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PUBLIC PROCUREMENT IN BULGARIA: DO WE GET VALUE FOR THE TAXPAYER'S MONEY?

ABSTRACT

The article provides insights of the public procurement practices in Bulgaria within the European Union context. Through an examination of key indicators, trends, and challenges, the study offers a general understanding on how public procurement generates value for the taxpayers' money with focus on competition. While Bulgaria demonstrates a strong commitment to transparency, challenges persist on national level, aligned with the overall regional trends. The prevalence of single bidding in certain sectors and negotiated procedures without open competition highlights key areas for improvement. Policymakers and stakeholders could enhance competitiveness and fairness in procurement practices, ultimately driving better outcomes for citizens and promoting sustainable development by prioritization targeted interventions and leveraging the available data.

KEYWORDS: public procurement, competitiveness, value-for-money, scoreboard indicators, transparency

JEL: H57, H60

INTRODUCTION

One of the key elements that the New public management introduced into the public sector is competition with the goal to foster efficiency, effectiveness, innovation and to maximize the value-for-money (VfM) proposition for the taxpayers. By inciting competition, the intention was to stimulate public agencies and departments to streamline processes, minimize wastage, and ultimately deliver higher-quality services at optimal costs, thereby ensuring that taxpayers receive optimal returns on their investment in public services. Competition is also a key element when the public entities need to acquire goods, services, and works from private sector suppliers. This process – public procurement, represents a is a vital component of government operations worldwide. It significantly influences economic development and resource allocation within a country and at present is used as a strategic tool for policy implementation.

In the European Union, the member states should navigate a complex web of regional and national regulations and practices to ensure that public procurement processes adhere to principles of transparency, fairness, efficiency, etc. On regional level the European Commission has developed a comprehensive set of performance indicators to monitor specific elements of the tendering process and if the contracting public entities manage to get good value for money (EC, n.d. c). The purpose of the present article is to provide an initial overview on how Bulgaria, compared to the other member states scores on three, that are regarded of utmost significance for the competitive level of the procurement process.

1. KEY ELEMENTS OF EU PUBLIC PROCUREMENT REGULATORY FRAMEWORK

Public procurement plays a central role in the functioning of modern democratic economies. Within the European Union (EU), public procurement accounts for a significant portion of overall government expenditure: annually more than 250 000 public entities spend around 14% of the GDP, equal to approximately to 2 trillion EUR (EC, n.d. a). Over the years, the EU has developed a comprehensive policy framework to regulate public procurement practices among its member states that could be traced back to the Treaty of Rome in 1957, which established the European Economic Community (EEC). Initially, the focus was on promotion of cross-border trade and prevention of discrimination against suppliers from other member states. However, with the expansion and further integration of the EU, the need for harmonized public procurement rules became evident.

In 2014 the European commission (EC) called for corrective actions and strategies to modernize the public procurement in the EU, based of four key elements: value for money, transparency, fairness, and good governance. Public procurement should not be regarded anymore as just an administrative process but as an opportunity to deliver various societal objectives through smart spending (EC, 2014). This led to the adoption in 2014 of a set of directives aimed to facilitate and regulate the creation of a single market for public procurement within the EU: Directive 2014/24/EU and 2014/25/EU. On April 18, 2016, the transposition deadline for the two directives required EU countries to enact national legislation accordingly and the significant changes reshaping how EU countries and public authorities allocate a substantial portion of the funds dedicated to public procurement on annual basis entered in force. The new rules were aimed to streamline procurement processes, making it more accessible and cost-effective for small and medium-sized enterprises (SMEs) to compete for public contracts and prioritized obtaining the best value for money in public purchases while upholding the EU's principles of transparency and competition. The new legislation also allowed for the consideration of environmental, social, and innovative aspects when awarding public contracts, encouraging progress towards specific public policy objectives (EC, n.d. b; European Parliament News, 2014).

In 2017, The EC continued its efforts to enhance the public procurement sector and strengthen the Single Market by presenting an “initiative to carry out procurement more efficiently and in a sustainable manner, while making full use of digital technologies to simplify and accelerate procedures” (EC, 2017a). The key priorities outlined in the strategy focus on ensuring wider uptake of strategic public procurement by emphasizing the importance of incorporating innovative, green, and social criteria, promoting pre-market consultation, and providing practical support for procurement processes. As key objectives were also highlighted addressing shortcomings in public procurement systems, targeting priority sectors for specific attention, and enhancing the role of public procurement in economic policy. By improving operational systems, promoting sustainable growth and jobs, and implementing directives to simplify procedures and enhance transparency, the strategy aims to transform public procurement into a strategic tool for economic development and efficiency within the EU.

