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Article

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Traditional Procurement versus Public-private Partnership: A Comparison and Synergies with Focus on Cross-border Contracts

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Abstract

Government purchases represent an important part of the world economy. Selling to the public sector is a key business activity for certain industries or service providers. The public procurement segment's attractiveness is also underlined by the security of payment and large extent of supplies. With globalisation as a worldwide phenomenon, businesses do not have to rely only on domestic institutions; they can enter international B2G markets as well. However, the ability of private companies to do business with foreign governments is limited by various national legislations as governments settle the procurement regulation with respect to their national interests. In the following overview article, the authors analyse the two main and typical procurement types – traditional procurement and public-private partnership – with regard to recent development trends, international regulatory framework, opportunities and barriers to entry for European businesses. The main goal of the paper is to define, based on this analysis, the main differences and possible synergies of the traditional procurement and public-private partnership while focusing on cross-border contracts. This paper can be regarded as useful for business, academia as well as the public sector.

Keywords: public procurement, public-private partnership, cross-border contracts, cross-border bidding

Introduction

Government purchases account for a significant share in the world gross domestic product. The government has to decide whether to obtain the desired goods/services/works externally or internally (Pavel, 2013). When choosing the so-called external production, the government has two main options – traditional procurement and public-private-partnership projects, the two main procurement types. However, each of these has its own specificities and regulation.

Selling to the public sector is a key business activity also for certain industries or service providers depending on their entrepreneurial activities. However, the public procurement segment's attractiveness is also underlined by the security of payment and large extent of supplies. With globalization as a worldwide phenomenon, businesses do not have to rely only on domestic institutions; they can enter international B2G markets as well. However, the ability of private companies to do business with foreign governments is limited by various national legislations as governments settle the procurement regulation with respect to their national interests.

Therefore, in the following overview article, the authors first analyze the traditional procurement and public-private partnership with regard to their specificities, recent development trends, international regulatory framework, opportunities and barriers to entry for European businesses. Secondly, they compare the traditional procurement and PPPs. The main goal of the paper is to define, based on this analysis, the main differences and possible synergies of the traditional procurement and public-private partnership while focusing on cross-border contracts.

Cross-Border Public Procurement

International public procurement markets

Public procurement, or in other words, the purchase of goods, services or construction services by governments, state-owned enterprises or other public entities, is increasingly used by these institutions as a strategic tool to deliver their mandates and achieve broader policy objectives (OECD, 2017). In the past years, governments of OECD members spent on average almost one third of the total general government expenditure on public procurement (OECD, 2015). This level of spending suggests that governments can exert significant influence on the outcomes of markets in their country by means of public procurement (Gourdon & Messent, 2017). Variations in the structure of public procurement spending reflect each country's specific public service portfolio. Health expenditures on average represent the largest share, accounting for almost one third of public procurement spending in OECD countries (29.8%). Economic affairs (17%), education (11.9%), defence (10.1%) and social protection (9.8%) represent significant shares of public procurement spending across OECD countries as well (OECD, 2017).

Traditional public procurement processes usually follow four consecutive steps (World Bank, 2004). The first phase of the process is preparation, when a government or a public entity determines and identifies the needs that have to be

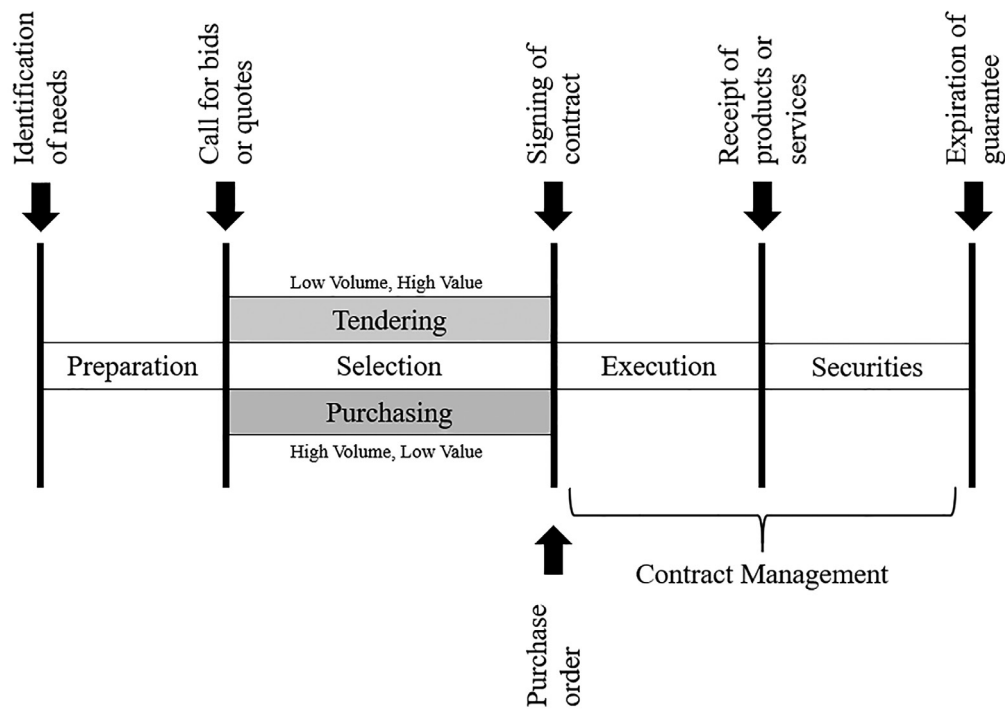
met and the desired works, goods or services. The results of the first phase are a precise specification of the product, budget and the procurement method. The preparatory phase is followed by the selection process, which means searching for the best-evaluated bid through procurement methods. The methods typically used include tendering (procurement of specialized products with a high economic impact as it involves low volume and high value contracts) and price quotation (procurement of standardized products involving high volume and low value contracts).

