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# How the public sector buys small things: direct procurement in the European Union and the opportunities for the Social Economy organizations

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**ABSTRACT:** Direct (or low value) procurement can foster the participation of SMEs in public procurement. However, although they all come from the same Directive, a review of the national legislations shows that there is not a common model for this type of procedures. The thresholds in the national legislations vary without a visible explanation for it. To assess if countries can be grouped a hierarchical analysis was performed. Meanwhile, to research whether economic and social factor can influence the establishment of different conditions for direct public procurement in each Member State a regression model was applied. The results contradict the widely proclaimed intention of promoting SMEs in public procurement, since there is not direct relation between the percentage of SMEs in the economic fabric and the thresholds for the contracts. The limitations on direct procurement have probably more to do with cultural reasons and legislative traditions than with economic and social factors. Higher thresholds and specially the differentiation for, social services that present some Member States could be an opportunity for social entities. The legislative modifications of several countries point in the direction of favoring a minimum number of competitors. The study shows that noticeable divergences can be found in the way Member States regulate direct procurement, contrary to the convergency that can be observed generally in the field of public procurement.

**KEYWORDS:** Public procurement, SMEs, European Union, direct procurement, Social Economy.

**ECONLIT DESCRIPTORS:** H4, H5, H57.

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**RESUMEN:** La contratación directa (o de bajo valor) puede fomentar la participación de las PYME en la contratación pública. Sin embargo, aunque todas provienen de la misma Directiva, una revisión de las legislaciones nacionales muestra que no existe un modelo común para este tipo de procedimientos. Los umbrales en las legislaciones nacionales varían sin una explicación visible para ello. Para evaluar si los países se pueden agrupar, se realizó un análisis jerárquico. Mientras tanto, para investigar si los factores económicos y sociales pueden influir en el establecimiento de diferentes condiciones para la contratación pública directa en cada Estado miembro, se aplicó un modelo de regresión. Los resultados contradicen la intención ampliamente proclamada de potenciar a las pymes en la contratación pública, ya que no existe una relación directa entre el porcentaje de pymes en el tejido económico y los umbrales de contratación directa. Las limitaciones probablemente tengan más que ver con razones culturales y tradiciones legislativas que con factores económicos y sociales. Los umbrales más altos y especialmente la diferenciación por servicios sociales que presentan algunos Estados Miembro podría ser una oportunidad para las entidades sociales. Las modificaciones legislativas de varios países apuntan en la dirección de favorecer un número mínimo de competidores. El estudio muestra que se pueden encontrar divergencias notables en la forma en que los Estados miembros regulan la contratación directa, contrariamente a la convergencia que se puede observar en general en el ámbito de la contratación pública.

**PALABRAS CLAVE:** Contratación pública, pymes, Unión Europea, contratación menor, Economía Social.

## Resumen extendido

# Cómo el sector público compra cosas pequeñas: los contratos menores en la Unión Europea y las oportunidades para las entidades de Economía Social

La necesidad de agilización de la compra pública ya era perentoria antes de que la pandemia pusiera aún más de manifiesto que los sistemas de contratación adolecen en muchos casos de la rapidez necesaria para hacer frente a las necesidades de las administraciones públicas. La contratación directa (denominada “menor” en España) ha sido usada – y abusada en no pocas ocasiones – como mecanismo para disminuir esos procedimientos burocráticos.

Sin embargo, a pesar de su mala fama, este tipo de contratos puede constituir una buena manera para que las pymes, en especial las pequeñas y microempresas, puedan acceder a la contratación sin tener que seguir la carrera de obstáculos en las que muchas veces se convierten las licitaciones. Este tipo de procedimiento también puede favorecer a las entidades de la Economía Social, cuyo fomento aparece como uno de los objetivos de, entre otras, la Ley 9/2017 de Contratos del Sector Público.

A pesar de tener un corpus legislativo común de referencia, las Directivas de 2014, los Estados Miembro tienen mayor libertad para fijar los condicionantes de las compras públicas por debajo de los umbrales comunitarios. El objetivo de este trabajo es, por un lado, analizar si existen factores económicos y sociales que puedan explicar las diferencias entre la regulación para la contratación directa en la Unión Europea. Por el otro, identificar dónde existen mayores oportunidades para las entidades sociales para entrar en la compra pública en mejores condiciones.

Se realizó inicialmente una revisión de las 28 legislaciones nacionales que trasponían las Directivas 2014/24/UE y 2014/23/UE (incluyendo la de Reino Unido) y se definieron: los umbrales para la contratación directa, las diferencias – si existieran – por objeto contractual, y si se contemplaban separadamente los objetos del Anexo XIV de la Directiva 2014 relativos a servicios sociales, sanitarios y culturales. Este último punto se introdujo debido a que muchos sectores de trabajo tradicionales de las entidades de Economía Social están recogidos ahí.

Las variables elegidas para el análisis estadístico están referidas al tejido productivo, con especial atención al porcentaje y valor añadido que representan las pymes sobre el total, a los límites establecidos para obras, servicios y suministros, las condiciones económicas (PIB per cápita), condiciones políticas (año de acceso a la UE) y a la medición de la corrupción, que ha estado tradicionalmente (y desgraciadamente) asociada con la compra pública. Para esto último se usó el Índice de Percepción de la Corrupción (CPI) que calcula anualmente Transparencia Internacional.

Se llevó a cabo un análisis jerárquico utilizando esas variables, lo que dio como resultado cinco grupos. La agrupación se produjo en función de la existencia de años de acceso a la UE similares en un caso, umbrales de la contratación directa parecidos en otro, o una combinación de un alto PIB per cápita y elevados umbrales de compra directa. Cabe destacar que Alemania aparece como un caso extremo debido a la rara mezcla de bajos umbrales de contratación directa, si bien puede matizarse ya que los *Landers* pueden establecer umbrales más altos, con un alto PIB per cápita y una baja corrupción percibida.

