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# Has European public procurement law improved the competitiveness of public procurement?

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**Summary:** The European Union (EU) laws lay out the harmonized public procurement procedures and rules that establish a fair and level playing field for businesses operating in the European market. These rules coordinate procedures for the award of work, supply, and service contracts to the public. The paper examines EU public procurement law highlighting the governing principles, directives, justification, and enforcement. Public procurement is a major non-tariff barrier to the functioning of a competitive internal market. The law governing this process has both – legal and economic justification. From an economic perspective, it introduces competitiveness, price convergence, and significant cost savings in the public sector. From a legal standpoint, it adheres to the EU’s fundamental principles of free movement of goods, transparency, non-discrimination, and equal treatment. The introduction of the New Directives to replace the Old Directives aimed to increase flexibility and efficiency in the procurement process. However, compliance remains a challenge. Thus, effective implementation of the law requires a major change in the public procurement culture.

**Keywords:** EU public procurement law, Old Directives, New Directives, transparency, equal treatment, non-discrimination, price convergence, enforcement

## 1. Introduction

Public procurement is a powerful exercise. It demonstrates policy choices and represents the processes involved in the delivery of public services. It provides economic freedom and depicts trade relations among economic players. Essentially, public procurement is a significant non-tariff barrier and it works as an

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obstacle to the functioning of a competitive internal market.<sup>1</sup> Regulation of the procurement process encourages competitiveness and contributes to significant cost savings in the public sector. The EU law provides a platform for all businesses operating in the region. It sets out the minimum public procurement rules that guide procurement process. These public procurement rules are transposed into member states' laws and apply to tenders whose value exceeds certain threshold amounts.<sup>2</sup> If public tenders do not reach a certain threshold value (or below it), national rules of member states' budgetary laws will apply. According to International Comparative Legal Guides (2016), public procurement represents nearly 19% of the EU's gross domestic product (GDP).<sup>3</sup> It explains the tightening of regulation in the EU. Since the 1970s, it becomes directly relevant to the establishment of the European single market. Although the EU aims to ensure that its economic policy obeys the principles of an open market economy and free competition, public procurement requires authorities to develop a positive regulatory approach. That is why public procurement has now become an essential element of the EU in ensuring a competitive economy. The purpose of this research paper is to examine the EU public procurement law and recommends ways to improve enforcement and the procurement process in the region.

## 1.1. Directives

The primary legislation that regulates public procurements within the EU is in the public procurement directives. They include Directive 2004/17/EC that coordinates procurement procedures in the energy, transport, postage, and water services.<sup>4</sup> A recent 2014/25/EU supersedes that 2004/17/EC Directive. Directive 2004/18/EC coordinates procedures involved in the award of public works, service, and supply contracts.<sup>5</sup> Similarly, a recent 2014/24/EU one supersedes the 2004/18/EC directive. Directives 2004/18EC and 2004/17 EC are now Old

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<sup>1</sup> DE KONINCK, Constant, RONSE, Thierry. *European Public Procurement Law: The European Public Procurement Directives and 25 Years of Jurisprudence by the Court of Justice of the European Communities: Texts and Analysis*. New York: Kluwer Law International, 2008, p. 643.

<sup>2</sup> PÎRVU, Daniela, BÂLDAN, Cristina. Access to the EU Public Procurement Market: Are There Disparities Based on the Origin of Economic Operators?. *Journal of Economic Issues*, 2013, vol. 47, no. 3, pp. 2-8.

<sup>3</sup> International Comparative Legal Guides 2016. *EU public procurement rules*. [online]. Available at: <<http://iclg.com/practice-areas/public-procurement/public-procurement-2017/eu-public-procurement-rules>>

<sup>4</sup> McCRUDDEN, Christopher. *European Public Procurement Law and Equality Linkages: Government as Consumer, Government as Regulator*. London: Oxford Publishing, 2007, p. 45.

