

The Single Market Review

SUBSERIES III: DISMANTLING OF BARRIERS

Volume 2:

Public procurement



EUROPE

The Single Market Review

DISMANTLING OF BARRIERS

PUBLIC PROCUREMENT

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The Single Market Review

D I S M A N T L I N G O F B A R R I E R S

PUBLIC PROCUREMENT

The Single Market Review

SUBSERIES III: VOLUME 2

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This report is part of a series of 39 studies commissioned from independent consultants in the context of a major review of the Single Market. The 1996 Single Market Review responds to a 1992 Council of Ministers Resolution calling on the European Commission to present an overall analysis of the effectiveness of measures taken in creating the Single Market. This review, which assesses the progress made in implementing the Single Market Programme, was coordinated by the Directorate-General 'Internal Market and Financial Services' (DG XV) and the Directorate-General 'Economic and Financial Affairs' (DG II) of the European Commission.

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by

EuroStrategy Consultants

It does not, however, express the Commission's official views. Whilst every reasonable effort has been made to provide accurate information in regard to the subject matter covered, the Consultants are not responsible for any remaining errors. All recommendations are made by the Consultants for the purpose of discussion. Neither the Commission nor the Consultants accept liability for the consequences of actions taken on the basis of the information contained herein.

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List of abbreviations

ATM	Asynchronous Transfer Mode
BOT	build, operate, transfer
BREL	British Rail Engineering Ltd
CAN	contract award notice
CCT	compulsory competitive tendering
cif	cost, insurance and freight
CMLR	Common Market Law Review
CN	Combined Nomenclature
Comext	database of external trade statistics (Eurostat)
CPC	common procurement code
CPV	common procurement vocabulary
DEBA	data for European business analysis
DOU	discrete operating unit
EAP	Entités Adjudicatrices Potentielles
EUR-12	total of the first 12 Member States (also EC12 and EU12)
EUR-15	total of the current Member States
ECR	European Court Reports
ECSC	European Coal and Steel Community
ECU	European currency unit
EDCM	European Defence Equipment Market
EDP	Electricidade de Portugal
EEA	European economic area
EECGs	European economic interest groups
EFCA	European Federation of Engineering Consulting Associations
EFTA	European Free Trade Association
EIC	European Information Centre
ENEL	Ente Nazionale per l'Energia Elettrica
ESB	Electricity Supply Board
Euratom	European Atomic Energy Community (EAEC)
FIEC	European Construction Industry Federation (Fédération de l'industrie européenne de la construction)
fob	free on board
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GPA	WTO Agreement on Government Procurement
ISDN	Integrated Services Digital Network
NACE	general industrial classification of economic activities within the European Communities
NIC	newly industrializing countries
NOU	Nemden for Offentlig Upphandling (Committee for Public Procurement, Sweden)
OJ	Official Journal of the European Communities
PIN	periodix indicative notice
R&D	research and development
SDR	special drawing right
SEM	single European market
SIMAP	Information System for Public Procurement
SME	small and medium-sized enterprise
TED	Tenders Electronic Daily
VAT	value-added tax
WTO	World Trade Organization
ZDCM	European Defence Equipment Market

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1. Summary

1.1. Introduction

1.1.1. Background

The single European market (SEM) was conceived in the first half of the 1980s to combat the economic threat to Europe posed by the USA and Japan in high technology and by the newly industrializing countries (NICs) in assembly industries.

The Commission's 1985 White Paper, *Completing the internal market*,¹ focused the attention of Member States on the formal and informal barriers to intra-EU trade, the removal of which would create the environment for the development of European industries capable of competing in global markets. The 1987 Single European Act established a legislative programme of some 300 directives designed to remove these barriers, which were classified under three headings:

- (a) physical barriers, associated with frontier inspections,
- (b) technical barriers, causing legal and regulatory obstacles,
- (c) fiscal barriers, epitomized by differences in indirect taxes and excise duties.

After adjustments, the SEM programme comprised 282 directives designed to create:

- (a) a new Community standards policy,
- (b) a common market for services,
- (c) conditions for industrial co-operation,
- (d) a single public procurement market,
- (e) plant and animal health controls.

The directives are either horizontal (industry independent) or vertical (industry specific) in nature. Examples of the former include the removal of border controls and the harmonization of indirect taxation, and of the latter, mutual recognition in the pharmaceuticals industry.

The 1988 Cecchini Report² provided the economic justification for completing the single market and highlighted the interdependence of its various 'components'. At a conference on public procurement immediately preceding the report's press launch in London in January 1988, Lord Cockfield, the then vice-president of the European Commission responsible for the single market programme, described:

- (a) the aim of the SEM as 'to create the environment in which European business can flourish';
- (b) the opening-up of public procurement as one of the cornerstones of the SEM programme, without which the single market would not be complete.

¹ *Completing the internal market*, COM(85) 310 final of 14 June 1985.

² *The cost of non-Europe in public procurement*, European Commission, 1988.

The removal of the formal and informal barriers to intra-EU trade is clearly the most important factor in creating 'the environment in which business can flourish'. The economic impact will be the extent to which the wealth-generating sectors of the economy have taken advantage of the 'new business environment'.

1.1.2. Public procurement before the single market

The Cecchini Report described public-sector markets in the EUR-12 as closed and generally uncompetitive, with:

- (a) widely different design standards in certain key high technology sectors, for example, defence, power generation, telecommunications and railways, making intra-EC trade costly;
- (b) governments promoting competition between alternative national suppliers, reflected in sub-optimal – globally uncompetitive – businesses;
- (c) distorted markets due to government subsidies;
- (d) R&D effort dissipated – in the USA and Japan there were 3–5 major (global) companies in a sector, whereas in Europe there were often 15–20 sub-optimal players;
- (e) little incentive to invest in new technology to confront the competition from non-EC firms;
- (f) a lack of product specialization, such that even large EC firms had uneconomically wide product ranges and uneconomic production runs.

Although EC directives on public procurement have been in force since 1971 for works and 1977 for supplies, prior to the SEM legislation, transparency and fairness in terms of equal opportunity to submit offers and win contracts was strictly limited, with non-domestic suppliers almost completely excluded from national markets.

In addition to deliberately ignoring the existence of the legislation and favouring national suppliers as a matter of official policy, purchasing entities circumvented the rules by a range of measures, for example:

- (a) splitting contracts into lots to avoid the publications thresholds;
- (b) specifying national technical standards and proprietary products, which favoured the domestic supplier;
- (c) requiring special financial or technical capacities of foreign suppliers;
- (d) allowing inadequate response times for first-time bidders;
- (e) classifying contracts as 'continuations' or 'emergencies' to take advantage of the directives' exclusions and, in defence procurement, as 'warlike', regardless of the function of the supply.

1.1.3. *Ex ante* hypothesis

The legislation's aims

Between 1988 and 1993, a family of directives was adopted by the Council of Ministers defining the scope of public procurement and regulating the ways in which public and other covered purchasing entities procure works, supplies and services (see Appendix B for bibliographical references). The aim of the legislation was to provide a framework for, and climate of, openness and fairness. The expectation – and desire – was that this would lead to:

- (a) increased competition between European companies;
- (b) improved industrial efficiency and competitiveness of European companies in global markets;
- (c) reduced public-sector/utilities purchasing costs.

Measures of success

The success of the SEM in public procurement should be measured by the extent to which:

- (a) public entities and utilities are open (transparent) in informing potential suppliers of:
 - (i) a commercial opportunity,
 - (ii) the criteria by which their offers will be judged,
 - (iii) the results of the competition;
- (b) public entities and utilities are fair in awarding contracts in terms of:
 - (i) specifying objective award criteria which do not provide any potential supplier with an unfair technical or commercial advantage,
 - (ii) assessing tenders objectively in accordance with these criteria;
- (c) supplying industries have adapted to meet the challenge of the new purchasing environment in terms of:
 - (i) responding to extra-national opportunities,
 - (ii) restructuring to improve competitiveness and, generally, take advantage of trade liberalization afforded by the SEM;
- (d) the public sector and utilities have experienced a reduction in purchasing costs.

Of these, (a) and (b) are concerned with measuring the extent to which the directives and national transposing legislation are flawed in:

- (a) requiring entities covered to be open (transparent) and fair in their tendering process,
- (b) providing a climate encouraging compliance by those entities covered.

Factors (c) and (d) measure the supply- and demand-side response to the new purchasing environment created and to other drivers of change, including the SEM *per se*, economic performance, privatization, globalization of key industries, mergers and acquisitions, information technology, telecommunications, etc.

Economic impact

In 1987 it was assumed that liberalization of public procurement in Member States would result in:

- (a) increased competition for public contracts with the most competitive suppliers winning,
- (b) a reduction in prices paid by public bodies for works, supplies and services.

The introduction of new competitive suppliers into previously closed markets was forecast to result in:

- (a) a convergence of prices paid by the public sector to those of the most competitive suppliers – (short-term) price effect;
- (b) rationalization of production to achieve a better utilization of resources to fund price reductions – (medium-term) competition effect;

- (c) reorganization of certain strategic industries along pan-European lines via joint ventures, mergers and acquisitions, and alliances to create global players capable of benefiting from the SEM and competing with the US and Japanese giants – (long-term) restructuring effect.

The public sector would benefit from all three effects through being able to procure the economically most advantageous works, supplies and services. Within the private sector, there would be a redistribution of market shares and a more efficient use of productive resources, which, in the short term, would lead to employment reductions among uncompetitive players.

Overall, the EU would benefit from the creation of strong European companies in strategic industries capable of competing with US and Japanese players in world markets.

Key considerations

The opening up of EU public procurement markets should be viewed as a necessary but not sufficient condition for achieving the SEM's economic aims. In this context, the legislation should be seen as a catalyst, designed to create the environment in which the desired change could and would occur.

In assessing the SEM in public procurement, it is important to understand that the legislation places no obligation on:

- (a) the entities covered to be efficient purchasers,
- (b) suppliers to respond to business opportunities in other Member States of the European Union.

A lack or limited achievement of these two outcomes should not automatically be construed as an indicator of failure of the legislation. The legislation could be achieving its aims of openness and fairness, but its desired impact on purchasers and suppliers may not have been achieved due to:

- (a) the shortness of timescale between the directives coming into force and the timing of the mid-term assessment;
- (b) a lack of suppliers' awareness/understanding of the new EU purchasing environment;
- (c) supply-side scepticism of the fairness of the award process in other Member States;
- (d) inadequate supply-side knowledge of demand-side requirements in other Member States;
- (e) limited incentive and skills at the level of purchasing officers to correctly define award criteria which will result in the selection of the 'economically most advantageous' supplier.

1.2. Study approach

1.2.1. Key principles

The study's overall approach was driven by the limited availability of reliable and complete statistical data on the public procurement market.

As a result, considerable importance was placed on two pieces of primary research:

- (a) a survey of suppliers to the public sector/utilities, which was structured to allow inferences to be made about the total supply-side population;
- (b) a survey of a cross-section of purchasers subject to the directives.

Since the study considered the public procurement market from all key perspectives using a wide range of sources (in addition to the primary research), it has been possible to take into account the results of a number of qualitative, quantitative and quali-quantitative analyses to arrive at an assessment of the impact of the legislation which is:

- (a) consistent,
- (b) plausible,
- (c) coherent.

In some areas it has not been feasible to arrive at a definitive quantitative assessment due to a lack of suitable data (at a sufficient level of detail), or the existence of contradictory information/analyses. In such instances, arguments and hypotheses have been developed by working from first principles to arrive at a reasoned (quali-quantitative) conclusion.

The study also focused on procurement-sensitive products and sectors on the basis that, if change had occurred, it would have been in these areas.

A final, and key, consideration has been the fact that no one analysis holds the answer to whether the public procurement legislation has achieved its aims. It is only the combination of the results of all analyses (which themselves reflect a range of information sources) that can provide this overall assessment. Consequently – in common with the main report – each section in this executive summary analyses a key issue(s) in isolation from other sections/analyses, with Section 1.9 drawing them together to arrive at an assessment of the legislation's impact.

An overview of the executive summary's structure (which mirrors that of the main report) is shown in Table 1.1 together with the primary information sources.

1.2.2. Data commentary

This section provides an overview of the main data problems encountered, and the approaches employed to overcome them.

Public procurement in 1987

The prime data source for the description of the public procurement markets in 1987 was the Cecchini Report, *The cost of non-Europe in public sector procurement* (European Commission, 1988). Market size statistics from the Cecchini study were supplemented by data from the Commission's 1992 study, *The implications of opening up public procurement in the excluded sectors in Greece, Italy, Portugal and Spain*.³

³ *The implications of opening up public procurement in the excluded sectors in Greece, Italy, Portugal and Spain*. European Commission, 1992.

Table 1.1. Executive summary structure and key sources overview

Measure/output	Primary sources/inputs	Section
Public procurement in 1987	<i>Cost of non-Europe in public sector procurement</i> ¹ and other European Commission studies National accounts	1.3
Legal measures review	Member State and European public procurement law experts European Commission – DG XV/B	1.4.1-1.4.5
Public procurement market contours in 1994	National accounts Demand-side survey results (for utilities) Member State statistical returns EAP database European Commission public procurement studies Tenders Electronic Daily (TED) database Member State officials responsible for public procurement Office for Official Publications of the EC	1.5.1-1.5.2
Market perceptions	Survey of 1,608 EUR-15 suppliers to the public sector/utilities Survey of 698 EUR-15 central and sub-central government bodies and utilities	1.6.1-1.6.2
Economic analysis	Comext, Eurostat external trade statistics DEBA, Eurostat production and employment statistics Enterprises in Europe, Eurostat Supply-side survey Eurostat price survey indices European Commission procurement and single market studies EuroStrategy Consultants price survey	1.7.1-1.7.4
Case studies	Industry interviews Comext, Eurostat trade statistics DEBA, Eurostat production and employment statistics Industry publications Company accounts Eurostat	1.8.1-1.8.6
Impact assessment	The individual analyses	1.9.1-1.9.4

¹ *The cost of non-Europe in public sector procurement*, European Commission, 1988.

The following public entities and ‘products’ covered in the Cecchini study are not covered by today’s directives:

- (a) nationally-owned civil airlines and their purchases,
- (b) fuel used for power generation (coal, gas, nuclear material),
- (c) ‘warlike’ materials (nuclear missiles, ships, aircraft, tanks, guns, ammunition, etc.).

To ensure comparison between 1987 and today, the market size statistics in the Cecchini Report were adjusted to reflect the differences in coverage.

The public procurement market in 1994 – market size

Since no reliable data exist on the size of the EUR-15 public procurement market in 1994, estimates of the market size were made using a combination of a top-down and bottom-up analysis in each Member State.

Estimates of government procurement of works, goods and services were, therefore, based on the top-down analysis, which used national accounts on general government spending and summed entries under the following line headings:

- (a) purchases of goods and services,
- (b) gross fixed capital formation.

This total was adjusted to remove defence spending on 'warlike' materials (art. 223 (EC Treaty) materials), which are not covered by the directives. These 'warlike' materials estimates were derived from national accounts statistics on defence spending and estimates of the share of 'warlike' materials in the study, *The costs of non-Europe in defence procurement*.⁴

The demand-side survey results proved an inadequate base for making reliable bottom-up central and sub-central government estimates, due to:

- (a) an overall response rate of 62%, less than the required 90–95%;
- (b) low response rates for some Member States, particularly France, Germany and Spain;
- (c) some responses missing estimates of total procurement, reflecting:
 - (i) confidentiality considerations,
 - (ii) problems obtaining information from different (autonomous) departments;
- (d) some respondents returning only above-threshold procurement values, as they did not consider below-threshold procurement of any interest to the Commission study.

Estimates of utilities procurement were based on a combination of top-down and bottom-up analysis results. It was possible to use utilities' returns from the demand-side survey for making bottom-up estimates, since:

- (a) compared to the public sector, far fewer entities accounted for a large share of total utilities procurement;
- (b) responses were obtained from around 90% of all European utilities operating in the key sectors of power, gas, coal, oil and gas exploration/extraction, rail transport and telecommunications;
- (c) completed questionnaires were returned via their European associations (which were briefed separately on the scope and objectives of the survey), ensuring standardized information covering their total annual procurement;
- (d) a large number of entities are separate companies (either state- or privately-) owned, operating as 'private-sector' businesses and, therefore, more likely to have a comprehensive view of their total purchases and annual capital expenditure.

The public procurement market in 1994 – market size by contract type

The market breakdown by contract type (works, supplies and services) was based on:

- (a) the EC-US procurement study⁵ for central and sub-central government, under the assumption that the 1994 breakdown was not significantly different from that in 1993;
- (b) the demand-side survey results for utilities.

⁴ *The cost of non-Europe in defence procurement*, European Commission, 1994b.

⁵ *EC-US procurement*, European Commission, 1994a.

The public procurement market in 1994 – market size by entity type

Primary data sources for the breakdown of the market by principal entity type were:

- (a) the OECD national accounts for central and sub-central government,⁶
- (b) the bottom-up analysis of utilities procurement using the demand-side survey results.

Where possible, the breakdowns provided by the OECD national accounts were cross-referenced with the results from the EC-US procurement study.

The public procurement market in 1994 – above- and below-threshold procurement

The only available data sources on the split between above- and below-threshold procurement were:

- (a) Member State returns to the Commission;
- (b) the EC-US procurement study.

In the 1988 report, the concept of above- and below-threshold procurement was not considered. The Cecchini Report focused on ‘contract purchasing’, concluding that entities were splitting contracts into lots to avoid the then directives’ thresholds, which led to the introduction of rules on aggregation. There was no *ex ante* expectation of the percentage of total procurement which would, as a result, be above-threshold (and therefore covered by the directives), although it is understood that a level of at least 50% was considered most likely.

The complexity and sensitivity of this issue is demonstrated by the:

- (a) significant differences between the estimates from these two data sources,
- (b) lack of any other reliable statistics.

Given this, we have deliberately avoided making any additional estimates, but have instead highlighted a number of key issues and put forward hypotheses, which are further developed in the final impact assessment.

Number of contracting entities

A characteristic of the public sector and, to a lesser extent, utilities markets has been the lack of a comprehensive description (single database) of the number of entities covered by the directives which are capable of letting above-threshold contracts, where a ‘contract’ is defined in the context of the aggregation rules.

This study’s analysis makes use of the EAP database, for which information has been collected in a systematic and consistent manner across the 12 Member States. Information for Austria, Finland and Sweden was obtained via their national procurement representatives.

Publication in the Official Journal of the European Communities

Prime data sources were:

⁶ *National accounts*, OECD, 1995.

- (a) the Tenders Electronic Daily (TED) database archives for the years 1993 to 1995,
- (b) statistics published by the Office for Official Publications of the European Communities for the years prior to 1993.⁷

Analysis of the publishing entities focused on:

- (a) central government (including TED categories 'central government' and 'armed forces'),
- (b) sub-central government (TED category 'local authorities'),
- (c) utilities (TED category 'water, energy, transport and telecommunications sectors').

Demand-side survey

Some 698 purchasing entities were targeted by the survey, covering:

- (a) central government ministries;
- (b) sub-central government bodies, including:
 - (i) regional and local government bodies,
 - (ii) uniformed services (fire and police),
 - (iii) purchasing consortia,
 - (iv) health bodies;
- (c) utilities:
 - (i) water,
 - (ii) energy (covering coal, and oil and gas exploration and extraction, electricity and gas generation and distribution),
 - (iii) transport (covering airports, ports, rail and urban transport),
 - (iv) telecommunications.

Table 1.2. Member State and entity type responses

	Central government	Sub-central government	Utilities	Total
Belgium/Luxembourg	9	13	10	32
Germany	2	18	7	27
Denmark	22	22	10	54
Spain	2	23	21*	46
France	1	41	7	49
Greece	0	2	0*	2
Italy	6	42	9	57
Ireland	6	9	7	22
Netherlands	5	27	9	41
Portugal	3	10	5*	18
United Kingdom	9	53	25	87
Austria	4	6	10	20
Sweden	3	12	7	22
Finland	10	8	7	25
Total	82	286	134	502

Note: Since utilities in Greece, Spain and Portugal (marked *) were not subject to the Utilities Directive at the time of the survey, the questionnaire asked them for their experiences since 1990 and their intentions post-transposition (rather than pre- and post-directive as for the other Member States).

⁷ *Basic statistics of the Community*, Eurostat, 1989, 1993.

The survey sample was drawn on a constrained Pareto basis. The approach was to target purchasers representing 80% of procurement at each level of government and utility type in each Member State. Hence for any Member State, the survey targeted:

- (a) central government ministries representing an estimated 80% of central government procurement, covering in the main ministries responsible for:
 - (i) defence,
 - (ii) public works,
 - (iii) transport,
 - (iv) education,
 - (v) interior/home office,
 - (vi) health,
 - (vii) post and telecommunications;
- (b) purchasing entities at a regional level accounting for an estimated 80% of total regional procurement in the regions representing 80% of national GDP;
- (c) bodies representative of total local government procurement within sub-regions representing 80% of GDP or population of the regions described at (b);
- (d) the largest utilities representing 70–80% of procurement in the each of the sub-sectors as defined in Annexes I to X to the Utilities Directive.

As a result, the survey covered a wide range of:

- (a) entity sizes – ranging from large spending central government ministries, such as the Ministry of Defence, to local authorities and local fire services and, in a number of cases, independent purchasing units within local bodies;
- (b) purchasers focusing on works, supplies and services.

The survey's results have been used as indicators of changes, employing a combination of direct comparisons (pre- and post-Directive experience) and scoring systems. Although responses in some areas were disappointing, the quality and number of responses overall were sufficient to be considered reliable and indicative for qualitative inferences to be drawn, particularly since the results were consistent:

- (a) within and between Member States,
- (b) with those from the supply-side survey,
- (c) with implicit expectations based on previous studies in this area.

The results were also considered of particular value since, despite gaps, only those with responsibility for procurement can really know:

- (a) what has happened in practice,
- (b) their experiences and views of the legislation.

The information obtained from returned questionnaires was supplemented and corroborated by:

- (a) interviews with some 80 entities which were re-contacted to clarify their responses;
- (b) a number of written submissions from entities (including some which declined to complete the questionnaire) and, in the case of utilities, their representative bodies which took up the questionnaire's invitation to provide additional comments.

The supply-side survey

Our approach was to:

- (a) focus our sample on the procurement-sensitive supplying sectors, accounting for some 62% of the value of procurement;
- (b) ensure that the large Member States and major supplying sectors had adequate representation for the purposes of making inferences about the total population.

Quota samples were drawn on a 4:1 basis from TED and Kompass and other business directories to ensure representation of all Member States and procurement-sensitive sectors. Random samples were drawn in each cell (Member State and supplying sector). In total 6,000 companies were drawn from:

- (a) published contract award notices (CANs) in 1994 and 1995,
- (b) Kompass and other business directories.

This approach yielded an effective sample of 1,608 companies, which was representative of the size of firms selling to the public sector/utilities within the quotas.

The central selection criterion for firms surveyed was that they should, at a minimum, be selling to the public sector and/or utilities in their own Member State, and survey respondents were managers with specific responsibility for public-sector/utilities markets.

Table 1.3. Member State and sectoral coverage

	315	316	33	341/2	344	351	362	37	453	471/2	502	83	Total
D	15	9	24	21	20	20	11	11	10	11	24	24	200
F	19	9	24	20	20	20	9	11	11	10	23	24	200
I	19	5	24	22	22	19	10	10	7	8	29	22	197
UK	25	10	27	22	23	15	7	7	12	4	24	25	211*
E	14	8	18	14	15	14	8	8	10	8	18	18	153
B/L	8	4	13	10	10	11	5	5	5	5	12	12	100
NL	10	4	12	10	9	10	5	4	6	4	12	12	98
DK	6	3	9	6	6	5	3	3	3	3	9	9	65
P	5	5	7	6	8	5	3	3	2	1	9	7	61
IRL	4	3	6	5	5	4	3	4	3	3	6	7	53
GR	4	4	3	6	6	3	1	4	4	2	6	7	50
A	11	4	12	8	10	8	5	6	6	5	13	12	100
S	6	4	9	6	6	5	4	4	4	4	9	9	70
FIN	4	3	6	6	5	3	3	3	2	3	6	6	50
	150	75	194	162	165	142	77	83	85	71	200	194	1,608

Note: * UK figures do not total 211 because, due to a computer error, NACE identifying codes for 14 records were lost.

Trade flow analysis

The trade flow analysis was based on data collected from the Comext database, (Eurostat, 1995) covering the EUR-12 Member States as reporting countries.

Problems with the data were identified in the form of substantial discrepancies between the import figures recorded by an importing country and the export data of the relevant exporting country, which, according to Eurostat, was due, in certain cases, to exports:

- (a) not being recorded in the imports of the trading partner because on arrival at their destination they were placed under a transit procedure or in a customs warehouse;
- (b) being recorded in the imports of the importing Member States with a different value, not only because of the rule 'exports-fob, imports-cif', but above all as a result of special situations such as trade between associated companies with revaluing of imports, inclusion or exclusion of monetary compensatory amounts on agricultural products, and declaration of the value to be used for calculating value-added tax (VAT) as the statistical value;
- (c) being recorded in the imports of the trading partner:
 - (i) during a later period (affects the overall figures and the figures by type of goods),
 - (ii) under a different statistical heading (affects the figures by type of goods);
- (d) being recorded in the trading partner's imports according to different methods:
 - (i) because not all the cases in which the regulation may apply have been settled (ships' store, postal consignments, confidential data, aircraft maintenance, etc.),
 - (ii) because it was impossible to eliminate all the errors in data returns or in the processing and forwarding of results,
 - (iii) because there were still a certain number of fraudulent declarations.

For the purpose of consistency, we have used EUR-12 export data to measure intra-EC imports on the basis that total intra-EC exports in a sector equal total intra-EC imports.

Analysis at the intra-EC level covers the period 1988–92, since:

- (a) at the time of writing, 1995 product level trade data were not available,
- (b) the introduction of a new intra-EC data collection system in 1993 (Intrastat) has made 1993 figures unreliable and 1994 figures not comparable with pre-1993 statistics.

Even if 1995 data were available, an extended coverage to 1994 and 1995 would not be valid since:

- (a) the proportion of the unexplained variation associated with the trend analysis was generally of the order of 30%,
- (b) any new trend based on two points (1994 and 1995) would have no meaning.

Public-sector import penetration

In general, there is no systematic recording or analysis of the national origin of purchases by entities despite the existence of reporting requirements for public-sector bodies and the utilities as laid down in the current directives. Although some Member States have submitted returns to the Commission on their procurement, the required level of detail is not available, since:

- (a) the coverage of the reporting requirements varies between the directives in terms of above- and below-threshold purchases. For example, utilities are only required to report below-threshold procurement;
- (b) only a small number of Member States have provided returns to the Commission;
- (c) returns are generally only available for central government bodies;
- (d) individual Member State returns are inconsistent in terms of segmentation and level of detail provided, and are therefore not comparable;

- (e) the available Member State returns provide only an insight into direct purchases of foreign origin, and provide no information on indirect purchases.

In addition, taking into account the problems concerning the application of aggregation rules, the definition of discrete operating units, etc., it is not surprising that the Member State returns with respect to above-threshold purchases vary from 16% to 93% coverage. This, combined with the lack of necessary detail, calls into question their reliability.

Therefore, no consistent data exist on the value of purchases from foreign suppliers nor of purchases of foreign origin from domestic suppliers. To provide this information at a sufficient level of detail for 1994 would require the entities participating in the demand-side survey to undertake a significant amount of work at an individual contract level, which was not feasible within the scope of this study.

Since no data exist or are collectable on imports into the public sector below central government level and into the utilities in individual Member States, it was not possible to use demand-side data to make sound estimates of import penetration by supplying sector or in total for each Member State.

A more reliable source of information is private-sector companies supplying the public sector or utilities, since they keep detailed records of their exports and imports. In general, this information is published in their annual reports at regional level, permitting identification of exports to the (rest of the) EU and third countries.

The supply-side survey provides the following (high quality) data on a representative sample of 1,608 suppliers to the public sector, broken down by Member State, supplying sector and company size:

- (a) total turnover,
- (b) percentage of turnover supplied to the domestic public sector,
- (c) percentage of turnover exported to the public sector in other EU Member States,
- (d) percentage of domestic public-sector sales imported.

Using the supply-side sample data (where possible, cross-referenced with the Member State returns), estimates of intra-EU direct and total indirect import penetration by supplying sector and Member State were made, based on the following assumptions:

- (a) the value of intra-EU public-sector exports in a sector is equal to that of intra-EU public-sector imports;
- (b) the total value of sales to the public sector in the EU provides a good estimate of the value of EU public-sector consumption.

The estimates of third country direct import penetration for central government, as contained in Member State returns, have been used to estimate direct extra-EU public-sector import penetration. The problems described above with differences in coverage and level of detail of the Member State returns are of less importance when estimating direct extra-EU import penetration, since overall levels of direct extra-EU imports into the public sector are reported to be very low and, therefore, any inaccuracies will have little impact on the total estimates.

Price disparities

Considerable difficulties were encountered in obtaining reliable price data, since this information is, understandably, highly sensitive. As a result, it was necessary to obtain price data from a range of sources:

- (a) *The cost of non-Europe in public sector procurement*, European Commission, 1988;
- (b) *The implications of opening up public procurement in Greece, Italy, Portugal and Spain*, European Commission, 1992;
- (c) Eurostat;
- (d) price data created by DRI for a study undertaken for the European Commission on price convergence (1997).

Despite the limited availability of price data, comparisons of prices between Member States and over time (1987–94) are considered to be reliable indicators of price differences for the same or similar products within the EU, for the reasons given below.

- (a) Data sources are not significantly different, due to:
 - (i) all data referring to prices paid by purchasers,
 - (ii) the Cecchini Report (European Commission, 1988) and DRI figures all being based on Eurostat data.
- (b) Any changes in product over time, which happen universally or only in one country, are irrelevant. What matters is purchaser behaviour. For example, in a case study interview it emerged that one utility in one Member State had purchased a technologically advanced product in another Member State at a third of the domestic price. Despite this, all other utilities in the first Member State continued to buy the outdated technology domestically at the higher price.
- (c) There is a value in showing price data for the individual years to identify the level and nature of price disparities between Member States.

Since the price information was inclusive of taxes, an adjustment was made by removing VAT under the assumption that equipment goods are subject to the standard rate of VAT in all Member States.

Supply-side structure and case studies

The principal sources used for the collection of data on production, employment and industry specialization were:

- (a) Eurostat 1994–95,
- (b) DEBA, industry and database estimates, 1994–95,
- (c) *Basic statistics of the Community*, Eurostat 1993, 1995,
- (d) industry publications,
- (e) *Panorama of EU industry 1995/96*,
- (f) company accounts.

The analysis covered the 1987–94 period, where possible.

1.3. Public procurement in 1987 (Chapter 4)

The public procurement market in 1987 was estimated at ECU 476 billion, equivalent to almost 12% of the EUR-15's GDP. This estimate was arrived at by adjusting the original Cecchini estimate of 15% of GDP for the coverage of the current (single market) directives on public procurement.

Table 1.4. Macro-economic importance of public purchasing in 1987 (billion ECU)

	GDP ¹	Total government expenditure ²	Total public procurement ³	Government expenditure/GDP	Public procurement/GDP
Belgium	121.1	71.5	15.4	59.1%	12.7%
Denmark	88.8	49.5	10.3	55.7%	11.6%
France	770.2	398.2	88.3	51.7%	11.5%
Germany	960.8	450.4	94.8	46.9%	9.9%
Greece	40.1	19.1	6.3	47.7%	15.7%
Ireland	26.2	13.4	3.0	51.3%	11.5%
Italy	658.2	330.6	68.4	50.2%	10.4%
Luxembourg	5.3	2.9	0.6	54.1%	11.3%
Netherlands	188.7	112.2	21.9	59.5%	11.6%
Portugal	31.8	13.7	4.6	43.1%	14.5%
Spain	254.2	103.7	26.4	40.8%	10.4%
UK	599.3	244.5	98.9	40.8%	16.5%
EUR-12	3744.7	1809.8	438.9	48.3%	11.7%
Austria	101.8	53.6	11.9	52.7%	11.7%
Finland	77.3	35.4	9.0	45.8%	11.6%
Sweden	139.4	83.1	16.3	59.6%	11.7%
EUR-15	4063.2	1981.9	476.1	48.8%	11.7%

Sources: ¹ Eurostat.

² *General government receipts, expenditure and gross debt*, European Commission, DG II, 1995.

³ B, D, F, I and UK: *Cost of non-Europe in public sector procurement*, European Commission, 1988.

E, GR, P: *Opening up public procurement in the excluded sectors*, European Commission, 1992.

Other countries: EuroStrategy Consultants estimates.

The five large Member States accounted for almost 80% of the EUR-15 public procurement market in 1987.

In 1987 the EUR-12 public procurement markets were characterized by nationalistic purchasing, lack of transparency, wide price variances for similar products and negligible cross-border trade.