The second phase concludes with the signing of the contract, in the case of a tendering process, or with the issuance of the purchase order or the delivery of the service, in the case of a price quote (World Bank, 2004). After this, the process of implementation takes place and the supplier delivers ordered goods or services while the purchasing public entity makes the corresponding payment. The whole procurement process is completed with the phase of securities that ends when the guarantee expires. The above-mentioned process is also depicted in Figure 1.

The estimations of the size of the international public procurement markets vary depending on the data sources used. Trionfetti (2000) calculates the size of the public procurement market for nine OECD members and arrives at 7-9% of the GDP, when the calculations are based on the data of the United Nations, and at 10-18% of the GDP, when the calculations are based on the data of the International Monetary Fund. The most recent calculations of the OECD say that the size of the public procurement approximately represents 12% of the GDP in OECD members ranging from 5.1% in Mexico to 20.2% in the Netherlands (OECD, 2017). More details are presented in Figure 2, which also reflects the fact that the higher the general government expenditures, the bigger the size of the public procurement market. Pavel (2013), however, points out that this relation is complicated by differences in structure of general government expenditures – e.g. high public investments increase the size of the procurement market, whereas social transfers do not.

Government procurement policies are typically made up of procedures and rules that government entities must follow in order to meet the objectives of their procurement while minimizing the costs of taxpayers (Gourdon & Messent, 2017). Pavel (2013) states that there are also goals other than economic goals referring to the so-called Green Public Procurement or Social Public Procurement. One of the important goals may also be favouring domestic businesses, which can be the reason for the low level of cross-border procurement or cross-border bidding. Direct cross-border procurement represents a relation of a government or a public entity with a foreign contractor. Indirect cross-border procurement, on the other hand, represents a relation with a

Figure 1. Government procurement processes



Source: World Bank, 2004, author's drawing.

domestic contractor who, however, has a foreign partner or subcontractor, supplies goods or services from abroad, or the contractor itself is a foreign subsidiary (Kommerskollegium, 2011). According to Kubátová et al (2013), who analysed the public procurement market in Slovakia, the participation of foreign businesses decreases the costs in case of construction services (the same was not proven for goods and services). Despite this, the share of cross-border procurement remains limited. The share of direct cross-border procurement in the EU in its member states usually accounts for 0-6% in the total number of contracts (European Commission, 2011). Therefore, the authors further analyse, in the following chapters, the international regulatory framework, opportunities and barriers to entry.

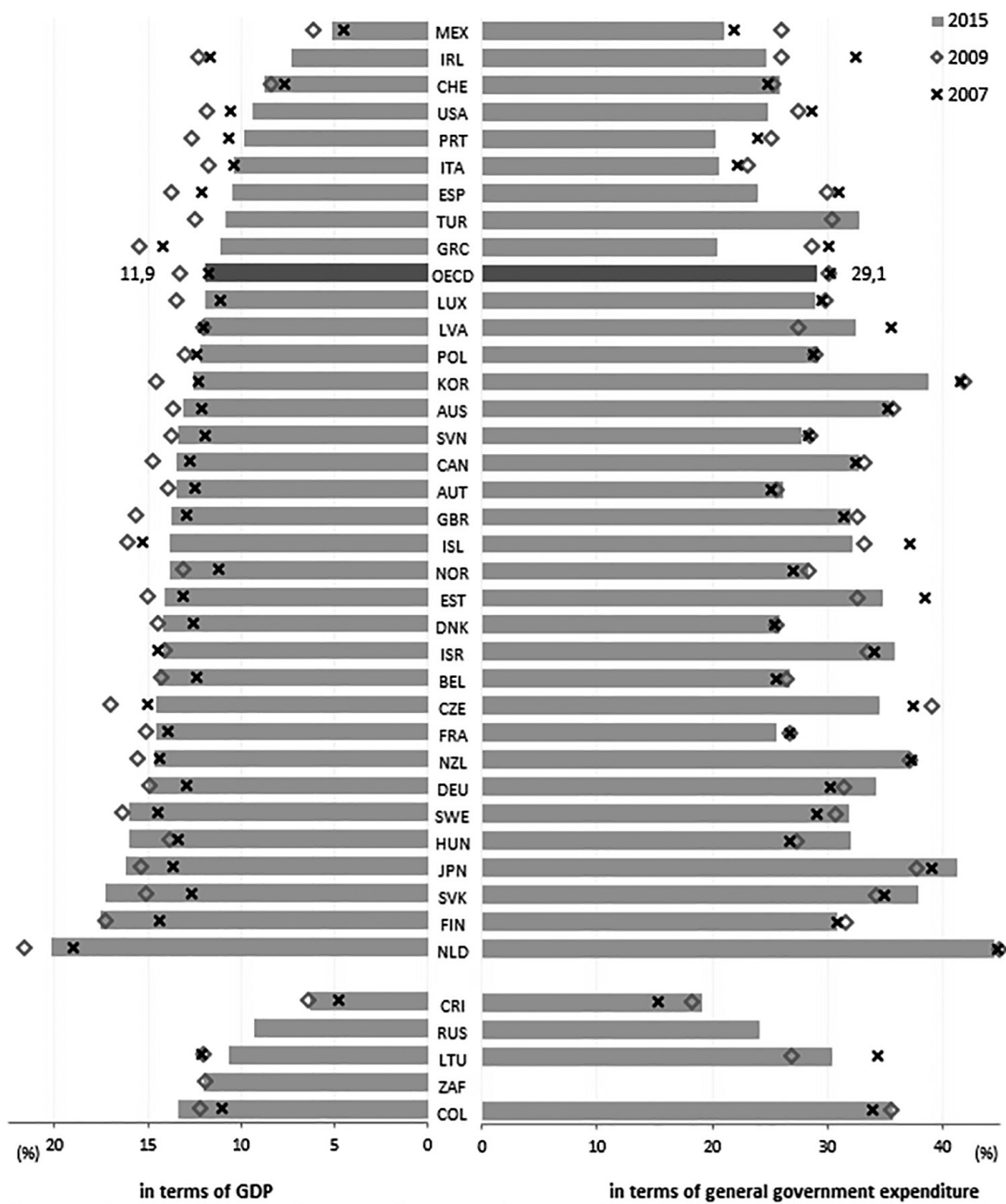
International regulatory framework

National regulation on governmental procurement belongs to an area that in developed countries complies with the international trade agreement which became a part of the multilateral trading system under the World Trade Organization. The Governmental Procurement Agreement (GPA), however, is not signed by all WTO members as are other agreements of the system. The reason lies in the history and in the complexity of the topic. Developing low-income countries found it difficult to be committed to procurement rules effected by central and sub-central government