<sup>5</sup> Official Journal of the European Union (OJEC). *European & UK procurement regulations*. [online]. Available at: <<http://www.ojec.com/directives.aspx>>

Directives. The New Directives replaced them following a consultative process coupled with a series of legislative proposals. These rules regulate the purchase of goods and services by the member states and their various bodies. The new rules simply contain procedures of public procurement and make them flexible to the advantage of businesses. They pave the way for electronic procurement that is expected to increase the effectiveness of the procurement process. For example, only winning firms submit the papers to show that they qualify. As a result, the new directives will reduce the documentation required.<sup>6</sup>

Besides, the procurement law includes several specific rules for different sectors. Defense Procurement Directive (Directive 2009/81/EC) focuses on defense and security. Regulation EC1370/2007 focuses on public transport sector by road and rail. Directive 2007/66/EC amended Directive 92/13/89/665/EEC to increase the protection of tenderers against breaches of the law by contracting authorities when they award public contracts. It sets out the requirements concerning the remedies necessary for the violation of public procurement procedures.<sup>7</sup> European institutions establish directives as the legal instruments to achieve flexibility. The directives provide discretion to the member states regarding the method and form of implementing public procurement rules. They have the ability to harmonize public markets while considering the existing divergences in the legal systems of different states. The directives ensure that legal systems conform to the objectives of the European Community. However, it must be acknowledged that the divergences will remain. Essentially, this attributes to the fact that the EU does not have the power to override existing national legal regimes and impose a different one.<sup>8</sup>

Although the New Directives address some of the inherent weaknesses in the Old Directives, issues of transparency still arise.<sup>9</sup> For instance, Directive 2014/24/EU has not yet clarified the uncertainties that involve in the operation of single and multi-supplier frameworks.<sup>10</sup> Although one can affirm that some level of transparency exists, it is only present at the pre-award stage. Currently, there are inadequate provisions to guarantee transparency, especially during the award stage of the contract. One of the key issues that arise is the lowest price offer that contracting authorities should accept. A transparent or competitive

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<sup>6</sup> THAI, Khi, SURYO, Robin, MAI, Tam. Symposium on European public procurement. *Journal of Public Procurement*, 2016, vol. 16, no. 4, pp. 455-462.

<sup>7</sup> Ibid.

<sup>8</sup> KAPTEYN, Paul Joan George, VERLOREN VAN THEMAAT, Pieter. *Introduction to the law of the European communities after the coming into force of the Single European Act*. London: Kluwer Law and Taxation Publishers, pp. 135-180.

<sup>9</sup> ANDRECKA, Marta. Dealing with legal loopholes and uncertainties within EU public procurement law regarding framework agreements. *Journal of Public Procurement*, 2016, vol. 16, no. 4, pp. 505-527.

<sup>10</sup> ANDRECKA, Marta. Framework agreements: Transparency in the call-off award process. *European Procurement & Public Private Partnership Law Review*, 2015, vol. 10, no. 4, pp. 231-242.

pattern does not guarantee and provides safeguards against under-priced patterns. However, it automatically disqualifies abnormally low offers as in the case of *SA Transporoute ET. Travaux v. Minister of Public Works*.<sup>11</sup> Even so, the New Directives allow for the achievement of societal goals, including environmental protection, as well as stimulation of innovation. They improve efficiency in public spending largely by simplifying existing rules as well as introducing flexibility in the procurement process.