Para identificar qué factores influyen en los umbrales de la compra directa, se tomaron esas mismas variables y se aplicaron dos modelos de regresión tomando como variables dependientes en primer lugar el límite de los contratos de servicios y suministros y en segundo lugar el de los contratos de obras. Los resultados son similares para ambos tipos de objeto contractual y muestran que una menor percepción de la corrupción (reflejado en un mayor CPI), un PIB per cápita más alto y un acceso más reciente a la UE normalmente tienen aparejados umbrales más altos a la contratación directa. Por su parte, y de manera contradictoria con el objetivo de fomentar a las pymes, cuanto mayor es la presencia de estas y su peso en el valor añadido del tejido productivo más bajos suelen ser esos umbrales.

Los resultados pueden resumirse en lo siguiente: la mayoría de países sigue el modelo de las directivas y establece límite mayores para los contratos de obras; la existencia de un menor corrupción percibida lleva por lo general a mayores umbrales para la contratación directa; los países que consideran los servicios del Anexo IV como un objeto diferenciado son minoría; el futuro de la contratación menor, como muestran las modificaciones legislativa de Portugal, Francia e Italia, parece ir más en la dirección de favorecer la competencia antes que la transparencia, estableciendo umbrales más altos ligados a un número mínimo de concurrentes.

Para las entidades de la Economía Social, el análisis puede ser útil a escala europea para identificar qué Estados miembros existen mejores oportunidades para acceder a la contratación pública por dos vías: porque tienen límites más altos para la contratación directa y porque consideran por separado los servicios sociales. Los resultados pueden ayudar en la labor de lobby de la Economía Social para lograr condiciones ventajosas en las licitaciones. Tener ejemplos de países que establecen un umbral mayor para servicios donde se concentra mucha de la actividad de las entidades puede contribuir a que esa variante se introduzca dónde ahora no se contempla, como por ejemplo en España.

¿Existe un modelo común en los Estados Miembro de la UE con respecto a la compra pública directa? La respuesta, teniendo en cuenta el análisis realizado, es que parece ser que **no**. Si bien las Directivas de 2014 constituyen un avance importante para la homogeneización de la compra pública, por debajo de los umbrales comunitarios todavía existe un importante campo de mejora para dar mayor seguridad jurídica a los operadores comunitarios.

Este estudio contribuye a la literatura existente al analizar, de manera pionera, las causas que han llevado a fijar los umbrales de la contratación directa. Este es también, según conocimiento de los autores, el primer estudio que hace una comparación de esta materia en la UE y explora las oportunidades que supone para la Economía Social. Las limitaciones del estudio se centran especialmente en la necesidad de un análisis más profundo del trabajo en la prác-

tica de la contratación pública directa. La inexistencia de datos más precisos sobre el uso de este tipo de procedimiento en los informes de los países enviados a la UE dificulta evaluar el impacto efectivo de las ofertas directas en los sistemas de contratación y evaluar cómo operan las pymes en ellos.

En un marco donde la Economía Social ha cobrado una relevancia sin precedentes en la UE, sobre todo a raíz de la aprobación del Plan de la Economía Social, un uso racional de la contratación directa, que es un procedimiento más sencillo, podría ser la puerta abierta para que el sector social comience a adquirir experiencia y fortalezca sus capacidades para luego enfrentar procesos más complejos en el futuro. Abrir esas oportunidades cobra especial relevancia de cara a la puesta en marcha de los Fondos de Recuperación, que se supone impulsarán la transición hacia un nuevo modelo de desarrollo que incluye muchas de las características que la Economía Social lleva aplicando desde hace muchos años.

# 1. Introduction

Public procurement has acquired a marked strategic character in the last decade (Guarnieri & Gomes, 2019) that has been further accentuated by the current health crisis and the subsequent social and economic crises. Among the different ways through which public procurement can help to overcome this situation and build an alternative development model is the increased participation of SMEs (Martínez Fernández, 2020). Related with that, Glas & EBig (2018) studied the factors influencing the success of the SMEs inside public procurement and conclude that, contrary to the logic of the 2014 Directives, a higher division in lots do not imply necessarily more success for the SMEs, which is more linked with the type of procedure. According to Loader (2015), this type of enterprises is under-represented in public procurement.

SMEs, which are most of the productive fabric, have more problems adapting to e-procurement (Alomar & de Visscher, 2017) and have a first approach to public procurement through direct procedures, which allow the award of contractual objects without the need for an open public tender. This kind of procedure has been perceived many times as a source of corruption to which it is convenient to put a 'fence' (Orquín Serrano, 2019) and as an obstacle to due transparency within public administrations (Pineda Nebot, 2019). However, it is no less true that, with correct control and execution, it could help strengthen the productive fabric, especially local.

Within that objective to foster local entities, the 24/2014/EU Directive on public procurement highlights the potential of social entities and recognizes that they must face more obstacles to access public procurement processes. Consequently, mechanisms like the reserved contracts have been developed in the last 15 years. According to Mendoza et al. (2019), social enterprises in Spain perceive opportunities for development and to increase social benefits through public procurement, albeit the intricate design of the bid documents was seen as one of the main obstacles.

Public procurement, especially with the consideration of sustainable criteria, is a form of supporting social economy (Morón, 2021). Public institutions must serve as example of sustainable practices (Erasuskin et al., 2017) and should increase social value of procurement (Bernal Uribarrena, 2020). Therefore, an analysis of the regulation of direct procurement in the different Member States could contribute to increase the knowledge of European social enterprises from the public employees, which, following the study of Pirvu & Clipici (2016), is one of the main gaps to be covered to increase social entities participation in procurement.