entities and they do not see reciprocal concessions from GPA members as a valuable outcome of the membership (Hoekman & Kosteckí, 2009). GPA is currently implemented in 47 countries, including the EU Member States, and other ten countries are in process of acceding to it. Nevertheless, it is the most extended international framework that provides compulsory rules for governmental procurement policies and, according to the WTO (2019), it opens a procurement market of 17 trillion USD annually to international competition. The GPA has been re-negotiated several times and the most recent revision comes from 2006. It simplified the rules, reflects advances in information technology and expands coverage of the agreement while opening additional government procurement to international competition.

The GPA imposes non-discrimination while applying the National Treatment and the Most Favoured Nation Clause upon member governments. Those have to provide the same treatment under governmental procurement to the products, services and suppliers of the other signatory party that is accorded to goods, services and subjects coming from other signatories or procured domestically. For procurement, any measure, including the electronic one, and any contractual means can be used, but it has to be conducted transparently. Contractual option includes purchase, leasing, rental and hire purchase. The provisions of the GPA are applied only if the value of the contract exceeds a certain threshold level (Wouters & DeMeester, 2007). GPA states that the

Figure 2. General government procurement spending as a percentage of GDP and total government expenditures, 2007, 2009 and 2015



Source: OECD, 2017.

technical specification of the procurement should not become an obstacle to international trade, it means that the characteristics of the products or services to be procured must not discriminate or favour any supplier in the process of preparation, adoption or application of the procurement. The transparency principle should be applied to tendering procedures, qualification of suppliers, invitation to tender, selection procedures, time limits, documentation requirements, procedures for the award of contracts and negotiations with tenderers. Moreover, the GPA also rules specific procedural obligations.

The rules stated by the GPA text are accompanied by the schedule of commitments of all signatories. In the schedule, they specify how their market is open for foreign supplies of goods, services and construction services under the governmental procurement in a form of a positive list. For practical use, the most important role is devoted to the commitments of individual countries, as they state in their schedule the coverage related to the procurement activities and entities, and also list the goods, services and construction services suitable for procurement (WTO, 2019).

In countries non-signatories of the GPA, discriminatory practices in the area of governmental procurement are used, among them bans on participation by foreign bidders or local content and offset requirements. Less distortive effect than above mentioned practices have price preferences that are also more transparent. Those preferences are allowed by multilateral development banks under certain conditions and limits, and the UNCITRAL Model Law on Procurement provides rules for their use (Hoekman & Kosteci, 2009).

Opportunities and barriers to entry for EU businesses

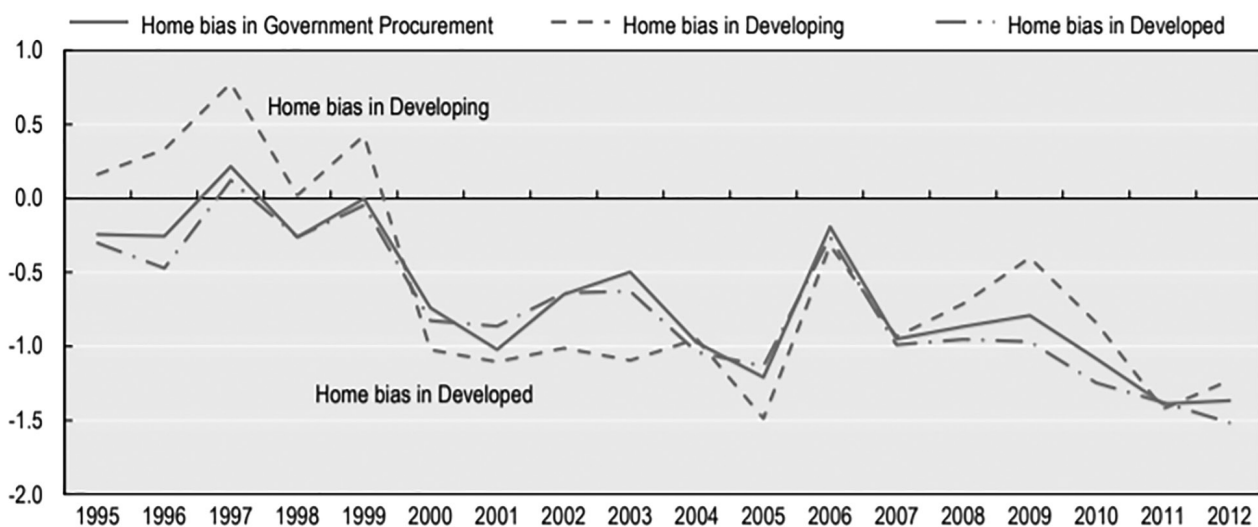
As the authors mention in chapter on International public procurement markets, public procurement can be a way of favouring domestic industries. Despite the existing international legislative framework, home bias in public procurement is a persisting phenomenon. However, measuring domestic bias is complicated as it is usually not explicit. The home bias is not directly observable for it is usually the result of tacit discriminatory behaviour not codified in written rules, or it can be the result of procurement procedures that unintentionally impede foreign firms from applying or winning contract awards (Gourdon & Messent, 2017). What is more, calculations of these authors indicate that the home bias effect even increases throughout the years. As Figure 3 shows, the home bias is more pronounced in developed economies with a coefficient of approximately -1 (-97%), implying that the government discriminates completely, while the home bias is significantly less in developing countries (-66%). Results also indicate that discrimination is becoming more severe in both regions, by 6.6% and 6% respectively.