## 1.2. Governing Principles

The contracting authorities in the public sector are subject to the EU General Principles even when the procurement itself is outside the scope of the New Directives.<sup>12</sup> These principles encompass equal treatment, non-discrimination, proportionality, mutual recognition, and transparency. Others include free movement of products and freedom to provide services. For public sector procurements that are outside the scope of the New Directives, the overriding principles are competition, transparency, and equal treatment. These principles require potential bidders to access the suitable information regarding the intention to award certain procurement. Therefore, it means that they should advertise to ensure that the contract is available to all parties to allow fair competition. The European courts have reinforced these principles in different case laws. In *Commission vs. Ireland*, the Court of Justice of the European Union (CJEU) concluded that the modification of the contract award criteria after reviewing the bids violated the principles of transparency and equal treatment.<sup>13</sup>

## 1.3. Importance of public procurement

Public procurement in the EU is a matter of immense economic value. According to BDI, awarding public contracts to businesses is critical in meeting the public needs and ensuring a cost-effective use of public resources.<sup>14</sup> It also serves as an important factor that allows companies or organizations from different parts

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<sup>11</sup> Case 76/81, *SA Transporoute et Travaux, Brussels vs. Minister of Public Works*, Grand Duchy of Luxembourg. *Reports of Cases of the Court of Justice of the European Union*, 1982, pp. 418-430.

<sup>12</sup> EBRECHT, Caspar, WERNER, Michael Jürgen. *Public procurement in the European Union: overview*. [online]. Available at: <[https://uk.practicallaw.thomsonreuters.com/9-522-6594?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/9-522-6594?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)>

<sup>13</sup> Case 249/81, *Commission of the European Communities vs. Ireland*. *Reports of Cases of the Court of Justice of the European Union*, 1982, pp. 4006-4024.

<sup>14</sup> The Federation of German Industries (BDI). *Public procurement – European and international law governing public procurement*. [online]. Available at: <<http://english.bdi.eu/article/news/public-procurement-european-and-international-law-governing-public-procurement>>

of the world to compete fairly. In the EU, member states award public contracts that exceed 2.2 trillion EUR annually.<sup>15</sup> This figure accounts for approximately 12–19 % of the GDP. Indeed, these figures show a macroeconomic value of public procurement. Thus, from an economic perspective, public procurement legislation aims to bring competitiveness, increase the penetration of imports, enhance trading of different public contracts, and bring about price convergence.<sup>16</sup>

The EU law ensures that the award of higher value for the provision of public goods and services must be transparent, fair, equitable, and non-discriminatory. It means that any public procurement activities with a value over that stated must be advertised in the European Union's Official Journal (OJEU). However for tenders of lower value, national rules apply, which have to respect the general principles of EU law, of course.

**Table 1: Public Procurement Thresholds of the years 2016/2017**

| PUBLIC                        | Supply, Services and Design contracts | Works contracts | Social and other specific services |
|-------------------------------|---------------------------------------|-----------------|------------------------------------|
| Central Government            | 135,000 EUR                           | 5,225,000 EUR   | 750,000 EUR                        |
| Other contracting authorities | 209,000 EUR                           | 5,225,000 EUR   | 750,000 EUR                        |
| Small lots                    | 84,000 EUR                            | 1,000,000 EUR   | n/a                                |

| UTILITY             | Supply, Services and Design contracts | Works contracts | Social and other specific services |
|---------------------|---------------------------------------|-----------------|------------------------------------|
| Utility authorities | 418,000 EUR                           | 5,225,000 EUR   | 1,000,000 EUR                      |

| DEFENCE AND SECURITY             | Supply, Services and Design contracts | Works contracts | Social and other specific services |
|----------------------------------|---------------------------------------|-----------------|------------------------------------|
| Defence and Security authorities | 418,000 EUR                           | 5,225,000 EUR   | 1,000,000 EUR                      |

*Source: European Commission. Current thresholds. [Online]. Available at: [https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds\\_de](https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds_de). [Accessed: 2018, January 26].*

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

From a legal perspective, public procurement law is essential as it supports the free movement of people, goods, and services, and prohibits discrimination based on the nationality of an individual.<sup>17</sup> Thus, its liberalization reflects the desire of European institutions to end discrimination and preferential purchasing patterns in the public sector. It also shows the wish to create seamless interstate trade links involving both the private and public sector. Due to the importance and value of public procurement, European institutions have developed several rules at a national, regional, and international level. The goal is to create a predictable legislative framework that guides public procurement.