Direct procurement can also be a helpful tool in the pandemic situation, which has demanded from the public administration to 'navigate' in a whole new market (Goff et al. 2020) and has put the Member States in a difficult situation (Van Hecke, Fuhr & Wolfs, 2021) where procurement, according to McKee (2020, 1), 'has failed on a massive scale'. Therefore, there is a need to rethink and recalibrate procurement policies (Love et al., 2020), to achieve more efficiency (Wang et al., 2020) and to start measuring their impact (Gutiérrez et al., 2019). In the European Union, that has also been highly criticized because of the obscurity of the vaccines' procurement processes, the Public Procurement Directives leave small margins for the

Member States to regulate the contracts above the harmonized thresholds. However, below those limits, there is an opportunity to strategically impulse the participation of small business, especially social entities, and help preserving the employment and other positive factors they bring into local communities.

In this study the terms direct and low value procurement will be used as synonyms. It includes an analysis of the 28 national laws of the EU to evaluate which is the specific regulation on direct procurement on each of them. It begins with an analysis in the European institutions, starting from the community regulations. Next, the regulation of the Member States is compared based on three factors: whether there is a difference in the limit depending on the object of the contract, there is a specific regulation and the distinction of the services of Annex XIV of the 24/2014/EU Directive. Once this is done, a comparison among the different countries is offered carrying out a statistical and econometric analysis to assess if there are socio-economic variables that could explain the differences and similarities between countries when setting the limits for this type of procurement. After that, the future of direct contracting will be dealt with by reviewing the modifications, in force or close to being, in three Member States. The article ends with the conclusions and the bibliography used.

## 2. How do they do it in the EU? Direct procurement in the European institutions

Public procurement directives only regulate those contracts above the established thresholds and leave to Member States the decision about how to legislate below them. However, the own European institution must also legislate this field, which currently is done through the *Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012* (here in after Regulation).

As it can be seen in Table 1, the Regulation addresses the issue of contracts below the threshold in the point 14 of the Annex I and establishes four levels for the contracts: middle value, low value, very low value, and direct procurement.



**Table 1.** Contracts' regulation in the Regulation 2018/1046

| Type of contract   | Threshold                | Type of procurement   |
|--------------------|--------------------------|---|
| Middle value       | 60,000 € - EU thresholds | Negotiated procedure with at least 5 candidates               |
| Low value          | 15,000 – 60,000 €        | Negotiated procedure with at least 3 candidates               |
| Very low value     | 1,000 – 15,000 €         | Negotiated procurement without a minimum number of candidates |
| Direct procurement | 0 – 1,000 €              | Payment against invoices, no procurement needed               |

**Source:** Authors' elaboration from Regulation 2018/1046.

Therefore, the administrative effort needed for a procurement is adapted depending on the value of the contract. Thus, it seems to be a rationalization of the efforts that the administration should do linked to the value of the contract. The strategy is focused on the maximization of the competence, with the establishment of a minimum number of candidates at each level, more than in the transparency of the process.

## 3. Same tree, different branches. Direct procurement in the Member States

### 3.1. A general overview

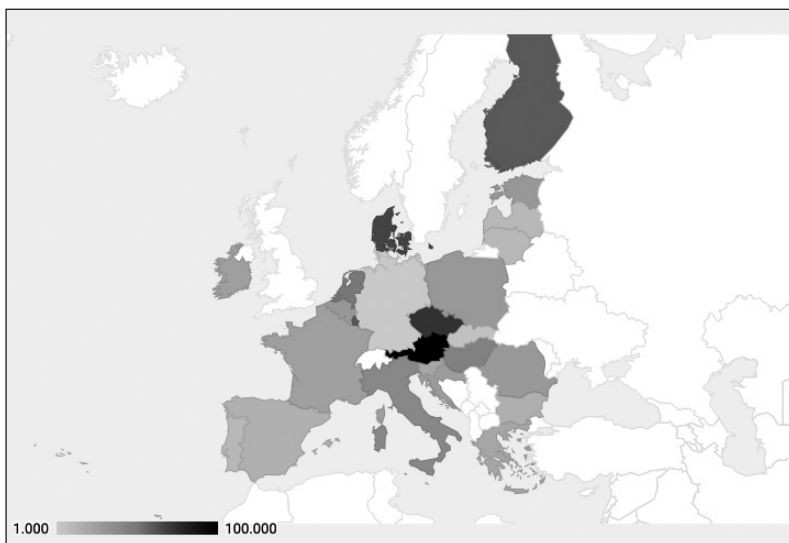
Public procurement has been studied as a tool against the cuts produced following the 2008 crisis (Sack & Sarter, 2018). Some of the problems it faces include how to balance the choice between the best and the cheapest offer remains (Hölzl et al., 2017), the excessive duration of the procedures (Placek et al., 2016) or how to determine the correct price in the bids (Nemec & Grega, 2015). Those issues are less severe in the case of direct procurement due to the lower value of the contracts and the simpler procedures they must go through.

A first overview of the practical implementation of these type of procedures in 28 legislations of the Member States regarding public procurement (the United Kingdom has been included) shows that there has not been a homogeneous transposition of the Directive 24/2014/EU. The data about the national regulations and limits of low value public procurement are shown in the Annex I, which also includes a reference to the part of the legislation that addresses it. A visual summary of the established thresholds for direct procurement can be found

in the Map 1. In there, the color of each country represents the average between the limits for direct procurements in services, goods and works, in a scale from dark blue for the lowest one (Germany) to orange for the highest one (Finland and Austria).