Besides the trend of domestic bias, businesses have to face many other barriers when entering international procurement markets. Some of them are identical with barriers present in standard international B2C (*business-to-consumer*) or B2B (*business-to-business*) relations, including language barriers, exchange rate volatility or high level of competition. Some of the barriers are specific to B2G (*business-to-government*) relations. The European Commission (2011) conducted a survey among 250 businesses to find their views of different potential obstacles to cross-border bidding based on their experience.

The following barriers were assessed, starting with the one that proved to be the most relevant:

1. Lack of experience in doing business abroad;
2. Language barriers;
3. High competition with national bidders;
4. Legal requirements leading to market entry barriers in the awarding country;
5. Cost level in general higher at home than abroad;
6. Resources necessary for participating in cross-border tender procedures higher compared to procedures in home country;
7. Unfamiliar formal requirements;
8. Risks imposed by possible currency exchange rate fluctuations;
9. Additional costs due to geographic distance, i.e. implementation of contract more costly compared to delivery close to own location;
10. Different kinds of required technical specifications, compared to the experience in their own member state (*the survey was conducted among EU member states);
11. Tax or social insurance differences leading to cost disadvantages.

Figure 3. Trend of home bias in government procurement over years



Source: Gourdon & Messent, 2017.

The same survey also shows that, compared to SMEs, large entities (>250 employees) participate more often in both public procurement tenders in general and direct cross-border public procurement in particular. What is more, high competition leads to lower success rates in public procurement tenders in general, and to lower participation and success in direct cross-border public procurement. In other words, businesses with fewer competitors bid more often cross-border. This is in line with the assumption that cross-border procurement is especially relevant for specialised goods/services/works, where there are only a limited number of potential suppliers, and is less relevant for commodities. Bearing these facts in mind, barriers to entry can be even higher for small- and medium sized enterprises.

This also corresponds with the analysis of the European Bank for Reconstruction and Development (EBRD, 2017) that comes with additional challenges SMEs have to face. The analysis is based on the examination of the public procurement market in Chile. The EBRD (2017) states the following challenges:

1. Very large contracts;
*As mentioned in chapter 2.2, international regulatory framework covers only procurement above certain financial thresholds, procurement below these thresholds are not regulated in this respect.
2. Insufficient access to information on business opportunities in public procurement;
*Information asymmetry can be also one of the reasons why the chances of SMEs on public procurement markets are lower. According to Neumannová & Štěrbová (2018a), there are not always single points of access for procurement notices, which also goes hand in hand with the fact that the notices are not always translated to one of the commonly used languages.
3. Lack of knowledge regarding public procurement procedures;
4. Excessive bureaucracy;
5. Limited experience in bidding;
6. Expensive standards and certification requirements;
7. Disproportionate levels of technical qualification;
8. Disproportionate levels of financial qualifications and incompatible payment terms;
9. Unclear tender requirements;
10. Lack of time to prepare bids;
11. Preference for lowest price tenders;
12. Centralization of public procurement contracts;
13. Lack of feedback from public buyers.

In other words, there are four categories of barriers – legal, complexity, access and capacity.

According to Neumannová and Štěrbová (2018b), one of the opportunities for SMEs consists in future work

programs of the World Trade Organization with regard to the Government Procurement Agreement. This would, however, also be conditioned by increasing the number of the GPA parties. Another opportunity can as well consist in creating synergies with regional trade agreements that usually deepen the commitments of their partner countries with regard to financial thresholds, covered entities and covered goods/services/works. Besides the commitments themselves, the RTAs often establish free online access through a single point to public procurement notices.

Cross-Border PPP Projects

International markets of PPP projects

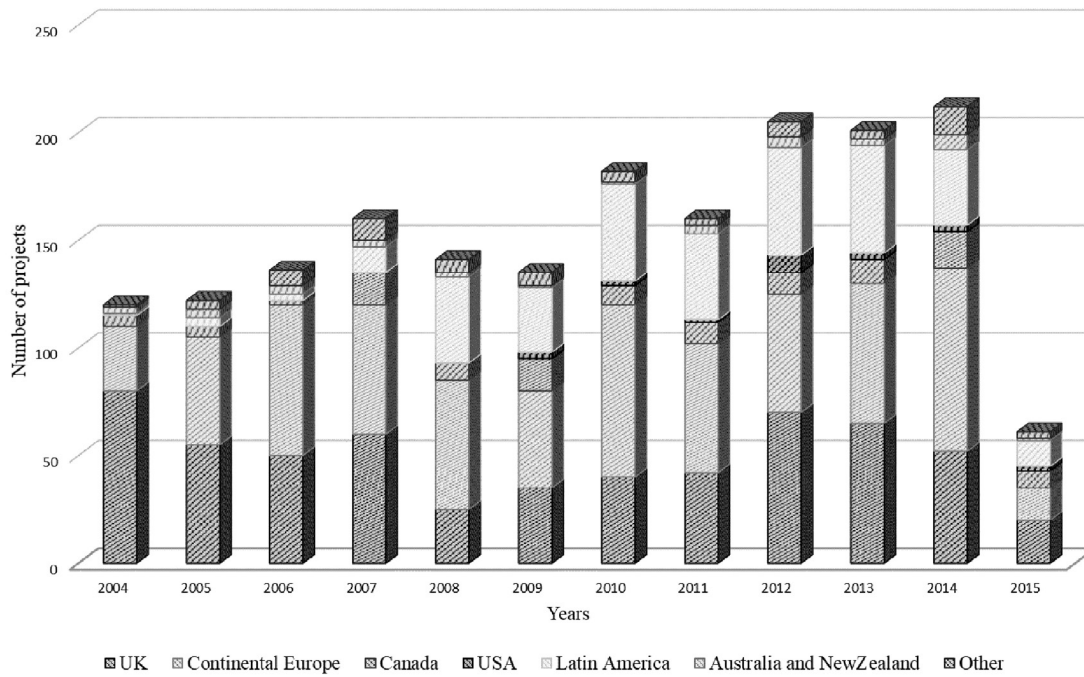
In a country with sustained underinvestment in infrastructure, economic competitiveness can suffer. The global “infrastructure gap” is so wide that closing it by 2030 will require an estimated US\$40 trillion to US\$50 trillion worldwide (E&Y, 2015). Therefore, it is very important to run infrastructure procurement right. One of the ways is a good combination of public procurement project with public-private partnerships (PPPs). Figure 4 shows the geographic spread of the PPP projects in the world.