The Communication of the EC (2017b) also addressed the issue of competition in public procurement markets by stating concerns about collusion and the impact it could have on prices. This illegal practice could lead to inflated prices, adding up to 20% to the costs that would be incurred in competitive markets. The Commission acknowledges the role of contracting authorities in investigating and enforcing measures against collusive practices but also emphasizes the importance of proactive measures to minimize the risks of such behaviours. Actions to improve market knowledge of contracting authorities, careful planning and design of procurement processes, and better cooperation between public procurement and competition

authorities are proposed to address this issue. Additionally, guidelines on the application of EU procurement directives on exclusion grounds related to collusion are mentioned as part of the efforts to boost competition and integrity in public procurement.

The focus in public procurement has shifted – it not just important the procurement to be in adherence to the legal framework, but it should further prioritize value-for-money (VfM), emphasizing the importance of obtaining optimal returns on investments. Public authorities should be committed to promote a fairer society that is built on principles of equal opportunity, sustainable economic growth, and broad market participation, while at the same time they maintain sustainable financial frameworks. National governments recognize the significant impact of public procurement on policy delivery and at present they view it as a strategic tool to achieve key policy objectives (Bieńkowska, 2017) and provide more value for the taxpayers' money.

The concept of VfM is significant for the public sector governance as it is closely related to the public expenditure, a significant part of which are the funds dedicated for public procurement. Various organizations, scholars and experts have attempted to define what is VfM in public procurement². Although the aim of the present article does not include reviewing them, it is important to provide a basic understanding. A comprehensive one is provided by Jackson (2012) who explained the concept with reference to its close relation to the “three E’s”- economy, efficiency, and effectiveness, as it represents striking the balance between them. It is not just about minimizing costs (economy) or maximizing outputs for a given level of inputs (efficiency), but also about achieving desired results and outcomes (effectiveness) in a cost-effective manner. VfM is essential for ensuring that public funds are utilized efficiently and effectively and when it comes to procurement, it is about goods, services, or works to be acquired at the best possible cost while meeting the required quality standards and achieving the desired outcomes. In the procurement process, VfM considerations also involve assessment not only of the price of the goods or services but also of their quality, sustainability, and the overall value they bring to the project or program. By focusing on VfM in procurement, organizations could make informed decisions that maximize the impact of their spending and contribute to the overall effectiveness of their initiatives. But as Jackson points out “studies show that when procurement is tied, value for money is reduced: some believe by 15-30%” (p.3). This underscores the importance of promoting competition within procurement practices, as it fosters innovation, efficiency, and cost-effectiveness, ultimately driving better outcomes for both public organizations and the citizens, the main beneficiaries.

The pursuit of VfM by the public contractors aims to instil confidence among taxpayers that their money is being managed carefully and responsibly by government entities, which fosters transparency, accountability, and trust in public institutions. The latter are also among the fundamental principles of public procurement as set in the EU's rules and regulation: “As part of the single market, EU law sets out minimum public procurement rules to safeguard the core principles of transparency, equal treatment, open competition, and sound procedural management. This creates a competitive, open, and well-regulated procurement market to support growth in jobs and investments in the EU” (EU, n.d.). The goal is evident but of significant importance are the regulatory frameworks that would facilitate its achievement as well as the indicators that would be used to monitor its effectiveness as the main of concern are presented in the next paragraphs.

² A comprehensive summary is provided by Adewumi-Audu, 2023.

2. KEY COMPETITIVENESS INDICATORS IN PUBLIC PROCUREMENT

Ensuring competition is the cornerstone to achieve VfM in public procurement and to support a dynamic marketplace. If the suppliers are encouraged to offer the best possible value, the public contractors could benefit from more efficiency, innovation, and cost-effectiveness. Also, if there are multiple suppliers competing for contracts, procurement processes become more transparent, open, and competitive, thus leading to better outcomes for taxpayers and stakeholders since resources are utilized in the most effective and efficient manner possible.