1.4. Legal measures review (Chapters 5–9)

1.4.1. Background

As a result of the findings of the 1988 ‘cost of non-Europe’ study, a number of amendments were made to the original Works and Supplies Directives⁸ (adopted in 1971 and 1977 respectively) to improve their effectiveness by closing ‘loopholes’ which had been used by purchasing entities to circumvent the directives’ aims.

The scope of the public procurement rules was also subsequently extended to embrace:

- (a) utilities,
- (b) services (purchased by both the public sector and utilities),
- (c) a system of remedies (to ensure suppliers had a rapid and effective system of obtaining redress in instances where they have been treated unfairly).

As well as intra-EU legislation, a number of international agreements giving third country firms and products access to public and utilities procurement have been concluded, the principal of which are:

- (a) the European Economic Area (EEA) Agreement,
- (b) the World Trade Organization (WTO) Agreement on Government Procurement (GPA),
- (c) bilateral agreements with the USA,
- (d) association agreements with central and eastern Europe.

In view of these amendments and extensions in scope, a coherent and comprehensive legal framework should have ensured that:

- (a) the possibilities for non-compliance were limited,
- (b) suppliers would have access to effective systems of redress within Member States.

1.4.2. Community legislative framework (Chapter 6)

In many important areas the legislation’s requirements are not clear, including, in particular:

- (a) boundaries between works and supply/services contracts,
- (b) operation of the ‘aggregation rules’ (both regarding which products or services should be aggregated, and the treatment of discrete operating units (DOUs) within the same entity),
- (c) use of ‘framework agreements’ in the public sector,
- (d) permissible criteria for shortlisting in the public sector,
- (e) extent to which renewals, extensions or amendments to existing contractual agreements constitute new contracts,
- (f) extent to which alterations to bids are permitted in open and restricted procedures.

⁸

Council Directive 71/305/EEC of 26 July 1971 concerning the co-ordination of procedures for the award of public works contracts (OJ L 185, 16.8.1971, p. 5) (as amended by Directives 78/669/EEC (OJ L 225, 16.8.1978, p. 41) and 89/440/EEC (OJ L 210, 31.7.1989, p. 1)) and Council Directive 77/62/EEC of 21 December 1976 co-ordinating procedures for the award of public supply contracts (OJ L 13, 15.1.1977, p. 1) (as amended by Directives 80/767/EEC (OJ L 215, 18.8.1980, p. 1) and 88/295/EEC (OJ L 127, 20.5.1988, p. 1)), both now superseded.

These problems have been perpetuated in national transposing legislation, which has, in general, not provided any interpretation of the directives.

The directives also contain a number of drafting errors, inconsistencies and omissions, some minor, some more serious.

As at the end of 1995, no European Union guide to the interpretation of the directives existed.

1.4.3. National transposition (Chapter 7)

As at 31 December 1995:

- (a) the European legal framework had not been fully transposed, with a number of key gaps where Member States had failed to introduce national transposing measures, particularly in relation to the Public Services Directive 92/50 (Austria, Belgium, France, Greece and Austria) and Utilities Services Directive 93/38 (Austria, Belgium, Germany, France, Luxembourg and UK);
- (b) numerous examples of late transposition for all directives; during this period the directives (with the exception of those on remedies) were effective by 'direct effect';
- (c) a number of Member States where national transposition was late, but where instructions, such as circulars/administrative orders were in place requiring contracting entities to comply with directives, particularly in relation to the Public Works Directive 89/440 (Denmark, Ireland, Netherlands and UK), and the Public Supplies Directive 88/295 (Denmark, Ireland and UK).⁹

Against this background, the European Commission is currently pursuing a number of Member States for failure to transpose and incorrect transposition of the directives.

There is considerable variance between the date of entry into force of the directives in Member States, with, for example, directives only having come into force in Austria, Finland and Sweden in 1994 (under the EEA Agreement, now superseded by their membership of the EU from 1 January 1995), and the Utilities Directives yet to come into force in Greece, Portugal and Spain.

Whilst the Public Procurement Directives in force had not been transposed into national law in all Member States, where transposition had taken place, it was largely effective in legal terms.

1.4.4. Remedies and enforcement (Chapter 8)

In most Member States there are two principal problems hindering effective relief (under the Remedies Directives, 89/665/EEC and 92/13/EEC):

- (a) the inability to obtain remedies with sufficient rapidity,
- (b) a lack of clarity in the manner in which damages are calculated or can be obtained.

At the Member State level, there is a range of institutions dealing with public procurement, none of which appears to police and actively enforce the legislation.

⁹ See note 8, p. 16.

At a Community level, enforcement is limited to the Commission which, under the general provisions of the Treaty of Rome, pursues infringements of its own initiative, including proceedings relating to incorrect and/or late Member State transposition, or actions brought to its attention by an aggrieved party.

1.4.5. Measures affecting third country access (Chapter 9)

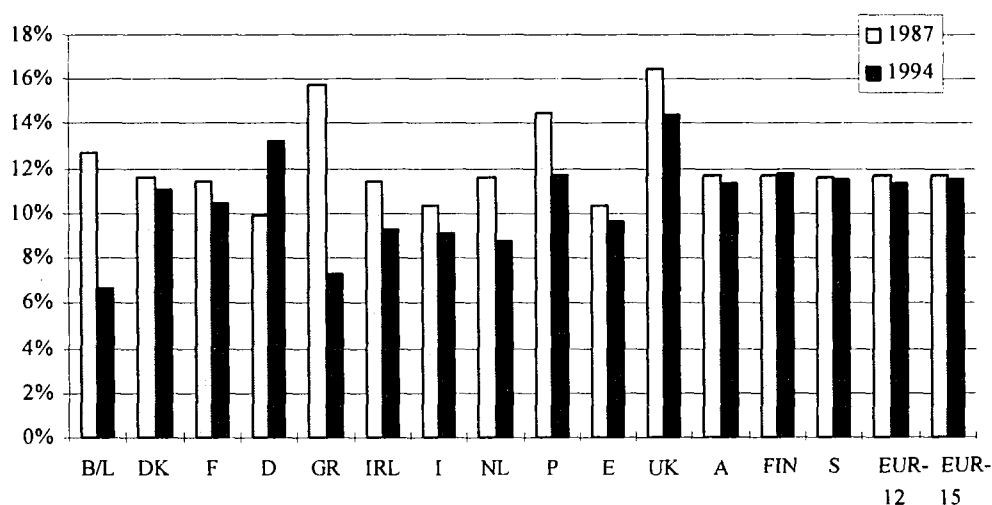
The EU public procurement markets are open to a number of non-EU countries enjoying the benefits of multilateral and bilateral agreements. The most important is the WTO Agreement on Government Procurement (GPA), but the scope of agreements is far from universal, with derogations in relation to all sectors and third countries.

1.5. Public procurement market contours in 1994 (Chapters 10–11)

1.5.1. Market size (Chapter 10)

The estimated size of the EUR-15 public procurement market in 1994 based on a combination of top-down and bottom-up analysis is ECU 721 billion (11.2% of EUR-15 GDP). As a share of GDP, this represents a reduction in most Member States, which is compensated by a significant increase in Germany due to unification.

Figure 1.1. Procurement as a share of GDP in 1987 and 1994



Note: 1994 figures are based on mean values.

Sources: Tables 4.2 and 10.1.

The overall decrease in size of the public procurement market is likely to reflect the general decrease in public expenditure as a result of Member State policies to reduce budget deficits.

In terms of procurement by entity type, sub-central government entities accounted for almost half of total EUR-15 public procurement in 1994, followed by central government (29%) and utilities (24%). Individual Member States showed significant variances due to institutional differences in public-sector structure, and the impact of austerity budgets. Compared to 1987,

sub-central government procurement had increased, whereas central government and utilities purchasing had decreased slightly, reflecting:

- (a) decentralization in purchasing from central to regional and local government,
- (b) privatization of utilities.

In terms of procurement by contract type, supplies contracts accounted for nearly 40% of total purchasing in 1994, with the remainder split equally between works and services. Compared to 1987, no significant shift in this breakdown had occurred.

Estimates of above-threshold procurement based on Member State returns for central government and the EC-US procurement study (1994) range from 25% to 60% of total EUR-15 procurement. National estimates vary from 16% in Denmark to 93% in France.

The key determinant of above-threshold purchasing for supplies and services is the definition of 'like' products or services for the purposes of aggregation. If, under the Supplies Directive, 'like products' are defined at the level of 'vehicles', 'stationery', 'IT hardware', etc., and, under the Services Directive at the level described in its Annex A, it is inconceivable that central government purchasing entities spend less than approximately ECU 130,000 annually under each of these general headings. Therefore, these estimates are likely to understate the level of above-threshold purchasing, other than for France, which reported 93% of total government purchasing above threshold.

The estimated total number of entities covered by the legislation and capable of letting contracts above threshold was around 111,000 in 1995, half of which were sub-central government entities.

1.5.2. Publication in the Official Journal (Chapter 11)

There has been a significant overall increase in the total number of notices published in the *Official Journal of the European Communities* (OJ) since 1987. However, Member State increases varied from 200% to 900%.

The number of notices for supplies and works contracts in the nine Member States subject to the Supplies and Works Directives since 1989 is still growing substantially.

There is a low level of compliance with the requirement to publish contract award notices (CANs) with, on average, only one CAN for every two tender notices.

Sub-central government accounted for the majority of notices published in 1995, although there were differences between Member States, reflecting roles and responsibilities.

In general, central government bodies complied with the directives' requirements in relation to use of procedures, with the exception of Italy, where 'accelerated restricted' was used for over 60% of tenders. A number of Member States also made considerable use of the negotiated procedure.

In general, sub-central government bodies complied with the directives' requirements in relation to use of procedures, with the exception of Italy, where 'accelerated restricted' was

used for some 38% of tenders. Noticeably high use of the negotiated procedure was also made in several other Member States.

In general, utilities predominantly used the negotiated and restricted procedures, although a number did make significant use of the open procedure.

In 1995, between 15,000 and 18,500 entities published notices in the OJ, with sub-central bodies making up about 75% of the total.

1.6. Market perceptions (Chapters 12–13)

1.6.1. Demand-side survey results (Chapter 12)

Despite expected differences between Member States, types of purchasers and types of procurement, a number of consistent messages emerged from the survey.

At a global level the survey showed that the legislation has had a significant impact, but that whilst there have been a number of benefits, these are currently seen by purchasers to be outweighed by associated 'costs'.

The legislation has resulted in increased openness, with most respondents reporting having published more notices and now using the OJ.

The survey's results indicated that:

- (a) without the legislation, there would have been a more restrictive approach to purchasing;
- (b) there are still high levels of non-compliance, with sub-central government entities, in particular, considered only to be starting to fulfil the directives' requirements.

Whilst there were indications of continued non-compliance with the legislation's requirements, there were also entities which had been genuinely disappointed by the supply side's response (to notices published in the OJ).

In general, whilst purchasing entities had a reasonable 'feel' for their domestic suppliers, their knowledge in relation to non-domestic suppliers was very low; implying that, for most, any increases in non-domestic penetration have been minimal. This was confirmed by entities which were able to provide such information.

In relation to sub-central government's experiences, a number of entities in some of the largest Member States:

- (a) expressed disappointment at the lack of response to notices published;
- (b) reported that, despite the directives having been in force for almost seven years in relation to supplies, only recently had there been evidence of (any) new suppliers responding to calls for competition;
- (c) awareness of the rules at this level is still low. (The structure of sub-central government in Member States is likely to exacerbate non-publication, particularly where procurement is devolved to (small) independent units, whose procurement is not aggregated.)

The 'cost' element of the legislation was most associated with:

- (a) more complex procurement,
- (b) more time-consuming procurement.

This 'cost' element of the legislation was exacerbated by generally perceived increases in both the total number of firms, and the number of non-domestic firms, submitting tenders not having, in general, been translated into changes in supplier bases, under the following conditions.

- (a) Only a minority of entities reported real benefits – primarily lower contract prices. Even in such instances, this perception was based on 'exceptional' cases, such as:
 - (i) two instances where, in a strategic area, an innovative technical solution from a new non-domestic supplier resulted in savings of 50%,
 - (ii) purchase of railway rolling stock from a previously unknown EU supplier as the direct result of a notice placed in the OJ.
- (b) The legislation's impact on any changes in supplier behaviour, such as improved service, was perceived to be minimal.

The lack of lower prices indicated that, despite an increase in new firms submitting tenders, they were:

- (a) either not competitive, or not competing on price;
- (b) pricing to national markets (minimizing any cost saving potential for the purchaser);
- (c) not selling across border (exporting direct) – the price reduction examples quoted above were, significantly, from suppliers selling direct from another Member State;
- (d) not stimulating competition (for the above and other reasons, such as domestic supplier apathy, lack of awareness and lack of concern).

An additional key finding not specifically covered by the survey, but consistently raised by entities which submitted additional comments, was the threat of legal action by suppliers. As a consequence of this and the legislation's lack of clarity, entities have adopted a literal (and defensive) approach to implementation of the rules. However, by applying the directives' requirements 'to the letter' rather than their 'spirit' in relation to, for example, supplier qualification:

- (a) administrative costs have increased,
- (b) potential new suppliers are (seen to be) deterred by the costs of completing extensive qualification documentation.

With the exception of some entities with a focus on works procurement, 'economically most advantageous' was the preferred award criterion for all types of entity in all Member States. However, the nature of award criteria used indicated that, despite claiming to be awarding on the basis of 'economically most advantageous', in most cases, purchasers chose on the basis of lowest price.

1.6.2. Supply-side survey results (Chapter 13)

Across all Member States, and within most sectors, there were a significant number of non-domestic subsidiaries selling to the public sector/utilities.

Overall, 41% of all firms surveyed had obtained information from the OJ and TED, although there were differences between Member States. A significantly higher percentage of large firms (69%) obtained information from the OJ and TED than medium-sized (53%) and small (34%) companies.

As a result of opportunities identified from the OJ and TED, 13% of all firms surveyed had won additional domestic business, and some 4% of all firms surveyed had won additional business in other EU Member States.

Large firms had been most successful in winning additional new business in both domestic and non-domestic markets as a result of opportunities identified in the OJ and TED. However, those small and medium-sized firms which had used the OJ and TED, were as successful as large companies in winning business in domestic markets.

The OJ and TED were seen in a positive fashion by those firms which had obtained information from them, with over 80% intending/expecting to submit at least as many tenders in response to notices in the future for both domestic and non-domestic markets.

In terms of domestic business, of the firms which had obtained information from the OJ and TED:

- (a) almost half had identified additional domestic business opportunities,
- (b) response rates to new opportunities were very high, with over 90% having submitted tenders, more than 70% of those submitting having won business as a result. Success was generally independent of size and sector.

In domestic markets, price was the major reason given by firms for failing to win additional business from opportunities identified in the OJ and TED.

In terms of non-domestic business:

- (a) a significantly higher percentage of firms reading the OJ/TED sell to other EU Member States than those not reading the OJ/TED, with the higher the percentage of readership of the OJ and TED in a Member State, the higher the percentage of firms selling to other EU Member States;
- (b) a significantly higher percentage of larger companies had won new business than medium-sized and small companies.

Response rates for non-domestic opportunities were high, with over 80% of those that had identified new opportunities having submitted tenders. Of these, 44% had subsequently won business.

Firms successful in non-domestic markets attributed their success to a range of factors. Although price was important, equal importance was attached to service, quality and technical innovation indicated.

Most firms considered the cost of submitting tenders for non-domestic business to be greater than for domestic business. Marketing and bid preparation itself were the most important additional costs.

Of those firms which reported using the OJ and TED, some 67% (32% of all firms interviewed) considered the information contained in notices adequate for business purposes. At a general level, the quality of information provided was seen to be lacking, since:

- (a) 9% of all firms interviewed had tried to sell to other EU Member States, but were not now doing so;
- (b) of the 58% of firms which had not tried to sell to other EU Member States, the principal reasons given were difficulty in identifying opportunities (13%) and the complexity of administrative procedures (10%).

Overall, 36% of all firms surveyed had noticed an increase in non-domestic firms competing for, and winning, business from their own public-sector and utilities customers.

This perception was supported by other survey results, principally that:

- (a) 31% of all firms surveyed were currently selling to public-sector/utilities customers in other EU Member States;
- (b) 21% of all firms surveyed were selling through offices/companies based in other Member States (although clearly there is a degree of overlap, and the extent to which firms actually know whether competitors in their own markets are non-domestic subsidiaries is debatable).

1.7. Economic analysis (Chapters 14–16)

1.7.1. Trade flows (Chapter 14)

In terms of the strategic products analysed, which are primarily bought by the public sector, there has been an overall increase in trade at both intra and extra-EC level, with the exception of locomotives and goods wagons. Extra-EC trade balances have been improving over the period 1988–92 with a particularly sharp rise in exports for transformers, X-ray apparatus, and telephonic and telegraphic switching apparatus.

For these products, Germany, France and, to a lesser extent, the UK showed the largest increases in both intra-EC and extra-EC trade.

Regarding the shopping list products which are bought by both the public and private sectors, there has generally been a larger increase in trade at both intra-EC and extra-EC levels than for the strategic public-sector purchases. Computers and network servers represented the only exception within the overall trend of increasing trade, whereas uniforms showed a particularly sharp increase in extra-EC imports, mainly from low-wage countries.

Generally, the United Kingdom and Italy have benefited most, while Germany and France experienced smaller increases.

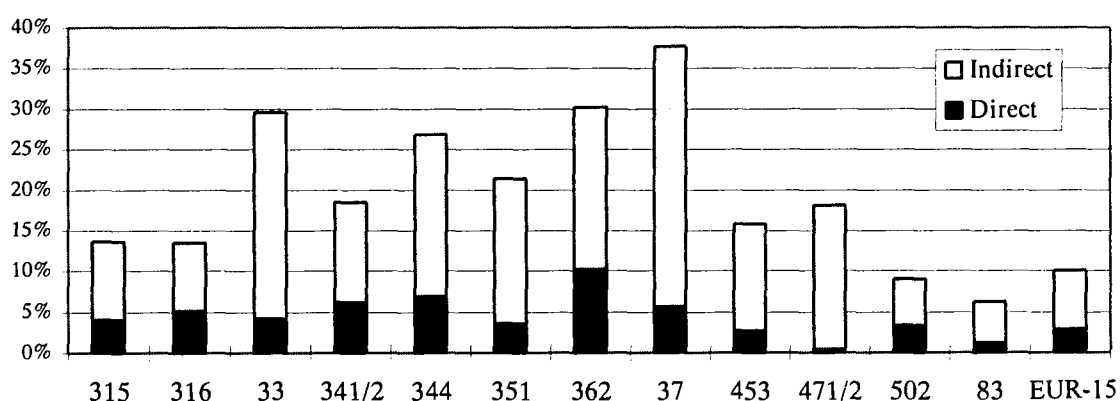
1.7.2. Public-sector import penetration

In 1994, an estimated 96–98% of total EU public-sector purchases was procured from domestic suppliers. When indirect foreign purchases are included, i.e. purchases via domestic suppliers such as subsidiaries, agents or importers, an estimated 7–13% of total European public-sector purchases was of non-domestic origin.

Of the direct imports into the public sector, other European suppliers accounted for an estimated 2–3% of total EU public-sector purchases in 1994. Third country suppliers accounted for less than 0.5%.

The level of public-sector import penetration showed large variations between the 'procurement sensitive' sectors. In general, public-sector purchases which are complex and have a relatively high technology content, such as medical equipment, railway rolling stock and office machinery, showed a high level of cross-border trade.

Figure 1.2. Direct and indirect public-sector import penetration by supplying sector (1994)



Note: Figures are based on the mean of the upper and lower estimates.

Source: Supply-side survey questions 26, 27 and 28. Member States' statistical reports, DG XV, 1995.

At an individual Member State level, the larger Member States showed lower levels of public-sector import penetration than the smaller Member States.

Compared to 1987, public-sector import penetration increased from 6% to an estimated average of 10% in 1994.

1.7.3. Price disparities (Chapter 15)

Overall, there is no conclusive evidence of price convergence between Member States for products bought by the public sector. There are some exceptions for certain products where a degree of price convergence has occurred between 1987 and 1994, such as cardiac monitors, buses and office machinery, which are generally purchased directly from the manufacturer.

Since no clear price convergence has been identified, it can be assumed that the competition effect predicted by the Cecchini Report in relation to the opening of public procurement has not yet materialized. Therefore, any price changes observed within a Member State can only be attributed to factors other than the single market in public procurement.

Despite the continued existence of price differences in 1994, the relative position of Member States in terms of absolute prices has changed between 1987 and 1994 for certain products, which can be partly explained by:

- (a) exchange rate movements,
- (b) differences in inflation rates.

Regarding price disparities for comparable products bought primarily by the private sector, no clear price convergence was observed between 1985 and 1993, except for transport equipment, such as motor vehicles and bicycles, ships, and aircraft.

1.7.4. Supply-side structure (Chapter 16)

In all industries, there has been a significant reduction in employment.

In 'commodity' areas, there has been a redistribution of market shares between Member States, resulting in changes in specialization.

For strategic industries, significant restructuring has resulted in increased supplier concentration and the creation of global players in the telecommunications, railway rolling stock and power generation sectors.

1.8. Case studies (Chapters 17–22)

1.8.1. Telecommunications equipment (Chapter 17)

The EU telecommunications equipment market has undergone fundamental change since 1987:

- (a) the supply side has been restructured and is today dominated by three economically strong and technologically advanced European groups;
- (b) equipment prices have come down by 20–30% in nominal terms;
- (c) market leaders – Alcatel, Siemens and Ericsson – have transferred production to other Member States to ensure access to local (public-sector) markets;
- (d) indirect import penetration has risen significantly, largely in components;
- (e) the EU's trade surplus with the rest of the world has been growing steadily since 1987, reflecting the industry's competitiveness on the world stage.

The main drivers of change have been the globalization of the market for telecommunications services, which has been the motor of liberalization. Service providers – the entities covered by the Utilities Directive – have responded by demanding the best technical solutions.

Although much of the *ex ante* hypothesis has been achieved, the role of the Utilities Directive, which came into force in January 1993 in most Member States, has been strictly limited.

Liberalization of network services in January 1998 will accelerate the changes already in progress and is likely to contribute to the achievement of a competitive and fair 'public procurement' market almost overnight.

1.8.2. Railway rolling stock (Chapter 18)

On the demand side, governments are being pressured to liberalize previously heavily subsidized national markets and increase the operational independence of network operators. Similarly, deregulation, privatization and separation of network management from the provision of services is creating competition between service providers, further weakening the

links between purchasers and traditional suppliers. As a result, the concentration of supply has reduced in the majority of Member States.

Since 1987, these developments are considered to have resulted in price reductions of the order of 20–30%.

On the supply side, over-capacity due to reduced public-sector expenditure and the high cost of R&D has resulted in a radical process of rationalization since 1987, significantly increasing supplier concentration. The industry is now dominated by three major players – Adtranz, GEC-Alsthom and Siemens – all having a strong presence in other Member States.

The public procurement legislation has had little impact on the competitiveness of the industry as the varied technical standards employed by national railways provide an inherent advantage to traditional suppliers which were either involved in their development, or have prior experience of them.

Only in the market for new urban/mass transit systems has the increased transparency caused by the directives been considered a key factor in opening up the markets to competition.

1.8.3. Power generating equipment (Chapter 19)

The electricity generation industry is moving, via a process of liberalization and privatization, towards greater private sector involvement and more market-driven behaviour. Together with the impact of the recession, general reductions in infrastructure investment, over-capacity and increased competition from North American suppliers, have caused equipment prices to fall by between 30% and 40% since 1990.

The public procurement legislation has acted as an accelerator to these changes, but despite its existence, some markets have been slow to liberalize. While technical harmonization has increased cross-border trade, the industry is still hampered by internal and external barriers such as enlarged testing requirements and certification activities.

The supply side has begun to restructure in response to these changes, with manufacturers trying to enter national markets, either through consortia or acquisition, but significant adjustment has not yet taken place. However, over the next 18 months a number of manufacturers are predicting large job losses.

1.8.4. Engineering consultancy (Chapter 20)

In 1987, the engineering consultancy market was generally fragmented on both the supply side and the demand side. This has not changed significantly, although a dramatic reduction in demand has reduced prices and increased the intensity of competition. This effect, however, has taken place nationally, with cross-border EU activity remaining low (3% to 4% of revenue), despite the continued success of European consultancies outside Europe.

There is a trend towards large companies becoming larger and seeking to use strategic partnerships and consortia as a means of developing intra-European business. At present, however, the positions of the leading consultancies in the UK, Germany and the Netherlands have not altered markedly because of continued barriers to intra-EU trade, including differences in fee regulations and necessary qualifications.

1.8.5. Uniforms (Chapter 21)

The public procurement legislation has played a role in opening up previously closed markets, but other factors, such as a decline in demand, have been as important.

The experience of major suppliers indicates that:

- (a) the potential for purchasers to continue to discriminate against new suppliers, even when complying with the legislation, is considerable;
- (b) non-compliance, in particular by splitting contracts (failing to aggregate), is still widespread, especially in smaller (sub-central) purchasers.

The benefits of increased cross-border trade have only been realized by the industry's largest players. There is a strong perception, even among larger suppliers that have been successful in selling across borders, that key markets are still closed to non-domestic suppliers.

SMEs have continued to focus on local and regional markets since they:

- (a) lack the resources to compete for non-domestic business;
- (b) do not consider other markets to be truly open and fair.

In addition, the legislation is seen to have complicated the tendering process with additional bureaucracy in relation to, for example, (pre-) qualification which is particularly burdensome for SMEs.

There is an apparent contradiction between the continued closed nature of regional and local markets, with purchasers still showing a national preference, and reported reductions in prices. It appears, however, that, in common with several other case study sectors, purchasers have used the legislation as a means of driving down prices while keeping the same suppliers.

1.8.6. Construction (Chapter 22)

The overall impact of the single European market and public procurement legislation on the EU civil engineering market has been minimal in comparison with the changes brought about by declining demand due to reduced public finance for infrastructure investments. The result has been a dramatic rise in competition with prices falling throughout Europe.

The majority of large civil engineering contracts, however, continue to be won by national suppliers, although in a small number of cases non-national suppliers are being used to drive down prices of traditional suppliers. What success there has been in developing intra-EU trade is due to smaller, specialist subcontractors, which have exported their know-how throughout Europe.

The supply side continues to be dominated by a small number of large national contractors in France, Germany and the UK. The level of concentration has increased slightly due to the recession, forcing further mergers and acquisitions at national as well as at international level.

The existing market structure will not remain static indefinitely, and the most likely competitive response will be an upsurge in mergers and acquisitions, particularly among the leading French and German players, as they seek to restructure and rationalize their operations, eliminate competition and penetrate non-national markets through cross-border ownership.

1.9. Impact assessment (Chapter 23)

1.9.1. Direct impacts – openness

Use of the Official Journal

In general, the OJ has been a very valuable source of information. It is regarded as the single point of focus for business in the public sector, either domestically or in other Member States, in particular by suppliers committed to entering new markets. This was illustrated by the supply-side survey, which found that:

- (a) an estimated 41% of suppliers to the public sector obtain information from the OJ. However, SMEs have only a 30% readership, suggesting that larger companies are the main beneficiaries of this information;
- (b) an estimated 14–20% of all suppliers to the public sector had identified additional opportunities in their domestic markets, and an estimated 9–13% in other EU markets;
- (c) over two-thirds of OJ readers considered information provided in notices to be adequate for business purposes.

These findings were supported by results from the demand-side survey, where most purchasers reported their only change in publication media to be the OJ. This implies that there has been an increase in access to opportunities within a Member State and in other EU Member States, since, previously, public-sector calls for competition were only published locally and nationally, not internationally, whereas utilities, in general, did not publish at all.

Therefore, if suppliers did not know about opportunities before legislation came into force, without the OJ, they would probably still be unaware of them. In this respect, the directives have created, in the form of the OJ, greater openness and consistency in relation to public-sector opportunities.

However, there is a lack of knowledge among potential suppliers of the extent of information on public-sector opportunities available in the OJ, due to:

- (a) limited promotion of the OJ at Member State level,
- (b) relatively high subscription fees for the OJ and the TED database, especially for SMEs.

It can also be inferred that, based on the results of the demand-side survey and the previous analysis, it is SMEs that have benefited the least from the legislation since:

- (a) smaller contracts are still let locally to broadly the same suppliers without publication in the OJ (as they are not being aggregated);
- (b) a smaller proportion of SMEs use the OJ.

Numbers of entities publishing in relation to the coverage of the directives

As a result of the procurement legislation, there has been an increase in the number of entities publishing, reflecting:

- (a) implementation of the Utilities Directives,
- (b) as indicated by the demand-side survey, entities, particularly sub-central government bodies, only recently starting to fulfil the directives' publishing requirements.

The number of entities that are covered and that should be publishing does not correspond to the actual number of entities publishing. This is illustrated by the significant differences between the number of entities in the EAP database (>100,000) and the number that had published in 1995 (>15,000).

Overall, an estimated 14% of the total number of entities covered by the legislation is actually publishing in the OJ.

Reasons for non-publication by entities reflect a varied understanding of the directives' requirements, for example:

- (a) a contract-based approach to purchasing, resulting from a misinterpretation of the aggregation rules;
- (b) different definitions for discrete operating units;
- (c) misunderstanding of coverage leading to non-compliance.

In addition, non-publication is exacerbated by:

- (a) the absence of active policing and enforcement of the directives' requirements at Member State level;
- (b) inefficient national legal systems of redress;
- (c) suppliers' reluctance to 'prosecute' potential customers;
- (d) lack of awareness of the legislation's requirements by suppliers, particularly SMEs.

Extent of publication of notices in relation to the coverage of the directives

The implementation of legislation has resulted in a significant increase in the total number of notices published in the OJ from around 12,000 in 1987 to over 95,000 in 1995, reflecting:

- (a) the entry into force of the Utilities and Services Directives on 1 January 1993;
- (b) the overall increase in awareness of the directives, as reported in the demand-side survey, resulting in more entities publishing and more notices being published per entity.

The impact of the implementation of the Utilities and Services Directives is vividly illustrated by the step change in the number of:

- (a) notices published by the utilities, from 0% in 1992 to 14.7% of all notices published in 1995;
- (b) services notices published, from 11.3% of all notices published by central and sub-central government in 1993 to 28% of the total number of notices in 1995.

However, there is still under-publication of tender notices as illustrated by:

- (a) entities not publishing, due to the varied understanding of the directives' requirements;
- (b) the continuing increase in number of supplies notices being published by public-sector entities despite legislation having been in force since 1989;
- (c) for every two tender notices only one CAN being published (itself an indicator of openness);
- (d) the reported differences in above-threshold procurement, with central government in some Member States claiming above-threshold procurement at a mere 16%. This is

inconceivable in terms of the size of aggregated budgets on supplies and services, even taking into account the existence of discrete operating units.

These views are supported by a 1994 study for the European Commission on EC-US procurement, which showed that in one of the EU's largest Member States:

- (a) almost 10% of towns with more than 100,000 inhabitants did not report any procurement in 1993;
- (b) 28% of towns of 10,000–50,000 inhabitants, and over 30% of towns of 50,000–100,000 reported no contracts.

It was concluded to be inconceivable that these entities did not have any purchases covered by the directives. Likewise, a Commission analysis highlighted considerable variation between notice publication by similar-sized (major) sub-central government bodies with similar responsibilities in other Member States.

The overall conclusion is that significant under-publication in the OJ exists as a result of:

- (a) varied interpretations of:
 - (i) a contract,
 - (ii) a discrete operating unit,
 - (iii) the definition of 'products/services with *similar* characteristics' under the aggregation rules;
- (b) in some cases, non-compliance.

In addition, from a demand-side perspective, there is a perceived lack of incentive to publish due to:

- (a) difficulties in understanding some key elements of the directives (and, consequently, national transpositions);
- (b) little supplier response when tender notices are published;
- (c) no active policing or enforcement.

This is creating a 'self-fulfilling prophecy', reflecting attitudes and actions of not only the demand side but also of the supply side, as will be shown in the downstream impact assessment.

Use of procedures

A direct impact of the legislation has been that when entities are publishing a call for competition, they are, in general, complying in terms of the type of procedure used, with:

- (a) central and sub-central government primarily using the open and restricted procedures;
- (b) utilities primarily using the negotiated and restricted procedures.

The scope of openness is only limited in relation to the use of qualification systems and negotiated procedures, since:

- (a) opportunities are not required to be made public. Even when the supplier is on an approved list, there is no obligation to notify every supplier of the opportunity;

- (b) the level of information required to be accepted on a qualification list can be used to deter new suppliers (albeit unintentionally).

Similarly, although compliant, the publication of indicative notices or notices of existence of qualification systems on an annual basis means suppliers that either miss the announcement or do not obtain information from the OJ/TED will not respond or be aware.

In general, there is a preference by purchasers to use restricted procedures to avoid the higher costs associated with the administrative implications of using the open procedure.