## 2. Methodology

The study used a combination of doctrinal research and qualitative approach. A doctrinal research was carried out by reviewing different case laws on the EU procurement and combing them with secondary research. The researchers accessed these articles from the leading law journals and government documents using the search terms, such as ‘European procurement law,’ ‘procurement law,’ ‘effectiveness of European procurement law,’ and ‘recommendations to the procurement law.’ An initial search yielded 30 articles, but after a close examination of the sources, this study chose only the following 15 articles as they met the inclusion criteria:

- ANDRECKA, Marta. Dealing with legal loopholes and uncertainties within EU public procurement law regarding framework agreements. *Journal of Public Procurement*, 2016, vol. 16, no. 4, pp. 505-527;
- ANDRECKA, Marta. Framework agreements: Transparency in the call-off award process. *European Procurement & Public Private Partnership Law Review*, 2015, vol. 10, no. 4, pp. 231-242;
- BOVIS, Christopher. Recent case law relating to public procurement: A beacon for the integration of public markets. *Common Market Law Review*, 2002, vol. 39, no. 5, pp.1025-1056;
- BOVIS, Christopher. *EU Public Procurement Law*. Cheltenham: Edward Elgar Publishing, 2012, pp. 490-492;
- CAVE, Bryan. *What is the future of EU public procurement law in the UK after Brexit?*. [online]. Available at: <<http://www.lexology.com/library/detail.aspx?g=bb144c40-6008-4e07-8143-98a3bfa36ecc>>;
- DE KONINCK, Constant, RONSE, Thierry. *European Public Procurement Law: The European Public Procurement Directives and 25 Years of*

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<sup>17</sup> BOVIS, Christopher. Recent case law relating to public procurement: A beacon for the integration of public markets. *Common Market Law Review*, 2002, vol. 39, no. 5, pp.1025-1056.

- Jurisprudence by the Court of Justice of the European Communities: Texts and Analysis. New York: Kluwer Law International, 2008, p. 643;
- EBRECHT, Caspar, WERNER, Michael Jürgen. *Public procurement in the European Union: overview*. [online]. Available at: <[https://uk.practicallaw.thomsonreuters.com/9-522-6594?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/9-522-6594?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)>;
  - Federation of German Industries (BDI). *Public procurement – European and international law governing public procurement*. [online]. Available at: <<http://english.bdi.eu/article/news/public-procurement-european-and-international-law-governing-public-procurement>>;
  - International Comparative Legal Guides 2016. *EU public procurement rules*. [online]. Available at: <<http://iclg.com/practice-areas/public-procurement/public-procurement-2017/eu-public-procurement-rules>>;
  - KAPTEYN, Paul Joan George, VERLOREN VAN THEMAAT, Pieter. *Introduction to the law of the European communities after the coming into force of the Single European Act*. London: Kluwer Law and Taxation Publishers, pp. 135-180;
  - LICHÈRE, François, CARANTA, Roberto, TREUMER, Steen. *Modernising Public Procurement: The New Directive*. Copenhagen: DJØF Publishing, 2014, pp. 97-130;
  - McCRUDDEN, Christopher. *European Public Procurement Law and Equality Linkages: Government as Consumer, Government as Regulator*. London: Oxford Publishing, 2007, p. 45;
  - Official Journal of the European Union (OJEC). *European & UK procurement regulations*. [online]. Available at: <<http://www.ojec.com/directives.aspx>>;
  - PÎRVU, Daniela, BÂLDAN, Cristina. Access to the EU Public Procurement Market: Are There Disparities Based on the Origin of Economic Operators?. *Journal of Economic Issues*, 2013, vol. 47, no. 3, pp. 2-8;
  - THAI, Khi, SURYO, Robin, MAI, Tam. Symposium on European public procurement. *Journal of Public Procurement*, 2016, vol. 16, no. 4, pp. 455-462.