To ensure competition in EU public tendering procedures encompass various methods for awarding contracts, with competitive tendering being the standard approach. Under competitive tendering, several procedures exist (Your Europe, 2024):

- Open procedure: allows anyone to submit a full tender, most commonly used in practice;
- Restricted procedure: allows anyone to request participation, but only pre-selected candidates could submit tenders;
- Competitive negotiated procedure: open to all interested parties, but only pre-selected participants could submit initial tenders and negotiate;
- Competitive dialogue: enables a contracting authority to propose a method for addressing a specific need;
- Innovation partnership: applicable when the contracting party plans to purchase a product or service not yet available on the market and multiple companies may be involved throughout the process;
- Design contest: used to acquire design ideas.

Additional techniques that support competition may also be employed such as framework agreements, electronic dynamic purchasing systems and electronic auctions.

Although there is a legal framework on EU level, all public procurement procedures are conducted in accordance with national regulations. For contracts of higher value, these regulations align with the overarching EU public procurement rules (there are specified thresholds that indicate when EU rules apply). They vary as per the nature of the purchase and the procuring entity, and they are periodically reviewed and adjusted. For tenders of lower value than those specified national procurement rules apply, yet adherent to EU principles of transparency and equal treatment (EC, n.d. d).

At national level also, non-competitive tendering procedures may be used. For example, in Bulgaria they are under special surveillance from the national Public Procurements Agency (PPA): Negotiated procedure without prior publication, Negotiated procedure without prior call for competition of a contract notice, Negotiated procedure without publication of a contract notice and Direct contracting. They are considered of high risk since they are the least likely to comply with the basic principles of the public procurements - publicity, transparency, and competitiveness. For this reason, they could be applied by contracting authorities only in the presence of certain prerequisites and are subject to compliance with the conditions explicitly set out in the national law (PPA, 2022).

In 2023, The European court of auditors published a special report “Public procurement in the EU: Less competition for contracts awarded for works, goods and services in the 10 years up to 2021” (ECA, 2023). Its goal was to provide insights into the challenges, trends, and shortcomings in the public procurement practices across the EU based on a comprehensive dataset that spreads over a decade-long period. Various aspects of public procurement are examined such as competition levels, direct awards, monitoring mechanisms, and the impact of

the 2014 reform of the directives on procurement practices. Some of the key points covered in the Report include evidence that there is less competition in public procurement processes as well as there is a prevalence of direct awards in several member states, which also limits competition. Although the EU and national legal frameworks are designed to encourage competition, there are inherent problems that impede reaching maximum effectiveness and efficiency that the public authorities find hard to deal with. They often come as a result of the complex regulations, bureaucratic barriers, and insufficient oversight mechanisms. Such factors could discourage potential bidders and thus compromise the attainment of VfM so they deserve special attention on European and national level. In the Report outlined are twelve Scoreboard indicators that are used to assess the performance of public procurement processes in EU. These indicators are categorized based on their weighting and what they measure and serve as evidence of key issues related to competitiveness since they indicate the inability of public contractors to secure VfM when purchasing goods, services, and works from private sector. For the purpose of the present research, only three indicators are selected since the Commission considered them to be particularly relevant, and triple-weighted them to calculate an overall composite indicator (ECA, 2023, p.11).

Table 1. Scoreboard indicators description

	Indicator	What it measures
Triple weighted indicators	Single bidding	The proportion of contracts awarded where there was just one bidder.
	No call for bids	The proportion of procurement procedures that were negotiated with a company in the absence of a call for bids (also termed “direct award”);
	Publication rate	The value of public procurement advertised on TED as a proportion of national GDP.

Source: excerpt from ECA, 2023

While it is not inherently problematic to receive a single bid, as it may indicate a competitive market with few suitable suppliers or contractors, consistently high levels of single bid occurrences could raise concerns about competition, value for money, and transparency in the procurement process. In 2019, Fazekas outlined a few significant reasons why single bidding is considered a problem and a challenge in public procurement with respect of competitiveness and VfM. The first one is that it may indicate a lack of competition in the procurement process, which could lead to higher prices, lower quality of goods or services, and reduced innovation. It might also suggest collusion or anti-competitive behaviour among suppliers, which could distort the market and harm fair competition and transparency of the procurement process.