1.9.2. Direct impacts – fairness

Selection of award criteria and their application

Regarding the application of award criteria, a distinction has to be made between the tendering procedure chosen, with:

- (a) for the open procedure, only contract award criteria being applied;
- (b) for the restricted and negotiated procedures, three types of criteria being applied:
 - (i) pre-qualification,
 - (ii) shortlisting,
 - (iii) award.

In general, the pre-qualification stage can cut out competition by setting criteria which prevent potential suppliers from submitting tenders. In addition, assuming the awarding authority sets objective pre-qualification criteria, there appears to be no objective basis for selecting a subset of pre-qualified suppliers to tender. The absence of any permissible criteria for shortlisting increases the scope for misuse and favouring of traditional suppliers.

The vast majority of awarding authorities claim to award contracts on the basis of the ‘most economically advantageous tender’, which requires the purchaser to select the overall best tender according to a combination of objective award criteria. Under normal circumstances the award criteria should be prioritized, implying the existence of a weighting system.

In practice, purchasers:

- (a) find it difficult to measure some of their stated award criteria, such as quality;
- (b) often create a shortlist of tenders based on all criteria other than price, then choose the cheapest;
- (c) invariably, select on price.

As a result, suppliers often submit tenders on one basis, and are evaluated on another.

Both the surveys and the in-depth interviews confirmed that:

- (a) price is often the sole decision criterion (without weighting being applied);
- (b) purchasing authorities often introduce competition and award an occasional contract to a new supplier to force traditional players to reduce prices, even though they would have won under the strict application of ‘most economically advantageous’.

Redress

In all regulated environments there is always a degree of unfairness. This can be minimized by having:

- (a) clear and unambiguous rules,
- (b) effective policing,
- (c) efficient enforcement.

Regarding clarity, important areas of the directives have been identified as unclear, notably:

- (a) boundaries between works and supply contracts;
- (b) application of the 'aggregation rules', both regarding the level at which products or services should be aggregated and the treatment of discrete operating units within the same entity;
- (c) use of 'framework agreements' in the public sector;
- (d) permissible criteria for shortlisting in the public sector;
- (e) the extent to which renewals, extensions or amendment to existing contractual agreements constitute new contracts;
- (f) the extent to which alterations to bids are permitted in open and restricted procedures;
- (g) rules on criteria and evidence for assessing qualification in the utilities sector applying to qualification systems in some circumstance but not in others, without any apparent justification.

In general, there is no active policing of compliance at Member State level.

Regarding enforcement, there is no provision for Member States to enforce compliance. Enforcement is restricted to suppliers instituting an action against a purchasing authority under the legal remedies legislation in a particular case. However, with the exception of Denmark and Sweden, the efficiency and effectiveness of national arrangements in relation to remedies are considered to be inadequate, due to:

- (a) an inability to obtain remedies with sufficient rapidity,
- (b) a lack of clarity in how damages are calculated and obtained.

1.9.3. Downstream impacts – competition

Supplier response

Based on the supply-side survey results, an estimated:

- (a) 14–20% of all suppliers to the public sector have identified additional opportunities in their *domestic* markets from notices published in the OJ, with 9–13% of all suppliers to the public sector winning new business as a result;
- (b) 9–13% of all suppliers to the public sector had identified additional opportunities in *other EU Member States* from notices published in the OJ, with 3–4% winning additional business as a result.

In both cases, this level of success is directly attributable to the directives' requirement to publish notices in the OJ, and their impact on the purchasing procedures and attitudes of public-sector entities.

Although firms of all sizes have been successful in winning additional business using the OJ, the weighting has been in favour of large companies, particularly for non-domestic business, reflecting their:

- (a) higher readership of the OJ: 69% of all large companies compared to 53% for medium-sized companies and 34% for SMEs,
- (b) greater presence in non-domestic markets.

These changes on the supply side are corroborated by the views of purchasers that there had been:

- (a) some increase in non-domestic suppliers tendering for opportunities;
- (b) some change in the mix of their supplier bases, predominantly large and multinational companies, particularly among utilities and sub-central government.

Import penetration

Public-sector purchases of non-domestic origin moved from an estimated 6% in 1987 to 10% of total public-sector purchases in 1994, of which:

- (a) direct imports increased from 1.4% to 3%,
- (b) indirect imports increased from 4.5% to 7%.

This was consistent with the estimated increase in the number of suppliers to the public sector winning new additional business in other EU Member States.

In general, the demand side did not perceive any change in nationality of their supplier base, which reflects:

- (a) the small and uneven nature of the increase in direct public-sector import penetration;
- (b) the majority of the increase in public-sector import penetration being purchased from a 'domestic' supplier (including subsidiaries of foreign companies) that imported the procurement.

When considering public-sector purchases in terms of 'commodity' products, which are low-tech standard purchases (office furniture, paper, stationery, etc.), and of high-cost strategic products, it is in the area of 'commodity' purchases that there has been a general significant increase in intra-EU trade. This was reflected in the rise in public-sector indirect import penetration.

For example, in paper there has been a significant increase in intra-EU trade, which is consistent with a high level (18%) of indirect public-sector imports. This is supported by the reported lack of success in winning new direct business in other Member States by paper suppliers to the public sector (see Table 1.5).

Since both public and private sectors procure these commodity products from the same intermediate local suppliers, by inference, public-sector import penetration equals private-sector import penetration.

Table 1.5. Supplier response and public-sector import penetration

Sector/product	NACE	OJ readership ¹ (%)	Winners of new domestic business ² (%)	Winners of new other-EU business ³ (%)	Public-sector import penetration, ⁴ 1994 (%)	
					direct	indirect
<i>Low-tech products</i>						
Office furniture	316	34	9	2	5	8
Uniforms	453	47	12	4	3	13
Printing and paper	471/2	26	6	0	<1	17-19
<i>High-tech products with common tech. specs.</i>						
Office machinery	33	45	17	3	4	22-29
Motor vehicles	351	41	12	3	3-4	16-19
Medical equip.	37	26	10	2	5-6	19-21
<i>High-tech products with different technical specs.</i>						
Boilers	315	31	12	4	4	9-10
Power generating equip.	341/2	42	10	4	6-7	11-14
Telecommunications equip.	344	42	13	7	6-8	18-22
Railway rolling stock	362	49	12	10	10-11	19-21
<i>Works</i>						
Construction/civil eng.	502	44	11	4	3	4-7
<i>Services</i>						
Consulting engineering	83	52	22	4	1	5-6
EU average		41	9-13	3-4	2-4	5-9

Sources: ¹ Percentage of suppliers to the public sector using the OJ and TED (Figure 13.2).

² Percentage of suppliers to the public sector winning additional domestic business (Figure 13.12).

³ Percentage of suppliers to the public sector winning additional business in other EU Member States (Figure 13.23).

⁴ Table 1.1.31 in the unpublished Annex to this report.

With respect to purchases of strategic products, in general this area of procurement has experienced increases in intra-EU and extra-EU trade, albeit at a somewhat lower level than the corresponding changes in trade for 'commodity' purchases. However, their level of direct purchases from non-domestic suppliers is, today, more important than that for 'commodity' purchases. This is supported by the supply-side survey where suppliers of strategic products, such as railway rolling stock and telecommunications equipment, reported the highest levels of new additional business in other Member States.

In the areas of works and services, public-sector import penetration is, in broad terms far lower, with any public-sector trade, in the main, being related to a small number of large international construction projects and their closely related services, such as architecture and engineering consultancy. The case studies indicated a perceived continued existence of barriers to trade in these areas, which, in essence, the public procurement legislation could not be expected to overcome.

Price convergence

Within a national market a company's competitiveness is determined by the efficiency of the use of labour and capital. The domestic price of a product is a function of the productivity and cost of labour, and the cost of bought-in goods and services, of which raw materials are generally the most important component.

Although a depreciating currency can make the export price of the country concerned competitive, this price advantage is usually eroded by higher inflation and lower productivity. The situation is further complicated when dealing with technologically complex products, where a price advantage may result from innovative design, such that competitors' products are technologically different, though, possibly, functionally similar.

When considering price convergence, the following key factors should be taken into account:

- (a) degree of imperfect competition – the demand- and supply-side surveys indicate that a minority of purchasers and suppliers are aware of the opportunities in the marketplace;
- (b) technical incompatibility – purchasing entities are restricted to existing, national suppliers or, when feasible, other EU suppliers incur additional costs to satisfy national technical requirements;
- (c) technical/functional specifications – the use of technical rather than functional specifications mitigates against the use of innovative (often lower cost) solutions;
- (d) supply chain structure – the nature of national supply chain structures often restricts price savings to intermediaries rather than end-purchasers;
- (e) exchange rates – exchange rate movements create artificial price advantages of a temporary or permanent nature and result in a climate of commercial uncertainty.

Within the EU the above factors, particularly imperfect competition throughout the EU, have individually and collectively contributed to a situation in which there has been no observable price convergence.

Regarding commodity products, the dominant factor has been the supply-chain structure where these products are almost exclusively purchased locally from national (private sector) suppliers. These suppliers are normally intermediaries, who source their purchases internationally on (ex-factory) price – as illustrated by the increases in trade since 1987 – and sell at national price levels. This also reflects the completion of the single market programme.

In general, these observations are consistent with the high levels of indirect import penetration for commodity products. This is illustrated by filing cabinets being 36% more expensive in the UK than the cheapest Member State, although the UK was the largest exporter of filing cabinets to the rest of Europe in 1994, reflecting the change in the terms of trade due to exchange rate movements.

In addition, there is little competition in these products with minimal tendering resulting from misinterpretation of the aggregation rules, whereby the focus is on contracts rather than aggregated annual expenditure. This might also explain the lack of price convergence and the high levels of price disparities in these areas.

Regarding strategic products, they are considered to fall into two categories:

- (a) those with common technical specifications, such as medical equipment, vehicles and office machinery,
- (b) those with significantly different technical requirements due to incompatibility of systems between Member States, as illustrated by differences in national railway, and power distribution systems.

Although there have been recession-induced price reductions for strategic purchases, no real price convergence has occurred, with the exception of cardiac monitors, buses and office machinery, which can be explained by:

- (a) their relatively more transparent markets with few European players,
- (b) the products requiring little to no adaptation for different EU markets.

The fact that there has been no price convergence for the other strategic products reflects:

- (a) their being 'bespoke' in nature and manufactured to satisfy widely differing national technical standards,
- (b) supplier strategies of having a local presence (as generally preferred by the purchasers), resulting in a national cost base and pricing to national markets.

This is supported by the fact that for these strategic purchases, direct public-sector import penetration is low compared to indirect imports.

Rationalization and restructuring

In all procurement-sensitive sectors there has been significant supply-side rationalization, reflected in reduced employment and productivity improvements.

In the 'commodity' areas, despite significant recession-induced price reductions in national markets, any change cannot be attributed to the procurement legislation since:

- (a) there has been no price convergence, reflecting the supply-chain structure (purchasing from national wholesalers) and the bulk of the public-sector imports being indirect;
- (b) there has been significant non-publication both in terms of number of entities publishing (an estimated 14% of the potential published) and the underpublication of above-threshold procurement (as illustrated by the example of the typical sub-central government entity, which published an estimated 25–30% of their purchasing of works and supplies).

In the strategic areas, there has not only been a recession-induced reduction in employment, but also a (public-sector) market-induced restructuring, which has resulted in:

- (a) the creation of a small number of global players in telecommunications, power generation equipment and railway rolling stock;
- (b) significantly increased intra- and extra-EU trade, the bulk of which has been in indirect imports reflecting the strategies of these global players to have local manufacturing (assembly) capabilities in key European markets;

Table 1.6. Economic indicators

Sector/product	Public-sector import penetration ¹ 1994 (%)		Price convergence 1987-93 ²	Trade change 1988-92 ³	Production % change 1988-92 ⁴	Employment change 1988-92 ⁵
	direct	indirect				
<i>Low-tech products</i>						
Office furniture	5	8	N	++	+2.3	+1
Uniforms	3	13	n/a	++	+1.2	-17
Printing and paper	<1	17-19	N	+	+3.5	-3
<i>High-tech products: common technical specs.</i>						
Motor vehicles	3-4	16-19	N/S*	++	+0.1	-18
Office machinery	4	22-29	S	++	+6.5	-13
Medical equipment	5-6	19-21	N/S**	++	n/a	n/a
<i>High-tech products: different tech. specs.</i>						
Telecommunications equip.***	6-8	18-22	N	+	-1.5	-18
Power generating equip.***	6-7	11-14	N	++	+2.7	-19
Power distribution equip.***	6-7	11-14	N	++	+2.7	-19
Railway rolling stock***	10-11	19-21	N/S	++	+6.6	-5
Boilers	4	9-10	N	-		-9
<i>Works</i>						
Construction/civil eng.	3	4-7	n/a	+	+1.2	+7
<i>Services</i>						
Engineering consultancy	1	5-6	n/a	+	-	n/a

Notes: N = none; S = some; n/a = not available; ++ = strong increase; + = increase; - = decrease.

* buses; ** cardiac monitors; *** single market (public-sector) induced restructured industries.

Sources: ¹ Table I.1.31 in the unpublished Annex to this report.

² Tables 15.5 and 15.6.

³ Tables 14.1-14.20.

⁴ Tables 16.1-16.10. and 22.1.

⁵ Tables 16.1-16.10.

- (c) no apparent price convergence, largely reflecting the additional costs associated with:
- (i) complying with national technical standards,
 - (ii) the use of local production facilities,
 - (iii) the general resistance of public bodies in certain Member States to innovative technology. For example, in one of the large Member States with in excess of ten purchasing entities in a sector, only one had purchased a high-cost strategic product based on a new and proven technology from another large Member State at a third of the national price level.

Despite the lack of price convergence, since 1990 suppliers in high-cost strategic product areas have been forced by public purchasers to reduce their prices by 20–40%, reflecting the recession and squeeze on public spending. According to interviews with market leaders, the public sector has used the procurement legislation to bring down national price levels in national markets by threatening traditional suppliers that they would award contracts to new, lower priced competitors. In practice, there have been occasional contracts awarded to non-domestic players, resulting in lower prices but no appreciable change in market shares.

1.9.4. Downstream impacts – public-sector cost-benefit analysis

For strategic products with common technical specifications, the identified price convergence between 1987 and 1994, implies the achievement of savings in the less competitive Member States. Particularly in the telecommunications area, the in-depth interviews showed that the public sector has enjoyed significant technology-related savings, reflecting the liberalization of the European telecommunications market.

Elsewhere in the strategic areas, the absence of price convergence implies that any national price savings can only be attributed to the recession.

The introduction of the public procurement legislation has caused some purchasers to put more calls for competition in the OJ, particularly in the area of ‘commodity’ products. This has resulted in 9–13% of all suppliers to the public sector winning at least one new contract, which would not have been identified otherwise. Since both demand and supply sides confirmed that contracts in these areas are in the main awarded on the basis of price, this implies that the public sector has experienced some price savings due to application of the legislation.

This conclusion is consistent with the demand-side survey results where a minority of the central and sub-central government claimed some degree of price savings due to opening their procurement markets.

There are two principal sources of price savings in terms of increased direct competition from:

- (a) domestic suppliers,
- (b) other EU suppliers.

Although there were a number of central and sub-central government bodies reporting price savings resulting from the implementation of the public procurement legislation, this was the exception rather than the rule.

In terms of direct competition from other EU suppliers, estimated total intra-EU direct import penetration rose from 1.4% in 1987 to 3% in 1994 – an increase of 1.6% – which, due to its low weighting in total public-sector purchasing, could not have resulted in significant price savings.

Similarly, there is a consensus of opinion of those surveyed in the demand-side survey that the application of the legislation has created additional administration costs.

As the Utilities Directive has only been in force for most Member States since January 1993 (for supplies and works) and the Services Directive for the public sector since July 1993 and for utilities since July 1994 (in most Member States), it could be argued that, realistically, the timescales are too short to expect the legislation to have fully achieved its objectives. Since the public-sector Supplies and Works Directives have been in force since January 1989 and July 1990 respectively in most Member States – a period of some six to seven years – it would be reasonable to expect a high degree of compliance with the legislation, a necessary condition for achieving the downstream gains. However, a combination of related demand-side (Chapter 12), supply-side (Chapters 13 and 17–22) and legal factors (Chapters 5–9) have hampered the achievement of these gains.

Overall, it is important to note that, as a consequence of the implementation of the public procurement legislation:

- (a) there have been instances where purchasing entities have achieved considerable savings on individual procurements, which, coupled with the continued existence of substantial intra-EU price differences, support the hypothesis that there is potential for significant public-sector savings;
- (b) when new suppliers responded positively to public-sector opportunities, a high proportion were successful, implying that the purchasing entity had benefited from a more 'economically advantageous' offer.

2. Introduction

2.1. Background

The single European market (SEM) was conceived in the first half of the 1980s to combat the economic threat to Europe posed by the USA and Japan in high technology and by the newly industrializing countries (NICs) in assembly industries.

The Commission's 1985 White Paper, *Completing the internal market*, focused the attention of Member States on the formal and informal barriers to intra-EU trade, the removal of which would create the environment for the development of European industries capable of competing in global markets. The 1987 Single European Act established a legislative programme of some 300 directives designed to remove these barriers, which were classified under three headings:

- (a) physical barriers, associated with frontier inspections;
- (b) technical barriers, causing legal and regulatory obstacles;
- (c) fiscal barriers, epitomized by differences in indirect taxes and excise duties.

After adjustments, the SEM programme comprised 282 directives designed to create:

- (a) a new Community standards policy,
- (b) a common market for services,
- (c) conditions for industrial co-operation,
- (d) a single public procurement market,
- (e) plant and animal health controls.

The directives are either horizontal (industry independent) or vertical (industry specific) in nature. Examples of horizontal directives include the removal of border controls and the harmonization of indirect taxation, and one example of a vertical directive is mutual recognition in the pharmaceuticals industry.

The 1988 Cecchini Report provided the economic justification for completing the internal market and highlighted the interdependence of its various 'components'. At a conference on public procurement immediately preceding the report's press launch in London in January 1988, Lord Cockfield, then vice-president of the European Commission responsible for the internal market programme, described:

- (a) the aim of the SEM as 'to create the environment in which European business can flourish';
- (b) the opening-up of public procurement as one of the cornerstones of the SEM programme, without which the internal market would not be complete.

The removal of the formal and informal barriers to intra-EU trade is clearly the most important factor in creating 'the environment in which business can flourish'. The economic impact will be the extent to which the wealth-generating sectors of the economy have taken advantage of the 'new business environment'.

2.2. Public procurement before the single market

The Cecchini Report described public-sector markets in the EUR-12 as closed and generally uncompetitive, with:

- (a) widely different design standards in certain key high technology sectors, such as defence, power generation, telecommunications and railways, making intra-EC trade costly;
- (b) governments promoting competition between alternative national suppliers, reflected in sub-optimal – globally uncompetitive – businesses;
- (c) distorted markets due to government subsidies;
- (d) R&D effort dissipated – where in the USA and Japan there were 3-5 major (global) companies in a sector, in Europe there were often 15-20 sub-optimal players;
- (e) little incentive to invest in new technology to confront the competition from non-EC firms;
- (f) a lack of product specialization, such that even large EC firms had uneconomically wide product ranges and uneconomic production runs.

Although EC directives on public procurement have been in force since 1971 for works and since 1977 for supplies, prior to the SEM legislation, transparency and fairness in terms of equal opportunity to submit offers and win contracts were strictly limited, with non-domestic suppliers almost completely excluded from national markets.

In addition to deliberately ignoring the existence of the legislation and favouring national suppliers as a matter of official policy, purchasing entities circumvented the rules by a range of measures, for example:

- (a) splitting contracts into lots to avoid the publications thresholds,
- (b) specifying national technical standards and proprietary products, which favoured the domestic supplier,
- (c) requiring special financial or technical capacities of foreign suppliers,
- (d) allowing inadequate response times for first-time bidders,
- (e) classifying contracts as ‘continuations’ or ‘emergencies’ to take advantage of the directives’ exclusions and, in defence procurement, as ‘warlike’, regardless of the function of the supply.

2.3. *Ex ante* hypothesis

2.3.1. The legislation’s aims

Between 1988 and 1993, a family of directives was adopted by the Council of Ministers defining the scope of public procurement and regulating the ways in which public and other covered purchasing entities procure works, supplies and services. The aim of the legislation was to provide a framework for, and climate of, openness and fairness. The expectation – and desire – was that this would lead to:

- (a) increased competition between European companies,
- (b) improved industrial efficiency and competitiveness of European companies in global markets,
- (c) reduced public-sector/utilities purchasing costs.

2.3.2. Measures of success

The success of the SEM in public procurement should be measured by the extent to which:

- (a) public entities and utilities are open (transparent) in informing potential suppliers of:
 - (i) a commercial opportunity
 - (ii) the criteria by which their offers will be judged
 - (iii) the results of the competition;
- (b) public entities and utilities are fair in awarding contracts in terms of:
 - (i) specifying objective award criteria which do not provide any potential supplier with an unfair technical or commercial advantage;
 - (ii) assessing tenders objectively in accordance with these criteria;
- (c) supplying industries have adapted to meet the challenge of the new purchasing environment in terms of:
 - (i) responding to extra-national opportunities
 - (ii) restructuring to improve competitiveness and, generally, take advantage of trade liberalization afforded by the SEM;
- (d) the public sector and utilities have experienced a reduction in purchasing costs.

Factors (a) and (b) are concerned with measuring the extent to which the directives and national transposing legislation are flawed in:

- (a) requiring entities covered to be open (transparent) and fair in their tendering process;
- (b) providing a climate encouraging compliance by those entities covered.

Factors (c) and (d) measure the supply and demand-side response to the new purchasing environment created and to other drivers of change, including the SEM *per se*, economic performance, privatization, globalization of key industries, mergers and acquisitions, information technology, telecommunications, etc.

2.3.3. Economic impact

In 1987 it was assumed that liberalization of public procurement in Member States would result in:

- (a) increased competition for public contracts with the most competitive suppliers winning,
- (b) a reduction in prices paid by public bodies for works, supplies and services.

The introduction of new competitive suppliers into previously closed markets was forecast to result in:

- (a) a convergence of prices paid by the public sector to those of the most competitive suppliers – (short-term) price effect;
- (b) rationalization of production to achieve a better utilization of resources to fund price reductions – (medium-term) competition effect;
- (c) reorganization of certain strategic industries along pan-European lines via joint ventures, mergers and acquisitions, and alliances to create global players capable of benefiting from the SEM and competing with the US and Japanese giants – (long-term) restructuring effect.

The public sector would benefit from all three effects through being able to procure the economically most advantageous works, supplies and services. Within the private sector, there would be a redistribution of market shares and a more efficient use of productive resources, which, in the short term, would lead to employment reductions among uncompetitive players.

Overall, the EU would benefit from the creation of strong European companies in strategic industries capable of competing with US and Japanese players in world markets.

2.3.4. Key considerations

The opening up of EU public procurement markets should be viewed as a necessary but not sufficient condition for achieving the SEM's economic aims. In this context, the legislation should be seen as a catalyst, designed to create the environment in which the desired change could and would occur.

In assessing the SEM in public procurement, it is important to understand that the legislation places no obligation on:

- (a) the entities covered to be efficient purchasers,
- (b) suppliers to respond to business opportunities in other Member States of the European Union.

A lack, or limited achievement, of these two outcomes should not automatically be construed as an indicator of failure of the legislation. The legislation could be achieving its aims of openness and fairness, but its desired impact on purchasers and suppliers may not have been achieved due to:

- (a) the shortness of timescale between the directives coming into force and the timing of the mid-term assessment,
- (b) a lack of suppliers' awareness/understanding of the new EU purchasing environment,
- (c) supply-side scepticism of the fairness of the award process in other Member States,
- (d) inadequate supply-side knowledge of demand-side requirements in other Member States,
- (e) limited incentive and skills at the level of purchasing officers to correctly define award criteria which will result in the selection of the 'economically most advantageous' supplier.

2.4. Report structure

This report has been divided into a number of sections which lead the reader sequentially and logically through to a final impact assessment section:

SECTION A – The public procurement market in 1987 (base case) describes the situation in 1987 which subsequent legal measures were put in place to overcome, and provides the starting points for subsequent comparisons and evaluations;

SECTION B – Legal measures review describes the measures put in place at a European level to overcome the problems identified in 1987, and assesses the legislation itself, the manner in which it has been transposed in Member States, and the way in which measures are enforced;

SECTION C – Public procurement market contours in 1994 provides an overview of the market in 1994, and highlights major changes;

SECTION D – Market perceptions provides an insight into the experiences and views of both purchasers (the demand side) and suppliers (the supply side) of the impact of the public procurement legislation;

SECTION E – Economic analysis outlines trends in a number of key indicators in relation to ‘procurement-sensitive’ supply sectors;

SECTION F – Case studies examines in detail six sectors which were identified as being most likely to have been impacted by the creation of a single market in public procurement;

SECTION G – Impact assessment which draws together the findings and results of all previous sections to arrive at an assessment of the extent to which the *ex ante* hypotheses in relation to the legislation have been realized in relation to both purchasers (the demand side) and their key supplying sectors (the supply side), and the reasons for this.

Each chapter, with the exception of those dealing with legal issues, contains an overview which describes:

- (a) the *ex ante* hypothesis for the particular issues being considered – what might have been expected to happen if the measures put in place are working;
- (b) coverage – the nature and scope of the specific issues addressed;
- (c) data – a description of sources of information and methodologies used, together with any constraints, and the ways in which they have been addressed;
- (d) key findings.

Given the complex nature of the subject of public procurement, and the different inputs into the assessment of its impact (described above), no single output can be treated in isolation. While each chapter’s key findings are valid in their own right, it is only their interaction and relationships which, combined, present the complete picture. Although there are references within chapters to other study chapters, it should be noted that, in general, there is intentionally no interpretation of key findings within chapters. This is carried out in Section G.

3. Study approach

3.1. Key principles

The study's overall approach was driven by the limited availability of reliable and complete statistical data on the public procurement market.

As a result, considerable importance was placed on two pieces of primary research:

- (a) a survey of suppliers to the public sector/utilities, which was structured to allow inferences to be made about the total supply-side population;
- (b) a survey of a cross-section of purchasers subject to the directives.

Since the study considered the public procurement market from all key perspectives using a wide range of sources (in addition to the primary research), it has been possible to take into account the results of a number of qualitative, quantitative and quali-quantitative analyses to arrive at an assessment of the impact of the legislation which is:

- (a) consistent,
- (b) plausible,
- (c) coherent.

In some areas it has not been feasible to arrive at a definitive quantitative assessment due to a lack of suitable data (at a sufficient level of detail), or the existence of contradictory information/analyses. In such instances, arguments and hypotheses have been developed by working from first principles to arrive at a reasoned (quali-quantitative) conclusion.

The study also focused on procurement-sensitive products and sectors on the basis that, if change had occurred, it would have been in these areas.

Given the issue of data quality, each chapter contains a brief section which describes:

- (a) sources of information,
- (b) any particular characteristics of the data which should be noted,
- (c) any specific methodologies used to arrive at conclusions – where particularly technical approaches have been adopted.

A final, and key, consideration has been the fact that no individual analysis holds the answer to whether the public procurement legislation has achieved its aims. It is only the combination of the results of all individual analyses (which themselves reflect a range of information sources) that can provide this overall assessment. Consequently – as emphasized in Section 2.4 – each section or chapter generally analyses a key issue(s) in isolation of other chapters and analyses, with Chapter 23 drawing them together.

3.2. Approach overview

Although, as described in Section 3.1, each chapter describes its sources, Table 3.1 gives an overview of the range of information sources used in relation to individual measures/outputs. As will be seen, in some instances, outputs from one analysis form an input into others.

Table 3.1. Study outputs and sources overview

Measure/output	Primary sources/inputs
Section A - Public procurement in 1987	<i>The cost of non-Europe in public sector procurement</i> (European Commission, 1988) and other European Commission studies National accounts
Section B - Legal measures review	Member State and European public procurement law experts European Commission - DG XV/B
Section C - Public procurement market contours in 1994	National accounts Demand-side survey results (for utilities) Member State statistical returns EAP database European Commission public procurement studies <i>Tenders Electronic Daily</i> (TED) database Member State officials responsible for public procurement Office for Official Publications of the EC
Section D - Market perceptions	Survey of 1,608 EUR-15 suppliers to the public sector/utilities Survey of 698 EUR-15 central and sub-central government bodies and utilities
Section E - Economic analysis	Comext, Eurostat trade statistics DEBA, Eurostat production and employment statistics Enterprises in Europe, Eurostat Supply-side survey Eurostat price survey indices European Commission procurement and single market studies EuroStrategy Consultants price survey
Section F - Case studies	Industry interviews Comext, Eurostat trade statistics DEBA, Eurostat production and employment statistics Industry publications Company accounts Eurostat
Section G - Impact assessment	Sections A-F

SECTION A

The public procurement market in 1987

This section describes the situation in 1987, which subsequent legal measures were put in place to overcome, and provides the starting point for subsequent comparisons and evaluations.

4. Public procurement in 1987

4.1. Overview

4.1.1. Coverage

This chapter describes the European procurement markets in 1987 in terms of:

- (a) demand-side structure and characteristics;
- (b) public procurement procedures and practices;
- (c) supply-side structure and characteristics, with particular reference to:
 - (i) supplier perceptions (of public-sector purchasers),
 - (ii) cross-border trade,
 - (iii) price differences.

4.1.2. Data

The prime data source for the description of the public procurement markets in 1987 was the Cecchini study on the cost of non-Europe in public-sector procurement (European Commission, 1988). Market-size statistics from the Cecchini study were supplemented by data from the Commission's 1992 study on the implications of opening up public procurement in the excluded sectors in Greece, Italy, Portugal and Spain.

To allow this description of the European public procurement market in 1987 to serve as a benchmark against which to measure change, it is necessary to define public procurement in a consistent fashion over time, in terms of entities and purchases covered. To this end, the Cecchini study estimates of the size and structure of the public-sector market in 1987 have been adjusted to reflect purchasing entities and products covered by today's consolidated directives:

- (a) Public Supplies (93/36/EEC),
- (b) Public Works (93/37/EEC),
- (c) Public Services (92/50/EEC),
- (d) Utilities (93/38/EEC).

Public entities and 'products' covered in the Cecchini study which are not covered by today's directives are:

- (a) nationally-owned civil airlines and their purchases;
- (b) fuel used for power generation (coal, gas, nuclear material);
- (c) 'warlike' materials (nuclear missiles, ships, aircraft, tanks, guns, ammunition, etc.).

The market size statistics in the Cecchini report have been adjusted to reflect the differences in coverage.

4.2. The European public procurement market in 1987

4.2.1. Coverage

This section describes the size and structure of the public procurement market in the 15 countries now members of the European Union in 1987 in terms of:

- (a) macro-economic importance,
- (b) main purchasing entities,
- (c) purchases by type of contract,
- (d) purchases by supplying sector,
- (e) number of contracts published in the OJ.

4.2.2. Macro-economic importance

In 1987 public spending represented between 40% and 60% of Member States' gross domestic product (GDP) – some ECU 4,100 billion – covering everything from salaries and social welfare to purchases of works, supplies and services. The macro-economic importance of public purchasing in individual Member States is shown in Table 4.1.

In 1987, public spending represented a relatively high share of GDP in:

- (a) Sweden (59.6%),
- (b) the Netherlands (59.5%),
- (c) Belgium (59.1%),
- (d) Denmark (55.7%).

In the larger Member States, the public sector accounted for a smaller percentage of GDP, varying from 41% in Spain and the UK, to 47% in Germany, and 51% in France and Italy.

After adjusting for the coverage of the directives, the EUR-15 public procurement market in 1987 represented a very significant proportion of EUR-15's GDP, an estimated 12% (ECU 476 billion). However, national shares varied significantly between Member States, from 9.9% in Germany to 16.5% in the UK.

In 1987, of all 15 countries, the UK had the largest public procurement market, amounting to almost ECU 99 billion, followed by Germany (ECU 95 billion) and France (ECU 88 billion). Combined, the four largest Member States accounted for almost 75% of the total market.

4.2.3. Nature of contracts

For all 15 Member States, it is estimated that supplies contracts accounted for nearly 40% (ECU 180 billion) of total spending on works, supplies and services in 1987. Works accounted for approximately a third of total spending (ECU 160 billion) and service contracts for 28% (ECU 135 billion).

This breakdown by type of contract also indicates what the coverage of today's directives would have been in 1987.