The UK has long tradition in PPPs, the market is always adjusting to the new methods, and government actively supports its development. In continental Europe, beside the banks, the institutional investors are getting more initiatives that include government-sponsored credit enhancements toward longer-term debt solutions. Canada has an active financial market with government support at all levels, including efficient collaborative procurement. Australia belongs to the world’s pioneers in using the PPP model, the commercial banks, however, still over helm other forms of institutional investment. New Zealand is a small market, but PPPs are playing a constantly growing role with the full support of the government. In Latin America, some countries have been running the PPP programs for more than two decades, however, poor management and unsophisticated legislation is a major challenge. The US has much potential, but it is resistant to using PPP for social infrastructure projects, as most benefits are seen rather in tax concessions and business-oriented projects, like transportation. Asia is expected to be one of the largest markets for infrastructure development over the next decade, and PPPs seem to be widely accepted concept. In Africa, PPPs face significant constraints, as limited financial markets, inadequate legal and regulatory frameworks, an absence of technical skills, and political and national risks.

Typical examples of implementation through PPP are projects in the fields of transport infrastructure (highways, tunnels, bridges, high-speed), administrative possibly (accommodation capacities like offices, courts, dormitories, administrative facilities, prisons), healthcare (hospital,

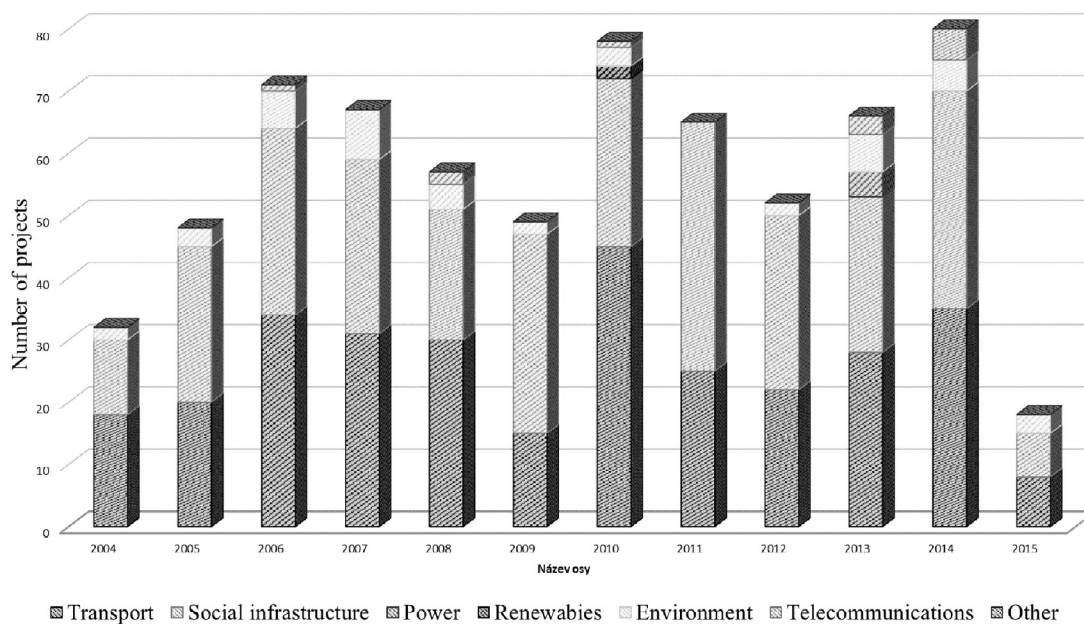
supply facilities), education (university complexes, dormitories, schools), defence (equipment, special infrastructure) and utilities (water supply). Figure 5 shows the sectoral spread of the PPP projects in the Continental Europe.

Figure 4. Number of PPP projects by regions - global



Source: E&Y, 2015.