In the 2023 Report (ECA, 2023) these issues are further addressed since in a competitive bidding environment, multiple bidders compete to provide the best VfM which drives the cost savings and improves outcomes for the contracting authority – in a scenario with only one bid submitted, this could lead to suboptimal choices and inefficiencies in public spending. A higher rate of single bidding could be evidence that the market is distorted and the opportunities for new entrants and smaller businesses to engage in public procurement are limited. Procurement officials should monitor single bid statistics to identify trends in market engagement and assess

the effectiveness of their efforts to attract a diverse pool of suppliers or contractors. Consistently low levels of competition signal the need for targeted interventions to stimulate market interest. Also, relying on a single supplier or contractor increases the organization's vulnerability to disruptions, such as supplier insolvency or supply chain disruptions. Diversifying the supplier base through competitive procurement processes mitigates these risks.

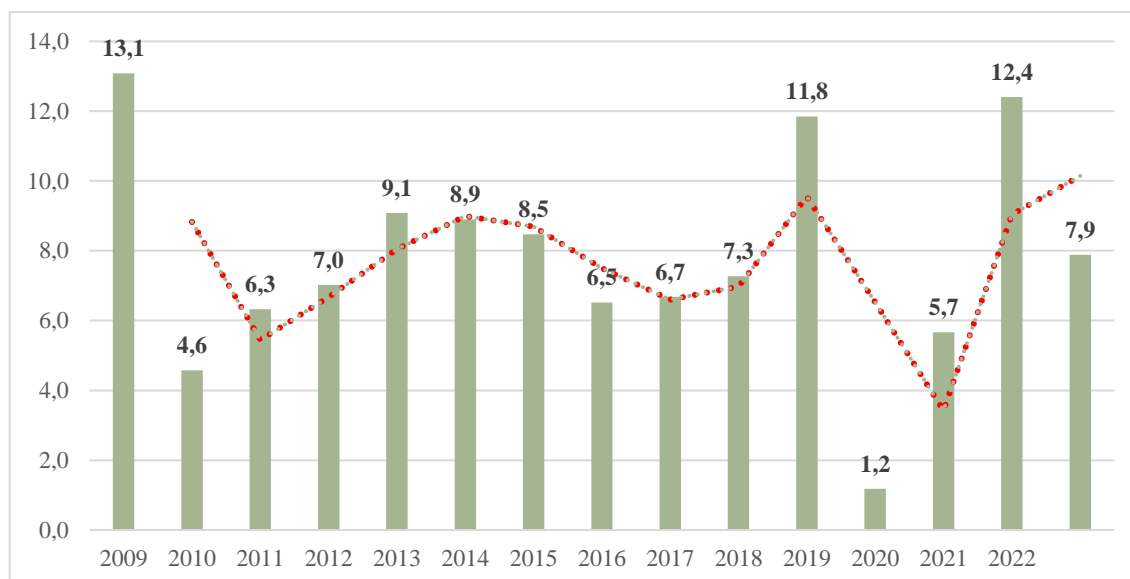
If the contracting party attains goods, services, or works, that were negotiated with a company in the absence of a call for bids also restricts competitiveness in the procurement process and needs to be monitored. When a public authority opts for a direct award without issuing a call for bids, it restricts competition by not allowing other potential suppliers to participate in the procurement process. In such procedures there is a high risk of non-compliance with the principles of transference and fairness as without an open and competitive bidding process, there is a risk of favouritism, lack of accountability, and potential for corruption. By bypassing the competitive bidding process, public authorities may miss opportunities to obtain better VfM and have access to more cost-effective solutions.

With reference to the publication rate indicator which measures the extent to which public procurement procedures are advertised, the EU court of auditors state in the Report that by limiting the access to openly available information, the transparency and equality principles may be at risk. The member states are required to ensure that data for above-threshold procedures is obligatory transferred to the platform Tenders Electronic Daily (TED) in accordance with EU directives. This requirement further enhances accountability in public spending as it allows stakeholders to monitor the procurement activities.