As it can be seen in the map, the limits for this kind of procurements varies from 1,000 to 105,000 €. The total average reaches 31,627.84 € for services and supplies and 44,152.08 € for works. Therefore, the proportion between limits is only 1,40, which is very low considering that the EU limit for works (5,335,000 €) is almost 25 times bigger than the limits for services and supplies (214,000 €).

### Map 1. Limits for direct procurement in the Member States in the European Union<sup>1</sup>



**Source:** Authors' elaboration.

## 3.2. The issue of corruption and public procurement

One possible explanation to the differences between limits of each Member States could be that the amounts are related to the perception of corruption in the countries. Corruption has been identified one of the main problems associated to public procurement in the OECD countries (Hessami, 2014) and has been mostly analyzed in the newest Member States of the Eu-

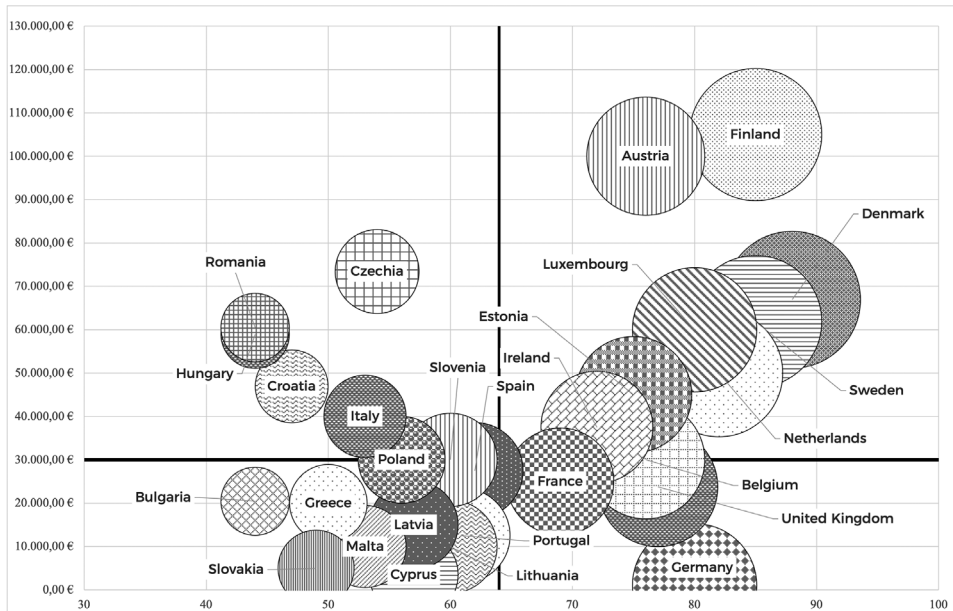
*1. An interactive version of the map can be found here.*

ropean Union like Romania (Neamtu & Dragos, 2014) and Bulgaria (Pashev, 2011). Precisely, the Bulgarian law makes specific reference to avoid the corruption in direct procurements (compelling to redact a contract no matter the amount).

From the internationally recognized indicators to measure corruption the Corruption Perceived Index (CPI), that is calculated yearly to measure the perceived corruption in the public sector in 180 countries according to the 2021 data, can be highlighted. The institution in charge of its calculation and display, Transparency International, “has served as a facilitator against corruption” (Kimeu, 2014, 1). The CPI includes data from 13 different sources, which must comply with several requirements to be considered, offered by 12 different institutions like the World Bank, the World Economic Forum, the African Development Bank, etc. The data from those sources is standardized and results in a 0-100 scale, being 0 the worst level of perceived corruption and 100 the ideal situation (Transparency International, 2021).

To assess whether those variables can be related, the limits of the direct procurement are measured against the values given in the CPI and are shown in figure 1. In the vertical axis is shown the average of the limits of direct procurement for the services, supply and in each country. The horizontal axis displays the CPI value, and the size of the bubble is referenced as well to that index to show the differences between Member States.

**Figure 1.** Limits of low value procurement and Corruption Perception Index



Source: Authors' elaboration.

A first overview shows that no relation can be directly extrapolated between the direct procurement limits and the perception of corruption. Although there are countries like Austria and Finland that present high CPI and limits, other like the UK, Belgium and specially Germany do not follow that model, while there are also countries in the bottom of the CPI classification, but which limits for public procurement are over the EU average.

### 3.3. How national legislations regulate direct procurement

To compare the legislation and find differences and similarities between Member States, three factors have been considered: whether there the threshold depends on the object of the contract, if there is a specific regulation in the national law and if there is a different limit for the services of Annex XVI of the 24/2014/EU Directive. Considering that, the Table 2 summarizes the results of the study.

**Table 2.** Characteristics of direct procurement regulation in the EU Member States

|     | Difference by object (countries and %) | Regulated in law (countries and %) | Attention to Annex XIV (countries and %) |
|-----|--|------------------------------------|--|
| Yes | 16 – 57,14 %                           | 14 – 50,00 %                       | 6 – 21,42 %                              |
| No  | 12 – 42,86 %                           | 14 – 50,00 %                       | 22 – 78,58%                              |

**Source:** Authors' elaboration.

Most of the countries differentiate the limits of direct procurement for services and goods on one side and works on the other. Most of the countries in this situation, except for Cyprus, has a bigger limit for public works than for other contractual objects, following the logic of the European legislation. On those countries with different thresholds, the amount established for direct procurement of works is 2,08 times bigger than for services and goods. Five Member States are above that ratio, with Romania, United Kingdom, and Spain in the first three position. On the bottom of the list are Cyprus and Portugal.