Figure 5. Number of PPP projects by sectors – Continental Europe

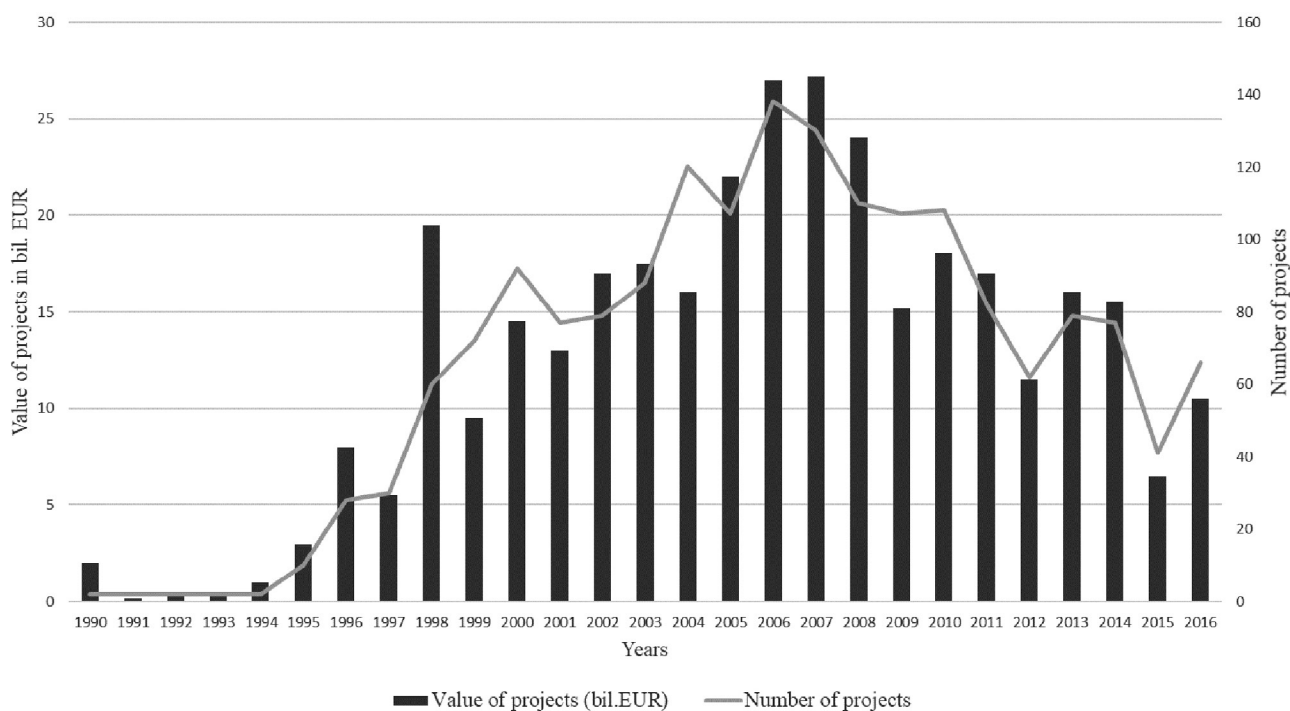


Source: E&Y, 2015.

In terms of the number of PPP projects and their monetary value, there was an increasing growth from 1990s to 2007, followed by a decreasing trend that lasted until 2016. Figure 6 shows the year-by-year development within this period.

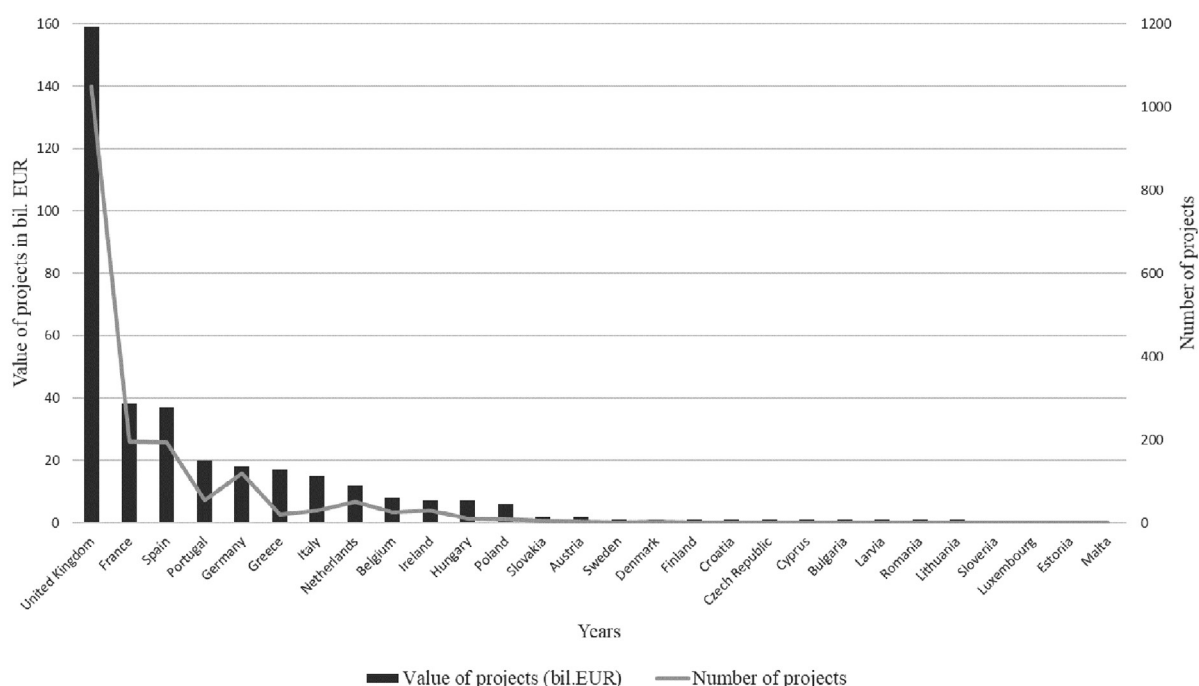
From territorial point of view, the United Kingdom exceeds all other European countries extensively, followed by France, Spain, Portugal and Germany. The smallest number of PPP projects can be seen in Central Europe, Balkan Countries and the Baltic States. Figure 7 shows the overview of the number of projects in Europe in 1990-2016.

Figure 6. The European Union PPP market development from 1990 to 2016



Source: European Court of Auditors, 2018.

Figure 7. The European Union PPP market per countries from 1990 to 2016



Source: European Court of Auditors, 2018.

International regulatory framework

Cross border PPP is not regulated by any multilateral agreement that would provide its principles, rules and conditions. PPP should respect the legislation of the host country that may decide either to enact a specific PPP law or to regulate PPP by other types of legal acts, for example by the governmental procurement law. A specific PPP law gives priority over laws regulating individual sectors, as does the regulation on governmental procurement. In such cases, very often the process of developing, procuring, implementing and reviewing PPP projects is related to an establishment of a clear institutional framework. Even if an international agreement on PPP does not exist, there are still international guidelines that can help each government in the guidance of PPP and laws drafting.