All of the 15 listed articles were those published in English law journals or on reputable websites. Later, the researchers analyzed the secondary sources and identified the key themes on EU public procurement law. The researchers also conducted the qualitative research to get deep insights into the effectiveness of the EU procurement law from the perspectives of contracting parties. This approach was necessary for identifying the procedure involved, its strengths, weaknesses, as well as recommendations, to improve the research process.

The researchers interviewed two managers of a Germany company, BAUER AG that has participated in several EU public contracts to determine their

experience. The BAUER AG is a construction and machinery manufacturer company with headquarters in Schrobenhausen, Germany. Founded by Sebastian Bauer in 1790, the company has grown and expanded to include several subsidiaries that employ over 10.800 people across the world. The Bavarian company has been awarded several public contracts in the EU due to its expertise in the area of operation. Thus, it was the best choice for obtaining more information about the EU public procurement law. The managers were contacted by mail and requested to participate in the study. They were informed about the purpose of the research and assured that their personal information and responses will not be divulged to third parties, but only for research purpose. After confirmation of their participation, the researchers organized a telephone interview with them on 12<sup>th</sup> August 2017 and recorded their responses using a mobile phone. See interview questions in the appendix section.

### **3. Results**

The participants responded to a series of questions about the EU public procurement law and its enforcement. When asked about the competitiveness of the public procurement, they indicated that the legislation had made the process competitive. They stated they accorded the same platform to compete for the public contract. They affirmed that they learned about the process through an advert. When the researchers asked them about the effectiveness of the New Directives, they indicated that these directives upgraded the Old Directives and addressed the technical limitations. However, they affirmed that the New Directives did not wholly address the transparency aspect. They affirmed that public procurement had eliminated the barriers that, in turn, have allowed for the establishment of a competitive internal market. They indicated that the legislation provided a level-playing field that allowed them to compete fairly with other players.

Further the participants confirmed that the procurement law has contributed significantly to the convergence of price and economic policies of different economies. The participants further affirmed that the directives had harmonized the public procurement law. However, they noted that they had once did not get a chance to contract due to the revision of the award criteria after the bids had already been reviewed. The participants reported that the European Commission (EC) lacks the power to ensure effective implementation of Public procurement law. They affirmed that while some member states had failed to comply with the law, it took longer for them to forcefully follow the provisions. The member states are not subject to any sanctions that would force them to comply with the regulations.

## 4. Discussion

The EU law provides the basis for the creation of a common or a single market.<sup>18</sup> The treaties that establish the EU envisage a system of economic, political, and legal integration via a progressive convergence of different economic policies of the member countries.<sup>19</sup> An envisioned common market is the one in which free movement of people, goods and capital, and a single currency exists.<sup>20</sup> Other aspects of the market include the adoption of shared economic policies and the customs union that embraces economic aspects. Adherence to these principles is expected to remove any restrictions to the interstate trade. The degree of economic integration in the region will determine the extent to which the member states integrate with each other politically, which is the primary goal of the treaties.<sup>21</sup>

### 4.1. Exemptions to in-house contracts

The delivery of public service varies across the EU. Perhaps, this explains the differences in cultures and traditions concerning the practice. It is also important to acknowledge that the public needs vary widely due to social and geographical situations. Although national differences exist, case laws have confirmed that some contracts do not automatically fall outside the EU public procurement law. Based on the landmark case law, EU procurement directives do not cover in-house arrangements in which a contracting authority organizes for the purchase of works or services using internal resources.<sup>22</sup> Such contracts do not necessarily need to be advertised. Drawing from the case law, the process can proceed without a competitive or transparency process. For instance, a local authority can employ its internal staff for sewage line maintenance without following procurement directives. When a contracting authority anticipates an arrangement with a different legal entity, the in-house privilege applies only after satisfaction of two conditions. One of the conditions is that “the contracting authority exercises over the separate entity control that is similar to which it exercises over its

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<sup>18</sup> CAVE, Bryan. *What is the future of EU public procurement law in the UK after Brexit?*. [online]. Available at: <<http://www.lexology.com/library/detail.aspx?g=bb144c40-6008-4e07-8143-98a3bfa36ecc>>

<sup>19</sup> See Articles 2 and 3 of the Treaty of Rome (EC).