Table 4.1. Macro-economic importance of public purchasing in 1987 (ECU billion)

	GDP ¹	Total government expenditure ²	Total public procurement ³	Government expenditure/GDP (%)	Public procurement/GDP (%)
Belgium	121.1	71.5	15.4	59.1	12.7
Denmark	88.8	49.5	10.3	55.7	11.6
France	770.2	398.2	88.3	51.7	11.5
W. Germany	960.8	450.4	94.8	46.9	9.9
Greece	40.1	19.1	6.3	47.7	15.7
Ireland	26.2	13.4	3.0	51.3	11.5
Italy	658.2	330.6	68.4	50.2	10.4
Luxembourg	5.3	2.9	0.6	54.1	11.3
Netherlands	188.7	112.2	21.9	59.5	11.6
Portugal	31.8	13.7	4.6	43.1	14.5
Spain	254.2	103.7	26.4	40.8	10.4
UK	599.3	244.5	98.9	40.8	16.5
EUR-12	3744.7	1809.8	438.9	48.3	11.7
Austria	101.8	53.6	11.9	52.7	11.7
Finland	77.3	35.4	9.0	45.8	11.6
Sweden	139.4	83.1	16.3	59.6	11.7
EUR-15	4063.2	1981.9	476.1	48.8	11.7

Sources: ¹ Eurostat.

² *General government receipts, expenditure and gross debt*, European Commission, DG II, 1995.

³ B, D, F, I and UK: *The cost of non-Europe in public sector procurement*, European Commission, 1988.

E, GR, P: *Opening up public procurement in the excluded sectors*, European Commission, 1992.

Other countries: EuroStrategy Consultants estimates.

4.2.4. Purchasing entities

Overview

The structure of the public sector and organization of public purchasing vary significantly between the Member States. In general, some of the key characteristics influencing structure and organization include:

- (a) degree of decentralization, the number of individual purchasing entities and the size of contracts;
- (b) allocation of responsibilities for purchasing between central and local authorities, in particular for roads, public works, health and public order;
- (c) the size, number and constitution of utilities, combined with the degree of government control over management and purchasing activities;
- (d) the nature and extent of legal restrictions and central control over public-sector purchasing procedures and policy.

The breakdown of the public procurement markets between central government, other government and utilities for the largest Member States reflects these differences in structure. In Italy, for example, most public purchasing in 1987 was carried out at regional and local government levels, whereas in the UK the larger part of the procurement market was accounted for by central government.

Table 4.2. Public procurement by nature of contract in 1987 (ECU billion)

	Works	Supplies	Services	Total
UK	25.9	44.4	28.7	98.9
W. Germany	28.8	37.7	28.3	94.8
France	33.3	28.2	26.8	88.3
Italy	29.4	20.5	18.5	68.4
Spain	8.9	10.1	7.5	26.4
Netherlands	7.3	8.3	6.2	21.9
Belgium	6.4	8.1	0.9	15.4
Denmark	3.4	3.9	2.9	10.3
Greece	2.1	2.4	1.8	6.3
Portugal	1.5	1.7	1.3	4.6
Ireland	1.0	1.2	0.9	3.0
Luxembourg	0.2	0.2	0.2	0.6
EUR-12	148.3	166.8	123.9	439.0
Sweden	5.5	6.2	4.6	16.3
Austria	4.0	4.5	3.4	11.9
Finland	3.0	3.4	2.6	9.0
EUR-15	160.8	180.9	134.5	476.2
Percentage of total	33.8%	38.0%	28.2%	100%

Sources: B, D, F, I and UK: *The cost of non-Europe in public sector procurement*, European Commission, 1988.
 E, GR, P: *Opening up public procurement in the excluded sectors*, European Commission, 1992.
 Other countries: EuroStrategy Consultants estimates.

Table 4.3. Estimated share of public purchasing by entity type in the four largest Member States in 1987

	Central government (%)	Other government (%)	Utilities (%)	Total (%)
France	30.7	36.7	32.6	100
W. Germany	35.6	34.8	29.6	100
Italy	22.4	50.9	26.8	100
UK	39.7	23.3	37.0	100
Weighted average	33.2	34.7	32.1	100

Sources: *The cost of non-Europe in public sector procurement*, European Commission, 1988.
 EuroStrategy Consultants estimates.

Individual Member States

France, with around 50,000 purchasing entities, had decentralized local government and dispersed central government purchasing, but strong central policy-making and monitoring of public purchasing. Additionally, local authorities were increasingly forming purchasing consortia to pool resources and achieve economies of scale. There was also strong central purchasing in the key sectors of power, gas, coal, railways, airlines, telecommunications, and defence, with some 58% of government contract purchasing carried out by the Defence and public telephone operator agencies.

In 1987 Germany had one of the most decentralized public-sector structures in Europe, with around 20,000 purchasing entities. Central purchasing only applied to railways, telecommunications and defence. Many municipal and infrastructural activities were in the hands of local companies, usually with public ownership. Purchasing in the utilities sectors, mainly infrastructural activities, was very dispersed. In terms of procurement value, however, over 50% of total German procurement was accounted for by the Ministries of Defence, Transport and the Interior, the railways, post and telecommunications, and three large *Länder*.

Italy had a complex public-sector structure in 1987 with around 20,000 entities. Although as decentralized as Germany, it did have centralized power generation. Public ownership was widespread, also covering commercial activities, with expenditure spread across a number of agencies.

The UK had a more centralized structure, with around 700 entities. It had fewer and larger local government authorities, some of which had started grouping into purchasing consortia. Five powerful central purchasing entities (including Defence and the former Department of Health and Social Security) accounted for over 50% of total procurement in 1987. Electricity and water were distributed by large regional bodies under commercial regimes; rail, power generation, gas and telecommunications were nationally organized.

In common with Italy, Spain had a complex public-sector structure covering an estimated 15,000 purchasing entities, with the majority of purchasing carried out at central and regional government levels. The utilities were predominantly in public ownership, with purchasing dispersed among a number of smaller regional and local agencies, particularly in the water, energy and transport sectors.

Belgium had moderately decentralized local government spending, including health, local roads and utilities. The main national services, however, were under direct Ministry control, including railways, telecommunications and several other public bodies. In general, the Belgian public sector covered around 1,000 purchasing entities, with total expenditure spread widely among them.

Of the other Member States, many of the smaller, northern European countries, like Denmark, the Netherlands, Sweden and Finland, had a public-sector structure which was broadly similar to that in Belgium.

The other two southern European Member States, Greece and Portugal, had a small number of public enterprises which controlled purchasing in the utility sectors, with the exception of water, which was controlled by local authorities. Both Greece and Portugal had also centralized government purchasing.

4.2.5. Supplying sectors

At a NACE 1 level, building and construction was the largest supplying sector, representing nearly 34% of all public purchases (ECU 160 billion). Combined with services and equipment goods these three sectors accounted for an estimated 65% of total procurement in 1987. Table 4.4 shows estimates of market size by principal supplying sector.

Table 4.4. Public procurement market size by supplying sector in 1987 (ECU billion)

Country	Building/ construc.	Services	Equip. goods	Consumer goods	Transport/ comm.	Energy/ water	Interm. goods	Agr./Fish Forestry	Total	% of total
UK	25.9	21.3	20.9	11.4	7.4	5.6	6.2	0.4	98.9	20.8
W. Germany	28.8	22.6	16.1	8.5	5.7	4.7	7.3	1.1	94.8	19.9
France	33.3	18.5	14.7	6.8	8.3	4.8	1.4	0.5	88.3	18.5
Italy	29.5	14.2	9.0	4.9	4.3	3.1	2.7	0.7	68.5	14.4
Spain	8.9	5.6	4.8	2.4	1.9	1.4	1.3	0.2	26.4	5.5
Netherlands	7.3	4.7	4.0	2.0	1.6	1.1	1.1	0.1	21.9	4.6
Belgium	6.4	0.8	5.1	1.6	0.1	0.6	0.8	0.1	15.4	3.2
Denmark	3.4	2.2	1.9	0.9	0.7	0.5	0.5	0.1	10.3	2.1
Greece	2.1	1.3	1.1	0.6	0.4	0.3	0.3	0.0	6.3	1.3
Portugal	1.5	1.0	0.8	0.4	0.3	0.2	0.2	0.0	4.6	1.0
Ireland	1.0	0.6	0.6	0.3	0.2	0.2	0.1	0.0	3.0	0.6
Luxembourg	0.2	0.1	0.1	0.1	0.0	0.0	0.0	0.0	0.6	0.1
EUR-12	148.3	92.9	79.1	39.9	30.9	22.5	21.9	3.2	439.1	92.2
Sweden	5.5	3.0	3.5	0.8	1.5	1.2	0.8	0.1	16.3	3.4
Austria	4.0	2.2	2.5	0.6	1.1	0.9	0.6	0.1	11.9	2.5
Finland	3.0	1.6	1.9	0.5	0.8	0.6	0.4	0.1	9.0	0.9
EUR-15	160.8	100.8	85.8	43.4	33.7	24.5	23.8	3.4	476.2	100
% of total	33.8%	21.2%	18.0%	9.1%	7.1%	5.1%	5.0%	0.7%	100%	

Sources: B, D, F, I and UK: *The cost of non-Europe in public sector procurement*, European Commission, 1988.

E, GR, P: *Opening up public procurement in the excluded sectors*, European Commission, 1992.

Other countries: EuroStrategy Consultants estimates.

The principal supplying sectors to central and local government, nationalized industries and other state-owned or controlled bodies are broken down as follows.

- (a) **Building and construction** covers the provision of new, and maintenance of existing, infrastructure (roads, ports, airports, railways, bridges, tunnels, sewers, etc.), offices, factories, warehouses, sports centres, and so on, the bulk of which is purchased by central and local government.
- (b) **Services** covers the purchase of advertising, public relations management and other consulting, legal and auditing services, software development, travel, cleaning and catering. Ministries and state-owned industry are the main purchasers of all services, except cleaning and catering services, whose customers are principally local, health and educational authorities.
- (c) **Equipment goods** covers the purchase of power generating and distribution equipment, central heating systems, mining machinery, railway rolling stock, computers, furniture, motor vehicles, and so on. In addition to the specialized purchases of the nationalized industries, all public bodies tend to buy most forms of capital equipment.
- (d) **Consumer goods** covers the purchase of radios, televisions, videos, food, beverages (including alcohol), sports equipment, newspapers, and so on. Consumer electronics are principally purchased by schools and hospitals, sports equipment by schools, and other products by most public bodies.
- (e) **Transport and communications** covers the purchase of transport and communications services, including air and rail fares, contract car hire, telephone, telex, fax and post. All public bodies are major customers of this supply sector.

- (f) **Energy and water** covers the purchase of coal, gas and petroleum products (with the exception of fuels used for power generation), as well as electricity and water.
- (g) **Intermediate goods** covers the purchase of 'products' which form part of an end product, for example, crude oil, mechanical or electrical components (nuts and bolts, circuit boards, silicon chips, etc.).
- (h) **Agriculture, fisheries and forestry** covers the purchase of crops, livestock, fish and forestry products by the public sector. The principal customers are Ministries of Agriculture and Fisheries.

4.2.6. Number of contracts published in the Official Journal

A key measure of openness is the number of contracts published in the OJ in relation to the total number of contracts covered by the directives.

No statistics exist on the total number of contracts covered by the directives in 1987. It is generally accepted, however, that the number of notices published represented only a small proportion of contracts covered.

Table 4.5. Number of tender notices published in the *Official Journal of the European Communities* (1987)

	Works	Supplies	Total
Belgium	168	147	315
Denmark	38	89	127
France	1,547	1,148	2,695
W. Germany	820	581	1,401
Greece	131	33	164
Ireland	23	30	53
Italy	1,517	1,010	2,527
Luxembourg	16	6	22
Netherlands	193	55	248
Portugal	89	28	117
Spain	666	548	1,214
UK	1,469	932	2,401
EUR-12	6,677	4,607	11,284

Source: TED database.

4.3. Public procurement procedures and practices in 1987

4.3.1. Background

Since the inception of the European Economic Community in 1957, trade between Member States has risen considerably, despite numerous physical, technical and fiscal barriers. For each of the four major economies – Germany, France, Italy and the UK – which accounted together for about 75% of Community's GDP, the other 'eleven' represent their most important export market.

In contrast, the Cecchini report found that public entities in all Member States exhibited a clear national preference. Works, supplies and services were purchased almost exclusively from national suppliers which, wherever possible, provided a national 'product'. This was

despite the Commission's attempts in the 1970s to introduce competition in the Community's public procurement markets through:

- (a) Directive 71/305/EEC, which had been in force since 1971, covering works contracts, and was amended by Directive 78/669/EEC in 1978;
- (b) Directive 77/62/EEC, which had been in force since 1977, covering supplies contracts, and was amended by Directive 80/767/EEC in 1980 to bring it into line with the General Agreement on Tariffs and Trade (GATT).¹⁰

Both directives were intended to force Member States to open up their procurement to foreign competition by:

- (a) requiring a summary invitation to tender (in a model format) to be published in the *Official Journal of the European Communities* (OJ) with set time limits for tendering;
- (b) prohibiting technical specifications which named proprietary goods or purchases, or restricted bids to certain suppliers;
- (c) establishing 'open' tendering (whereby any supplier may submit a bid) or 'restricted' tendering (whereby there is a pre-qualification stage for which any supplier may submit a pre-qualification document) as procedures to limit use of single sourcing and negotiated procedures, which were considered to be anti-competitive.

4.3.2. Procurement practices in 1987

Despite the existence of these directives, public procurement markets in 1987 were relatively closed. Public bodies perceived their resources to be too limited to permit active sourcing and evaluation of international bids for all contracts. As a consequence, they circumvented the rules laid down in the directives by, for example:

- (a) splitting contract into lots below the value threshold required for publishing calls for tender in the OJ;
- (b) detailing technical specifications – sometimes including proprietary products – which favoured particular (national) suppliers;
- (c) specifying inadequate response times for first-time bidders;
- (d) requiring special technical or financial capacities of foreign bidders;
- (e) classifying contracts as 'continuations' or 'emergencies' to take advantage of the directives' exclusions, and, in defence purchasing, as 'warlike', regardless of the function of the products.

In addition, national suppliers were favoured – often as a matter of official policy – by public bodies in the former excluded sectors:

- (a) energy,
- (b) transport,
- (c) telecommunications,
- (d) drinking water supply.

¹⁰ See note 8, p. 16.

As shown in Section 4.2, these utilities accounted for a large share of public purchasing in 1987, ranging from 25–35% of total procurement, but were still excluded from the directives' coverage.

Finally, the limited impact of the procurement legislation and, as a consequence, a closed and non-transparent European procurement market, was also a result of:

- (a) Member State politicians having no clear understanding of the issues at stake, in terms of:
 - (i) the cost to the Exchequer of pursuing nationalistic purchasing policies,
 - (ii) the negative impact on global competitiveness of European industries, particularly in high technology sectors;
- (b) different and complex national procurement procedures complicating the transposition of the directives into national law;
- (c) the absence of legal means of enforcing the provisions of the directives;
- (d) the drive for increased efficiency – and cost savings – within the public sector not yet having got under way.

4.3.3. Reasons for nationalistic purchasing

In general, the nationalistic purchasing practices pursued by the public sector in 1987 were often a result of, either:

- (a) perceived administrative and practical pressures, or
- (b) political considerations.

Administrative and practical considerations, such as lack of resources to consider a large number of bids or unfamiliarity with foreign specifications, were common reasons for public purchasers, particularly in local government, to buy locally. As a result, local (domestic) suppliers were considered to provide:

- (a) greater value for money, reflecting lower transportation and marketing costs;
- (b) better after-sales service due to their proximity;
- (c) faster delivery times, leading to lower stocks and inventory costs;
- (d) products more suited to local tastes, environment, techniques and methods;
- (e) more flexible quality assurance, particularly where this involved inspection of suppliers' premises;
- (f) local distribution facilities enabling efficient delivery to end users, such as schools and hospitals;
- (g) products and services without the added complications of customs procedures and language difficulties;
- (h) a more responsive and interested service.

In addition to these administrative and practical considerations, public purchasing was also used by EU Member States at a national level as a policy instrument to support national firms or industries, either:

- (a) for strategic reasons, in terms of security or maintaining leading edge technologies and skills bases;
- (b) to support employment in declining industries, like railway rolling stock and defence;

- (c) to compensate local communities near environmentally damaging public industries such as mining and nuclear power generation;
- (d) to support (emerging) high-technology industries, including telecommunications, electronics and biotechnology.

4.4. Supply-side structure and characteristics

4.4.1. Coverage

This section describes the impact of nationalistic purchasing practices in 1987 in terms of:

- (a) supply-side structure characteristics,
- (b) supply-side perceptions of non-domestic procurement markets,
- (c) participation of small and medium-sized enterprises in public procurement markets,
- (d) levels of cross-border trade in the public sector,
- (e) differences in price levels for common public-sector purchases.

4.4.2. Supply-side characteristics

One of the main consequences of closed and protective public purchasing was that in certain key, high-technology supplying sectors – notably capital equipment for defence, power generation, telecommunications and railways – public-sector markets were the ‘province’ of several major national players in the Member States studied, which:

- (a) were heavily reliant on the national public sector,
- (b) competed outside Europe principally only in developing countries,
- (c) were on average considerably smaller than their Japanese and US competitors.

In addition, the key supplying industries to the public sector in 1987 were characterized by:

- (a) widely differing national design standards, for example, in railways and power generation, which also created a barrier to the trade in the goods and services supplied to the public sector, with widespread repercussions on transport and communications and, hence, the efficiency of European industry;
- (b) firms with short-sighted marketing and production strategies. In key sectors such as office machinery, telecommunications and motor vehicles, US and Japanese firms, as well as other non-EU firms, were making increasing inroads into the EU market by adopting European marketing strategies, while EU firms sheltered behind their national public-sector customers and looked outward only towards Third World markets;
- (c) the absence of incentives to invest in new technology to confront the competition from non-EU firms;
- (d) distorted national markets as a result of government subsidies, R&D support and artificially high prices;
- (e) duplicated, dispersed and sub-optimal R&D efforts;
- (f) governments attempting to enforce competition between alternative national suppliers which directly led to sub-optimal plant sizes, and to support for inefficient firms which would otherwise have had to improve performance or go out of business;
- (g) a lack of product specialization, resulting in uneconomically wide product ranges and short production runs, even within large EU firms.

4.4.3. Supply-side perceptions

In addition to this degree of sub-optimization, Europe's supplying industries to the public sector showed a general lack of interest in non-domestic public procurement markets, due to:

- (a) currency risks and administrative burdens;
- (b) limitations imposed by marketing agreements or exclusive dealerships eliminating any possibilities of tendering abroad;
- (c) a hesitancy to enter into competitive bidding, also as a result of a regular flow of domestic contracts;
- (d) an unwillingness to break up 'cosy' cartels, whereby prices and margins were controlled by a few large suppliers;
- (e) calls for tender not being perceived as serious, but merely as complying with the legislation;
- (f) a general lack of information on opportunities abroad, particularly in the case of SMEs.

4.4.4. SME participation

The dominance of several large national players in certain segments of the public procurement market had a direct impact on the participation of SMEs.

In terms of size of suppliers, large (national) companies accounted for an estimated 70% of all public procurement in the EU in 1987. European SMEs, which accounted for over 65% of total European turnover, supplied only 30% of public purchases, representing some ECU 165 billion. Public procurement markets represented only 1.6% of European SMEs' turnover, compared with 7.3% for large European companies.

In contrast, SMEs accounted for a far larger share (40%) of the public procurement markets in the USA and Japan.

Table 4.6. European market breakdown by enterprise type (1990)

	Large enterprises (≥500 employees)	SMEs (<500 employees)
Total EU turnover (%)	35	65
Total EU public purchasing (%)	70	30
Importance of public purchasing as a percentage of company's turnover	7.3	1.6

Source: *SMEs' participation in public procurement*, European Commission, 1990.

4.4.5. Cross-border trade

As a consequence of nationalistic purchasing practices, in 1987 the level of direct and indirect import penetration in the public sector compared to that in the economy as a whole was minimal.

In Belgium, public-sector import penetration in 1987 was estimated at half the national level, in Italy at 5% of the national level and in the UK at 20% of the national level.

In France and Germany, public-sector import penetration was slightly higher due to a bilateral trade agreement in defence products, and estimated at 80% and 52% of their national levels respectively. Excluding the defence trade, public-sector import penetration was similar to that of the UK.

Table 4.7. Direct and indirect public-sector import penetration (% of purchases by value in ECU, 1987)

	Belgium ¹	France ²	Germany ²	Italy ¹	UK ¹	EUR-15
Direct EU	0.6	0.6	1.0	0.3	0.2	0.6
Direct non-EU	2.0	0.5	0.8	-	0.2	0.7
Indirect	10.0	4.3	2.0	0.7	4.0	4.8
Total public-sector import penetration ³	13	6	5	1	4	6
National import penetration	43	20	22	19	22	

¹ Adjusted for different coverage under the current directives.

² Adjusted for French-German trade agreement on defence materials and different coverage under the current directives.

³ Total public-sector import penetration covers direct imports (from foreign suppliers) and indirect imports of goods manufactured abroad but sold via a domestic sales office/agent.

Source: *The cost of non-Europe in public sector procurement*, European Commission, 1988, Tables I.6.2.9 and II, p. 175.

Public-sector imports from third countries accounted for a relatively large share of public-sector import penetration in 1987, suggesting that foreign suppliers were considered only in cases where no domestic alternatives were available. This was mainly in the areas of office machinery, telecommunications equipment and nuclear technology, where European industries were lagging behind their American and Japanese counterparts.

4.4.6. Price differences

In 1987, partly as a consequence of nationalistic procurement practices, large price differences between and within Member States for public-sector procurements were common with:

- (a) prices for strategic public-sector purchases between Member States showing differences of over 200%;
- (b) price differences within Member States, particularly for local authority procurement of as much as 100% or more.

Table 4.8 shows the most significant differences in price levels between Member States for common public-sector purchases.

Table 4.8. Price indices in 1987 (100 = lowest price)

	Belgium	France	Germany	Italy	UK
Fixed armchair	118	133	162	100	141
Filing cabinet	126	154	132	183	100
Shelf	227	165	163	110	100
School desk	201	187	283	126	100
Office desk	197	211	256	100	174
Typewriter	101	117	100	146	144
Power cable	150	105	101	105	100
Transformer	100	117	117	102	154
Telephone handset	207	300	355	183	100
Cardiac monitor	108	114	119	118	100
X-ray machine	133	155	153	217	100
Average of car	100	109	103	116	119
Van b6	100	102	119	122	122
Van b7	100	134	111	122	122
Bus d8	n/a	113	101	129	100
Bus d14	100	151	110	n/a	133
Goods wagon	121	100	136	112	117
Uniform	215	131	83	154	100
Copier paper	115	142	153	100	118

Source: *The cost of non-Europe in public sector procurement*, European Commission, 1988, Tables II.3.1 and II.3.2.

4.4.7. Case-study sectors in 1987

Table 4.9 provides a brief outline of the situation in 1987 for each of the selected case study sectors and the potential impact of the procurement liberalization.

Table 4.9. Case-study sectors in 1987

Description	Sector characteristics in 1987	Potential impact of procurement liberalization
Electrical engineering – power generation	<p>Public sector is the key purchaser</p> <p>Historically nationalistic purchasing due to heritage of equipment and standards</p> <p>Domestic market demand fluctuates. Significant dependence on exports to developing countries</p> <p>Many European producers linked to boiler manufacturers, which are in turn linked to large electrical engineering groups</p> <p>Threats from Japanese (and potentially South East Asian) producers</p>	<p>Possible economies of scale in production</p> <p>Perception that opening up of procurement would make little difference since national preference is strong, and other EU purchasers are seen to prefer US to other EU suppliers</p> <p>Standards are a major problem, although less so for non-EU suppliers used to working with foreign standards</p> <p>Transnational mergers and rationalization expected, although only as an indirect impact of the single market</p>
Telecommunications	<p>Public sector – national PTTs – is sole purchaser. Sector is seen as strategic industry, with public-sector purchasing crucial to development</p> <p>Foreign companies have entered EU markets, but indigenous manufacturers are dominant</p> <p>Procurement policies are a barrier</p> <p>Technology is critical (digital switches), with non-EU companies (AT&T, Northern Telecom) as acknowledged market leaders</p>	<p>Possible economies of scale in production and R&D</p> <p>Restructuring of EU supplier base expected (and already begun in some Member States)</p> <p>Increase in import penetration expected</p>
Railway rolling stock	<p>Public sector is the dominant (sole) purchaser – sector highlighted as area in which nationalistic purchasing is most applicable</p> <p>Sector operating sub-optimally/below capacity (50%), with significant scope for economies of scale</p> <p>Product development and technical innovation crucial</p> <p>Member States locked into a heritage of standards, operating systems and engineering traditions</p> <p>EC manufacturers do not compete in one another's markets</p>	<p>Railways expected to become more open in procurement, but market opening expected to result largely from technological developments</p> <p>No short-term change in intra-EC trade expected, but there could be increased imports of diesel (not electric) locomotives from the US, Japan and South Korea</p> <p>Collaboration and mergers likely, with rationalization of product lines</p> <p>Increased trade expected, with number of manufacturers reducing by about one third</p>
Uniforms	<p>The public sector is an insignificant purchaser of clothing, with the exception of uniforms (military, emergency services, etc.)</p>	<p>Although a highly priced competitive sector, significant price disparities exist, with minimal cross-border trade</p> <p>There is no restriction on scale of production, with SMEs (<500 employees) active and important</p>

(Continued)

Description	Sector characteristics in 1987	Potential impact of procurement liberalization
Building/construction	<p>Public sector is a major purchaser, with construction accounting for some 30% of total procurement</p> <p>Potential for increased trade is generally limited by distance. Trade is further restricted by on-site nature of most work, limited mobility of labour and the cost of transporting building materials</p>	<p>Given these limitations, opportunities are seen:</p> <ul style="list-style-type: none"> • in border areas • in specialist areas (e.g. tunnelling) • where there are local areas of high construction activity and low construction activity, leading to differential profit margins, so that firms with low orders have an incentive to bid in the high demand areas
Engineering consultancy	<p>The public sector is a major purchaser of services, but general trade in services is weak (low tradability) since close supplier/customer proximity is crucial, especially in utilities (power, water), although this does not prevent foreign ownership</p> <p>For most business services, language and knowledge of local laws, customs and circumstances is main barrier to trade, but not linked to procurement. Business is generally through local representative offices</p>	<p>Subject to sectoral characteristics, most impact is considered to fall within high value added sub-sectors</p> <p>Engineering consultancy closely linked to construction. Also a sector which has a tradition of 'exporting' to Third World, developing countries</p>

Source: *The cost of non-Europe in public procurement, Part II: Case Studies*, European Commission, 1988.

SECTION B

Legal measure review

This section describes the measures put in place at a European level to overcome the problems identified in 1987, and assesses the legislation itself, the manner in which it has been transposed in Member States, and the way in which measures are enforced.

5. Legal measures overview

5.1. Background and *ex ante* hypothesis

As a result of the findings of the 1987 study into the cost of non-Europe, a number of amendments were made to the original Works and Supplies Directives (adopted in 1971 and 1977 respectively) to improve their effectiveness by closing 'loopholes' which had been used by purchasing entities to circumvent the directives' aims (see Section 4.3.2).

The scope of the public procurement rules was also subsequently extended to embrace:

- (a) utilities,
- (b) services (purchased by both the public sector and utilities),
- (c) a system of remedies (to ensure suppliers had a rapid and effective system of obtaining redress in instances when they have been treated unfairly).

As well as intra-EU legislation, a number of international agreements giving third country firms and products access to public and utilities procurement have been concluded, the principal of which are:

- (a) the European Economic Area (EEA) Agreement,
- (b) the WTO Agreement on Government Procurement (GPA),
- (c) bilateral agreements with the USA;
- (d) Association Agreements with Central and Eastern Europe.

In view of these amendments and extensions in scope, a coherent and comprehensive legal framework should have ensured that:

- (a) the possibilities for non-compliance were limited,
- (b) suppliers would have available effective systems of redress within Member States.

5.2. Coverage

This section contains the following chapters:

Chapter 6. Community legislative framework overview, which describes the legal context for the public procurement legislation, as well as highlighting a problems.

Chapter 7. National transposition, which describes the status as at the end of 1995 of Member States' transposition into national law of the directives, their legal effectiveness, and a summary of any national procurement rules and regulations;

Chapter 8. Remedies and enforcement, which describes the Community and Member State arrangements for redress, sanctions and enforcement, and an assessment of the arrangements for ensuring enforcement of procurement provisions;

Chapter 9. Measures affecting third country access, which describes the nature and scope of international agreements on access to procurement markets, as well as the situation when no agreements apply.

5.3. Data

The results of this section are based on:

- (a) analysis and interpretation by national and European public procurement legislation experts;
- (b) interviews with European Commission services responsible for drafting, monitoring and enforcing the public procurement legislation.

5.4. Key findings

Community legislative framework

In many important areas the legislation's requirements are not clear, including, in particular:

- (a) boundaries between works and supply/services contracts;
- (b) operation of the 'aggregation rules' (both regarding which products or services should be aggregated, and the treatment of discrete operating units within the same entity);
- (c) use of 'framework agreements' in the public sector;
- (d) permissible criteria for shortlisting in the public sector;
- (e) extent to which renewals, extensions or amendments to existing contractual agreements constitute new contracts;
- (f) extent to which alterations to bids are permitted in open and restricted procedures.

These problems have been perpetuated in national transposing legislation, which has, in general, not provided any interpretation of the directives.

The directives also contain a number of drafting errors, inconsistencies and omissions, some minor, some more serious.

As at the end of 1995, no European Union guide to the interpretation of the directives exists, although several are being prepared. However, the extent to which these will clarify areas which are unclear is not known.

National transposition

As at 31 December 1995, all public procurement directives in force had not been transposed into national law in all Member States, but where transposition had taken place, it was largely effective in legal terms.

There is considerable variance between the date of entry into force of the directives in Member States, with, for example, directives only having come into force in Austria, Finland and Sweden in 1994 (under the EEA Agreement, now superseded by their membership of the EU from 1 January, 1995), and the Utilities Directives yet to come into force in Greece, Portugal and Spain.

Remedies and enforcement

In most Member States there are two principal problems hindering effective relief (under the Remedies Directives):

- (a) the inability to obtain remedies with sufficient rapidity,
- (b) a lack of clarity in the manner in which damages are calculated or can be obtained.

At the Member State level, a range of institutions deals with public procurement, none of which appears to police and actively enforce the legislation.

At a Community level, enforcement is limited to the Commission which, under the general provisions of the Treaty of Rome, pursues infringements of its own initiative, including proceedings relating to incorrect and/or late Member State transposition, or actions brought to its attention by an aggrieved party.

Measures affecting third country access

The EU public procurement markets are open to a number of non-EU countries enjoying the benefits of multilateral and bilateral agreements. The most important is the WTO Agreement on Government Procurement, but the scope of agreements is far from universal, with derogations in relation to all sectors and third countries.

6. Community legislative framework overview

6.1. The sources of Community rules on procurement

Public procurement is regulated to some extent by the general principles of the Community Treaties (see Section 6.9). Since these principles alone are insufficient for open procurement markets, the Communities have adopted directives which regulate award procedures for major contracts.¹¹ These are divided into two groups:

- (a) the Public Sector Directives,
- (b) the Utilities Directives.

6.2. The Public Sector Directives

The public-sector directives mainly cover procurement by public authorities. They could also cover private-sector procurement with reference to bodies governed by public law and cases where the purchaser is subsidized by a public authority or holds a concession. At present, there are four key directives:

- (a) Council Directive 93/36/EEC of 14 June 1993, OJ L 199/1, co-ordinating procedures for the award of public supply contracts (the Supplies Directive);
- (b) Council Directive 93/37/EEC of 14 June 1993, OJ L 199/54, co-ordinating procedures for the award of public works contracts (the Works Directive);
- (c) Council Directive 92/50/EEC of 18 June 1992, OJ L 209/1, procedures for the award of public service contracts (the Services Directive);
- (d) Council Directive 89/665/EEC of 21 December 1989, OJ L 395/33, on remedies (the Public Sector Remedies Directive).

The Works and Supplies Directives were originally adopted in 1971 and 1977 respectively.¹² They were amended to make them more effective in 1989 and 1988 respectively, in the drive to complete the single market by 1993. The main changes introduced by these amending directives, can be summarized as follows:

- (a) the definition of authorities covered was made more comprehensive;
- (b) the definitions of works and supply contracts were clarified and extended;
- (c) the threshold for works contracts was raised (which, in contrast with most of the change, marks a limitation rather than an extension of the rules);
- (d) rules were introduced on aggregation of certain works contracts;
- (e) legal obligations were applied for the first time to the award of works concession contracts, works contracts by persons holding public works concessions who are not themselves contracting authorities, and works contracts subsidized by contracting authorities;
- (f) the scope of certain exclusions from the directives was clarified and restricted;

¹¹ Another relevant piece of legislation is the 'IT Standards Decision' (Council Decision 87/95/ 1987 OJ L 36/31).

¹² See note 8, p. 16.

- (g) a requirement to publish indicative notices was introduced for works, and for central and federal government supplies (extended to all supplies in 1993);
- (h) provision was made for a negotiated procedure subject to a limited degree of regulation, and in some cases involving an advertisement and competition for many cases which were previously wholly excluded from the directives;
- (i) the time limits for response to contract notices and invitations were extended;
- (j) slight amendments were made to the rules on abnormally low bids;
- (k) more detailed rules on use of standards were introduced, in particular a requirement to use European standards where relevant;
- (l) an obligation to publish contract award notices was introduced;
- (m) an obligation was introduced for works contracts to inform providers of the reasons for decisions (extended to supplies in 1993);
- (n) obligations to keep records and make statistical reports for the Commission were extended or introduced.