Regarding the second factor, the presence of specific regulation in the national law of direct procurement, half of the countries have adopted a similar strategy to the EU directives, meaning that they have set in the legislation that this only applies above certain amounts and let more freedom to the public buyers to organize themselves below them. From the countries that specifically regulate direct procurement, Spain together with Greece are probably the two of them that have the more detailed legislation. In the case of Spain, contracts subject to that type of procurement are limited to one year, which is not present in the rest of the Member

States' legislation except for Malta that establishes that very small amount contracts (500 € or less) cannot sum more than 5,000 € in a year.

Some Member States do also provide additional regulation in the shape of Public Procurement guides or strategies that focus on those contracts below the threshold. Specially interesting is the Public Procurement Guide from Ireland that sets a comprehensible scheme for procurement depending on their value. For procurements of 5,000 € or less, a verbal offer is enough, while for contracts between 5,000 and 25,000 € it is required to ask for three offers by e-mail (Office of Government procurement, 2019).

Finally, only six Member States set different limits for direct procurement on the contractual objects under the Annex XIV of the EU Directive. Those objects refer to social and other specific services that the EU regulation consider that might have less transnational interest than the regular services. Because of that, the community thresholds for those services more than triple the regular one (750,000 € vs 214,000 €). However, that special nature seems to not have been considered by most of the countries. For those Member States with a separate category, two of them, Hungary and Slovenia allow direct procurement up to the EU threshold, while Estonia and Finland differentiate between the services inside the Annex XIV and determine different thresholds depending on their category. Finally, Bulgaria and Sweden set the same amount for all the services of the Annex.

Having different, and higher, thresholds for this type of services might result in an opportunity for Social Economy entities since many of the work they do would fall in the scope of the Annex IV. Therefore, in the six countries that distinguish those services the organizations could have a higher chance to achieve contracts with higher budget without having to compete in the open market.

## 4. Is there a common model? Variables influencing direct procurement in the EU

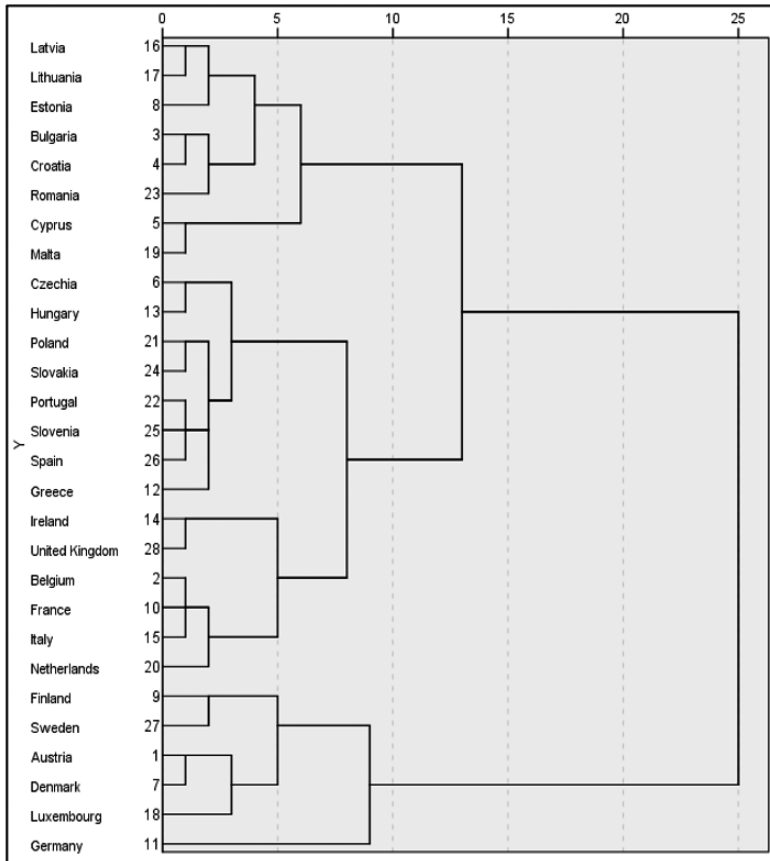
On the last section an overview of the situation of low value procurement within the member states has been provided. In this section, we intend to go one step forward and to carry out and statistical and econometric analysis to assess if there are socio-economic variables that could explain the differences and similarities between countries when setting the limits for this type of procurement. The variables for the analysis can be seen in table 3.

