



European wide Innovation
Procurement in Health and Care

EURIPHI
International
Roundtable
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EU legal background and legal perspective

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EU legal background

1. Cross border procurement is possible under UE Directives

Consideration 72 of the Directive 2014/24 *"determine the conditions for cross-border utilisation of central purchasing bodies and designate the applicable public procurement legislation, including the applicable legislation on remedies, in cases of cross-border joint procedures (...)."*

Article 40 of directive 2014/24 include the rules regarding procurement involving contracting authorities from different Member States. As a principle this article confirms that *"contracting authorities from different Member States may act jointly in the award of public contracts"*

Different forms of joint procurement

2. Joint procurement can take many different forms ranging from:

- **coordinated procurement** through the preparation of common technical specifications for works, supplies or services that will be procured by a number of contracting authorities, **each conducting a separate procurement procedure**,
- to situations where the contracting authorities concerned **jointly conduct one procurement procedure** either by **acting together** or by **entrusting one contracting authority with the management of the procurement procedure on behalf of all contracting authorities**;
- One can also think of **joint framework agreement with separate subsequent orders** (per country/institutions).

Relation between buying institutions

3. Legal attention points:

- Determine applicable law/language/competent Courts for the award procedure and the remedies
- Determine applicable law/language/competent Courts for the contract implementation phase
- Determine clearly the roles and responsibilities of everyone: during the award phase/during the implementation phase; for example:
 - what if the award phase goes wrong – who would pay a claim for damages?
 - Who would centralise (if any centralisation of envisaged) the collection of potential proofs of breaches?

Challenges and opportunities

4. Opportunities:

- More leverage during negotiations
- Sharing of best practices
- Spare time and energy

5. Challenges

- Align the needs of multiple institutions
- Procurement culture/case law could be different
- Language issues
- More concentration of orders → less competition (not good for small actors)
- Prices are not the same cross States → risk: alignment towards higher price?

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Thank you!