The mentioned international guidelines are provided by United Nations Commission on International Trade Law (UNCITRAL), European Bank for Reconstruction and Development (EBRD) or Organization of Cooperation and Development (OECD). We find also references to PPP in UNIDO Build Operate Transfer (BOT) guidelines. As a matter of fact, the suggested guidelines are respected by individual governments if they decide to do so.

The UNCITRAL's Legislative Guide on Privately Funded Infrastructure Projects of 2000 (UN, 2001) provides legislative recommendations to governments with an aim to clarify and explain the principles of the PPP and to establish a legal framework that would support the participation of private subjects in infrastructure projects. It is namely recommended that the regulation ensures transparency, fairness and long-term sustainability, and eliminates unnecessary restrictions on private sector participation. The Guide also refers to financial, regulatory, legal, policy and other aspects of PPP. The recommendations address the concerns that may arise, namely by private sector when participating in PPP, and offer advice on adequate governmental economic and financial assistance, administrative structures, authorities, practices, organizational capacities, expertise, human resources, and financial and economic stability. A model of suggested legislative provisions is a part of the Guide.

ECRD defined in 2005 a set of principles that should be followed in PPP. The principles are in compliance with the guidelines provided by UNCITRAL, however are aimed more on results that have to be achieved and do not concentrate on the process. They reflect international standards and best practices in order that the foreign private subjects can consider them in their decision to invest into projects in the host country. They are based on transparency and fairness, accessibility of rules and procedures, and aimed

at providing a stable and predictable legal framework. The protection of investors as well as of the public sector are their main goals, through negotiability of PPP agreements and enforceability of them. The principles, even if they are not exhaustive, lead governments to the identification of a need of economic and legal reforms that should be accomplished in order to benefit from PPP.

The ECRD principles were drafted also based on the European Union papers and legislation, in concrete European Commission Interpretive Communication on Concessions under Community Law (2000/C 121/02), European Commission Guidelines for Successful Public-Private Partnerships (2003) and European Commission Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions (2004).

Other guidelines in the PPP are OECD Principles for Public Governance of Public-Private Partnership. According to the OECD, "the Public-Private Partnerships (PPPs) are long term agreements between the government and a private partner whereby the private partner delivers and funds public services using a capital asset, sharing the associated risks. PPPs may deliver public services both with regards to infrastructure assets (such as bridges, roads) and social assets (such as hospitals, utilities, prisons)" (OECD, 2012). The implementation of the OECD guidelines would ensure that the public sector benefit from PPP and that bad projects are not developed. The objectives of the 12 principles are to establish a clear, predictable and legitimate institutional framework and competent authorities while using a transparent budgetary process that would minimize fiscal risks and would ensure the integrity of the procurement process.

Opportunities and barriers to entry for EU businesses

To analyse the opportunities and barriers to entry, the authors examine the Czech PPP project market.

There is a high demand for PPP in the Czech Republic. The main reason is a deficiency in public finances, high share of social spending which reduces public investments and the fact that reduction of mandatory government expenses is unpopular, so PPP projects appear to be a welcome solution (MFČR, 2004).

However, compared to OECD countries, the PPP projects in the Czech Republic are quite exceptional. What is the cause?

The private sector in the Czech Republic is considered as unacceptably risky, particularly for the PPP projects (Transparency International, 2010).

According to the Czech legislation, the terms of PPP projects are not created only for the period of construction, in case of a building, but also for the period of operation of the works and services which extends the time frame to up to 20-30 years. The preparation of the PPP project requires a sustainable consensus relative to the way the project responds to the public interest, splits the risks associated with its financing and relates revenues and operating costs for its sustainability. The condition is therefore a consensus across political representation that is very difficult in the Czech Republic to achieve, and usually does not coincide with the length of one electoral term (BusinessInfo, 2017).

The cost of the PPP project is usually passed on to the user in the form of payments for services, but also to the public sector and its budget. In this context, political representation is usually faced with criticism from the opposition, and sometimes from the public. There is a general reluctance from the authorities to provide the information due to commercial secrets. In many cases, the increase in transaction costs (e.g. external consultants, monitoring) for the projects exceeds the decrease in production costs, therefore the PPP implementation is not viable (Ostřížek, 2010).

Government contracting authorities have neither a strategy nor a methodology how to use the PPP. They are not able to define the requirements for the outputs, and they have no idea about the impact on the state budget deficit and the country's total debt (Sýkorová, 2009).

Additional political support for the PPP projects in the Czech Republic, and if the public sector is willing to use their potential, is a prerequisite for them to become a valid and functional tool to ensure the necessary public services and infrastructure.

Comparison and Synergies of Traditional Procurement and PPP Projects

The public sector in the Czech Republic at present struggles with the problem of ensuring the financing of the necessary investment needs and not increasing the debt of the state (Němec, 2018). This issue also raises the question of the effectiveness of investment projects in the public sector. This can be ensured by the optimal form of cooperation between public and private sectors, where each of the partners ensures maximum efficiency and economic profitability.

PPP stands for public and private sector partnership, resulting from the English term "Public Private Partnership". It is also possible to use the designation PFI – "Public Finance Initiative" (Lexis, n.d.).

The basic characteristics of the PPP projects are:

- Scope of the projects (costs of implementing reach from the tens of millions to several billions)
- Long term (the tens of years)
- Participation of private capital in the funding of the project
- Division of risks between contracting partners (with respect to the ability to control these risks)
- Evaluation of the cost and revenue of the whole project life-cycle
- Measurable outputs based on the objectives, benefits and transaction cost of running the project

The strengths of the PPP projects:

- a) Value for money – the obligation to conduct a comparison of the advantages compared to standard public procurement projects.
- b) The state contractor has the only single counterparty that is responsible for the entire project.
- c) Each party shall bear the risks that they can better manage. The main risks (design, construction, operation, demand risk...) are in part or entirely transferred to the private partner throughout the whole duration of the project.
- d) The involvement of the private partner to provide the motivation to upgrade the agreed service as efficiently as possible, and the resulting effort used to project the best know-how and innovation.
- e) The sponsor provides the payments at the very end of the projects and considers the final assessment of the delivery agreed by both parties.