The 1993 directives are, for the main part, merely consolidated versions of this earlier legislation. However, the Supplies Directive also introduced some changes, some of which have already been referred to above, which, in particular, aligned the rules more closely with those on works. The 1993 directives replace the previous directives. Directive 92/50 on services had already been modelled on the existing directive on public works, and following the 1993 consolidation, which was largely based on the Works Directive, the three public-sector directives were thus largely aligned.

The adoption in 1992 of a directive to regulate services, and in 1989 of one on remedies, were, like the 1989/88 amendments to the original Works and Supplies Directives, part of the programme to complete the single market by 1993. Prior to 1992 there was no secondary legislation on services (although the Treaty principles applied). Prior to the 1989 Remedies Directive there were no specific provisions on remedies in procurement, although the procurement rules could be enforced using general Community law principles on remedies.

The rules under the Works, Supplies and Services Directives are almost identical. The rules on remedies under the Remedies Directive are similar to those for the utilities sector.

6.3. The Utilities Directives

The Directives on Utilities regulate bodies engaged in certain activities in the sectors of water, transport, energy and telecommunications ('utility activities'). Bodies whose procurement is, in general, covered by the Public Sector Directives are covered by the Utilities Directives where they engage in utility activities. However, the Utilities Directives are not confined to the public sector, but also apply to a number of other bodies engaged in 'utility' activities, including many in the private sector.

The award procedures for all contracts in the utilities sector – for works, supplies or services – are regulated by Council Directive 93/38/EEC of 14 June 1993, OJ L 199/84. Works and supplies procurement in the utilities sector were first regulated by Directive 90/531/EEC, 1990, OJ L 297/1 (as amended by Council Directive 94/22/EC, 1994, OJ L 164/3 (the Utilities Directive)). Prior to that, contracts in these sectors were generally not regulated at all, even when carried out by public-sector bodies (with a few exceptions). Services were covered for the first time by the 1993 directive. This also replaces the 1990 directive, so that the rules on

works, supplies and services in the utilities sector are all consolidated in a single directive. The other relevant directive is Council Directive 92/13/EEC, 1992, OJ L 76/14, on remedies (the Utilities Remedies Directive).

The entities and contracts covered by the Utilities Directive, and the award procedures, differ significantly from those in the public sector.

6.4. Amendments to the directives

The directives are likely to be amended, since the WTO Agreement on Government Procurement came into effect on 1 January 1996. This governs the access to public and utility markets between the EC Member States and certain third countries, and in some respects its rules are more favourable than those under the EC regime, for example, central government services contracts must be advertised at a lower threshold than under the directives. To avoid applying more liberal rules to third countries than apply between the EC Member States, the Commission has put forward a proposal (COM(95) 107 final) for amending the directives to ensure that they are as stringent as the GPA. The proposal also includes other amendments going beyond those required to align the EC rules with the GPA.

6.5. Problems with the drafting of the procurement legislation

A major problem for the implementation and application of the procurement legislation arises from the way in which the directives are drafted.

In many important areas their requirements are not clear. The major areas of uncertainty include, in particular:

- (a) the boundaries between works and supply/services contracts;
- (b) the operation of the 'aggregation rules' (both regarding which products or services should be aggregated, and the treatment of discrete purchasing units within the same entity);
- (c) the use of 'framework agreements' in the public sector;
- (d) the permissible criteria for shortlisting in the public sector;
- (e) the extent to which renewals, extensions or amendments to existing contractual agreements constitute new contracts;
- (f) the extent to which alterations to bids are permitted in open and restricted procedures.

There are also a number of drafting errors, inconsistencies and omissions, some minor, some more serious. A minor point, for example, without any substantial consequences, is the fact that the model notices in the Annexes to the directives do not always make reference to all the information which is required by the directives to be included in the notices, which may mislead anyone relying on the models. A more significant example is that the Supplies Directive omits obligations found in the Works and Services Directives concerning the manner in which bids are invited in negotiated procedures and the information to be included in invitations.¹³ Other gaps are:

¹³ It is also worth pointing out that some of the information referred to in the Works and Services Directives is not appropriate for negotiated procedures.

- (a) rules on criteria and evidence for assessing qualification in the utilities sector apply to qualification procedures in some circumstances but not others, without apparent justification;
- (b) a requirement in the utilities sector to give a low bidder reasonable time to respond to a request for explanation, but no such express requirement in the public sector.

No doubt many of the anomalies and omissions will be resolved through judicial interpretation; but in the meantime some uncertainties and difficulties prevail. Further, there are some anomalies which are clear in the text and cannot really be removed judicially: for example, the fact that an advertisement is required in a negotiated procedure for a study contract under the Works Directive, but not under the Supplies Directive. Many other examples of these kinds of problems could be given.

6.6. The obligation to implement the directives

Member States must implement directives into their national systems. The Community law principle of effectiveness requires them to provide national measures which are effective to secure the objectives of the directive. Precisely what is required depends on the exact nature of the directives, and of the national systems in question.

Where the directives intend to give legal rights to third parties, a method of implementation is required which provides for this effect within the domestic system. Generally, this will entail legislation, although this is not necessary if existing legal rules already provide adequately for the measures required,¹⁴ for example, where there is existing enforceable legislation providing for the same obligations. Other methods of implementation, such as through administrative circulars of a type which are not enforceable by third parties within that legal system, are not adequate in these cases.¹⁵ The rules in the procurement directives on award procedures are clearly intended to confer rights on third parties, and thus must be implemented by a means which provides for such rights.¹⁶

Implementing measures must also enable parties to know their position. Where directives lay down precise and specific rights or obligations, whose scope and application can be ascertained from the directive itself, it is adequate under Community law for these rules to be implemented 'by reference', i.e. by adopting legislation which simply provides that the rules in the directive are to be applicable and enforceable in national law. This is generally adequate for the rules on procurement procedures. Several states have chosen this method of implementation for these rules. Other states have chosen to implement the rules largely by repeating them verbatim in the national legislation. Others have, to a greater or lesser extent,

¹⁴ Case 29/84 *Commission v Germany* [1985] ECR 1661.

¹⁵ For example, Case 239/85 *Commission v Belgium* [1986] ECR 3645; Case C-59/89 *Commission v Germany* [1991] ECR I-2607.

¹⁶ Case C-433/93 *Commission v Germany*, [1995] ECR I-2303. In some cases rules in directives may become legally binding *and* enforceable by affected parties, even where they have not been implemented by domestic legislation. Broadly, this applies (once the date for implementation has passed) where a directive's rules are clear and precise, and unconditional. (In such a case they are said to have 'direct effect'.) However, the fact that rules have direct effect does not obviate the obligation under EC law for states to implement those rules by a means which gives third parties enforcement rights within the domestic legal system (as confirmed by Case C-433/93, above).

chosen to reorganize and rephrase the rules in their own national legislation, and/or to explain or elaborate on some of the requirements.

It should be stressed that even if the rules on award procedures have not been properly implemented, they may nevertheless still be enforced by affected firms, by virtue of the Community principle of direct effect. However, where the rules have not been properly implemented, firms are less likely to know of, and rely on, their rights. In addition, it is not clear whether direct effect applies to all entities covered by the procurement directives, for example, to some of the utilities in the private sector.

On the other hand, where the extent of rights or obligations is not certain from the directive, it is necessary to adopt detailed national rules. This is the position with the procurement rules on remedies. For example, they provide for damages to be awarded, but do not state how damages are to be calculated, nor from which body they are to be obtained. Often, legislation is needed for this kind of case. However, this is not necessary where clear national rules on such issues already exist, which satisfy the requirements of the directive and are sufficiently certain in their content. In the area of remedies several states have relied on national measures already in place.

Where directives are not intended to confer rights on third parties, implementation through various methods such as administrative circulars is acceptable, provided that this is the normal way of giving effect to such rules within that system. Certain rules in the procurement directives are of this kind. For example, it is unlikely that it was intended that persons should have legal rights to enforce the obligations to provide statistical information to the Commission, or to enforce the requirement for states to make available an attestation system. In this case the enforcement method need not include a legal right of enforcement for third parties, but may simply involve the state taking practical steps to ensure that the information/system is provided.

6.7. The different methods of implementation

Section 6.6 considered the nature of the legal obligation to implement the directives, but the question also arises of the practical effectiveness of the different implementation techniques, in particular, implementation by reference, as contrasted with detailed implementation.

Detailed implementation has a number of potential advantages. First, it allows for clarification of ambiguities in the directives. However, when the meaning of the directives is unclear because significant ambiguities have not yet been clarified by the European Court of Justice, as with the procurement directives, clarification is problematic, and, further, any interpretation attempted by Member States may actually be misleading to affected parties, if it turns out to be incorrect. Member States have not in fact attempted clarification to any significant extent. A second possible advantage is that, for those states with domestic rules on procurement, it allows for the Community rules to be integrated into the domestic system, to clarify the relationship between the two and make the law more accessible. However, the lack of clarity in the Community provisions again makes this difficult, and substantial integration has not generally been attempted. Third, detailed implementation provides an opportunity to improve the presentation of the text by using concepts familiar in the domestic system, and be re-arranging, indexing etc. the legislative text. Fourth, the process of adopting detailed national legislation often involving consultation, may result in greater publicity for the relevant

Community rules. Finally, a national legislative text may be more accessible in physical terms to those from the states concerned.

There are, on the other hand, some potential disadvantages with detailed implementation. First, as noted above, attempts to clarify provisions which are ambiguous may in fact result in legislation which is in fact misleading to affected parties. Second, detailed implementation means that parties will often feel the need to look at two texts – the national text (for example, to see if there are any relevant additional obligations or if any of the exclusions allowed under the directives have been omitted), and also the Community text (in case the directive has not been properly implemented). This is a particular problem with legislation which is complex and unclear – as with the procurement rules – and it may be especially burdensome for foreign providers who are less familiar with the features of domestic legislation (but who are the very persons whom the procurement rules are intended to benefit). For states with no substantial existing procurement law, this problem can be avoided by using implementation by reference. Finally, detailed implementation, simply by repeating the provisions of the directive itself, is problematic in states (notably the common law states) where the style of legislative drafting is different from the Community style; but the lack of clarity in the Community provisions may make verbatim transposition unavoidable if detailed legislation is to be adopted.

The merits of detailed implementation thus depend to a great extent on the nature of the directive, and the characteristics of the particular national system, in particular whether there is already significant domestic legislation requiring integration with the Community rules. With the substantive procurement directives, it appears that given the uncertainty of many of their obligations, implementation by reference may be a method of implementation which is as effective, if not more so, than detailed legislation for certain states.

6.8. Guidance on the procurement legislation

The Commission published the *Guide to the Community rules on open procurement*,¹⁷ covering the original Supply and Works Directives, 71/305 and 77/62. However, this has not been revised to cover amendments to those directives and the Services, Utilities and Remedies Directives, nor to incorporate the jurisprudence of the Court of Justice since 1987 (which is of much significance). The guide also fails to go much beyond paraphrasing the directives: it does not tackle most areas of uncertainty – such as shortlisting – and, in particular, does not deal with rules which are implicit rather than expressly stated in the directives. A number of new guides are understood to be in preparation, but the extent to which these will clarify areas which are unclear is not known.

Other documents have also been published by the Commission which have been used by industry in interpreting the rules, although they have no formal legal effect.

¹⁷ *Guide to the Community rules on open procurement*, 1987, OJ C358/1.

These include a number of guidelines discussed and (in some cases) approved by Advisory Committees operating in the field of procurement,¹⁸ and Commission Communications.¹⁹ Council Minute Statements also exist on some aspects of the rules, but have not been made publicly available.

6.9. Application of the Community Treaties

Certain general principles in the Community Treaties have significance for procurement. These supplement the rules in the directives, and also apply to contracts outside the directives, such as those below threshold.

The most significant provisions are those concerned with free movement. Under the EC Treaty²⁰ these are found in Articles 30, 52 and 59.

6.9.1. Article 30

This article forbids measures which hinder or discourage free trade in goods, including measures which restrict access of goods to government contracts. It applies, first, to measures which discriminate directly between domestic and imported products. For example, in Case 263/85 *Commission v Italy*,²¹ the Court of Justice ruled unlawful measures requiring Italian authorities to purchase motor vehicles of domestic manufacture, as a condition of eligibility for certain subsidies. Regional preference policies are also precluded by this rule,²² as they discriminate against imports. Article 30 also covers measures which apply equally to domestic and imported products, but which have the effect of favouring domestic products, such as the use of national standards in contract specifications.²³

6.9.2. Article 52

This article is concerned with 'freedom of establishment' – the right for firms from one state to set up and carry on a business in other Member States on a permanent basis. This covers

¹⁸ *Policy guidelines on the interpretation of the obligation to refer to European standards in the framework of the Public Procurement Directives*, CC/91/61 (rev. 2) final; *Policy guidelines on defining the term 'product area' in periodic indicative notices for Directive 93/38*; *Policy guidelines on standards having currency in the Community*, CC/92/80 final; *Policy guidelines on contracts awarded by separate units of a contracting entity under Directive 90/531/EEC*, CC/92/87 final; *Policy guidelines on non-relevant airport activities under the 'Utilities Directive' 90/531/EEC*, CC/92/24 (rev. 1) final.

¹⁹ See, in particular, *Public procurement: regional and social aspects*, COM(89) 400 final, Commission Communication of 22 September 1989, OJ C311/7.

²⁰ These provisions apply to products covered by the EC and Euratom Treaties where there is no conflict with those Treaties. Relevant provisions under those Treaties are Articles 4 and 86 ECSC and Article 93 Euratom (dealing with free movement of goods under those Treaties); and Article 97 Euratom (supplementing Articles 52 and 59 EC in relation to the Euratom Treaty).

²¹ Judgment of 16 May 1991, [1991] ECR I-2457.

²² Case 21/88 *Du Pont de Nemours Italiana SpA v USL No. 2 di Carrara* [1990] ECR I-889, confirmed in Case 351/88 *Laboratori Bruneau Srl v USL RM/24 di Monterotondo* [1991] ECR I-3641. On Article 30 in procurement see also Case C-243/89 *Commission v Denmark*, [1993] ECR I-3353.

²³ Article 30 also prohibits the use of standards which are neither directly nor indirectly discriminatory, but which nevertheless amount, actually or potentially, to restrictions upon intra-Community trade in goods.

restrictions on access to government contracts which affect the activities of non-nationals established in the state in question.

6.9.3. Article 59

This article deals with restrictions on those who wish to provide services on a temporary basis in another Member State, including persons wishing to participate in contracts for services awarded by government. Like Article 30 it covers measures which discriminate directly and indirectly. An illustration is *Re data processing*,²⁴ which concerned Italian legislation limiting participation in certain data processing contracts to firms wholly or mainly in Italian public ownership. This contravened Articles 52 and 59: although non-Italian firms could be owned by the Italian government, in practice all data processing firms in Italian public ownership were Italian, and the provision thus discriminated against non-nationals, both those established in Italy (Article 52) and those in other Member States (Article 59).

An unresolved question is whether these provisions apply to single contract awards, or only when the act in question is, or is a manifestation of, a general practice in procurement. It is also not clear how far the Treaty rules apply to bodies outside the traditional public sector – to the private sector bodies covered by the Utilities Directive because they enjoy special or exclusive rights. These are important issues for contracts outside the directives, including those below the thresholds.

The most significant exemption from the Treaty for procurement is an exemption for military hardware, deriving from Article 223(1)(b) EC which generally exempts from the Treaty all trade measures relating to such hardware. The Article provides for the Council to draw up a list of products covered, and this was done in 1958 (although the list has not been formally published). It is generally considered that this permits states to exempt from the Treaty all procurements of relevant military products, participation in which may thus be limited to domestic firms or products (although an argument can be made, based on the wording of Article 223, that the exemption will only apply if such restrictive measures are based on security, rather than economic grounds). Whilst the Treaty may not apply, however, it can be noted that the Member States have agreed informally to open up their military hardware contracts of ECU 1 million or more, under the European Defence Equipment Market (EDCM) programme, operated by the Western European Armaments Group within the context of the Western European Union.

The Community rules on competition law also have a potential application to public procurement, although this has not yet been tested in the Court of Justice.²⁵

²⁴ Case 3/88 *Commission v Italy* [1989] ECR 4035. See also Case C-272/91 *Commission v Italy* (the *Lottomatica* case) [1994 ECR I-1409, [1995] 2 CMLR 504.

²⁵ For example, long-term supply agreements could be caught as restrictive agreements under Article 85 EC, or by Article 86 where they were induced by a supplier abusing a dominant market position.

7. National transposition

7.1. Timing

Directives governing the award of works and supplies contracts were originally adopted in 1971 and 1977 respectively. The Cecchini report concluded that these directives were insufficient to ensure an open and fair market for public procurement, and they were subsequently amended, as described in Section 6.2. The scope of the legislation regulating public procurement was also subsequently extended to cover:

- (a) utilities (which were excluded from the legislation's requirements at the time of Cecchini study);
- (b) services (purchased by both the public sector and utilities);
- (c) a system of remedies (to ensure suppliers had a rapid and effective system of obtaining redress in instances when they have been treated unfairly).

The timing of these new directives varied, and an overview of their entry into force is shown in Table 7.1. The key feature of the timing of the entry into force of public procurement directives is the greater time given to Spain, Greece and Portugal for implementation. The majority of the directives came into force in Austria, Finland and Sweden in 1994 under the terms of the EEA Agreement, although this has now been superseded by their membership of the European Union from 1 January 1995.

Table 7.1. Entry into force of post-1987 public procurement directives

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Works 89/440	EUR-12 except E,GR,P			E GR P		A S FIN				
Supplies 88/295		EUR-12 except E,GR,P		E GR P		A S FIN				
Supplies 93/36						EUR-15				
Services 92/50					EUR-12	A S FIN				
Remedies 89/665			EUR-12			A S FIN				
Utilities 90/531				EUR-12 except E,GR,P				E		GR P
Utilities (Services) 93/38						EUR-15 except E,GR,P			E	GR P
Utilities Remedies 92/13					EUR-12 except E,GR,P	A S FIN	E		GR P	

Source: Directives.

An overview of the extent to which Member States have put in place national legislation for transposition of the directives is shown in Table 7.2.

Table 7.2. Status of Member State transposition of directives (excluding remedies) (1995)

	B	D	DK	E	F	GR	I	IRL	L	NL	P	UK	A ¹	FIN	S
Works 89/440 Date of entry into force Date of implementation	7/90 8/90	7/90 *	7/90 8 90	3/92 5/95	7/90 9/90	3/92 2/93	7/90 12 91	7/90 2/92	7/90 8/92	7/90 10/91	3/92 12/93	7/90 12/91	1/94 1/94	1/94 1/94	1/94 1/94
Supplies 88/295 Date of entry into force Date of implementation	1/89 1/89	1/89 *	1/89 12 91	3/92 5/95	1/89 4/89	3/92 9/95	1/89 8/92	1/89 2 92	1/89 8/92	1/89 1/92	3/92 2/92	1/89 12 91	1/94 1/94	1/94 1/94	1/94 1/94
Supplies 93/36 Date of entry into force Date of implementation	6/94 x	6/94 *	6/94 6/94	6/94 5/95	6/94 x	6/94 9/95	6/94 x	6/94 9/94	6/94 x	6/94 6/94	6/94 3/95	6/94 2/95	7/94 x	7/94 3/95	7/94 7/94
Services 92/50 Date of entry into force Date of implementation	7/93 x	7/93 **	7/93 7/93	7/93 5/95	7/93 x	7/93 x	7/93 5/95	7/93 7/93	7/93 1/94	7/93 7/93	7/93 3/95	7/93 1/94	7/94 x	7/94 7/94	7/94 1/94
Utilities 90/531 Date of entry into force ² Date of implementation	7/92 9 94	7/92 *	7/92 1/93	1/96 x	7/92 8/93	1/98 n/a	7/92 5/95	7/92 4/93	7/92 3/93	7/92 4 93	1/98 n/a	7/92 1/93	1/94 1/94	1/94 1/94	1/94 1/94
Utilities (Services) 93/38 Date of entry into force Date of implementation	7/94 x	7/94 x	7/94 7/94	1/97 n/a	7/94 x	1/98 n/a	7/94 5/95	7/94 2/95	7/94 x	7/94 7/94	1/98 n/a	7/94 x	7/94 x	7/94 7/94	7/94 7/94

Notes: * Formal measures in government regulations, but it is not clear that these confer subjective rights and therefore they may not be a legally adequate method of implementation.

** Contracting entities have been instructed to comply via unpublished circulars.

Italics Official circulars (or equivalent) published to ensure compliance in absence of implementing legislation.

x No implementing legislation as at the end of 1995 (although planned in most Member States).

¹ Member State level only.

² 7/92 deadline for national implementing measures to be in place, but not in force until 1/93.

³ A, FIN and S required to make adjustments by 1 January 1995 on EU accession.

Source: National legal experts.

As Table 7.2 shows, at the end of 1995:

- the European legal framework had not been fully transposed, with a number of key gaps where Member States had failed to introduce national transposing measures, particularly in relation to the public-sector Services Directive 92/50 (Austria, Belgium, France, Greece and Austria) and Utilities Services Directive 93/38 (Austria, Belgium, Germany, France, Luxembourg and the UK);
- numerous examples of late transposition for all directives; during this period the directives (with the exception of those on remedies) were effective by 'direct effect';
- a number of Member States where national transposition was late, but where instructions, such as circulars/administrative orders were in place requiring contracting entities to comply with directives, particularly in relation to the public-sector Works Directive 89/440 (Denmark, Ireland, the Netherlands and the UK), and public-sector Supplies Directive 88/295 (Denmark, Ireland and the UK).

The status of transposition of the remedies directives and its legal effectiveness are described in Chapter 8.

7.2. Legal effectiveness of national transposing measures

7.2.1. Overview

The existence of national legislation does not mean *per se* that, from a legal perspective, Member States have made a correct transposition of the directives. By the same token, it should be noted that the absence of effective legal transposition does not necessarily mean that the legislation is not having, or has not had, a practical impact, principally that entities are publishing. For example, despite the absence of transposing measures described in Section 7.1 (Table 7.2) notices are being published by entities.

Table 7.3 gives an overview of the status of national transposing legislation from the perspective of the European Commission unit responsible for ensuring correct transposition (DG VX/B/3).

Table 7.3. European Commission evaluation of the status of Member State transposition of directives (1995)

	B	D	DK	E	F	GR	I	IRL	L	NL	P	UK	A	FIN	S
Works 89/440	A	A		C	C						C		C	C	C
Supplies 89/225		A		C							A		C	C	C
Supplies 93/36	B	B		C	B		B	C			C	C	D	C	C
Services 92/50	B	B		C	B	B	C	C			C	C	D	C	C
Remedies 89/665		A		A		A					A		C	C	C
Utilities 90/531	A	A		D		n/a	C	C			n/a	A	C	C	C
Utilities (Services) 93/38	A	B		n/a	B	n/a	C				n/a	B	D	C	C
Utilities Remedies 92/13	A	A		D	A	n/a	A	A	C	C	n/a	A	D	C	C

Notes: A Community infringement procedure for incorrect transposition commenced/proposed.
 B Community infringement procedure for non-communication in effect.
 C National implementing measures being analysed by the European Commission.
 D National implementing measures not communicated to the European Commission.
 n/a National implementing measures not yet required.

Source: European Commission, DG XV/B/3, January 1996.

In broad terms, however, Member States with transposing legislation have transposed the key elements of the public sector and utilities directives in a legally effective (correct) manner. (The effectiveness of arrangements for meeting the requirements of the Remedies Directives – 89/665 and 92/13 – is discussed in Chapter 8).

7.2.2. Effectiveness of public-sector directives transposition

According to the analyses carried out by national legal experts on the situation in Member States as at the end of 1995, in relation to the key elements of the public sector directives, most Member States with transposing legislation have merely repeated exactly what is stated in the directives themselves (either in a detailed fashion or 'by reference'). As a consequence, incorrect transposition tends to be minimal, and although there are minor discrepancies, the following highlights the most significant exceptions to this 'general rule':

- (a) bodies covered – some lack of clarity in Austria regarding public enterprise coverage; inadequate public-sector coverage in Belgium (although to be corrected by forthcoming legislation); inadequate public enterprise coverage in France;
- (b) definition of works, supply and service contracts – the definition of a works contract is inadequate in Germany;
- (c) thresholds – unclear whether UK regulation on discrete operating units (DOUs) is acceptable (for the purposes of aggregation);
- (d) award procedures – minor defects in the use of the negotiated procedure by public-sector entities in Finland; incorrect transposition of use of the negotiated procedures for supplies contracts by public-sector entities in Germany; incorrect ability for public-sector entities to negotiate post-tender for restricted procedure services and supplies contracts, and wrong implementation of accelerated restricted procedures for public-sector entities in Portugal;
- (e) rules on qualification – the recognition system for works contracts does not allow unlisted providers to qualify in time in Belgium; incorrect implementation of rules on participation in Finland; the requirement for domestic firms to be on approved lists may be an infringement in Spain; it is unclear whether UK rules on ‘ability’ of service providers comply;
- (f) use of framework agreements – UK advice promotes their use in the public sector, and it is not clear that this is permitted.

7.2.3. Effectiveness of utilities directives transposition

According to the analyses carried out by national legal experts on the situation in Member States as at the end of 1995, in relation to the key elements of the utilities directives, most Member States with transposing legislation have merely repeated exactly what is stated in the directives themselves (either in a detailed fashion or ‘by reference’). As a consequence, incorrect transposition tends to be minimal, and although there are minor discrepancies, the following highlights the most significant exceptions to this ‘general rule’:

- (a) bodies covered – incomplete coverage in Belgium (although to be corrected by forthcoming legislation); slight defect in coverage in Germany;
- (b) activities covered – minor omissions in Finland; possible incorrect approach to the telecommunications exemption in the UK (to be corrected in future legislation);
- (c) thresholds – unclear whether UK regulation on DOUs is acceptable (for the purposes of aggregation);
- (d) award procedures and choice of procedure – minor defect in time limits for restricted and negotiated procedures in Finland.

7.2.4. Approach to transposition – implications for effectiveness

Member States have adopted a detailed approach to transposition, with the exception of Denmark, Ireland and the Netherlands (with the exception of central government works contracts), which have, in general, transposed ‘by reference’. A common characteristic of both approaches has been the general absence of interpretation by Member States of ambiguous features of the directives highlighted in Section 6.5. Nor has detailed interpretative guidance been issued. The ambiguity of the directives means that there are significant uncertainties over issues, such as:

- (a) boundaries between works and supplies/services contracts,
- (b) operation of the 'aggregation rules',
- (c) use of 'framework agreements' in the public sector,
- (d) permissible criteria for shortlisting in the public sector,
- (e) extent to which renewals, extensions or amendments to existing contractual arrangements constitute new contracts,
- (f) extent to which alterations to bids are permitted in open and restricted procedures.

7.3. Member State specific procurement rules and regulations and contracting entity characteristics

7.3.1. Domestic procurement rules

Most Member States have domestic legislation to regulate public procurement procedures which apply not merely to contracts covered by the directives, but also to contracts below the directives' thresholds. This applies in Austria, Belgium, Finland, France, Greece, Luxembourg, Spain, Sweden and Portugal.

Germany also has formal and detailed regulatory provisions governing public contracting, although these do not confer subjective rights on bidders. Generally, the domestic rules require advertisement of contracts – although for contracts outside the scope of the directives this is generally in national publications rather than the OJ – and fair and transparent award procedures. The entities covered are not always identical to those covered by the directives, especially in Member States where the national provisions pre-dated the directives.

Italy has a number of additional rules in the area of works procurement, namely anti-Mafia laws, regional legislation and contract law. These are expressly required not to conflict with European rules.

The UK, Ireland, the Netherlands and Denmark do not have any comprehensive national legal provisions to regulate procurement. In the UK there are legal rules to regulate the award of certain services contracts by local authorities, but only where there is participation by an in-house bidder (under compulsory competitive tendering (CCT) rules) and not in other cases (where merely the local authority's standing orders apply). In the Netherlands there are rules regulating central government works contracts.

7.3.2. Structural Funds

It is a Community requirement that contracts let for projects funded by the Structural Funds comply with the procurement rules. Contracts let are checked for compliance by the European Commission prior to the contract award.

7.3.3. Privatization

The nature of ownership of a contracting entity, particularly in the area of utilities where some Member States have carried out extensive privatization programmes, is irrelevant from a legal perspective. An entity is covered if it carries out particular activities under particular circumstances. As such, privatization *per se* has not had an impact on the application of the procurement rules. However:

-
- (a) a number of previously 'excluded' sectors, particularly those whose operators compete and trade in international markets, consider it inappropriate that they should be treated like public-sector entities, albeit with directives which allow them considerably more flexibility than the public sector;
 - (b) private-sector contracting entities subject to 'market forces' are arguably more likely to be actively looking to take advantage of the rules, and any subsequent benefits. The extent to which this is borne out in reality is explored in demand-side subsequent points of the report, including the case studies (Section F) and demand-side survey results (Chapter 12).

8. Remedies and enforcement

8.1. Community level redress, sanctions and enforcement

At Community level, the European Commission is responsible for ensuring the correct implementation and application of directives and other measures by Member States.

8.1.1. Article 169 proceedings

Article 169 proceedings consist of an administrative stage (prior to litigation), followed, where necessary, by legal proceedings.

At the administrative stage, the Member State concerned is required to comment on the fact and points of law on which the Commission bases its decision to institute an infringement procedure. The Member State is required to reply to the Commission's letter of formal notice, which requires a submission of the Member State's observations within a specified period.

On the basis of the Member State's response, the Commission may decide to deliver a Reasoned Opinion, which calls upon the Member State to comply with Community law within a further specified period. In most cases this is two months. The Commission may also deliver a Reasoned Opinion if the Member State has not replied to the initial letter of formal notice (within the time specified). At this stage, the Commission has the ability to decide not to take further action.

This first administrative stage is an essential precondition for any subsequent referral to the European Court of Justice.

If the Commission does decide to instigate legal proceedings (after non-compliance with the Reasoned Opinion), it may then bring the matter before the European Court of Justice by submitting an application.

The proceedings are concluded when the Court of Justice makes its judgment as to whether an infringement has taken place. The Court's judgments are declaratory in nature. If the Court does find against a Member State, the latter is required by Article 171 EC to take the necessary measures to comply with the judgment, especially by resolving the original conflicts which gave rise to the procedure. However, the Court may not:

- (a) declare void a national provision which does not comply with Community law;
- (b) currently order a Member State to pay damages to an individual who has suffered from an infringement (where the Commission is pursuing an action brought to its attention by an aggrieved party).

The procedure under Article 169 EC is the same, irrespective of whether the Commission is pursuing an infringement of its own initiative, which includes proceedings relating to incorrect and/or late transposition or pursuing an action brought to its attention by an aggrieved party.

From the perspective of an aggrieved party, instigating an action via the Commission has three key attractions:

- (a) the Commission guarantees anonymity when dealing with Member State authorities,

- (b) the action is free,
- (c) in many cases the Commission succeeds in negotiating a settlement.

However, the average length of proceedings is over 20 months.

Detailed information on the number and nature of complaints brought by aggrieved suppliers and pursued by the Commission is not provided since it is considered that statistics on the number and nature of cases are misleading, and that cases do not necessarily represent fundamental problems associated with the legislation. However, an increasing number of suppliers are making use of this means of pursuing a complaint. In addition, most complaints with which the Commission deals are not trivial, with the majority being justified and resulting in positive outcomes for the aggrieved supplier. Most cases which have come to court have related to:

- (a) abuse of the negotiated procedure,
- (b) general non-publication,
- (c) breach of the free movement provisions.

8.1.2. Remedies Directives rules

There is express provision in both Remedies Directives for the Commission to act on its own initiative if it concludes that there is a 'clear and manifest' breach of the law (except once a contract has been concluded). In such circumstances, it must notify the relevant Member State and the purchaser of its reasons and request a correction. The Member State must reply within 21 days and either confirm that the infringement has been corrected or explain why not (unless the procedure has been suspended, in which case it must simply notify the Commission of this). Failure to do so does not, however, attract any sanctions. The Commission is not given any special enforcement powers, and the rules do not restrict or replace its powers under Article 169. As a result, if a satisfactory reply is not received, the Commission will simply continue proceedings under Article 169 (see above).

The Commission is not required to take action against a Member State, even if there is a genuine infringement. Hence, an aggrieved firm with a genuine complaint may not necessarily have the case pursued by the Commission.

8.1.3. Surveillance

To support its enforcement activities, the Commission also carries out surveillance to determine the extent to which contracting entities are:

- (a) publishing notices in the OJ,
- (b) using the appropriate procedures.