3. COMPETITION AND VALUE-FOR-MONEY IN THE BULGARIAN PUBLIC PROCUREMENT SECTOR

In Bulgaria the public procurement has an annual share of the national GDP (calculated by Production approach – Total of economy) below the average observed across the EU, which stands at approximately 14% for the period of 2009-2022. Several factors may contribute to this difference, which will be mentioned here but require further research and analysis. Bulgaria's economic structure and size may influence the proportion of GDP allocated to public procurement as smaller economies often exhibit lower spending levels on public procurement. Also, the efficiency and effectiveness of Bulgaria's public procurement processes, including transparency, competition levels, and regulatory frameworks, may impact the scale of procurement activities relative to GDP. Variations in government priorities, spending patterns, and investment strategies could further influence the amount of public procurement expenditure relative to overall economic activity. Another potential contributing factor is further suggested by the Bosio and Djankov (2020): “Fragile states often have a small share of public procurement to GDP, reflecting the limited ability of governments to deliver services”. In support of such claim, The Fragile state index, as provided by the Fund of Peace reveal for the period of 2009-2021 that Bulgaria has the second average highest score after Cyprus (TheGlobalEconomy.com, n.d.).

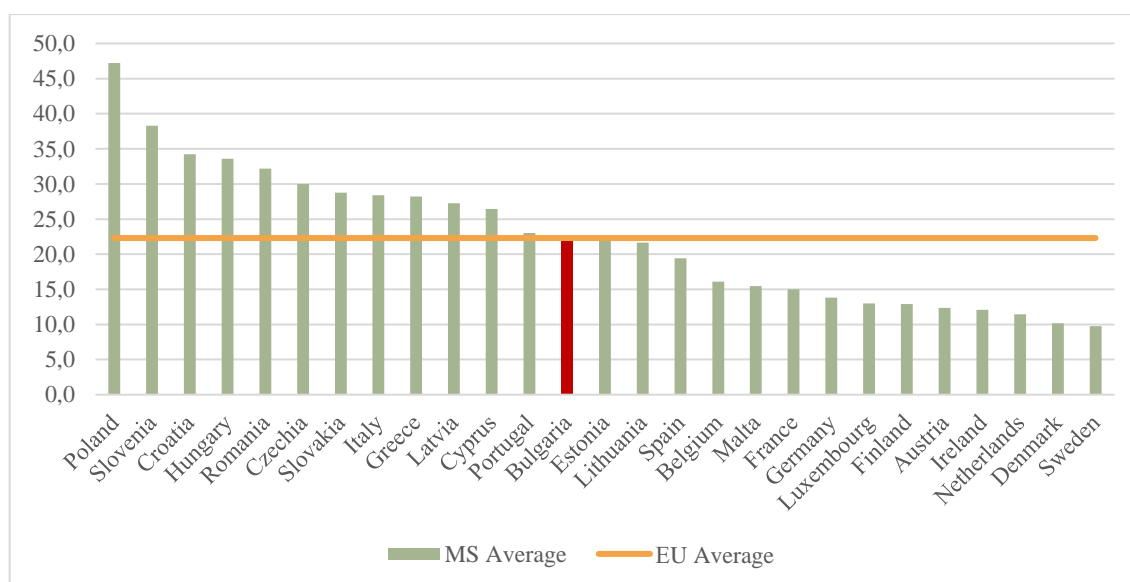
Figure 1. Public procurement value as a percentage of GDP in Bulgaria (2008-2022)



Source: author's calculations based on data from NSI, n.d. and PPA, n.d.

With reference to the competitiveness indicators selected and presented in the previous part of the article, a data provided by the European court of editors is used. To the analysis provided in the Report, an interactive dashboard was created (the “ECA Public procurement Dashboard”) which is publicly available for further research of the data, collected for the audit (ECA, 2023, p.13). Regarding the first indicator “Single bidding”, the data reveals that in Bulgaria, the scores for the analysed period as very close to the average for the EU and follow the overall trend of increasing.

Figure 2. Scoreboard indicators 2011-2020: Single bidding (%)

