase of the government contracts to interference by politics or business on politics. This is the submission of the Transparency International (2021) in special EU corruption Barometer. This issues discovered by Transparency International (TI) ranges from bribes to the use of individual connections when accessing services in the public sphere. Corruption takes various dimensions across the EU. This is coming amidst the

notion that the region has clean figure. EU is really clean by the virtue of its antecedence but the “Global Corruption Barometer (GCB) – EU” revealed people in the EU also aware of corruption in the bloc that 62% of over 40,000 of TI survey respondents believed that public corruption is becoming a big problem in their specific country (Transparency International, 2021). In public procurement, corrupt procurement is on red alert. This is supported by Fazekas and Kocsis (2020) in their study titled “Uncovering high-level corruption: Cross-national objective corruption risk indicators using public procurement data.” They base their study on regression theory and results. It was recorded that red flags of corruption was identified in the single bidding and further components of procurement.

However in Croatia, criminal acts were identified. This was affirmed by Sokanović (2020) who explained that criminal offence in Croatia is directly related to government procurement such as misuse of Article 254 of Procurement Procedures. This is also similar to the situation in Romania. Marian (2020) noted that ever since 2007, Romania records negative reports on procurement funds. Generally, there are non-fulfilment of contracts and missing data. This is similar to the findings of Culea and Constantin (2020) and Soylyu et al. (2020) respectively. From the foregoing, it can be said that the challenges of public procurement practices in the study area is multidimensional, and is characterised alongside peculiarity, that is each member state within the EU has its own restriction(s) or problems. Hence, corruption is a hotspot in the public procurement cycle.

## 5. RECOMMENDATIONS

Since one of the reasons for corruption is missing data; it is recommended that standards be strictly followed while entry data. However, the authorities of the EU should keep track with Romania, Bulgaria, Croatia, and other transition countries these members state still needs proper supervision in their procurement procedures. In addition, EU should factored in all options before accepting new members in future while ensuring strict procurement policy in line with EU’s benchmark.

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