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SYMPOSIUM ON EUROPEAN UNION PUBLIC PROCUREMENT

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SYMPOSIUM INTRODUCTION

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According to an arrangement between the International Public Procurement Conference (IPPC) and the publisher of the *Journal of Public Procurement (JoPP)*, and based on the 7th International Public Procurement Conference Scientific Committee's (IPPC7) peer reviews process, eight best papers are to be published in two consecutive issues of *JoPP*. Four of the eight papers that the Scientific Committee and peer reviewers recommended for publications in *JoPP*, are on public procurement of the same region, European Union (EU). Therefore, we have these papers under a special theme, EU public procurement. Spanning over a decade, this collaboration has benefited both the *JoPP* and the IPPC as

- *JoPP*'s publisher has sponsored the conference's Best Paper Awards program, which provides authors a good incentive to submit better quality papers;
- Having select best papers published in a well-respected journal is another incentive for researchers and practitioners to submit their research papers;
- IPPC has enhanced the quality of *JoPP* as only eight to nine best papers were selected from a good pool of 100-170 papers written by authors from every corner of the world, and these papers cover

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a wide range of public procurement theories and best practices issues. In other words, about 6% to 10% submitted papers have been selected; and

- These selected papers are published in two consecutive special issues of *JoPP*, which are printed timely for distribution at the conference. This is a unique feature of IPPC, and not many professional conferences in the world offer participants this type of academic publications at the conference.

Brief Overview of EU

The EU was created in the aftermath of the Second World War. To foster economic cooperation, an idea being that countries that trade with one another become economically interdependent and so more likely to avoid conflict, the European Economic Community (EEC), created in 1958, and initially to increase economic cooperation between six countries: Belgium, Germany, France, Italy, Luxembourg and the Netherlands. Gradually, more countries joined EEC. In 1993, EU was formed, and became a unique economic and political union between 28 European countries that together cover much of the continent. Since then, a huge single market has been created and continued to develop towards its full potential. Indeed, the economy of the European Union generates a GDP of about €14.3 trillion (US\$18.5 trillion in 2014), according to the International Monetary Fund (www.imf.org).

In order to reach a full single market, the European Commission (EC) issued the first Single Market Act on October 27, 2010 which contains twelve actions or levers (for detailed information, see <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52012DC0573>). About two years later, on October 3, 2012, the European Commission (2012) issued “Act II Together for New Growth” (COM(2012) 573 final), which grouped the first Single Market Act’s twelve actions or drivers under four major titles:

- Developing fully integrated networks in the single market (e.g. railways, maritime transport, aviation, energy);
- Enhancing the mobility of citizens and businesses across borders (e.g. EURES portal for jobs, access to finance for companies, long-term investment funds);

- Supporting the digital economy across Europe (e.g. online payment, broadband networks, electronic invoicing); and
- Strengthening social entrepreneurship, cohesion and consumer confidence (e.g. safer products, access to banking for all).

EU's Public Procurement: New Developments and Reforms

Public procurement expenditures contribute greatly to the EU's vast economy. Over 250,000 public authorities in the EU spent €1,931.5 billion (13.8% of GDP, excluding utilities and defense) on the purchase of services, works and supplies in 2014. They are the principal buyers in many sectors such as energy, transport, waste management, social protection and the provision of health or education services. Table 1 shows total annual procurement expenditures of the EU and twenty member states. Public procurement expenditures of three largest economies, France, Germany, and the United Kingdom are \$1,079.9 billion or 55.91% of the EU economy.

TABLE 1
Estimate of Total Public Procurement Expenditure by General Government on Works, Goods and Services (Excluding Utilities and Defense)

Countries	Year (In Billion Euros)			
	2011	2012	2013	2014
Belgium	54.5	57.1	57.4	59.1
Bulgaria	4.4	4.5	4.9	5.5
Czech Republic	23.6	22	21.2	21.3
Denmark	35.1	37.6	37.3	38.2
Germany	395.4	408.7	425.5	442.0
Estonia	2.2	2.6	2.6	2.7
Ireland	17.6	17.1	16.5	17.7
Greece	22.3	20.0	19.1	18.9
Spain	131.5	113	105.9	104.9
France	304.3	313.5	319.4	316.8
Croatia	5.7	5.7	6	6.0
Italy	177.1	171.7	171.7	169.8

TABLE 1 (Continued)

Countries	Year (In Billion Euros)			
	2011	2012	2013	2014
Cyprus	1.6	1.3	1.1	1.0
Latvia	2.6	2.7	2.7	2.7
Lithuania	3.7	3.6	3.6	3.7
Luxembourg	5.4	5.6	5.7	5.9
Hungary	13.3	13.1	14.3	16.1
Malta	0.7	0.7	0.7	0.9
Netherlands	134.7	134.8	133.9	133.8
Austria	40.3	41.1	42.5	43.5
Poland	51.2	48.4	47.4	51.3
Portugal	20.2	17.2	16.6	17.0
Romania	16.6	15.5	16.0	16.2
Slovenia	4.9	4.7	4.8	5.1
Slovakia	9.8	9.5	9.8	10.6
Finland	33.9	35.7	37.3	37.9
Sweden	65.2	69.3	71.8	70.8
United Kingdom*	270.7	290.1	284.5	312.1
Total	1,848.5	1,866.8	1,880.2	1,931.5

Source: European Union (2016).

Notes: In June 23, 2016 referendum, the United Kingdom's voters voted to have UK exit the EU. After the exit is effective, the volume of EU's the public procurement expenditure will be reduced significantly, by around 16.16%.