Its key sources of information are:

- (a) the OJ/TED (and, ultimately, the Information System for Public Procurement, SIMAP),
- (b) the EAP database of contracting entities (currently being created).

The Commission also receives and analyses statistical reports from Member States required by the directives:

- (a) annual reports on the total value of below-threshold procurement by utility type;
- (b) reports produced every two years on above-threshold works contracts (the reports are required to cover number and value of contracts, procedure used, supplier nationality, specific details on negotiated procedure contracts);
- (c) reports produced every two years on above-threshold supplies and contracts made by entities not covered by the 1988 GATT Agreement on Public Procurement (GPA); in essence this covers all non-central government bodies, and annual reports for above- and below-threshold supplies contracts for entities covered by the GPA, in essence central government (as for works, the reports are required to cover number and value of contracts, procedure used, supplier nationality, specific details on negotiated procedure contracts);
- (d) reports produced every two years on above-threshold service procurement. (As for works, the reports are required to cover number and value of contracts, procedure used, supplier nationality, specific details on negotiated procedure contracts.)

In terms of enforcement, as described in Section 8.1.1, the Commission currently adopts a proactive approach in ensuring legislation is correctly transposed, and a more reactive approach to enforcement.

8.2. Member State level redress, sanctions and enforcement

8.2.1. Redress and sanctions

The issue of remedies is highly complex, and a detailed description of the system of remedies (being put) in place in each Member State was provided by relevant national legal experts, together with an assessment of their sufficiency/effectiveness.

With the exceptions of Denmark and Sweden, national legal experts have identified problems with arrangements in all Member States. At the highest level, there are two principal areas hindering effective relief:

- (a) the inability to obtain remedies with sufficient rapidity,
- (b) a lack of clarity in the manner in which damages are calculated/can be obtained.

The situation at Member State level varies:

- (a) Austria – that damages are available only for tender costs, and firms may be required to pay compensation if a case is unsuccessful, are probably unacceptable;
- (b) Belgium – the system may not be sufficiently rapid, and there is no implementation of the special utilities rules on tender costs;
- (c) Finland – it is questionable whether remedies are available with sufficient rapidity;
- (d) France – the level of damages which could be recovered is unclear;
- (e) Germany – in addition to a number of other defects, the absence of the granting of subjective rights to tenderers is a major implementation issue, whilst damages for the loss of profits are only available if it can be shown that a firm would almost certainly have won the disputed contract;
- (f) Greece – remedies are not available with sufficient rapidity to ensure effective relief, and damages for lost profits are unduly difficult to obtain because of a requirement on the applicant to prove it would have won the disputed contract;

- (g) Italy – remedies do not seem to be available with sufficient rapidity to ensure effective relief;
- (h) Luxembourg – remedies are not available with sufficient rapidity to ensure effective relief, and there has been no implementation of the special provision on the utilities sector for the recovery of tender costs;
- (i) Netherlands – it is unclear whether the *Raad van Arbitrage* has the competency to make reference to the European Court of Justice under Article 177 EEC; damages for lost profits are unduly difficult to obtain because of a requirement on the applicant to prove that they would have won the disputed contract; there has been no implementation of the special provision on the utilities sector for the recovery of tender costs;
- (j) Portugal – interim relief is difficult to obtain; damages for lost profits are unduly difficult to obtain because of a requirement on the applicant to prove that they would have won the disputed contract, and the system is too slow to ensure effective relief;
- (k) Ireland – remedies are not available with sufficient rapidity to ensure effective relief;
- (l) Spain – remedies are not available with sufficient rapidity to ensure effective relief, and damages for lost profits are unduly difficult to obtain because of a requirement on the applicant to prove that they would have won the disputed contract;
- (m) UK – it is difficult to obtain interim measures, remedies are not clearly available with sufficient rapidity, and the system may be defective in being less favourable than remedies to enforce domestic rules.

8.2.2. Enforcement

Member States have units with responsibility for transposition of directives and the fulfilment of requirements of Member States within the directives, particularly in relation to the provision of statistics. However, with the exception of the Committee for Public Procurement (*Nemden for Offentlig Upphandling* (NOU)) in Sweden – which has been created as a supervisory body, as well as to provide advice and information on procurement – the Interministerial Commission of Inquiry for Procurement in France, the Committee for Public Procurement in relation to public works contracts in Italy, and, arguably, the Tender Commission in Luxembourg, Member States do not have independent enforcement/supervisory institutions with a remit to (actively) enforce compliance with the directives' requirements (as transposed in national law). In general, reliance is on the existence of national laws and suppliers' willingness to make use of national systems of remedies.

This general absence of national enforcement bodies is in contrast to almost all other areas of European legislation, such as the environment, health and safety, and financial services, where national bodies take responsibility for ensuring the rules are adhered to by the firms subject to legal requirements. The situation is clearly not directly comparable, since the procurement rules regulate the state, rather than, as above, the private sector (where the state acts as an 'independent' enforcer), although clearly, in many instances, public-sector organizations are equally subject to these rules.

8.3. Sufficiency of arrangements for ensuring enforcement of procurement provisions

Present arrangements for enforcement of procurement provisions at both Community and Member State levels are generally insufficient for a number of key and interrelated reasons:

- (a) a dependence on the supply side to, in effect, police its customers;
- (b) current lack of suitably effective national systems of redress;

- (c) the (poor) quality of information currently available to the Commission (as the Community's only principal enforcement body) and the perceived remit and resources available within the Commission to carry out the role of enforcement;
- (d) the perpetuation of key ambiguities within the directives in Member State transpositions;
- (e) demand-side mentality.

8.3.1. Supply-side dependence

All current enforcement arrangements (with the exception of the European Commission) rely upon suppliers to identify an infringement, such as non-publication or incorrect application of procedures. This presupposes a high level of supplier awareness of relatively complex regulations which affect their customers. Whilst an in-depth understanding of customer requirements is a commercial necessity, the extent to which suppliers should be expected to be aware of such technical issues is questionable. A number of other factors mitigate against this dependence:

- (a) results of the supply-side survey (Chapter 13) indicated that awareness of the core output from the directives – the requirement to publish in the OJ – is far from universal, particularly among small firms;
- (b) the level of resources required to understand the practical implications of the directives' requirements for customers is unlikely to be available, particularly within SMEs;
- (c) proving non-compliance is complicated, since suppliers are unlikely to have sufficient knowledge to be able to judge whether an infringement has taken place, whilst ambiguities in the directives mean that contracting entities can justify actions which are, at a minimum, against the 'spirit' of the directives;
- (d) regardless of the effectiveness of national and European remedies processes, firms are, in general, loath to instigate proceedings against a (potential) customer.

8.3.2. Member State systems of redress

As described in Section 8.2, with only few exceptions, there are problems with present national remedies systems. The inability to obtain remedies sufficiently quickly (from both a legal and practical perspective) and a lack of clarity with regard to damages are likely to be significant disincentives to firms considering pursuing a case.

(This state of affairs may be a contributory factor to a growing number of firms pursuing complaints through the Commission under Article 169. This hypothesis is further supported by the fact that the Commission's powers in this respect are not publicized and, as a consequence, are not widely known.)

8.3.3. Quality of information and Commission resources

Active enforcement by the Commission of non-compliant contracting entities is currently restricted by a lack of reliable and consistent market information on which to base decisions, and finite staff resources to deal with complaints.

The information and data sources available to the Commission to carry out surveillance activities (to determine the need for enforcement) are highly fragmented. As a result, there are no 'benchmarks' against which compliance (or its absence) can be measured. Key missing 'benchmarks' are as follows.

- (a) **The actual size (value) of the respective public-sector markets in each Member State.** Member States do submit statistical returns, but these are historic. For example, the most recent figures for bodies not subject to the GPA (in essence, local and regional public-sector bodies) are for 1992. Even so, not even half the Member States are covered, and nor is the information presented in a consistent format. Furthermore, Member State returning bodies for statistics are dependent on figures provided by the contracting entities themselves.
- (b) **The number of contracting entities in each Member State which are covered by the directives and which, in principle, should be publishing notices in the OJ.** As a result, although the monitoring of notices published in the OJ does highlight contracting entities which are not technically complying by, for example, use of an incorrect procedure, they are at least trying to comply. The creation of the EAP database is an initial step towards filling this gap, and output from the database has been used and is commented upon in Section 10.6.
- (c) **The number of notices which should (reasonably be expected to) be published.** Previous Commission analyses have indicated that the number of notices published is far below what might sensibly be expected, particularly in relation to supplies contracts. Unlike market size and number of contracting entities, there is unlikely to be a ‘benchmark’ for this measure. (An analysis of notice publication is contained in Chapter 11, and our evaluation of the levels of publication, and the complex points surrounding this issue, are presented in Chapter 23.) However, it is likely that a lower than expected level of notices can be explained by contracting entities’ (deliberate) misinterpretation of ambiguous elements of the directives which would allow them not to have to publish, notably:
- (i) the boundaries between works and supply/services contracts – given the significantly higher threshold for works, ‘defining’ a supply/service as a work increases the likelihood that publication will be unnecessary;
 - (ii) ‘aggregation rules’ – whilst the level at which aggregation should take place is clear for PINs, this is not the case elsewhere. Contracting entities justifiably highlight the need to aggregate at a pragmatic operational level, but if this is done at too low a NACE/CPC/CPV level, a purchaser in essence splits contracts, prevention of which was one of the directives’ principal objectives;
 - (iii) the extent to which renewals, extensions or amendments to existing contractual arrangements constitute new contracts, requiring a new tender.

8.3.4. Ambiguities in directives

There are a number of crucial ambiguities in the directives which, as described in Section 8.3.3, have significant implications for the directives’ coverage in terms of the number of entities publishing, and the number of notices they publish.

The use of directives as the legal instrument to introduce the procurement framework means there will continue to be areas open to interpretation.

8.3.5. Demand-side ‘mentality’

Although there are ambiguities in the directives, their overall objectives are, however, clear. It is also self-evident that even a ‘perfect’ piece of legislation will not work if a contracting entity sets out deliberately to avoid complying, or complies to the letter, but not the spirit, of the law.

An analysis of purchasing entities' response to, and views of, the procurement legislation is contained in Chapter 12.

9. Measures affecting third country access

9.1. International agreements on access to procurement

A number of international agreements giving third country firms and products access to public and utilities procurement have been concluded, the principal of which are:

- (a) the European Economic Area (EEA) Agreement,
- (b) the WTO Agreement on Government Procurement (GPA),
- (c) bilateral agreements with the USA,
- (d) Association Agreements with Central and Eastern Europe.

9.1.1. The European Economic Area Agreement

The European Economic Area (EEA) Agreement²⁶ brought members of the European Free Trade Association (EFTA) and the Community within a single market regime based on that of the Community itself. When it was signed the members of EFTA were Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland. However, Switzerland rejected it in a referendum, and did not participate, and Sweden, Finland and Austria joined the EU from 1 January 1995. Thus it is now relevant only to Iceland, Liechtenstein and Norway.

The Agreement requires states to open their procurement to each other under the rules that apply within the Community. They must follow general principles on free movement of goods, freedom to provide services and freedom of establishment which parallel those in the Community Treaties, and must also provide access to public procurement markets in accordance with the rules in the directives (including remedies).²⁷

9.1.2. The World Trade Organization Agreement on Government Procurement

The original Agreement on Government Procurement²⁸ was negotiated under the auspices of GATT and came into force on 1 January 1981.²⁹ However, it only covered supplies contracts and central/federal entities. In parallel with the Uruguay Round a more extensive agreement

²⁶ European Economic Area Agreement, 1994, OJ L 1/1 was concluded on 2 May 1992. See also EEA Joint Committee Decision 7/94, 1994, OJ L 160/1 (incorporating Directives 92/13, 92/50, 93/36, 93/37 and 93/38, which were adopted after the Agreement was concluded); and EEA Council Decision 1/95, 1995, OJ L 86/58 (concerning the accession of Liechtenstein).

²⁷ The EEA Agreement provides for adaptation of the EC rules to cover EEA states, since they are worded on the assumption that they only apply to EC Member States. Certain general ('horizontal') adaptations are contained in Protocol 1 to the Agreement and the procurement rules must be read in light of these adaptations. For example, it is stated that if a rule in a Community measure is directed at an EC Member State – such as the obligation to publish notices under the procurement rules – it applies also to participating EFTA states, and where it is stated that a rule confers a right on a Member State or a national of that state, the same right applies in respect of participating EFTA states and their nationals. There are also some special provisions modifying, in the context of the EEA, the usual application of the rules; for example, EFTA states may not send procurement notices to the OJ in their own language, but must use one of the official languages of the EC. They also need to apply the rules in the Utilities Directive restricting access of third country products.

²⁸ Approved on behalf of the EC by Council Decision 80/271/EEC of 10 December 1979, OJ L 71/1.

²⁹ The Agreement was slightly amended in 1987 by a Protocol, approved on behalf of the EC by Council Decision 87/565/EEC of 16 November 1987, OJ L 345/24, which came into force on 14 February 1988.

was concluded, which is contained in Annex IV to the World Trade Organization (WTO) Agreement. This took effect for Community Member States on 1 January 1996,³⁰ superseding the old Agreement for the parties to it. It is a 'plurilateral' agreement, meaning that WTO members may choose whether to participate. The current parties to the Agreement are:

- (a) the Community and its Member States,
- (b) Norway (a member of the EEA),
- (c) Canada,
- (d) Israel,
- (e) Japan,
- (f) South Korea,
- (g) the USA,
- (h) Switzerland.³¹

For the European Communities, the GPA covers all 'contracting authorities' under the public-sector directives. In the utilities sector it applies to entities carrying out listed activities which are either 'public authorities' or 'public undertakings' under the Utilities Directive. It does not, on the other hand, cover entities which are subject to the directive merely because they enjoy 'special and exclusive rights'. The relevant activities covered by the GPA are:

- (a) activities connected with the provision of water through fixed networks,
- (b) activities concerned with the provision of electricity through fixed networks,
- (c) provision of terminal facilities to carriers by air,
- (d) provision of terminal facilities to carriers by sea or inland waterway,
- (e) operation of public services in the field of transport by automated systems, tramway, trolley bus, or bus or cable.

In principle, public transport by rail is included, but there is an exclusion for certain entities, intended to remove non-urban services from its coverage. Activities covered by the Utilities Directive, but excluded from the GPA are:

- (a) distribution of gas or heat,
- (b) fuel extraction,
- (c) telecommunications.

The threshold for the application of the GPA by Member States to works contracts is SDR 5 million, for all entities. For supplies and services it is SDR 130,000 for central government;³² SDR 200,000 for local government; and SDR 400,000 for utilities.

³⁰ See Council Decision of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986–1994) (94/800/EC), 1994, OJ L 336/1.

³¹ These are the same as the parties to the old agreement except that South Korea was not formerly a party and Hong Kong and Singapore, who did sign the previous agreement, have dropped out of the new one.

³² EC Annex I.

The above coverage is qualified by important derogations.³³ For central/federal government works and supply contracts, generally the agreement applies in respect of all other signatories to all central government works and supplies contracts (except those falling within the general exclusions or below the thresholds). However, for services, certain utilities contracts, and contracts awarded by other levels of government (such as local and regional authorities, including the state governments in federal states), it is more complex. This arises because some signatories have been unwilling to offer coverage of all entities or contracts. Given the divergence, coverage based on what each signatory state was able to offer was unacceptable, since this would have produced great imbalances between states. On the other hand, to define coverage on the basis of the minimum common denominator would have resulted in an agreement of very narrow scope. Thus, it was decided that each signatory should negotiate with each of the others to agree coverage on a bilateral basis.

As a result, the wide coverage of Community entities and activities is limited in respect of many of the signatory states by a list of derogations. The most significant derogations, as stated in the GPA Annexes, can be summarized as follows:

- (a) For entities in Annex II, which mainly covers local government, regional government, and certain bodies covered by public law, the rules do not apply to Canada and the USA. There are also some limitations applying to Japan, Israel, Korea and Switzerland (for entities in Annex II, para. 2), applying until the EC is satisfied these states have offered complete coverage of sub-federal entities.
- (b) For the water sector, the rules do not apply to Canada and the USA.
- (c) For the electricity sector, the rules do not apply to Canada, Japan and the USA.
- (d) For airports, the rules do not apply to Canada, Korea and the USA.
- (e) For ports, the rules do not apply to Canada and the USA.
- (f) For urban transport, the rules do not apply to Canada, Israel, Japan, Korea and the USA;
- (g) For services contracts, the rules apply to providers from third countries only where those countries afford access to the category of services in question under their own Annexes (many states have opened up their markets only in limited services).
- (h) For Israel, Japan and Korea, the EC is to apply higher thresholds for contracts where these countries themselves provide higher thresholds in their Annexes than does the EC.
- (i) For Israel, Korea, Canada and the USA, there are derogations for certain types of equipment applicable until the EC is satisfied that these states provide access to the EC for the markets concerned.
- (j) The EC need not provide for enforcement of the rules by small and medium-sized enterprises from Japan, Korea and the USA until those states drop their own policies of favouring small and minority businesses.

The above derogations generally do not apply, however, once it has been accepted that the parties concerned give comparable and effective access to EU firms in the relevant markets. In the case of the USA, such access has been provided for some of the relevant sectors under the EC-US bilateral agreements (see Section 9.1.3).

³³ As well as the specific derogations there are exceptions based on national defence and security, and also for measures to protect 'public morals, order or safety, human, animal or plant life or health, [or] intellectual property' or measures relating to the products or services of handicapped persons, philanthropic institutions or prison labour.

There are also derogations for the EC in respect of certain contracts exempt from the directives but not covered by more general exemptions in the GPA, such as contracts for the purchase of energy for fuel, or for entities exempt from the Utilities Directive under the various exemptions designed to cover entities which operate in a competitive market. Further, the GPA does not apply to services contracts in the utilities sector in Spain or Greece until 1 January 1997 and 1 January 1998 respectively.

The approach to regulation is similar to the Community regime. Article III contains certain general principles, primarily that parties must:

- (a) give to providers and the products and services³⁴ of other signatory states the same treatment as is afforded to national providers and products;
- (b) give to the providers and the products and services of other parties treatment no less favourable than that afforded to other parties.³⁵

Thus providers of third country signatories must be able to take advantage of the procedures in the procurement regulations implementing the Community regime – which are available to national firms and firms from other Member States. Article III also prohibits discrimination against local firms based on the degree of foreign affiliation or ownership, or based on the country of production of the goods or services where these have been produced in one of the states which is party to the Agreement. The Agreement also requires states to follow transparent award procedures, as laid out in the Agreement.

Article III(3) makes it clear that access to procurement is subject to the rules which govern access to the general market of the signatory states. For example, products imported for a government procurement are subject to relevant customs duties.

Article XX requires states to give providers a right to enforce the rules, and lays down certain minimum standards for national remedies systems. It appears that Community Member States must apply the Community's own rules on remedies to third country firms in contracts covered by the GPA, because of the national treatment and non-discrimination obligations in Article III.

9.1.3. The bilateral agreements with the USA

The EU Member States and the USA are both party to the old GATT procurement agreement and also to the new GPA (see Section 9.1.2).

³⁴ To apply these provisions it is necessary to decide whether products and services are 'of' a particular third country. Rules governing this question in international trade are generally referred to as 'rules of origin'. These are dealt with in Article IV of the GPA, providing that parties 'shall not apply rules which are different from the rules of origin applied in the normal course of trade and at the time of importation to imports of the same products or services from the same Parties'. Rules on the origin of goods are not required in Community law itself since the principle of free movement of goods under Article 30 (which fulfils the function of the GPA requirement to treat products of third countries no less favourably than national products) applies not only to goods originating in other Member States but to all products from those states regardless of origin.

³⁵ This does not have a parallel in Community law, where there is nothing to prevent states from treating third countries more favourably than fellow Member States. In practice, this is unlikely to happen, since if national firms are given the favourable treatment afforded to third countries, it must then be applied to firms from other Member States because of the effective requirement to treat those firms as favourably as national firms.

In April 1993, a bilateral agreement was concluded providing for mutual access to:

- (a) major central/federal contracts, whereby the EC extended the benefit of the public-sector directives for central/federal contracts;
- (b) works and supply contracts in the electricity sector, whereby the EC extended access under the rules in Directive 90/531 for contracts in this sector.³⁶

This ceased to have effect as from 1 January 1996, since when similar access is provided under the terms of the new GPA instead.

In April 1994, a further bilateral Agreement was concluded for extensions to the coverage originally negotiated for the GPA in December 1993, as set out above,³⁷ which provided for:

- (a) a degree of liberalization of sub-federal procurement,
- (b) substantial mutual access in the ports sector,
- (c) access to services in the electricity sector.

The agreements concluded have not resolved all difficulties. US complaints over restrictions on access to contracts not covered by them have led the US to impose sanctions on Community industry under Title VII of the US 1988 Omnibus Trade and Competitiveness Act. Not wishing to undermine the access agreements already concluded, the USA confined these sanctions to federal contracts not covered by existing agreements, i.e. those of a low value. In retaliation the Community imposed similar sanctions under Regulation (EEC) No 1463/93. They apply to works, supplies and services contracts awarded by central government entities,³⁸ but only to supplies contracts below the thresholds of the current GPA (i.e. the old GATT Agreement), and to services and works contracts below the thresholds of the EC Directives (except in the case of services contracts for 'non-priority' services under the Directive, to which the sanctions apply whatever their value). For these contracts the sanctions require exclusion of all firms established in, and operating from, the USA.

9.1.4. Association Agreements with Central and Eastern Europe

Association Agreements which deal expressly with the issue of procurement are presently in force with:

- (a) Hungary and Poland (from 1 February 1994),

³⁶ This Agreement was in the form of a Memorandum of Understanding, approved by Council Decision 93/323, 1993, OJ L 125/1.

³⁷ Approved by Council Decision 95/215/EC, 1995, OJ L134/25. The Agreement also improves transparency, by providing for both sides to ensure that contract notices indicate clearly where the GPA applies to a procurement.

³⁸ Coverage is set out in Article 1 of the Regulation. Article 2 provides for exceptions for certain reasons of public interest.

- (b) the Czech Republic, the Slovak Republic, Romania and Bulgaria (from 1 February 1995).³⁹

Similar Agreements were concluded on 12 June 1995 with Lithuania, Latvia and Estonia, but these await ratification and are not yet in force (in the meantime Free Trade Agreements exist with these states – see Section 9.1.5).

In relation to trade in goods, they provide for the Community to abolish quantitative restrictions and measures of equivalent effect, with respect to most products originating in the association states.⁴⁰ Restrictions on access to government procurement are covered by this since they are measures equivalent to quantitative restrictions; thus exclusion of association states' products or any other discrimination against such products in procurement is prohibited. In addition, the Agreements provide for companies from the association states to be given access to contract award procedures pursuant to Community procurement rules, under conditions no less favourable than Community companies.⁴¹ Thus companies from these states wishing to supply goods to Member States can rely on the rules in the directives to obtain access. In return, Community companies are generally to be given access to award procedures in the association states within ten years (or earlier, if possible). Community firms established in the association states have immediate access. It is not clear how these provisions fit with the rules in Article 36 of the Utilities Directive which provides for certain preferences for Community products (see Section 9.2.1). The directive provides for the Council to disapply the preference rules for products from states which agree to give 'comparable and effective' access to Community products in that sector. However, this does not apply to the association states since the Europe Agreement provisions do not provide for immediate Community access to contracts of these states.⁴² Thus it would appear that amendment to the directive is required to give access to these states.⁴³ The reference in the Europe Agreements to Community treatment for firms from the association states suggests that the EC has an obligation to make such an amendment.

In relation to services, the Agreements provide for the Association Council to take, progressively, the measures necessary to open up markets between the Community, on the one hand, and the association states, on the other. Where access to government procurement services is concerned, companies may also rely on the provisions just discussed, giving access

³⁹ See Council and Commission Decisions 93/742/Euratom, ECSC, EC approving the Europe Agreement (Hungary), 1993, OJ L 347/1; 93/743/Euratom, ECSC, EC (Poland), 1993, OJ L 348/1; 94/907/Euratom, ECSC, EC (Romania), 1994, OJ L 357/1; 94/908/Euratom, ECSC, EC (Bulgaria), 1994, OJ L 358/1; 94/909/Euratom, ECSC, EC (Slovak Republic), 1994, OJ L 359/1; 94/910/Euratom, ECSC, EC (Czech Republic), 1994, OJ L 360/1. The texts of the Agreements are published in the Official Journal in annex to the relevant decisions.

⁴⁰ The provision covers all products listed in Chapters 25 to 97 of the combined nomenclature, except for products listed in Annex I, and also textiles and ECSC products, which are subject to special arrangements.

⁴¹ These are defined as companies/firms set up in accordance with the law of that state, and which have either their central administration or principal place of business in that state, or have their registered office in that state, and also a 'real and continuous link' with the economy of that country.

⁴² Once the transitional period has expired, however, access is likely to be comparable and effective, since both states will have, in effect, legislative codes prescribing fair and open award procedures for major procurements, similar to those of the EC.

⁴³ The same would apply in relation to future measures giving access to developing states in order to aid their development.

to contract award procedures. Thus, firms from the association states may, effectively, take advantage of the directives' rules in relation to provision of works and other services (whilst, as with goods, EC firms must wait for access to markets of those states, unless they are established there). However, access is subject to the general restrictions on freedom to provide services.

These rules on access are enforceable in the courts of Member States, which are obliged to provide the same remedies as under the Community's internal rules on remedies.

9.1.5. Other agreements

Other agreements concluded by the Community which contain provisions on free trade may also affect procurement, even though it is not dealt with expressly. There are a number of agreements (for example, the Free Trade Agreements with Estonia, Latvia and Lithuania⁴⁴) which prohibit quantitative restrictions and measures of equivalent effect, and this includes procurement practices which discriminate against products from those states within the scope of the Agreements. The Association Agreement concluded with Turkey also contains general provisions on free movement and freedom to provide services which operate to prohibit discrimination in procurement against firms and products from that state. It is expected that more specific provisions on access to procurement will be included in the revised version of that Agreement, to bring it into line with the more recent Association Agreements.

9.2. The position where no agreements apply

Third country access issues may also arise where there are no relevant agreements in relation to:

- (a) third country products,
- (b) third country services and service providers.

9.2.1. Third country products

Provisions in the Community directives

There are no provisions in the public-sector directives on third country products. Thus, they do not themselves prevent states from excluding such products. However, it is not permitted to apply a price preference against such products, since the origin of the products is not a permissible award criterion.

⁴⁴ Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community, the European Coal and Steel Community, of the one part, and the Republic of Estonia, of the other part (OJ L 373, 31.12.1994, p. 1); Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community, the European Coal and Steel Community, of the one part, and the Republic of Latvia, of the other part – Agreement between the European Economic Community and the Republic of Latvia on trade in textile products – Final act (OJ L 374, 31.12.1994, p. 2), and Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community, the European Coal and Steel Community, of the one part, and the Republic of Lithuania, of the other part – Agreement between the European Economic Community and the Republic of Lithuania on trade in textile products – Final act (OJ L 375, 31.12.1994, p. 2),

The Utilities Directive, however, includes specific rules, in Article 36. This provides that purchasers:

- (a) may reject third country offers, i.e. those which offer products which originate more than 50% in certain third countries;
- (b) must reject such offers where the price advantage of this offer over the next best offer is less than 3% (provided that next best offer is equally advantageous in features other than price).

These provisions were adopted to secure the Community's bargaining position in negotiations for access based on reciprocity.

Since the public-sector directives do not themselves forbid exclusion of third country products, and the Utilities Directive expressly allows it in certain cases, it may appear that Member States retain considerable discretion over treatment of such products. It might also be that states enjoy this discretion for contracts not covered by the directives. However, this apparent discretion is probably limited by the Treaty's free movement provisions, and/or by the provisions giving the Community power in external trade relations.

Impact of Article 30 EC

Article 30 EC prohibits discrimination not only against products originating in the EC but against any product in 'free circulation' within the Community, even though originally imported from a third country.

It appears, therefore, that states may not refuse to purchase third country products in free circulation within the EC, even where their freedom to do so is not restricted by the directives. Since the Community itself is bound by the free movement principle, it is doubtful that the position is any different even when the discrimination appears to be authorized by the Community itself.⁴⁵ Thus, to the extent that it appears to allow states to exclude third country offers, the validity of Article 36 of the Utilities Directive is questionable.

The question also arises as to the position of common commercial policy measures taken by the Community itself under its powers in Article 113 EC, i.e. measures whereby the Community adopts its own common policy on third country products, rather than allowing a discretion to Member States. The provision in Article 36 of the Utilities Directive which requires third country offers to be rejected where there is less than 3% price difference is a measure of this kind. It is arguable that this measure, also, is not lawful since it purports to require rejection even of products within free circulation in the EC. If measures of this kind are prohibited, restrictions on third country access in goods will need to be directed at third country firms (who are most likely to supply such goods) – the approach adopted in imposing sanctions against the USA (see Section 9.1.3) – rather than at third country products as such.

⁴⁵ The need for state measures in procurement to comply with Article 30 was recognized in the Council Resolutions referred to below. Authorization under those measures was intended to be confined to those authorized under an exception to Article 30 provided in Article 115, which authorizes exceptions to Article 30 to prevent deflection of trade caused by differing national policies. However, this situation appears to have no relevance to procurement.

Impact of Article 113 EC on the powers of Member States

The power to take measures relating to external trade in goods belongs exclusively to the Community under Article 113 EC. Member States may not take such measures themselves, even where no Community measures have been adopted⁴⁶ unless the Community itself has authorized states to take their own measures. It is arguable – although this specific point has not been tested before the Court of Justice – that this rule precludes Member States from discriminating against third country products in procurement, at least where this is done for trade reasons, unless so authorized.

Two existing measures might be relied upon to provide authorization. One is the provision in Article 36 of the Utilities Directive, authorizing rejection of third country offers, referred to above. The other is the Council Resolution of 1980,⁴⁷ which provides that states may apply existing commercial policy measures relating to third country products in public supply (although not works and services) contracts, pending adoption of a common policy.

If Article 30 EC in any case prohibits discrimination in procurement against third country products in free circulation, these authorizations are of little importance.

9.2.2. Third country services and service providers

The public sector

The public-sector directives do not contain any rules on services originating in third countries. It appears that Member States may exclude such services (although as with goods a preference policy cannot be implemented since the origin of services is not a relevant award criterion). For contracts not covered by the directives, third country services and providers may be excluded or subjected to a preference policy.

Article 113 EC does not generally apply to trade in services,⁴⁸ and probably this includes measures relating to services procurement.⁴⁹ If this is the case, the discretion of Member States in services procurement is unaffected by the provision.

The utilities sector

Under the Utilities Directive there are no provisions authorizing or requiring rejection of third country services or providers (since discrimination against the Community by third countries

⁴⁶ It may be noted that Article 113 in fact imposes a duty to adopt common policy measures relating to trade in goods. As explained above, however, whilst reciprocal access agreements on procurement have been concluded with major trading partners, no comprehensive common policy has yet been adopted on access of third country products to procurement. The Council Resolution of 1980 referred to in the next note calls upon the Commission to put forward proposals for such a policy; but this has still not happened.

⁴⁷ Council Resolution of 22 July 1980, OJ C211. This superseded a previous Resolution of 21 December 1976, 1977, OJ C11/1.

⁴⁸ Opinion 1/94 of 15 November 1994.

⁴⁹ Another view, however, is that the ruling in Opinion 1/94 does not apply to measures on services procurement, since these are always subject to general national rules governing the provision of services across borders, and are therefore not within the principle on which the ruling was based, which was a concern to preserve states' freedom in transactions involving movement of persons across borders.

was seen as less of a problem than in the case of goods). However, Article 37 EC provides for the Commission to make proposals for taking action against a third country⁵⁰ where Community undertakings do not enjoy national treatment in that country, where undertakings of another state receive more favourable treatment than those of the Community,⁵¹ or where Community undertakings do not enjoy 'effective' access 'comparable' to that given by the Community.

This provision probably constitutes a common policy in the field of services which precludes Member States from discriminating outside its field of application.

⁵⁰ Article 37(3) specifies the precise action which may be taken. The Council acts by qualified majority in deciding what action, if any, to take. To assist the Commission in its role, states must inform it about any difficulties their undertakings encounter in third countries.

⁵¹ Where this applies, in practice the national treatment will also generally be breached in practice.

SECTION C

Public procurement market contours in 1994

This section provides an overview of the market in 1994 and highlights major changes.

10. Public procurement market contours in 1994

10.1. Overview

10.1.1. Coverage

The market contours provide an outline of the structure and characteristics of the EU public procurement market in 1994, in terms of:

- (a) market size,
- (b) market size by type of contract,
- (c) market size by type of purchasing entity,
- (d) above- and below- threshold procurement,
- (e) number of purchasing entities.

Additionally, an analysis is provided, where possible, of any changes in the structure and size of the market since the Procurement Directives came into force.