<sup>20</sup> Case 286/82, *Graziana Luisi and Giuseppe Carbone vs. Ministero del Tesoro (Ministry of Treasury)*. *Reports of Cases of the Court of Justice of the European Union*, 1984, pp. 379-409.

<sup>21</sup> BOVIS, Christopher. *EU Public Procurement Law*. Cheltenham: Edward Elgar Publishing, 2012, pp. 490-492.

<sup>22</sup> Case 324/98, *Telaustria Verlags GmbH and Telefonadress GmbH vs. Telekom Austria AG*. *Reports of Cases of the Court of Justice of the European Union*, 2000, pp. 10770-10797.

departments.” The second one is “the separate entity carries out the essential part of its activities with the controlling authority”. The cases “*Teckal Srl v. Comune di Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia*”<sup>23</sup> and “*Parking Brixen GmbH. v. Gemeinde Brixen and Stadtwerke Brixen AG*” present important evidence of these two conditions.<sup>24</sup>

## 4.2. Enforcement of public procurement rules

Member states often implement public procurement directives. When carried out through the formulation of national legislation, the process is often under the judicial control of the European Community. Article 226EC grants the EC the right to initiate a proceeding in response to a member state complaint or on its own initiative:<sup>25</sup>

*“In the course of its duties, the European Parliament may, at the request of a quarter of its component Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by the Treaties on other institutions or bodies, alleged contraventions or maladministration in the implementation of Union law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.*

*The temporary Committee of Inquiry shall cease to exist on the submission of its report.*

*The detailed provisions governing the exercise of the right of inquiry shall be determined by the European Parliament, acting by means of regulations on its own initiative in accordance with a special legislative procedure, after obtaining the consent of the Council and the Commission.”*<sup>26</sup>

A specific legal interest is not part of the condition that determines the admissibility of the step to take. The EC has the mandate to supervise, observe, and ensure that the legislation is applied appropriately. For instance, in a case *Far-mainindustria vs. Consejeria de salud de la Junta de Andalucia* where a domestic litigation was withdrawn the EC moved to file a lawsuit against Spain for failing

<sup>23</sup> Case 107/98, *Teckal Srl vs. Comune di Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia*. *Reports of Cases of the Court of Justice of the European Union*, 2000, pp. 8139-8156.

<sup>24</sup> Case 458/03, *Parking Brixen GmbH vs. Gemeinde Brixen and Stadtwerke Brixen AG*. *Reports of Cases of the Court of Justice of the European Union*, 2005, pp. 8612-8638.

<sup>25</sup> *Ibid.*

<sup>26</sup> Article 226 EC Treaty (Maastricht consolidated version).

to comply with the Public Supplies Directive 77/62.<sup>27</sup> The Remedies Directive has introduced a correction procedure: Public Works and Public Supplies Compliance Directive.<sup>28</sup> The EC can intervene when it feels that a contravention of procurement rules have occurred as outlined in the Utilities Remedies Directive and public sector remedies directive. For the public sector Compliance Directive, the relevant provisions only apply in cases where the procurement process has breached the rules on contracts as laid out by public supplies Directive (93/36/EC) and public works Directive (93/37/EC). The EC often invokes the corrective procedure when it clearly manifests contravention of the procurement law. It often notifies the relevant state, as well as the contracting authority, about the situation and asks the parties to correct the infringement.