**Table 3.** Variables considered, definitions and sources

| Name of the variable | Definition   | Source  |
|----------------------|--|---|
| Limit Services       | Limit of the estimated value of the service and supply contracts established by the national tender for direct contracting | National legislations (see Annex I)   |
| Limit Work           | Limit of the estimated value of the works contract established by the national tender for direct contracting               | National legislations (see Annex I)   |
| CorruptionIndex      | Perceived corruption index according to the classification offered annually by Transparency International                  | Transparency International <a href="https://www.transparency.org/en/cpi/2020/index/nzl">https://www.transparency.org/en/cpi/2020/index/nzl</a>  |
| GDPpercapita         | Total GDP / no. Of inhabitants   | Eurostat – GDP per capita dataset <a href="https://ec.europa.eu/eurostat/web/products-datasets/-/sdg_08_10">https://ec.europa.eu/eurostat/web/products-datasets/-/sdg_08_10</a>   |
| Yearofaccession      | Official year of entry of the country into the European Union or its equivalent before its existence                       | European Parliament <a href="https://www.europarl.europa.eu/factsheets/en/sheet/167/the-enlargement-of-the-union">https://www.europarl.europa.eu/factsheets/en/sheet/167/the-enlargement-of-the-union</a>                                     |
| % Micro              | Percentage of micro companies (0-9 employees) over the total number of companies in the country                            | Eurostat – SMES dataset <a href="https://ec.europa.eu/eurostat/web/structural-business-statistics/small-and-medium-sized-enterprises">https://ec.europa.eu/eurostat/web/structural-business-statistics/small-and-medium-sized-enterprises</a> |
| % Small              | Percentage of small companies (10-49 employees) over the total number of companies in the country                          | Eurostat – SMES dataset <a href="https://ec.europa.eu/eurostat/web/structural-business-statistics/small-and-medium-sized-enterprises">https://ec.europa.eu/eurostat/web/structural-business-statistics/small-and-medium-sized-enterprises</a> |
| % Medium             | Percentage of medium-sized companies (50-249 employees) over the total number of companies in the country                  | Eurostat – SMES dataset <a href="https://ec.europa.eu/eurostat/web/structural-business-statistics/small-and-medium-sized-enterprises">https://ec.europa.eu/eurostat/web/structural-business-statistics/small-and-medium-sized-enterprises</a> |
| % Value micro        | Percentage of total added value represented by the added value generated by micro-enterprises                              | Eurostat – SMES dataset <a href="https://ec.europa.eu/eurostat/web/structural-business-statistics/small-and-medium-sized-enterprises">https://ec.europa.eu/eurostat/web/structural-business-statistics/small-and-medium-sized-enterprises</a> |
| % Value small        | Percentage of total added value represented by the added value generated by small companies                                | Eurostat – SMES dataset <a href="https://ec.europa.eu/eurostat/web/structural-business-statistics/small-and-medium-sized-enterprises">https://ec.europa.eu/eurostat/web/structural-business-statistics/small-and-medium-sized-enterprises</a> |
| % Value medium       | Percentage of total added value represented by the added value generated by medium-sized companies                         | Eurostat – SMES dataset <a href="https://ec.europa.eu/eurostat/web/structural-business-statistics/small-and-medium-sized-enterprises">https://ec.europa.eu/eurostat/web/structural-business-statistics/small-and-medium-sized-enterprises</a> |

**Source:** Authors' elaboration.

**Figure 2.** Dendrogram from the application of a hierarchical cluster analysis



**Source:** Authors' elaboration. Statistical software IBM SPSS Statistics. Version 22.0.0.0.

Considering those variables, a hierarchical cluster analysis is carried out (method of Ward) over the countries of the European Union and from the squared Euclidean distance matrix. Figure 2 shows the dendrogram resulting from the cluster analysis. At its sixth level of distance, the homogeneous groups of countries in terms of the variables considered were those shown in Table 4. Although to determine the most influential factors of the groups resulting from the cluster analysis, it is usual to perform an Analysis Factorial, which reduces the information provided by the variables by generating a smaller number of factors, the Factorial Analysis has not been finally executed because its value for the Kaiser-Meyer-Olkin measure of sample adequacy to apply it was 0.408, which it is indicative that its application is not appropriate since

the original variables do not show high correlations with each other and it would not justify their reduction in a smaller number of factors.

**Table 4.** Homogeneous groups of countries. Results from a hierarchical cluster analysis

| GROUP  | Motive for grouping   |
|--|---|
| Group 1<br>Latvia, Lithuania, Estonia, Bulgaria, Romania, Croatia, Cyprus, Malta | Two factors can explain this group: the year of accession, since all of them entered the EU in 2004 or later and the GDP per capita that is below the average of the EU.  |
| Group 2<br>Czechia, Hungary, Poland, Slovakia, Slovenia, Portugal, Spain, Greece | This group is the more heterogeneous. Two common features of all the countries are that they are below the EU average in GDP per capita and, as well in the CPI index. There are no similarities in the limits for services and works since they vary from the 5.000 € for Slovakia to the almost 75.000 € for Czechia. |
| Group 3<br>Ireland, United Kingdom, Belgium, France, Italy, Netherlands          | This group includes countries with a medium high GDP per capita and average limits for services and works that ranks from 25.000 to 50.000 € (except for UK that is a little below that limit).   |
| Group 4<br>Finland, Sweden, Austria, Denmark, Luxembourg                         | This group seems to be due to a combination of higher limits for service and works, since all the 5 countries are in the top 10 of those variables, and high GDP per capita, with the same situation.   |
| Group 5<br>Germany   | Germany is an outlier with unique characteristics for public procurements since it combines the lowest limits for service and work with a strong CPI score and good economic data in terms of GDP per capita.   |

**Source:** Authors' elaboration from figure 2.

To evaluate to what extent each of the variables considered above influences the 'limit of services' or the 'limit of works', a regression model is proposed that is estimated by Ordinary Least Squares (OLS) using in this time from the Gretl econometric software (version 2021a). The results of the regression analysis for each of the two dependent variables considered are shown in Table 5.

The coefficients of the regressors included in both models were significant at the usual confidence levels, except for the variable GDPpercapita, which was at the limit of significance at 90% confidence and worsened the results of the joint analysis if it was excluded, and the variables % Valuemedium and % ValueSmall, which were not significant in any case and, therefore, it was decided to eliminate them from the regression models considered.