10.1.2. Data

Procurement market size

Since no reliable data exist on the size of the EUR-15 public procurement market in 1994, estimates of the market size were made using a combination of a top-down and bottom-up analysis in each Member State, with:

- (a) the top-down analysis based on:
 - (i) current price data on GDP and public expenditure of general government from national accounts,
 - (ii) utilities purchasing as a share of GDP, using estimates from:
 - the Excluded Sectors report (European Commission, 1992),
 - the EC-US procurement study (European Commission, 1994a);
- (b) the bottom-up analysis providing, where possible, a more detailed estimate of public purchasing based on 'grossed up' estimates of total procurement expenditure using results of the demand-side survey carried out as part of this study.

Government procurement

The demand-side survey results proved an inadequate base for making reliable bottom-up central and sub-central government estimates, due to:

- (a) an overall response rate of 62%, less than the required 90–95%;
- (b) low response rates for some Member States, particularly France, Germany and Spain;
- (c) some responses missing estimates of total procurement, reflecting:
 - (i) confidentiality considerations,
 - (ii) problems obtaining information from different (autonomous) departments;
- (d) some respondents returning only above-threshold procurement values, as they did not consider below-threshold procurement of any interest to the Commission study.

Estimates of government procurement of works, goods and services were, therefore, based on the top-down analysis, which used national accounts on general government spending and summed entries under the following line headings:

- (a) purchases of goods and services,
- (b) gross fixed capital formation.

This total was adjusted to remove defence spending on 'warlike' materials (Article 223 materials), which are not covered by the directives. These 'warlike' estimates were derived from national accounts statistics on defence spending and estimates of the share of 'warlike' materials from *The costs of non-Europe in defence procurement* study (European Commission, 1994b).

Utilities procurement

Estimates of utilities procurement were based on a combination of top-down and bottom-up analysis results. It was possible to use utilities' returns from the demand-side survey for making bottom-up estimates, since:

- (a) compared to the public sector, far fewer entities accounted for a large share of total utilities procurement;
- (b) responses were obtained from around 90% of all European utilities operating in the key sectors of power, gas, coal, oil and gas exploration/extraction, rail transport and telecommunications;
- (c) completed questionnaires were returned via their European associations (which were briefed separately on the scope and objectives of the survey), ensuring standardized information covering their total annual procurement;
- (d) a large number of entities are separate companies (either state- or privately-) owned, operating as 'private sector' businesses and, therefore, more likely to have a comprehensive view of their total purchases and annual capital expenditure.

Market size by contract type

The market breakdown by contract type (works, supplies and services) was based on:

- (a) the EC-US procurement study (European Commission, 1994a) for central and sub-central government, under the assumption that the 1994 breakdown was not significantly different from that in 1993;
- (b) the demand-side survey results for utilities.

Market size by entity type

Primary data sources for the breakdown of the market by principal entity type were:

- (a) the OECD (1995) national accounts for central and sub-central government,
- (b) the bottom-up analysis of utilities procurement using the demand-side survey results.

Where possible, the breakdowns provided by the OECD national accounts were cross-referenced with the results from the EC-US procurement study.

Above- and below-threshold procurement

The only available data sources on the split between above- and below-threshold procurement were:

- (a) Member State returns to the Commission,
- (b) the EC-US procurement study.

In the 1988 Cecchini report, the concept of above- and below-threshold procurement was not considered. The report focused on 'contract purchasing', concluding that entities were splitting contracts into lots to avoid the then directives' thresholds, which led to the introduction of rules on aggregation. There was no *ex ante* expectation of the percentage of total procurement which would, as a result, be above threshold (and therefore covered by the directives), although it is understood that a level of at least 50% was considered most likely.

The complexity and sensitivity of this issue is demonstrated by:

- (a) the significant differences between the estimates from these two data sources,
- (b) the lack of any other reliable statistics.

Given this, we have deliberately avoided making any additional estimates, but have instead highlighted a number of key issues and put forward hypotheses in this chapter, which are further developed in the final impact assessment in Chapter 23.

Number of contracting entities

A characteristic of the public-sector and, to a lesser extent, utilities markets has been the lack of a comprehensive description (single database) of the number of entities covered by the directives that are capable of letting above-threshold contracts, where a 'contract' is defined in the context of the aggregation rules.

This lack of market knowledge has had implications for:

- (a) suppliers, in targeting potential customers;
- (b) the Commission in being able to determine whether entities that should be publishing notices are, in fact, doing so.

In 1993, the European Commission's Directorate-General for the Internal Market and Financial Services (DG XV) launched a tender to identify these entities, with the intention of integrating the results into the Information System for Public Procurement (SIMAP), pilot projects of which are currently underway.

When launching the study, the Commission estimated there were between 400,000 and 500,000 entities and their devolved or decentralized establishments or offices which would be subject to the directives in the then EUR-12. Of these, it was estimated that some 20% (80,000–100,000) would be capable of letting above-threshold contracts (in the context of the aggregation rules).

The total initial estimate of the number of entities in the EUR-12 made by the firms selected to carry out the study was some 390,000. After the first stage of the project, this was reduced to

about 159,500. This difference in itself highlights the difficulties and complexities of characterizing the market in this way.

This chapter does, however, make use of the EAP database subsequently created since it is not only the sole source of the data required, but also the only source for which information has been collected in a systematic and consistent manner across the Member States. It is recognized that the database will be subject to further refinement, and whilst we have examined its content in a critical fashion, it would seem that the current figures are reasonable – if not conservative – estimates.

Information for Austria, Finland and Sweden was obtained via their national procurement representatives.

10.1.3. Key findings

The estimated size of the EUR-15 public procurement market in 1994, based on a combination of top-down and bottom-up analyses, is ECU 721 billion (11.2% of EUR-15 GDP). As a share of GDP, this represents a reduction in most Member States, which is compensated for by a significant increase in Germany due to unification.

The overall decrease in size of the public procurement market is likely to reflect the general decrease in public expenditure as a result of Member State policies to reduce budget deficits.

In terms of procurement by entity type, sub-central government entities accounted for almost half of total EUR-15 public procurement in 1994, followed by central government (29%) and utilities (24%). Individual Member States showed significant variances due to the institutional differences in public-sector structure and the impact of austerity budgets. Compared to 1987, sub-central government procurement had increased, whereas central government and utilities purchasing had decreased slightly, reflecting:

- (a) decentralization in purchasing from central to regional and local government;
- (b) privatization of utilities.

In terms of procurement by contract type, supplies accounted for nearly 40% of total purchasing in 1994, with the remainder split equally between works and services. Compared to 1987 no significant change in breakdown had taken place.

Estimates of above-threshold procurement based on Member State returns for central government and the EC-US procurement study range from 25% to 60% of total procurement. National estimates vary from 16% in Denmark to 93% in France.

The key determinant of above-threshold purchasing for supplies and services is the definition of 'like' products or services for the purposes of aggregation. If, under the Supplies Directive 'like products' are defined at the level of 'vehicles', 'stationery', 'IT hardware', etc. and, under the Services Directive at the level described in Annex A to the directive, it is inconceivable that central government purchasing entities spend less than approximately ECU 130,000 annually under each of these general headings. Therefore, these estimates are likely to understate the level of above-threshold purchasing, other than for France, which reported 93% of total government purchasing above threshold.

The estimated total number of entities covered by the legislation and letting contracts above threshold is around 111,000 in 1995, half of which are sub-central government entities.

10.2. Total market size in 1994

10.2.1. Estimated total market size

In 1994, public spending represented between 41% and 63% of the Member States' GDP – some ECU 6,300 billion – covering everything from salaries and social welfare to purchases of works, supplies and services. The macro-economic importance of public purchasing in individual Member States is shown in Table 10.1.

Table 10.1. Top-down estimate of public purchasing in 1994 (ECU billion)

	GDP ¹	Total government expenditure ¹	Total public procurement ²	Government expenditure/GDP (%)	Public procurement/GDP (%)
Belgium	203.5	111.8	11.7-15.1	54.9	5.8-7.2
Denmark	123.3	77.3	13.6-13.6	62.7	11.0-11.1
France	1,120.9	621.0	114.4-120.1	55.4	10.2-10.7
Germany	1,725.3	850.6	223.7-232.4	49.3	13.0-13.5
Greece	96.7	46.5	6.3-7.9	48.1	6.5-8.2
Ireland	44.4	18.3	3.9-4.4	41.1	8.7-9.8
Italy	856.7	463.5	73.6-82.5	54.1	8.6-9.6
Netherlands	278.4	153.7	23.6-25.1	55.2	8.5-9.0
Portugal	74.0	32.4	8.5-8.9	43.8	11.4-12.0
Spain	407.0	194.5	38.2-40.3	47.8	9.4-9.9
UK	860.5	371.7	123.6-125.0	43.2	14.4-14.5
EUR-12	5,790.7	2,941.2	642.6-673.8	50.8	11.1-11.6
Austria	195.9	102.3	22.8-23.6	52.2	11.6-12.0
Finland	95.1	57.3	10.2-11.7	60.2	10.8-12.3
Sweden	194.4	137.0	28.5-28.6	70.5	14.6-14.7
EUR-15	6,276.1	3,237.8	704.1-737.6	51.6	11.2-11.8

Sources: ¹ *General government receipts, expenditure and gross debt*, European Commission, 1995.

² *Opening up public procurement in the excluded sectors*, European Commission, 1992;

EC-US procurement, European Commission, 1994a;

The costs of non-Europe in defence procurement, European Commission, 1994b;

EuroStrategy Consultants estimates.

In the following Member States total public expenditure represented a relatively high share of GDP in 1994:

- (a) Sweden (70.2%),
- (b) Denmark (62.7%),
- (c) Finland (60.2%),
- (d) Belgium (55.6%).

In the larger Member States, the share of GDP accounted for by the public sector varied from 43% in the UK, to 47% in Germany and 55% in France and Italy. On average, total government expenditure accounted for nearly 52% (ECU 3,240 billion) of total EUR-15 GDP in 1994.

In all Member States, public procurement in 1994 represented a very significant proportion of GDP. In the EU overall, this was an estimated 11% (ECU 704–738 billion).

Variances in public procurement as a share of GDP between Member States were significant. In Belgium, Greece and, to a lesser extent, the Netherlands, the national shares are low compared to the EUR-15 average. They appear to reflect:

- (a) institutional differences in public-sector structure;
- (b) the impact of austerity budgets.

Discounting Belgium, Greece and the Netherlands, 1994 estimates of national procurement markets as a share of GDP varied from 9.1% in Italy and 9.6% in Spain to 13.2% in Germany and 14.4% in the UK.

Of all 15 Member States, Germany had by far the largest public procurement market, amounting to an estimated ECU 228 billion (32% of total EUR-15 procurement), followed by the UK (ECU 124 billion) and France (ECU 117 billion). Overall, the five largest Member States accounted for over 80% of the total EU public procurement market in 1994.

10.2.2. Market size comparison between 1987 and 1994

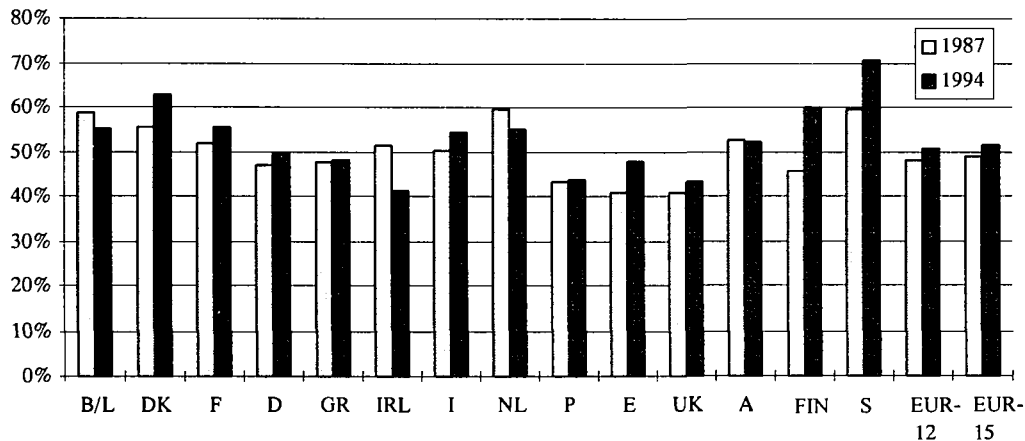
Government expenditure

Between 1987 and 1994, the share of GDP accounted for by government expenditure increased from 48.8% to 51.6% for the EUR-15 countries, reflecting the cost of the sharp rise in unemployment.

Figure 10.1 shows the changes in total government expenditure as a share of GDP between 1987 and 1994 for each Member State and for the EU as a whole.

General factors underlying changes in individual Member States include:

- (a) privatization of public services (utilities);
- (b) institutional changes in the public-sector structure, such as contracting out of non-core services;
- (c) annual variances in expenditure, particularly in the smaller Member States, where large infrastructure projects can have a significant impact on government expenditure.

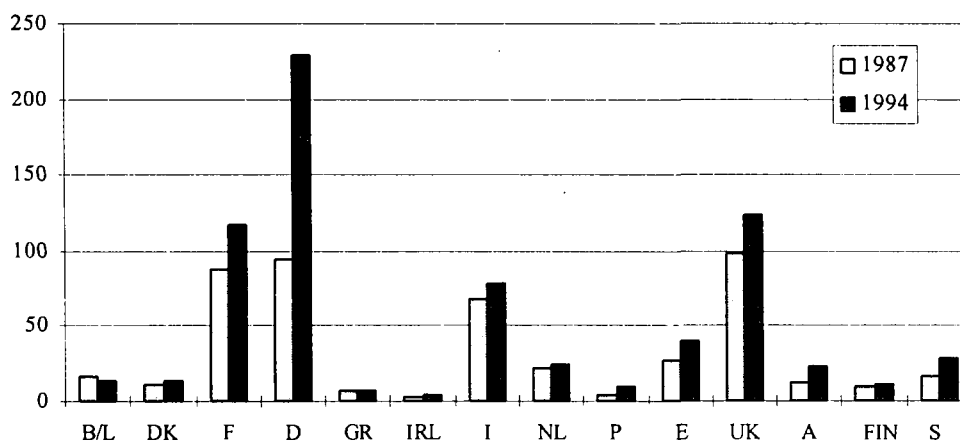
Figure 10.1. Government expenditure as a share of GDP in 1987 and 1994

Sources: Tables 4.1 and 10.1.

Public purchasing

Between 1987 and 1994, total EUR-15 public procurement in value terms increased by 51%, from an estimated ECU 476 billion in 1987 to ECU 721 billion in 1994.

Figure 10.2 shows the top-down estimates of the changes in total public purchasing for each Member State between 1987 and 1994.

Figure 10.2. Total procurement in 1987 and 1994 (ECU billion)

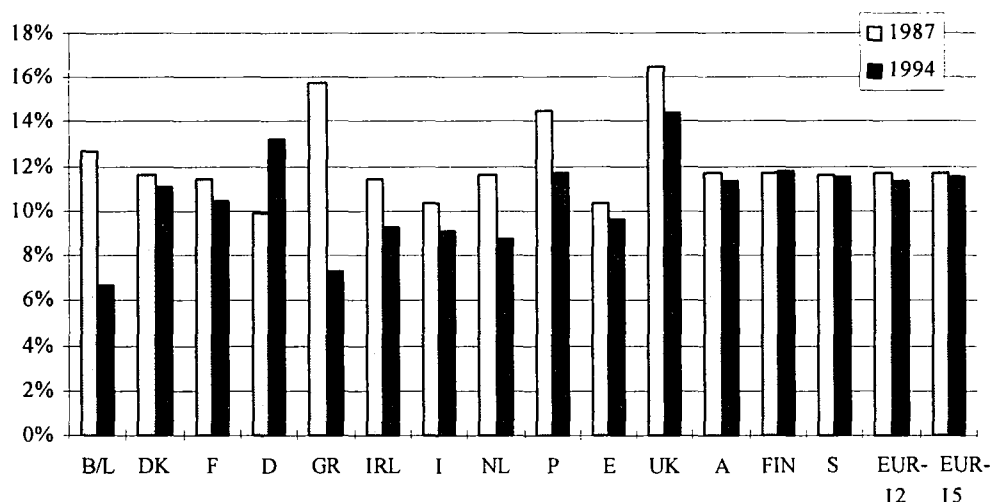
Note: 1994 figures are based on mean values.

Sources: Tables 4.1 and 10.1.

Between 1987 and 1994, France, Germany, Italy and the UK increased their relative share of the EUR-15 public procurement market, with their combined share rising from 73% in 1987 to 76% in 1994. Germany was the largest contributor to this increase with its share of the total market growing disproportionately as a result of reunification.

Figure 10.3 shows the estimated changes between 1987 and 1994 in public purchasing as a share of national GDP for each Member State and the EU as a whole.

Figure 10.3. Procurement as a share of GDP in 1987 and 1994



Note: 1994 figures are based on mean values.

Sources: Tables 4.1 and 10.1.

The total EU procurement market as a share of GDP showed no significant change between 1987 and 1994. However, discounting the expansion of the German procurement market following unification, public purchasing as a share of GDP decreased in all Member States, with the exception of Finland where the overall market size showed no significant change.

The overall decrease in size of the public procurement market is likely to reflect the general reduction in public expenditure as a result of Member State policies to reduce budget deficits.

10.3. Market size by entity type

10.3.1. Estimated market size by entity type

Table 10.2 shows the breakdown of the procurement market by principal purchasing entity type for each Member State. Table 10.3 shows the value of the procurement for government and utilities in each Member State.

Table 10.2. Shares of public purchasing by entity type in 1994

	Central government ¹ (%)	Sub-central government ¹ (%)	General government ² (%)	Utilities ² (%)	Total (%)
Belgium/Lux.	38.8	26.5	65.2	34.8	100
Denmark	-	-	72.2	27.8	100
France	22.7	50.6	73.3	26.7	100
Germany	5.2	73.6	78.8	21.2	100
Greece	-	-	68.8	31.2	100
Ireland	22.5	49.7	72.3	27.7	100
Italy	22.0	50.3	72.2	27.8	100
Netherlands	25.0	43.2	68.2	31.8	100
Portugal	43.3	29.0	72.3	27.7	100
Spain	18.4	56.8	75.2	24.8	100
UK	53.6	24.7	78.3	21.7	100
EUR-12	30.3	45.4	75.7	24.3	100
Austria	15.8	60.1	75.9	24.1	100
Finland	-	-	80.4	19.6	100
Sweden	-	-	79.3	20.7	100
EUR-15	28.8	47.1	75.9	24.1	100

Sources: ¹ Breakdown based on OECD national accounts, 1995.

² E, GR, P: *Opening up public procurement in the excluded sectors*, European Commission, 1992.
Other countries: EuroStrategy Consultants estimates.

Table 10.3. Total public procurement market estimates in 1994 (ECU billion)

	Total government procurement ¹	Total utilities procurement ²	Total public procurement	Total procurement as % of GDP
Belgium/Lux.	8.8	2.9-6.3	11.7-15.1	5.8-7.2
Denmark	9.8	3.8-3.8	13.6-13.6	11.0-11.1
France	85.9	28.5-34.2	114.4-120.1	10.2-10.7
Germany	179.8	43.9-52.6	223.7-232.4	13.0-13.5
Greece	4.9	1.4-3.0	6.3-7.9	6.5-8.2
Ireland	3.0	0.9-1.4	3.9-4.4	8.7-9.8
Italy	56.4	17.2-26.1	73.6-82.5	8.6-9.6
Netherlands	16.6	7.0-8.5	23.6-25.1	8.5-9.0
Portugal	6.3	2.2-2.6	8.5-8.9	11.4-12.0
Spain	29.5	8.7-10.8	38.2-40.3	9.4-9.9
UK	97.3	26.2-27.7	123.6-125.0	14.4-14.5
EUR-12	498.4	144.3-175.4	642.6-673.8	11.1-11.6
Austria	17.6	5.2-6.0	22.8-23.6	11.6-12.0
Finland	8.8	1.4-2.9	10.2-11.7	10.8-12.3
Sweden	22.7	5.8-5.9	28.5-28.6	14.6-14.7
EUR-15	547.4	156.7-190.2	704.1-737.6	11.2-11.8

Sources: ¹ *General government receipt, expenditure and gross debt*, European Commission, 1995.

² EuroStrategy Consultants estimates.

In 1994, general government, including central, regional and local government, accounted for an estimated 76% (ECU 547 billion) of public purchasing split between:

- (a) central government, representing an estimated 29% of total procurement,
- (b) sub-central government, representing 47%.

The utilities accounted for the remaining 24% (ECU 157–190 billion).

Variances in the percentage breakdown by purchasing entity type between Member States were significant, particularly in Belgium, Greece and, to a lesser extent, the Netherlands where the share of total procurement accounted for by the utilities is considered to be high (>30%). These and other variances appear to reflect:

- (a) institutional differences in public-sector structure,
- (b) the impact of public-sector austerity budgets.

Discounting Belgium, Greece and the Netherlands, 1994 estimates of procurement accounted for by the utilities varied from around 20% in Finland and Sweden to nearly 28% in Italy.

At a general government level, the split between central and sub-central government showed even more significant variances, reflecting:

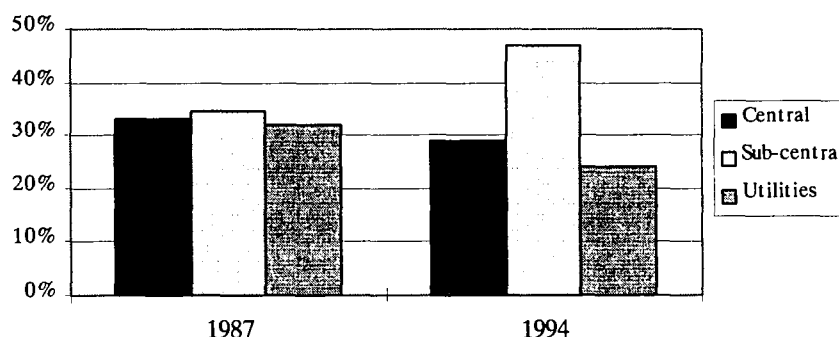
- (a) the differences in national public-sector structures,
- (b) the degree of decentralization.

Estimates for central government purchasing in 1994 varied from 5% of total procurement in Germany to over 50% in the UK.

10.3.2. Market size by entity type comparison between 1987 and 1994

The estimated change between 1987 and 1994 in the breakdown of the EU procurement market by entity type is shown in Figure 10.4.

Figure 10.4. Procurement by entity type in 1987 and 1994 (%)



Note: 1987 breakdown based on the weighted average of the four largest Member States.

Sources: Tables 4.3 and 10.2.

A comparison of the Cecchini study estimates of the share of the procurement market in 1987 with those made for 1994 shows the following differences:

- (a) central government: 33% (Cecchini), 29% (1994);
- (b) sub-central government: 35% (Cecchini), 47% (1994);
- (c) utilities: 32% (Cecchini), 24% (1994).

The majority of these apparent changes reflect the difference in coverage of the Cecchini report and that of the current directives, with the former including:

- (a) 'warlike materials' in central government procurement;
- (b) entities and purchases not covered by the current directives, such as purchases made by airlines, and purchases of fuel used for power generation.

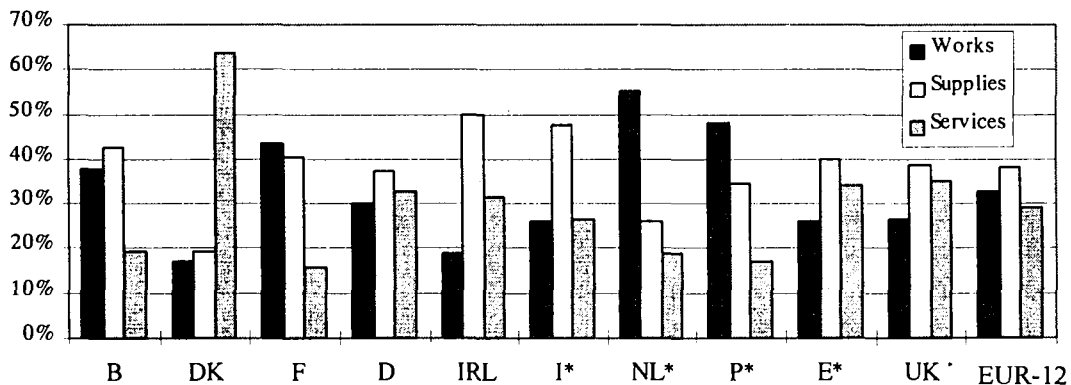
Other factors likely to be reflected in these changes are:

- (a) a degree of decentralization in purchasing from central government to regional and local government;
- (b) privatization of utilities.

10.4. Market size by nature of contract

The breakdown of the public procurement market in 1994 by contract type, i.e. works, supplies and services, for the Member States available is shown in Figure 10.5.

Figure 10.5. Estimated public procurement by contract type in 1994 (%)



* Breakdown based on utilities procurement only.

Sources: EC-US procurement study, European Commission, 1994a.
Bottom-up analysis for utilities procurement.

On average, purchasing of supplies accounted for the largest share of the procurement market in 1994, with an estimated 38% of the total, followed by works (33%) and services (29%).

Significant differences existed between Member States with:

- (a) smaller Member States showing large variances between the different contract types, which are likely to reflect substantial one-off contracts;
- (b) larger Member States showing a similar breakdown with the exception of France, where works contracts accounted for most procurement.

The total EU procurement market breakdown by contract and entity type is shown in Table 10.4.

Table 10.4. Estimated total public procurement by contract and entity type in 1994

Entity type	Works (%)	Supplies (%)	Services (%)	Total (%)
Central government ¹	23.8	39.7	36.5	100
Sub-central government ¹	41.3	29.6	29.1	100
Utilities ²	25.9	50.7	23.4	100
Total	32.6	38.3	29.1	100

Sources: ¹ EC-US procurement study, European Commission, 1994a.

² Bottom-up analysis for utilities procurement.

Table 10.4 shows that:

- (a) works contracts accounted for the largest share of total sub-central government purchasing (40%), compared with supplies being the largest purchasing area for central government and utilities, which taken in conjunction with the information in Figure 10.4 indicates that in the EUR-15 the majority of infrastructure expenditure is carried out at a sub-central government level;
- (a) central government is, in relative terms, the largest purchaser of services – 37% of the total – compared with 29% for sub-central government and 23% for utilities;
- (a) over half of total utilities procurement is spent on supplies contracts, reflecting the nature of their business.

The changes between 1987 and 1994 in the procurement market segmentation by contract type is shown in Table 10.5.

Table 10.5. Procurement by contract type in 1987 and 1994

	Works (%)	Supplies (%)	Services (%)	Total (%)
1987	33.8	38.0	28.2	100
1994	32.6	38.3	29.1	100

Sources: Tables 4.2 and 10.4.

Table 10.5 shows that there has been no significant shift in the breakdown by contract type since the implementation of the directives.

10.5. Above- and below-threshold procurement

10.5.1. Member State returns

Based on the statistical returns from the Member States to the Commission, as required by the directives, a segmentation between above- and below-threshold purchasing was obtained, assuming full reporting of all public purchasing covered by the directives.

Since only detailed Member State returns for central government purchasing for 1992 were available, a breakdown by above- and below-threshold purchasing was based solely on central government purchasing in 1992 as shown in Table 10.6 for each of the 12 reporting Member States.

Table 10.6. Above- and below-threshold central government purchasing in 1992

	Above threshold (%)	Below threshold (%)	Total (%)
Belgium	58.9	41.1	100
Denmark	16.3	83.7	100
France	92.6	7.4	100
Germany	68.0	32.0	100
Greece	39.8	60.2	100
Ireland	21.0	79.0	100
Italy	63.9	36.1	100
Luxembourg	31.1	68.9	100
Netherlands	51.9	48.1	100
Portugal	39.9	60.1	100
Spain	44.0	56.0	100
UK	61.2	38.8	100
EUR-12	60.5	39.5	100

Source: *Member States' statistical reports*, DG XV, 1995.

In 1992, reported above-threshold purchasing varied significantly between Member States from nearly 93% of total central government purchasing in France to around 16% in Denmark. On average, an estimated 60% of all central government purchasing was reported to be above threshold in 1992.

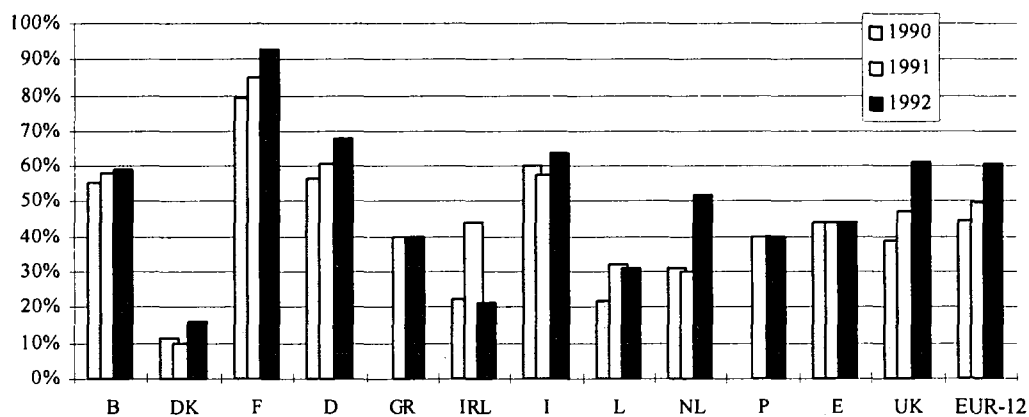
In general, the larger Member States reported a higher share of central government procurement to be above threshold than the smaller Member States, which may be explained by, on average, the former's procurement contracts being larger. Additionally, central government in Member States where the directives had been implemented recently, i.e. Greece, Portugal and Spain, and which are, therefore, expected to be less familiar with the legislation, reported a lower share of above-threshold purchasing in 1992.

However, the large differences between the Member States where the directives have been in effect for several years cannot be explained by Member State size alone. Other possible factors contributing to these variances are:

- (a) the structure of the public sector, and in particular, the degree of decentralization;
- (b) the extent of autonomy given to individual departments within a purchasing entity in the context of the definition of discrete operating units (DOUs);
- (c) national differences in interpretation and application of the directives' aggregation and publishing requirements.

The issue of familiarity with the procurement directives and the changes in procurement practices is also demonstrated by the change in the split between above- and below-threshold central government purchasing between 1990 and 1992. Figure 10.6 shows the change in above-threshold central government procurement for the 12 reporting Member States between 1990 and 1992.

Figure 10.6. Change in reported above-threshold central government purchasing



Source: *Member States' statistical reports*, DG XV, 1995.

Between 1990 and 1992, the reported share of above-threshold purchasing increased from an estimated 45% in 1990 to over 60% of total EUR-12 central government purchasing. Similar increases were reported for the four larger Member States and the smaller northern European Member States, indicating changes in procurement practices at a central government level following the aggregation and publishing requirements, as laid down in the directives.

10.5.2. EC-US procurement study

Table 10.7 shows the estimated split between above- and below-threshold procurement for total EUR-15 procurement based on the findings of the survey carried out as part of the EC-US procurement study (European Commission, 1994a). Above-threshold procurement is expressed both as a share of:

- (a) total procurement under contract or 'contract purchasing', which was estimated to represent around 55% of total procurement in the Cecchini study;

- (b) annual expenditure on procurement under contract.

Table 10.7. Total above-threshold procurement

Entity type	Above threshold as a share of total procurement under contract (%)	Above threshold as a share of annual expenditure on procurement under contract (%)
Central government	55	23
Sub-central government	34	26
Utilities	57	26
Total	46	25

Sources: EC-US procurement study, European Commission, 1994a, and Tables 10.2 and 10.3.

The EC-US procurement study found that, on average, 46% of total contract purchasing and 25% of annual contract procurement expenditure was above threshold. For total contract purchasing, this varied from an expected lower share for sub-central government purchasing, 34%, to around 55% for central government and utilities.

Total above-threshold procurement

These estimates of above-threshold procurement are significantly different from the reported values of above-threshold procurement – an estimated 25% compared to a reported 61% of total central government being above threshold.

For the purposes of assessing the level of above-threshold purchasing and, in consequence, whether there is significant under-publication of notices, it is necessary to consider expenditure on works, supplies and services at the level of the DOU. For certain supplies and services, notably vehicles, stationery, office furniture, IT hardware and software, the DOU is clearly:

- (a) the ministry (or some central purchasing function) for central government procurement;
- (b) the local authority for sub-central government;
- (c) the utility.

If the level of aggregation within a DOU is defined as 'vehicles', 'stationery', 'office furniture', etc., it is inconceivable that central government ministries in all Member States, and sub-central government entities serving populations of 50,000 or more do not enter into contracts totalling more than ECU 130,000 and ECU 200,000 respectively for a wide range of supplies and services.

For example, Table 10.8 shows the expenditure breakdown of a typical EU sub-central authority, serving a population of 400,000.

In this case, only 12 tender notices, with an estimated value of around ECU 18 million, were published in the OJ for annual purchasing of over ECU 100 million, nearly all of which is likely to be above threshold.