Because of the large size of public procurement expenditures, the EU works to ensure that public procurement is fair, competitive and conducive to the Single Market. To create a level playing field for all businesses across Europe, the EU sets out minimum harmonized public procurement rules. In 2014, it issued the following three directives:

- Directive 2014/24/EU on public procurement,

- Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors, and
- Directive 2014/23/EU on the award of concession contracts (More information).

The Directives specify the way public authorities and certain public utility operators purchase goods, works and services. These new rules are to simplify public procurement procedures and make them more flexible, and will benefit public purchasers and businesses, particularly small, medium-sized enterprises (SMEs). Specifically, simpler procedures for contracting authorities will open up the EU's public procurement market, prevent "buy national" policies, and promote the free movement of goods and services.

All member states are required to transpose these rules into national legislation by April 18, 2016, and apply these new rules to tenders whose monetary value exceeds a certain amount. For tenders of lower value, national rules apply. Nevertheless, these national rules also have to respect the general principles of EU law.

The new rules, including a new electronic self-declaration for bidders, pave the way for the digitalization of public procurement, which will considerably increase the efficiency of the public procurement system. For instance, only the winning company needs to submit all the documentation proving that it qualifies for a contract. This will drastically reduce the volume of documents needed for selecting companies. Through the limiting of turnover requirements and the option of dividing tenders into lots, SMEs will gain easier access to public procurement. As a result, contracting authorities will obtain better value for money.

Most recently, on February 5, 2016, the EC issued "Commission Implementing Regulation ([EU] 2016/7) Establishing the Standard Form for the European Single Procurement Document," the European Commission adopted the European Single Procurement Document that will considerably reduce the administrative burden for companies, in particular SMEs, who want to have a fair chance at winning a public contract.

About this Symposium

The theme of this symposium is on public procurement in Europe, with three papers covering the EU's procurement innovation, and

regulations; and one paper on Italian procurement. To induce innovation in the public sector, Directive 2014/24/EU encourages internal and external consultation during the procurement process. However, in “From Whence the Knowledge Came: Heterogeneity of Innovation Procurement across Europe, Anne Rainville stated: little is known regarding the prominence of these practices. Determining the extent of knowledge sourcing in innovation procurement across 28 European countries, she presents an institutional cluster analysis, examining heterogeneity across knowledge sourcing activities, procurement areas, and tender innovation outcomes for 1,505 public procurers from 2008-2010. Building upon existing taxonomies, three types of procuring agencies are identified: Large collaborative agencies practicing public procurement of innovation (31%); supplier-focused pre-commercial procurers (20%); and direct procurers at the municipal level (49%). Validation supports this heterogeneity, using innovation outcomes and policy drivers. At the country level, Spain, the United Kingdom, Italy, Germany, and Poland are most represented in respective clusters. Findings enable predictions regarding impacts on agencies and innovation from the new public procurement Directive’s translation into national law by member states.

Provision on framework agreements has been introduced into EU Law in 2004. Since then framework agreements have gained popularity and importance on the EU public tender market. Nevertheless, the use of frameworks poses significant legal challenges necessitating the clarification of the governing rules and the introduction of further guidelines. Unfortunately, “Dealing with Legal Loopholes and Uncertainties within EU Public Procurement Law Regarding Framework Agreements,” Marta Andrecka clarifications were not fully provided in the new Directive 2014/24/EU. This article is a study of legal loopholes and uncertainties that occur during public procurement of framework agreements as a result of current EU rules and national practices in Denmark and the United Kingdom. The author highlights the need for clarification of the existing rules and introduction of transparency to the subsequent call-off stage of framework agreements. To achieve study aims, three methods were applied: a doctrinal analysis, a small scale comparative law research and field research based on qualitative research by the means of semi-structured interviews.

In public procurement, transparency is one of major objectives, including competition, integrity, and efficiency. Actually, transparency helps build public trust in government contracting. However, in “Disclosure Rules in EU Public Procurement: Balancing between Competition and Transparency,” Kirsi-Maria Halonen (2016, p. 528) stated: “Certain level of transparency of public procurement procedure is necessary in order to fight corruption, enhance trade opportunities and ensure effective legal remedies. On the other hand, too much transparency may have certain anti-competitive effects.”

The author examines the disclosure of information within public contract awards under EU law. EU Public Procurement rules have several objectives that may at sometimes be conflicting with each other. The national laws regarding disclosure of information vary in different EU member states. In Finland the EU law principle of effective remedies has been interpreted as requiring full transparency among the bidders. The transparency rules under EU law and certain member states’ national laws are analyzed. The, the author suggested that the rules on disclosure should not be left solely to the discretion of member states as the over-transparent approach taken by certain member states may negatively affect the markets both on a national and EU level.

In public procurement, firms’ qualifications are one of major evaluation factors. In “The Role of Firms’ Qualification in Public Contracts Execution: An Empirical Assessment,” Alessandro Ancarani, Calogero Guccio and Ilde Rizzo investigated the link between the efficiency of infrastructure provision, and the Italian regulation concerning the firm’s entry and qualification system, employing a large dataset on Italian public works contracts for roads and highways. First, they estimated firm’s efficiency in public contracts’ execution, using a smoothed data envelopment analysis bootstrap procedure. Then, they evaluated effects of the qualification system on firm’s efficiency using a semi-parametric technique that produces a robust inference for an unknown serial correlation between efficiency scores. Their analysis shows that fully qualified firms perform better than partially qualified firms.

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