**Table 5.** Results of the estimated regression models

| Independent variable: Limits Services |             |          | Independent variable: Limit Works |             |          |
|---------------------------------------|-------------|----------|-----------------------------------|-------------|----------|
| Constant/Variable                     | Coefficient |          | Constant/Variable                 | Coefficient |          |
| Const                                 | 6.7364e+06  | *        | Const                             | 8.539e+06   |          |
| CorruptionIndex                       | 844.181     | *        | CorruptionIndex                   | 1,874.87    | ***      |
| GDPpercapita                          | 0.559467    |          | GDPpercapita                      | 0.697334    |          |
| Yearofaccesion                        | 707.696     | **       | Yearofaccesion                    | 1,741.28    | ***      |
| % Micro                               | -81,237.9   | **       | % Micro                           | -119,933    | **       |
| % Small                               | -83,433.5   | *        | % Small                           | -118,963    | *        |
| % Medium                              | -99,113.4   | *        | % Medium                          | -172,402    | **       |
| % Value micro                         | -2042.1     | *        | % Value micro                     | -3542.03    | **       |
| R2: 0,483638                          | *           | Sign 90% | R2: 0.5677168                     | *           | Sign 90% |
|                                       | **          | Sign 95% |                                   | **          | Sign 95% |
|                                       | ***         | Sign 99% |                                   | ***         | Sign 99% |

**Source:** Authors' elaboration. Econometric software: Gretl. Version 2021a.

Regarding the goodness of the fit, the values of the R2 coefficients were around 50% and 60% for 'limit of services' and 'limit of works', respectively. This is acceptable in a study such as the present one of cross-section, in addition to the fact that the objective of these models is mainly to observe the magnitude and sign of the relationship between the dependent variable and each of the independent variables, and not so much joint analysis or predictive purposes. In relation to this fundamental objective of the estimated regression models, the interpretation of the signs and magnitudes of the coefficients is very interesting.

The results of the regression model where the explained variable is Limit Services indicate that the higher the CorruptionIndex value, the higher the GDPpercapita value, and the higher the Yearofaccesion value, the higher the service limit in the country. Consequently, a country that is perceived as less corrupt (meaning that it has a higher CPI), is richer, and has more recently joining the European Union, raises his service limit. Specifically, for each point that the corruption index rises (lower degree of perceived corruption in the country), the services limit increases by 844.18 euros, for each euro that the GDP per capita rises, the services limit increases by 0.56 euros, and if one country acceded to the European Union one year later than another (increase of one unit in the Yearofaccesion variable) this increases the service limit by 707.70 euros.

In the opposite direction, the relationship between the limit of services and the variables related to the business structure of the country (%Micro, %Small, %Medium and %Value micro) is interpreted, observing an inverse relationship between them. Therefore, the higher the percentage of micro companies (from 0 to 9 employees), of small companies (from 10 to 49

employees) or medium-sized companies (from 50 to 249 employees), of the total number of companies in the country, or of the total added value that the added value that micro-companies generate, the lower is the limit of services imposed by the country.

The results when the explained variable is Limit Works are very similar to those obtained in the previous case. In fact, the higher the CorruptionIndex value, the higher the GPDpercapita value, and the higher the Yearofaccession value, the higher the works limit. Specifically, for each point that the corruption index rises, the works limit increases by 1,874.87 euros, for each euro that the GPDpercapita rises, the works limit increases by 0.697 euros, and for each increase of one unit in the variable Yearofaccession, the service limit increases by 1,741.28 euros. Similarly, an inverse relationship is observed between the limit of works and the variables for business structure. The higher the percentage of micro, small and medium-sized companies over the total. of companies in the country, or of the total added value that the added value generated by micro-companies, the lower the works limit established by the country. Specifically, an increase of one percentage point in the variables %Micro, % Small, %Medium and %Value micro also generates a reduction in the works limits that is higher than in the service limits.

## 5. Changes ahead: the reform of direct procurement in some countries

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The situation derived from the pandemic -and the monstrous task of managing recovery funds- has highlighted the need for greater agility in public procurement procedures, especially that related to health supplies (Armocida et al., 2020). The 'purchasing crisis' (Folliot Lalliot & Yukins 2020, 3) is produced by the need to solve a series of problems that may require 'deactivating' certain traditional precautions of public procurement (Sanchez-Graells, 2020).

A proposal for this greater agility, even at the risk of reducing transparency and control procedures, is to increase the limits of direct contracting to reduce the time and the number of procedures that must be carried out until the award is reached. of a contract. In this section, legislative modifications from three Member States that are in process (or already approved) and that may indicate future lines of work will be analyzed - which could later be consolidated as has happened with other modifications.

### 5.1. The Italian modification

Italy was among the first countries to introduce changes to its public procurement through legislative amendment. The Decree-Law of July 16, 2020, on urgent measures for simplification and digital innovation, which was subsequently validated by Law No. 120 of September 11, increases greatly the thresholds for direct contracting that, it should be remembered, they were at 40,000 € prior to the modification.

Article 2 of the law regulates the new ways in which Italian contracting authorities can award contracts below Community thresholds. Any contractual object can be awarded directly to those contracts with an estimated value of less than 150,000 € (except for services of an intellectual nature where the limit is 75,000 €). From there and up to the EU limits will depend on whether it is services and supplies or works. For the former, the invitation of five operators is required to carry out a negotiated procedure without advertising, considering a rotating criterion that also contains territorial diversity. The same applies to works between 150,000 and 350,000 €, increasing the requirement in the number of invitations to 10 for contracts up to one million euros and to 15 between that figure and the community thresholds.

It is, therefore, a considerable modification in the discretion capacity of the contracting authorities, which multiplies the current limits by almost 10 and whose consequences will have to be evaluated a posteriori.

## 5.2. The Portuguese modification

The proposed change in Portugal is still in the parliamentary process and is included in Law Proposal 41 / XVI / 1 (GOV) that establishes special public procurement measures and modifies the Public Contracts Code and the Process Code of the Administrative Courts.

Following the line of the Italian changes, article 2 increases the limit to carry out simplified direct adjustment procedures (where publication is not necessary) from 5,000 to 15,000 €. In addition, it establishes negotiations without advertising with an invitation to at least five entities for value-added contracts below the community thresholds. For these contracts, Article 11 exempts public entities from the obligation to divide into lots and from the justification for setting the base price.