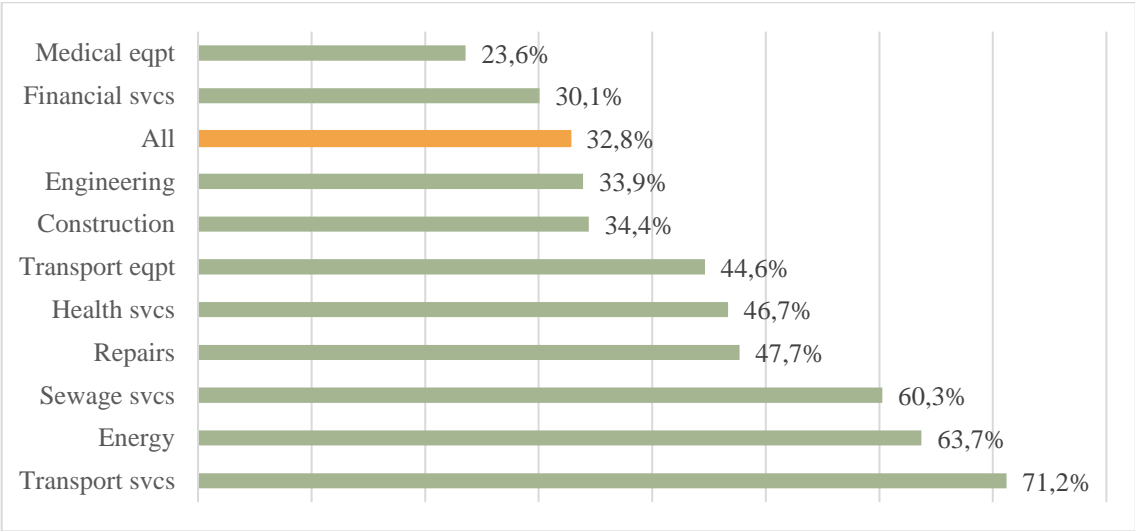


Source: author's calculations based on data from ECA dashboard, 2023

The sectors in which the levels of single bidding in Bulgaria are higher include transport services, energy, and sewage services. Among the possible explanations for this may be few underlying reasons. First, the nature of these sectors often involves specialized infrastructure and technical requirements that limits the pool of eligible bidders who are capable to meet the

tendering specifications. A complex regulatory frameworks and licensing requirements also exist that may further deter potential competitors. In these sectors a concentration of market power among a few dominant suppliers or contractors is also common.

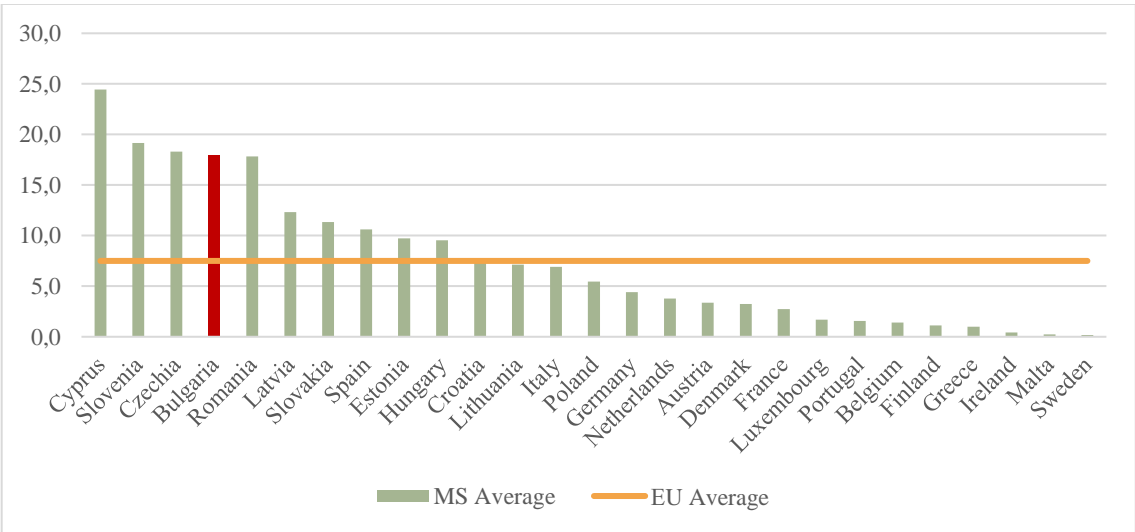
Figure 3. Share of single bidder contracts in Bulgaria per biggest sectors (2011-2021)



Source: ECA dashboard, 2023

The second indicator of the “triple weighed” group refers to the proportion of procurement procedures that were negotiated with a company in the absence of a call for bids. Such negotiations often occur when a contracting authority identifies a specific supplier deemed capable to meet the procurement requirements without the need for a formal bidding process. While negotiated procedures could offer flexibility and efficiency in certain circumstances, contracting without open competition may raise concerns regarding transparency, fairness, and the potential for favouritism or collusion. The average values for the period available (2011-2020) reveal that such tendering procedures tend to be more common for a few member-state, including Bulgaria.