The weaknesses of the PPP projects:

- a) The considerable complexity of the preparation of the PPP projects.
- b) Lower flexibility of the PPP projects as they are concluded for a long period of time (typically 20-30 years).
- c) The assumption of a competitive environment – in case of lack of competition when entering the PPP project, the offers can become disadvantageous for the sponsors.
- d) The projects where operating costs are substantially lower than the cost of the investment are not ideal for the PPP as they offer only limited scope for innovation of the private partner.

The strengths of the Public Procurement projects:

- a) The public sector has extensive experience with public procurement and is able to use it without difficulty.
- b) The process of entering and execution of public procurement projects is not that much regulated by the government as in case of the PPP, the entire process is less administratively demanding.
- c) Public procurement projects are typically bound to a relatively short period, therefore, its preparatory phase as compared to the PPP is noticeably shorter.

The weaknesses of the Public Procurement projects:

- a) The main risks (projection, production, risk demand...) remain on the side of the public sector.
- b) There has been a massive crossing of the planned costs of the construction within the public procurement projects.
- c) It is common in the Czech Republic that there is a frequent crossing of the planned schedule of construction.
- d) The contracting authority is gradually assigning work to various sub-contractors, which brings an additional risk.
- e) Cash flow of the project – the sponsor must have the financial resources available, covering the total investment cost of the project, at its beginning. For the contracting entity, it might generate a considerable financial burden, concentrated into a short period.

The involvement of the private partner in the project (ideally from the preparatory phase to the final implementation of operation of the project) usually brings valuable know-how and innovation that result in a higher value for money, and greater efficiency of project implementation and the quality of service being delivered. The public sector using the PPP will ensure a more efficient control over the cost and better future projects, aspects of the distribution of risks and greater transparency compared to the traditional public procurement contract.

With regard to the presented comparison of traditional procurement and PPP, the authors observe that these two types of procurement evince a lot of differences. The strengths of traditional procurement tend to be the weaknesses of PPP, and vice versa. Therefore, these two types of procurement are not interchangeable, and both also have an indisputable role for government purchases; both types should complement each other, not compete with each other. The long-term goal of public entities should consist in being able to distinguish and identify from which type of procurement they can profit more (not only economically, but also with regard to innovations, time of delivery, etc.) for every concrete purchase. Whereas the traditional procurement can be a tool of supporting SMEs, PPPs are extensive projects taking a

longer period of time – they, however, open up opportunities for cooperation of the main contractor with various subcontractors (even though the government has only one single counterparty).

Even though there is no multilateral agreement for PPPs, such as the Government Procurement Agreement for traditional procurement, the WTO in its negotiations to revise the GPA agreed to undertake a future work program related to PPPs. What is more, three GPA parties already added certain types of PPPs to their coverage under the revised GPA – namely, work concessions in the European Union, construction projects under the Private Finance Initiative in Japan and BOT (*build-operate-transfer*) contracts in South Korea.

Conclusion

Procurement of goods, services and works by public entities accounts for a significant part of the world economy. Governments or other covered public agencies have several ways how to procure – the two main procurement types are traditional public procurement and public private partnership projects. Traditional procurement is a standard tool used by governments to fulfill their goals; governments can use this tool for favouring their domestic industries as well, which corresponds with the growing home bias. Calling for openness of the international public procurement markets, however, led to the establishment of a regulatory framework by the Government Procurement Agreement under the auspices of the World Trade Organization. When entering international procurement markets, businesses have to face barriers similar to barriers on B2C or B2B markets but there are also additional barriers specific for traditional procurement.

Public private partnership is a tool that is not so commonly used in comparison with traditional procurement. Nevertheless, PPPs offer a unique opportunity, especially in case of complex, long lasting projects. The analysis shows that there are barriers to PPPs, mainly for governments because of the complexity and complicatedness of these projects – this applies to several particular countries, including the Czech Republic. On the other hand, the involvement of a private partner can lead to a relatively extensive use of new technologies and best possible know-how; also, the payment is provided at the end of the project. Even though there is no multi- or plurilateral agreement on PPPs, there is a future work program on how to include PPPs in the existing GPA.

The two analysed types of procurement – traditional procurement and PPPs – are not interchangeable and have an indisputable role for government purchases; both types should complement each other, not compete with each other.

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Tradicionalna javna naročila in javno-zasebno partnerstvo: primerjava in sinergije z osredotočanjem na čezmejne pogodbe

Izvleček

Vladne nabave so pomemben del svetovnega gospodarstva. Prodajanje javnemu sektorju je ključna poslovna dejavnost za nekatere industrije ali ponudnike storitev. Privlačnost segmenta javnih naročil izražajo tudi varnost plačil in velike količine dobav. Z globalizacijo kot svetovnim pojavom podjetja ne računajo samo na domače institucije; vstopajo lahko tudi na mednarodne trge B2G. Vendar pa je zmožnost zasebnih podjetij, da poslujejo s tujimi vlada, omejena z raznovrstno nacionalno zakonodajo, saj vlade uvajajo regulative javnih naročil glede na njihove nacionalne interese. V tem članku avtorji analizirajo dva ključna tipa javnih naročil – tradicionalnega in javno-zasebno partnerstvo, z vidikov nedavnih razvojnih trendov, mednarodnega regulativnega okvira ter priložnosti in ovir za vstop evropskih podjetij. Ključni cilj prispevka je definirati ključne razlike in mogoče sinergije tradicionalnih javnih naročil in javno-zasebnega partnerstva z osredotočanjem na čezmejne pogodbe. Ta članek je mogoče obravnavati kot uporabnega za podjetja, akademsko skupnost, kot tudi za javni sektor.

Ključne besede: javna naročila, javno-zasebno partnerstvo, čezmejne pogodbe, čezmejni razpisi