However, article 12 also contains a series of limits to limit possible corrupt practices in the choice of companies that can participate in these new simplified procedures, which are as follows:

- For works and concessions, the company may not award contracts awarded by this procedure in the current year and the previous two for a value greater than 750,000 €.
- For supplies and services, the limit may not be higher than the community thresholds.

The Portuguese proposal combines strategies to streamline public procurement, increasing the direct award limits and introducing negotiated amounts based on less administrative requirements, with the introduction of control instruments that resemble those of other countries like the initially included in the widely contested and interpreted article 118.3 of the Spanish Procurement Law.

## 5.3. The French modification

France is another of the countries that has progressively introduced modifications as the health crisis has aggravated the situation in the country. The changes have been focused on

works contracts, without significant modifications having been made to other contractual objects. Decree 2020-893 of July 22 raised to 70,000 € without taxes the threshold below which works contracts can be signed without advertising or competition provided they are signed before July 10, 2021. In addition, for food products whose distribution it would have been interrupted by the health crisis, that limit increased to 100,000 €.

A step further has gone the bill for the Acceleration and Simplification of Public Action (ASAP) that is being discussed and has not yet been published. Within this project, it is stated that the limit for the celebration of works by direct award is increased to 100,000 €, provided they are celebrated before December 31, 2022. This time limit distinguishes France from the other two countries analyzed, as that importance has been given to the temporary nature of the measures that, in theory, will lose their validity once the crisis has been (hopefully) overcome.

## 6. Discussions

There are some traces that can help to explain similar characteristics from the analysis of the 28 national laws of the EU countries (including UK). First, it is common that the limits of the direct procurement follow the general trend for the procedures above the community threshold and the allowed estimated value is higher for works than for services and supplies, although a surprisingly number of countries applies the same limits to all the types of contracts.

Second, a lower perception of corruption in the country – reflected in a higher Perceived Corruption Index – leads to higher limits for direct procurement both in services and supplies and works. Although Germany can be pointed out as an outlier in this aspect, the general trend would confirm that relationship. Third, the combination between the year of accession and the level of GDP per capita seems to be a good factor to organize the countries of the EU into similar groups when analyzing how the limits for direct procurement are established.

Fourth, social services under the annex XIV of the 2014/24/EU directive are rarely conceived as a separate object, and only six countries have different limits for them. Finally, the business' structure into small, medium, and big seems to have a contradictory influence on how the countries have considered to set their limits for direct procurement. Being this type of contract normally the door through which SMEs access to work with the public sector, the results obtained reflecting that the higher the percentage of SMEs the lower the limits for direct procurement do not follow the mandate of the EU Directives, and of most of the national laws, about favoring the participation of the SMEs in public procurement.

For the social economy entities, the analysis can help them identify with Member States present better opportunities to access public procurement in two ways: because they have higher limits for direct procurement and because they consider separately social services that have constituted the traditional field of work of many social organizations. The comparative results can also be helpful to negotiate with national government and achieve better legal conditions for direct procurement.

The path for the future that has marked the three countries analyzed, France, Italy, and Portugal, seems to be more focused on favored the competition within the public bids than in the publicity of those, than to the traditional conception of public procurement in countries like Spain. A further analysis of modifications affecting public procurement, especially on the effort to 'absorb' the incoming funds from the European Recovery Plan, would show more in detail whether the rest of the countries follow also that scheme.

## 7. Conclusions

According to the findings, the answer to the question: is there a common model for direct procurement in the EU? seems to be, according to the results obtained, a resounding no. The regulation of the direct procurement in the different national legislation adopts a variety of shapes that has probably more to do with cultural reasons and legislative traditions than with economic and social factors. Consequently, in the existing legislative framework of the EU where most of the legislation tend to converge starting from the directives, the regulation of direct public procurement seems to be an exception. This opens a field for future collaboration among the countries to find common solutions that can guarantee both the necessary legal security but also avoid the bureaucratic overweight that has traditionally accompanied public procurement.

Regarding the contribution to the existing literature, this is the first study, to the authors' knowledge, that explore the socio-economic reasons of the set of the limits for direct procurement on the EU. The results obtained can shed light into how this type of procurement, that has been frequently accused of being obscure and against the general principles of the EU, has been adopted into each country and the possible reasons for that.

For public administration, the findings of the analysis carried out can show how they are positioned within the European Union framework, and which has been the solutions those other countries, with similar economic structures or common geographical characteristics, have adopted to face a similar problem: how to deal with small expenditures in a fast but also reliable way. This could be useful for the incoming reforms in the field of public procurement, which, is not to be forgotten, represents almost a 18% of the GDP of the EU countries and has been tensioned by the necessity to act 'as quick as possible in response to the pandemic' (Beuter, 2020, 1).

The Action Plan for the Social Economy from the European Commission addresses the problems of social entities to access public procurement, such as the lack of visibility and the lack of experience (European Commission, 2021). A rational use of direct procurement, which is a simpler procedure, could be the open door for the social sector to start gaining experience and strength their capacities to later face more complex processes in the future. Opening those opportunities is especially relevant in the face of the implementation of the Recovery Funds, which are supposed to impulse the transition towards a new development model, that includes many of the characteristics that the social economy has already in place for many years.

The limitations of the study are centered specially in the need of a deeper analysis of the work in practice of direct public procurement. The inexistence of more accurate data on the use of this type of procedure in the countries reports sent to the EU difficults to evaluate the effective impact of direct bids into the procurement systems and to assess how the SMEs operate into them. In addition, a more qualitative analysis pointed at variables such as: satisfaction of operators and buyers, perception of the society on procurement, etc. could add value to this quantitative study.

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