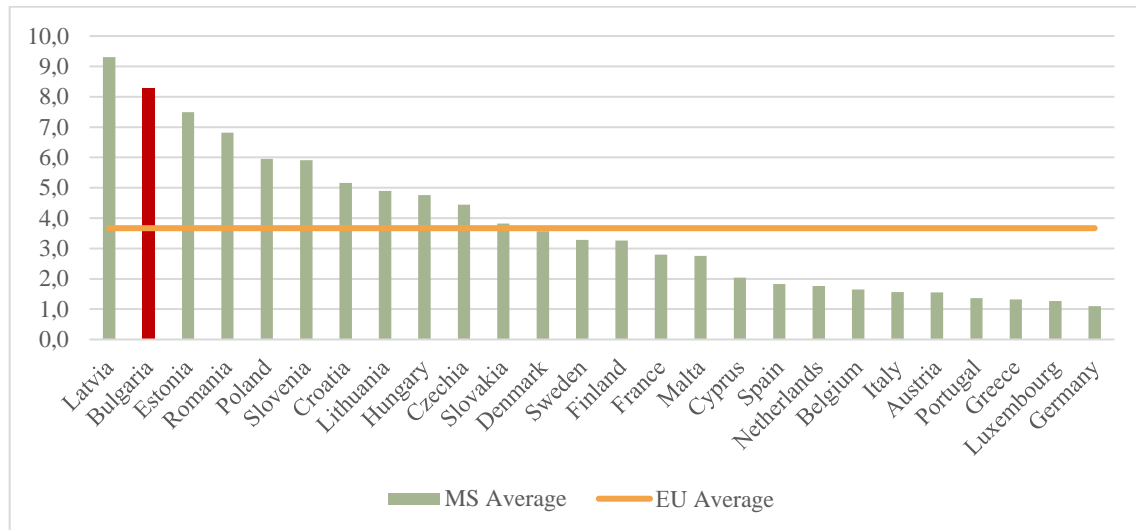
Figure 4. Scoreboard indicators 2011-2020: No call for bids (%)



Source: author’s calculations based on ECA dashboard, 2023

The publication rate measures the value of public procurement advertised on TED as a proportion of national GDP. As seen on Fig.5, Bulgaria has the second highest level after Latvia, despite its GDP is much lower than the leading economies in the EU. The score highlights that Bulgaria is actively engaged in ensuring transparency in the public procurement processes and tries to provide a significant opportunity for businesses and suppliers who seek to participate in Bulgaria's public procurement market.

Figure 5. Scoreboard indicators 2011-2020: Publication rate (%)



Source: author's calculations based on ECA dashboard, 2023

While these three indicators provide a starting point further evaluation of the competitiveness of public procurement in Bulgaria, they alone are insufficient for a comprehensive assessment. However, they offer initial insights into the state's adherence to transparency principles and its pursuit of VfM in taxpayer spending. Despite Bulgaria's public procurement expenditure falls below the EU average as a percentage of GDP, revealing potential for leveraging procurement to stimulate economic growth, the country demonstrates a commitment to transparency and market participation through its high publication rate relative to GDP. Challenges are also evident with respect to the elevated levels of single bidding in specific sectors and negotiated procedures lacking open competition. They suggest areas that require targeted government and institutional attention so as competitiveness and fairness in procurement practices to be enhanced. The data also reveals that the practices in Bulgaria align with broader trends in the EU, emphasizing the need for improvement across all member states – “Improving public procurement can yield big savings: even a 1% efficiency gain could save €20 billion per year” (EC, n.d. a).

CONCLUSION

The EU procurement regulatory system is designed to enhance transparency, fairness, and competitiveness. The enforced changes in 2016 were meant to make the Single market more open to supplier regardless of their residence, to lower the administrative burden and include other reward criteria along with the lowest offered price. However, in practice there are persisting problems that need to be addressed by the regulators that impede competitiveness and require careful monitoring and analysis. Policymakers and stakeholders must prioritize efforts to address these challenges, leveraging available data and insights to drive reforms that

promote efficiency, accountability, and value for money. Bulgaria, as part of the EU could strengthen its public procurement framework and deliver better outcomes for its citizens by adopting a proactive approach to address current shortcomings utilizing the data available to establish causal relationships and to develop comprehensive measures.

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