The concerned member state is expected to reply within 21 days and confirm whether it has corrected the issue or explain why it has failed to do so.<sup>29</sup> A member state that fails to reply within the stipulated time does not face any sanctions. At the same time, the EC does not enjoy special powers, even when a state invokes corrective mechanism. While there was a suggestion to grant the EC the powers to suspect the award procedure or procurement process on its own initiative, some member states opposed it. The Remedies Directives show that a state has breached the law, whether it gives a satisfactory response.<sup>30</sup> In practice, however, the corrective procedure does not provide any power or facilitates the EC to enforce public procurement law effectively. Above all, the remedies directives are not uniformly implemented across the member states.

## 5. Recommendations

The new rules are definitely a welcome step in the right direction, because they help to make the procurement process faster and less costly. However they are not enough to secure a fair public procurement. The authors are sceptical, if the promised aims: simplification, flexibility, legal certainty and increased transparency – can be realized.

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<sup>27</sup> Case 179/89, *Asociacion Nacional de Empresarios de la Industria Farmaceutica (Farmaindustria) vs. Consejeria de Salud de la Junta de Andalucia*. *Official Journal of the European Communities*, 27.06.1989, no. C 160, pp. 10-11.

<sup>28</sup> *Public Works and Public Supplies Compliance Directive 89/665*. *Official Journal of the European Communities*, 30.12.1989, no. L 395, pp. 33-35.

<sup>29</sup> LICHÈRE, François, CARANTA, Roberto, TREUMER, Steen. *Modernising Public Procurement: The New Directive*. Copenhagen: DJØF Publishing, 2014, pp. 97-130.

<sup>30</sup> PÎRVU: *Access to the EU Public Procurement Market...*, p. 7.

Unfortunately the directives have failed to achieve the goals of economic efficiency and market liberalization as anticipated. While the 2014 Directives address some of the weaknesses in the Old Directives, they only provide a limited solution to the compliance. Effective implementation of the legislation requires a major change in the public procurement culture. Imperative is to ensure that states and contracting parties understand the rules and the overall benefits of compliance with the set regulations. Although corrective procedures have been to ensure that states implement public procurement procedures as outlined in the legislation, they do not provide any powers or facilitate the EC to ensure effective enforcement of public procurement law. Thus, it is imperative for the state to give the EC powers to punish countries that breach the rules. Above all, there is a need to clarify the existing legislative framework to ensure greater precision and effective and proportionate sanctions as deterrents to the infringement on public procurement.

## **6. Conclusion**

Regulation of public procurement is an important element of achieving an internal market in the EU. By introducing competitiveness, the price convergence will ultimately occur and, in turn, lead to significant cost reductions. Aside from the economic justifications, regulation of procurement has legal inferences that strengthen the fundamental principles that govern the EU, such as free movement of goods, transparency, non-discrimination, freedom to offer services, and equal treatment.

As the authors proved, the public procurement has a strategic importance in the integration of the EU into a single market. The European Court of Justice (EC) has continued to provide intellectual support in efforts to strengthen the institutions to uphold the fundamental principles that form the basis of public procurement regulation. Although efforts have been to address the technical deficiencies in the Old Directives with the introduction of New Directives, much should be done to comply with the general principles and procedures of the EU. Especially the EC should have the powers to ensure effective implementation of public procurement law. Logically the “modernization process” of public procurement in the EU only makes sense, if all member states implement the common rules into their national law. Otherwise the implementation should be strictly monitored and if applicable to be enforced with the help of appropriate penalties.

## **Appendix (the list of interview questions)**

1. Has EU public procurement law improved the competitiveness of public procurement?
2. What is your opinion about prices of public contracts, do your quotations mirror those of other businesses that register interest in these contracts?
3. Are you aware of the New Directives and their purpose?
4. What are the key principles that govern the EU?
5. Have the New Directives strengthened these principles?
6. Have you ever been denied a public contract in the EU due to changes in an award criterion?
7. Is the EU public procurement law enforced properly by the European Commission?