Table 10.8. Gross capital expenditure for a typical EU local authority (1995/96)

Capital expenditure	ECU (million)	Invitations to tender published
Land and buildings	45.7	4
Information technology and communications	40.7	0
Vehicles	14.8	4
Other plant and equipment	1.3	4
Total	102.5	12
Total population	414,000	

Source: Internal information on gross fixed capital formation provided to EuroStrategy Consultants.

Even in the event the DOU serves a smaller population, or a more detailed level of aggregation is applied, it is still inconceivable that annual expenditure under each (high level) aggregation heading is below the thresholds laid down in the directives.

Given that 80% of procurement is accounted for by the ministries, sub-central bodies and utilities in the demand-side sample (see Chapter 12) and the quoted example is for an entity at the bottom end of this sample, it is unlikely that these entities have purchasing budgets, under the aggregated expenditure headings, which are below the thresholds laid down in the directives.

Therefore, in line with the directives' intention regarding above-threshold procurement, the estimated 25% or the reported 61% above-threshold procurement probably understate the percentage of total procurement that should be classified as above threshold.

10.6. Market size – number of contracting entities

Based on the Commission's EAP database, Table 10.9 shows the numbers of entities which are:

- (a) covered by the directives,
- (b) capable of letting above-threshold contracts.

It should be noted that these numbers reflect entities which are legally entitled to let contracts.

In 1995, an estimated 111,000 entities were covered by the legislation and should be publishing in the OJ. At an individual Member State level, the number of entities vary significantly, irrespective of population size, reflecting institutional differences in public-sector structure.

Excluding Italy and the Netherlands, sub-central government entities accounted for the majority of entities covered, at nearly 75%. Central government entities represented 9% and utilities 18% of the total number. Large variations between Member States exist, with:

- (a) Germany and Denmark having a disproportionately large number of utilities, the majority of which represent small water companies;
- (b) a relatively small number of sub-central government entities in the UK and Spain, reflecting the centralized public-sector structure.

Table 10.9. Entities covered and capable of letting above-threshold contracts (1995)

Member State	Central	Sub-central	Utilities	Total
Belgium	226	1,926	72	2,224
Denmark	177	6,480	2,999	9,656
France	1,625	14,854	138	16,617
Germany	733	18,580	10,850	30,163
Greece	660	2,549	241	3,450
Ireland	129	227	173	529
Italy ¹	n/a	n/a	n/a	23,512
Luxembourg	320	178	37	535
Netherlands ¹	n/a	n/a	n/a	472
Portugal	433	1,349	112	1,894
Spain	1,010	5,097	289	6,396
UK	841	7,884	351	9,076
Austria	200	1,000	100	1,300
Finland ²	150	524	550	1,224
Sweden ³	900	3,075	54	4,029
Total				111,077

¹ Total number of entities covered by legislation; no breakdown available by entity type at time of analysis.

² Sub-central includes regional and local government plus bodies governed by public law.

³ Sub-central includes utilities owned by sub-central government entities.

Sources: EUR-12: EAP database, European Commission, 1996 (subject to revision).

Austria: national public procurement representative estimates.

Finland: Ministry of Trade and Industry estimates.

Sweden: National Board for Public Procurement estimates.

11. Publication in the Official Journal

11.1. Overview

11.1.1. *Ex ante* hypothesis

A key measure of openness in the European public procurement markets is the number of tender notices published in the *Official Journal of the European Communities* (OJ) since 1987, in terms of:

- (a) changes in general publication rates,
- (b) entity types (central government, sub-central government and utilities),
- (c) type of contract (works, supplies and services/combined contracts),
- (d) types of procedure used,
- (e) total number of entities publishing.

General publication rates

It is expected that, since 1987:

- (a) the total number of notices published in the OJ would have increased significantly in all Member States;
- (b) the increase in publication levels would have levelled off in recent years, reflecting familiarity with the publication requirements in the directives, except where:
 - (i) the directives came into force only recently, notably the Utilities and Services Directives,
 - (ii) Member States had derogations, notably Greece, Spain and Portugal;
- (c) familiarity with the publication requirements in the directives would also have resulted in contract award notices being published for all contracts awarded.

Publication by entity type

It is expected that:

- (a) the increase in publication levels for central and sub-central government would have levelled off in recent years, reflecting familiarity with the publication requirements in the directives, except where Member States had derogations, notably Greece, Spain and Portugal;
- (b) the number of tender notices published by utilities would have increased substantially following the implementation of the Utilities Directive for supplies and works in 1993, and for services in 1994.

Type of procedure

It is expected that central and sub-central government for all Member States would be predominantly using open and (since 1993) restricted procedures, whereas utilities would also have made use of the negotiated procedure and qualification systems.

Publication by contract type

It is expected that publication levels would have increased equally for all types of contracts, other than works, bearing in mind the raising of the threshold from ECU 1 million to ECU 5 million in 1990.

Entities publishing

It is expected that, since the implementation of the legislation, the estimated number of entities publishing in the OJ would correspond in broad terms with the number of entities covered by the legislation and which should be publishing in the OJ.

11.1.2. Coverage

This section describes:

- (a) overall changes in publication rates between 1987 and 1995, by:
 - (i) Member State,
 - (ii) entity type,
 - (iii) type of contract;
- (b) nature of publication of tender notices in 1995 by:
 - (i) contract award notices published,
 - (ii) entity type,
 - (iii) procedure used,
 - (iv) type of contract;
- (c) the number of entities publishing in the OJ in 1995.

11.1.3. Data

Prime data sources are:

- (a) the TED database archives for the years 1993 to 1995,
- (b) statistics published by the Office for Official Publications of the European Communities for the years prior to 1993.

Analysis of the publishing entities focused on:

- (a) central government (including TED categories 'central government' and 'armed forces'),
- (b) sub-central government (TED category 'local authorities'),
- (c) utilities (TED category 'water, energy, transport and telecommunications sectors').

The following types of award procedures were considered, using the TED database categorization:

- (a) open,
- (b) open recurring,
- (c) restricted,
- (d) accelerated restricted,
- (e) negotiated,
- (f) accelerated negotiated.

For the purpose of the analysis, tender notices were considered synonymous with invitations to tender. In addition, notices published regarding the existence of a qualification system were also classified as a tender notice, since this type of notice can be used by utilities to inform prospective suppliers of opportunities.

The following types of contracts were covered:

- (a) works,
- (b) supplies,
- (c) services (including also the TED category 'combined contracts', which represents less than 2% of the total notices published).

In terms of number of entities publishing in the OJ, an analysis was carried out by Member State and entity type using the 'stat=report' function in the TED database. Due to double counting problems, the number of entities publishing have been presented in a range whereby:

- (a) the upper limit represents the raw number obtained from the TED database;
- (b) the lower limit represents the number of entities after adjusting for double counting as a result of:
 - (i) spelling differences and input errors,
 - (ii) different departments publishing within one entity.

The actual number of entities publishing in the OJ is considered likely to lie between the upper and lower limits.

11.1.4. Key findings

There has been a significant overall increase in the total number of notices published in the OJ since 1987. However, Member State increases varied from 300% to 1,000%.

The number of notices for supplies and works contracts in the nine Member States subject to the Supplies and Works Directives since 1989 is still growing substantially.

There is a low level of compliance with the requirement to publish contract award notices (CANs) with, on average, only one CAN for every two tender notices.

Sub-central government accounted for the majority of notices published in 1995, although there were differences between Member States, reflecting roles and responsibilities.

In general, central government bodies complied with the directives' requirements in relation to use of procedures, with the exception of Italy, where accelerated restricted was used for over 60% of tenders. A number of Member States also made noticeably high use of the negotiated procedure.

In general, sub-central government bodies complied with the directives' requirements in relation to use of procedures, with the exception of Italy, where accelerated restricted was used for some 38% of tenders. Noticeably, high use of the negotiated procedure was also made in several Member States.

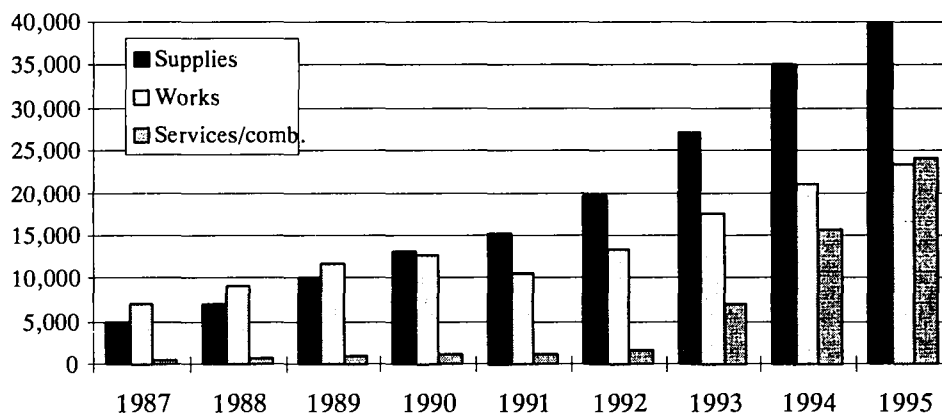
In general, utilities predominantly used the negotiated and restricted procedures, although a number did make significant use of the open procedure.

In 1995, between 15,000 and 18,500 entities published notices in the OJ, with sub-central bodies making up about 75% of the total.

11.2. Change in publication levels

Between 1987 and 1995 the number of published notices increased from around 12,000 to nearly 90,000, representing a more than sevenfold rise (Figure 11.1).

Figure 11.1. Total number of notices published in the OJ by nature of contracts between 1987 and 1995



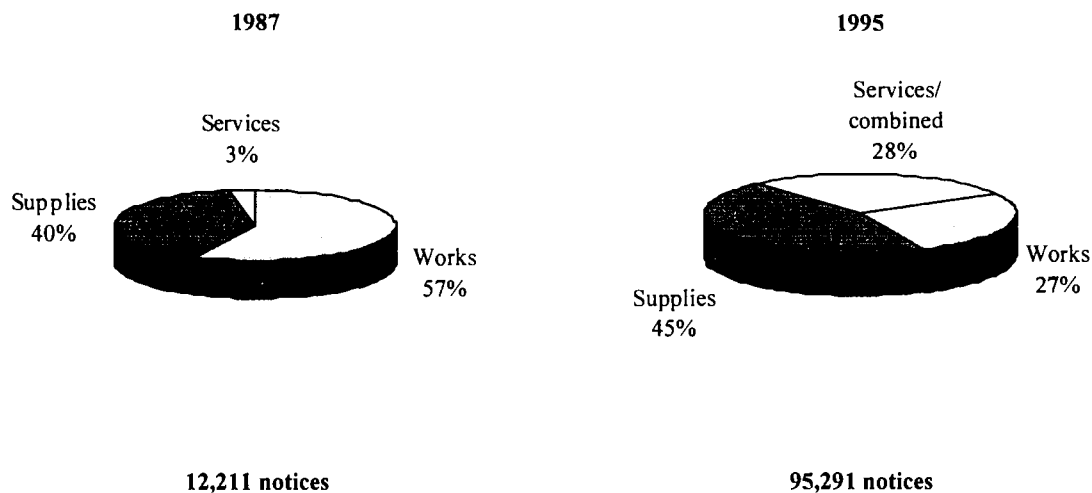
Sources: TED database, Office for Official Publications of the European Communities.

The change in total number of notices published between 1987 and 1995 shows:

- (a) a progressive increase in number of notices published for supplies contracts, particularly between 1992 and 1994, reflecting the coming into force of the Utilities Directives and the completion of the single market on 1 January 1993;
- (b) a constant increase in number of notices published for works contracts, with the exception of a small decrease in 1991;
- (c) relatively smaller increases in the number of service contract notices between 1987 and 1992, followed by a progressive increase after 1993 when the Services Directives came into force.

The share of supply contracts in the total number of notices published increased from nearly 40% in 1987 to over 45% in 1995. The share of the total number of notices published accounted for by service contracts rose from 3% in 1987 to 28% in 1995. The share of works related notices decreased to 27% of the total number of notices published in 1995, and would be less without Germany distorting the breakdown as a result of a large number of works contracts, post-unification (Figure 11.2).

Figure 11.2. Total number of notices published in the OJ by nature of contract, 1987 and 1995

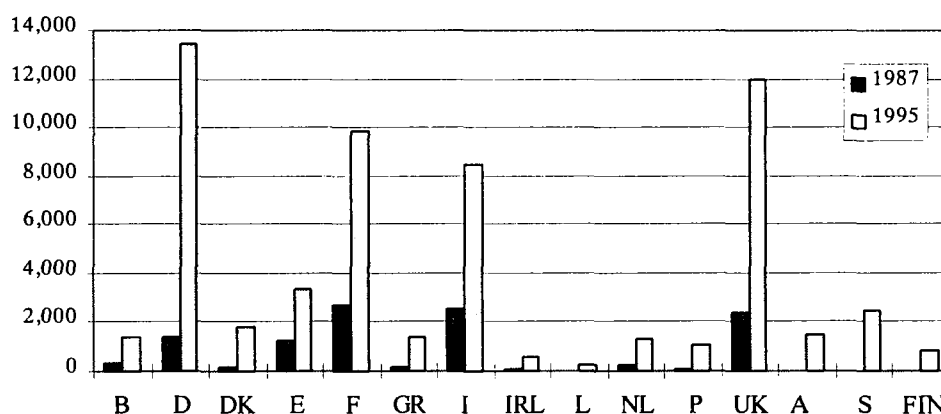


Sources: TED database, Office for Official Publications of the European Communities.

In general, these significant increases in total number of notices published and the changes in breakdown by type of contract between 1987 and 1995 reflected:

- (a) the implementation of the Utilities Directives in 1993 resulting in an increase in notices published for all types of contracts;
- (b) the implementation of the Services Directives in 1993 resulting in the large increase in publication levels of service contract notices;
- (c) increased publication rates for supplies contracts following implementation of the new Supplies Directive in 1989;
- (d) relatively smaller increases in publication rates for works contracts, partly due to the raising of the threshold for works contracts from ECU 1 million to ECU 5 million in 1990.

Figure 11.3 shows the total number of tender notices published for the individual Member States in 1995 compared to 1987.

Figure 11.3. Total number of tender notices by Member State for 1987 and 1995

Note: No 1987 data are available for Austria, Sweden and Finland.

Sources: TED database, Office for Official Publications of the European Communities.

As expected, all Member States have published significantly more tender notices, but changes varied from a twofold increase in France, Italy and Spain, to ninefold increases or more in Germany, Ireland and Denmark.

The extent to which the implementation of the Services and Utilities Directives have contributed to these increases is shown in Tables 11.1 and 11.2 which outline the total number and the annual increases in notices published by entity type and type of contract between 1993 and 1995.

Table 11.1. Total number of notices published by entity type and nature of contract

Entity type	Nature of contract	1993	1994	1995
Central government	Works	1,933	1,681	1,637
	Supplies	9,062	10,369	11,535
	Services/combined	1,157	3,622	5,387
	Total central government	12,152	15,672	18,559
Sub-central government	Works	13,319	15,735	17,820
	Supplies	13,375	17,703	21,006
	Services/combined	4,079	10,542	15,099
	Total sub-central government	30,773	43,980	53,925
Utilities	Works	1,968	2,659	3,853
	Supplies	4,983	8,789	10,361
	Services/combined	343	1,672	3,878
	Total utilities	7,294	13,120	18,092
Total ¹	Works	17,376	21,688	24,808
	Supplies	27,529	37,415	44,238
	Services/combined	5,879	16,620	26,114
	Total	50,784	75,723	95,160

¹ Total notices include also some notices published by other entity types.

Source: TED database.

Table 11.2. Annual change in number of notices published by entity type and nature of contract (%)

Entity type	Nature of contract	1994	1995
Central government	Works	-13	-3
	Supplies	14	11
	Services/combined	213	49
	Total central government	29	18
Sub-central government	Works	18	13
	Supplies	32	19
	Services/combined	158	43
	Total sub-central government	43	23
Utilities	Works	35	45
	Supplies	76	18
	Services/combined	387	132
	Total utilities	80	38
Total ¹	Works	25	14
	Supplies	36	18
	Services/combined	183	57
	Total	46	25

¹ Total notices include also some notices published by other entity types.

Source: TED database.

Tables 11.1 and 11.2 show that:

- (a) the overall increases in notices published are high – 46% in 1994 and 25% in 1995;
- (b) the increase in total notices published is highest for service contracts (183% in 1994 and 57% in 1995), reflecting the implementation of the Services Directives;
- (c) the increase in total notices published is the lowest for works contracts (25% in 1994 and 14% in 1995);
- (d) utilities accounted for a relatively larger increase in publication of contract notices than central or sub-central government, reflecting the implementation of the Utilities Directives – central government publishing increased at the lowest rate;
- (e) in the areas where the directives have been in force since 1989, i.e. central and sub-central government for works and supplies, increases are still high, in the range of 11% to 32% in 1995, with the exception of works contract notices which decreased slightly.

The extent to which individual Member States contributed to the increases in total publication rates is shown in Table 11.3.

In terms of total notices published by Member State:

- (a) annual increases were, relatively, highest in Austria, Finland and Sweden, reflecting their recent admission to the European Union;
- (b) on average, annual increases were high for most other Member States varying from 15% in Italy to 83% in Spain, with the exception of Greece, Luxembourg and the UK where there was no significant increase in the publication of notices.

Table 11.3. Change in number of notices by Member State, entity type and type of contract between 1994 and 1995 (%)

Procedure	B	D	DK	E	F	GR	I	IRL	L	NL	P	UK	A	S	FIN	EUR-15
Central																
Works	111	-64	30	-37	45	49	-28	n/a	25	31	-7	35	39	50	-77	-3
Supplies	14	4	-21	34	14	12	3	57	10	21	28	12	-17	33	-30	11
Services/comb	86	-29	17	431	138	87	-45	83	33	73	109	36	500	74	36	49
Total increase	28	-25	-11	79	32	27	-9	68	18	38	31	22	-3	44	-37	18
Sub-central																
Works	17	20	-25	11	-7	-55	17	-16	-18	-5	56	-27	189	2	167	13
Supplies	24	25	30	63	24	20	2	43	13	10	4	-17	161	72	130	19
Services/comb	64	58	184	426	90	-8	21	34	11	29	68	1	1100	95	605	43
Total increase	28	23	69	84	27	-10	11	20	-13	12	36	-10	194	75	160	23
Utilities																
Works	-4	56	-9	186	57	69	82	-35	33	8	267	-5	183	194	23	45
Supplies	48	52	-17	240	1	-3	20	11	-30	-7	-21	-12	285	173	152	18
Services/comb	103	92	85	-40	142	575	176	224	-33	138	-	107	1020	380	300	132
Total increase	44	56	-4	135	26	68	39	34	-23	17	10	16	281	222	149	38
Total																
Works	121	120	-15	1	5	-30	30	-15	-5	5	28	-9	170	39	28	14
Supplies	129	131	2	57	17	16	8	33	0	9	23	-5	96	73	101	18
Services/comb	178	151	137	473	105	44	24	86	14	62	92	24	963	106	380	57
Total increase	133	125	31	83	28	6	15	33	-1	23	32	5	142	80	111	25

Source: TED database.

In terms of notices published for the different types of contracts:

- the largest increase was for service contracts for all Member States, reflecting the impact of the Services Directive. Excluding the recently entered Member States, increases in total notices published for service contracts varied from 14% in Luxembourg to almost 475% in Spain;
- the number of notices published for works contracts showed the lowest increases, in most Member States.

In terms of the entities publishing:

- notices published by the utilities showed the largest increases in seven of the 15 Member States. With the exception of Denmark and Luxembourg, utilities published more notices in all Member States, varying from a 10% increase in Portugal to 281% in Austria;
- the overall number of notices published by central government increased for most Member States, with the exception of Austria, Denmark, Germany and Italy. Similarly, the notices published by sub-central government increased for most Member States, with the exception of Greece, Luxembourg and the UK.

11.3. Nature of publication

11.3.1. Publication of contract award notices

Table 11.4. Comparison of contract award notices to total tenders published by Member State

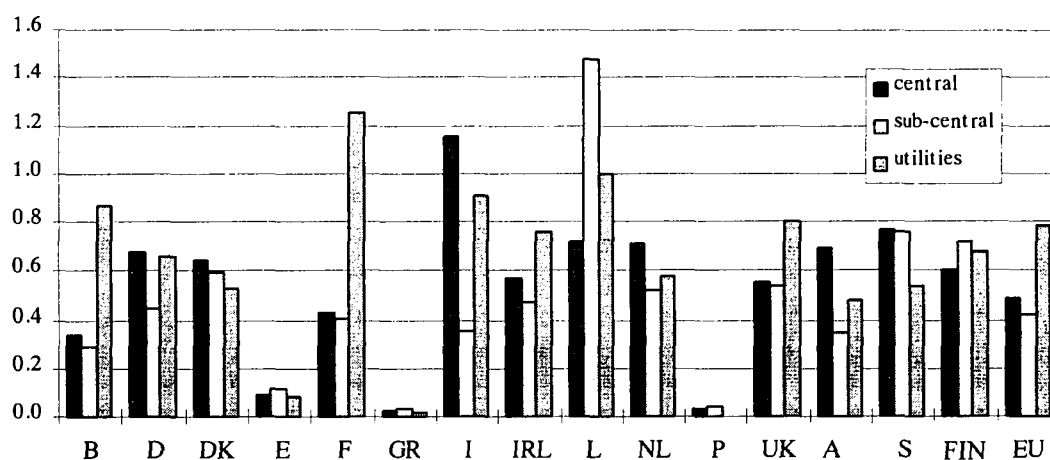
	CAN/tender 1993	CAN/tender 1994	CAN/tender 1995
Belgium	0.21	0.29	0.38
Denmark	0.55	0.58	0.58
France	0.46	0.54	0.50
Germany	0.49	0.46	0.48
Greece	0.02	0.04	0.03
Ireland	0.33	0.40	0.54
Italy	0.33	0.48	0.53
Luxembourg	0.44	0.54	0.47
Netherlands	0.48	0.49	0.60
Portugal	0.07	0.05	0.03
Spain	0.01	0.02	0.11
UK	0.50	0.58	0.57
EUR-12	0.41	0.47	0.47
Austria	0.52	0.28	0.39
Finland	0.31	0.28	0.66
Sweden	0.50	0.30	0.71
EUR-15	0.41	0.46	0.48

Sources: TED database, Office for Official Publications of the European Communities.

The directives require that for each contract awarded a contract award notice (CAN) should be published. Table 11.4 shows that:

- (a) on average, for every two tender notices appearing in the OJ, only one contract award notice was published in 1995;
- (b) excluding Greece, Portugal and Spain, no large variations existed between Member States in the number of CANs compared to the number of tenders published, varying from 0.38 in Belgium to 0.71 in Sweden;
- (c) hardly any CANs were published in Greece, Portugal and Spain (0.03–0.11), whereby it should be noted that no derogations to the directives in terms of the publication of CANs exist in these countries;
- (d) between 1993 and 1995 slightly more CANs were published in relation to tender notices, increasing from 0.41 in 1993 to 0.48 in 1995.

Figure 11.4. Contract award notices in relation to tenders published by Member State and entity type (1995)



Source: TED database.

CANs should be published in equal numbers by all entities. Figure 11.4 shows that:

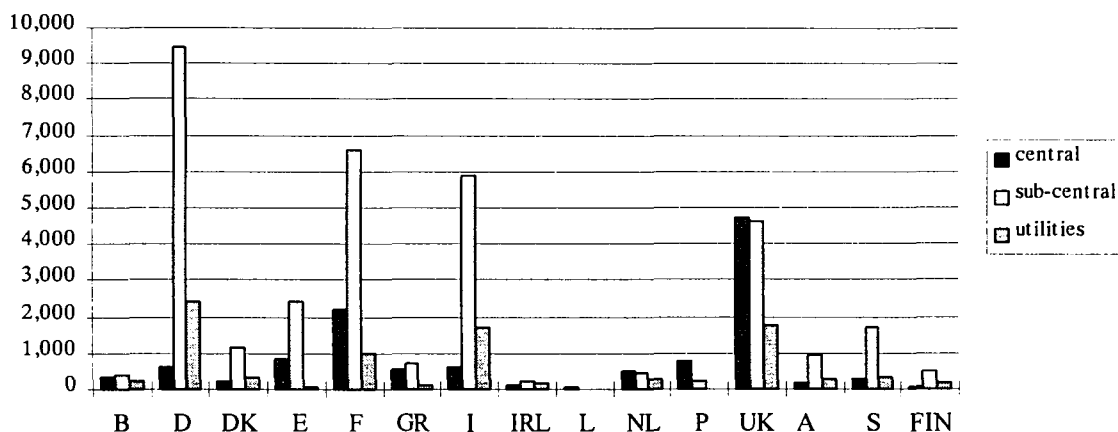
- utilities, on average, published more CANs compared to the number of tender notices than the other entity types in 1995 (0.78). This can be explained by the fact that many utilities make use of qualification systems, which allow them to award numerous contracts without publishing separate tender notices, but for each of which a CAN has to be published;
- central government published slightly more CANs compared to tender notices (0.49) than sub-central government (0.42) in 1995.

Large differences existed between Member States in 1995 with:

- central government publishing more CANs in comparison to total tenders than the other entity types in Denmark, Germany, Italy, the Netherlands, Austria and Sweden;
- utilities publishing more CANs in comparison to total tenders than other entity types in Belgium, France, Ireland and the UK;
- sub-central government publishing more CANs in comparison to total tenders than the other entity types in Spain and some of the smaller Member States, such as Greece, Luxembourg, Portugal and Finland.

11.3.2. Publication by entity type

The nature of publication of tender notices by Member State and entity type in 1995 is shown in Figure 11.5.

Figure 11.5. Total number of tenders by Member State and entity type (1995)

Sources: TED database; Office for Official Publications of the European Communities.

Sub-central government, covering local and regional government bodies, accounted for the majority, around 63%, of tender notices published in 1995. The remainder was split roughly equally between central government (21%) and utilities (16%).

Large variations existed between Member States, reflecting their public-sector structure and degree of decentralization. The Member States where central government accounted for the largest share of the total number of tender notices published in 1995, were:

- (a) Portugal (75%),
- (b) Luxembourg (63%),
- (c) the UK (42%),
- (d) the Netherlands (40%).

Sub-central government bodies accounted for the majority of tender notices published in:

- (a) Germany (76%),
- (b) Sweden (74%),
- (c) Spain (73%),
- (d) Italy (71%),
- (e) Finland (69%),
- (f) Austria (67%),
- (g) France (67%).

Excluding Greece, Portugal and Spain, where the Utilities Directive is not yet in force, publication of tender notices by the utilities was, for all Member States, around 20% of tender notices published, with the exception of:

- (a) France (10%),
- (b) Sweden (13%),
- (c) Luxembourg (8%).

11.3.3. Publication by procedure

*Member States***Table 11.5. Procedures used in 1995 (%)**

Procedure	B	D	DK	E	F	GR	I	IRL	L	NL	P	UK	A	S	FIN	EUR -15
Qual. system	1.0	1.7	2.4	0.0	0.5	0.0	2.5	2.0	0.0	3.5	0.1	5.1	2.5	1.5	1.5	2.2
Open	72.0	66.7	20.3	96.5	60.5	77.4	21.0	30.4	77.1	37.8	96.8	19.1	81.2	74.0	71.9	50.8
Open recurring	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.0	0.0	0.0	0.0	0.0	0.0
Restricted	15.7	11.5	59.0	2.2	29.6	21.7	39.7	18.4	11.0	43.2	1.9	57.1	3.1	10.5	17.6	29.3
Acc. restricted	2.5	5.7	3.0	0.7	0.8	0.9	31.4	3.5	2.3	3.0	1.0	6.8	1.1	1.0	0.6	7.7
Negotiated	8.7	12.2	15.2	0.5	8.7	0.0	5.0	25.2	9.6	12.2	0.1	11.4	10.6	12.8	8.3	9.3
Acc. negotiated	0.0	2.3	0.1	0.0	0.1	0.0	0.3	0.6	0.0	0.2	0.0	0.5	1.6	0.2	0.0	0.7
Total	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Source: TED database.

For all Member States, the open procedure was used most often (51% of all tender notices published), followed by the restricted procedure (29%), negotiated (9%) and accelerated restricted (8%).

The open procedure was used most often in the majority of Member States. In these Member States the use varied from 50% of all tender notices in Ireland to nearly 97% in Spain and Portugal.

The Member States using different procedures were:

- (a) Denmark, the Netherlands and the UK, where the restricted procedure was used most often (59%, 43% and 57% of all tenders published respectively);
- (b) Italy, where the restricted and accelerated restricted procedure was used most often (40% and 31% respectively).

Excluding Greece, Portugal and Spain where the Utilities Directive is not yet in force, the use of the negotiated procedure varied from 25% of all tender notices published in Ireland to 5% in Italy. Member States using the negotiated procedure relatively more often than other Member States included Germany, Denmark, Ireland, the Netherlands and Sweden.

Qualification systems are used in all Member States, with the exception of France.

In terms of the procedures used for the different types of contract (works, supplies and services):

- (a) at an EU level, the open procedure was used for works and supplies contracts (67% and 52% of all tender notices published respectively), with the restricted procedure used for the majority of services contracts (40%);
- (b) the negotiated procedure is used for all types of contracts, with an emphasis on services (14%) and supplies contracts (10%) compared to works contracts (6%);
- (c) qualification systems appear to be used mainly for supplies and services contracts.

Large variations existed between Member States with entities in:

- (a) Germany using the negotiated procedure for a high proportion of supplies (29%) and services tenders (50%);
- (b) Denmark using the restricted procedure most often for all types of contracts, and the negotiated procedure for a high proportion of works (15%) and supplies tenders (20.2);
- (c) Italy using the restricted and accelerated restricted procedure most often for all types of contracts;
- (d) Ireland using the negotiated for a high proportion of supplies contracts (28%) and the restricted and negotiated for the majority of the services contracts (65%);
- (e) the Netherlands using the restricted procedure for the majority of works contracts (21%) and the restricted and negotiated for the majority of the services contracts (68%);
- (f) the UK using the restricted procedure most often for all types of contracts and the negotiated for a significant proportion of works (16%) and services contracts (16%);
- (g) Austria using the negotiated procedure for a significant proportion of services contracts (23%);
- (h) Sweden using the negotiated procedure for a significant proportion of works (17%) and services contracts (15%);
- (i) Finland using the restricted procedure most often for works contracts (75%).

Central government

Table 11.6. Procedures used by central government in 1995 (%)

Procedure	B	D	DK	E	F	GR	I	IRL	L	NL	P	UK	A	S	FIN	EUR-15
Qual. system	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Open	84.3	48.9	17.2	96.6	40.7	70.1	2.5	80.2	73.5	50.1	98.6	12.2	75.8	71.0	65.5	39.9
Open recurring	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Restricted	14.2	26.7	73.8	2.1	53.5	28.2	35.6	14.2	2.0	43.5	1.2	74.0	10.1	15.4	27.3	47.9
Acc. restricted	1.5	16.3	6.4	1.2	1.6	1.7	61.1	5.7	6.1	3.2	0.3	7.4	2.7	2.7	5.5	7.9
Negotiated	0.0	4.9	2.6	0.1	4.2	0.0	0.3	0.0	18.4	2.8	0.0	5.9	1.3	10.2	1.8	3.9
Acc. negotiated	0.0	3.2	0.0	0.0	0.0	0.0	0.5	0.0	0.0	0.4	0.0	0.5	10.1	0.7	0.0	0.5
Total	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Source: TED database.

Open and restricted were the most used procedures by central government, with the exception of Italy where some 61% were accelerated restricted.

Although the directives limit the use of the negotiated procedure by central and sub-central government to exceptional occasions, the negotiated procedure was used relatively often by central government, particularly in Luxembourg (18% of all tenders published), Sweden (10%), Germany (8%), the UK (6%) and France (4%).

In terms of the procedures used by central government for different types of contract:

- (a) the open and restricted procedures were used equally by central government for works and supplies contracts (between 40–45% respectively of total tenders published);

(b) the restricted procedure was used more often for service contracts (56%).

At Member State level, central government in:

- (a) Germany also used the negotiated procedure for services contracts;
- (b) Italy only used restricted and accelerated restricted procedures for supplies and services contracts;
- (c) the UK used the negotiated procedure extensively for works contracts and also, albeit less extensively, for services contracts;
- (d) Sweden also used the negotiated procedure for services contracts.

Sub-central government

Table 11.7. Procedures used by sub-central government in 1995 (%)

Procedure	B	D	DK	E	F	GR	I	IRL	L	NL	P	UK	A	S	FIN	EUR -15
Qual. system	0.0	0.1	0.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.3	0.0	0.0	0.0
Open	72.8	78.2	24.3	96.7	74.1	83.9	25.8	67.4	52.2	41.3	97.1	31.7	93.1	84.9	81.2	62.6
Open recurring	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.0	0.0	0.0	0.0	0.0	0.0
Restricted	19.7	9.4	69.8	2.1	19.7	15.7	36.1	16.3	30.4	50.1	1.2	54.6	1.5	10.6	18.0	23.9
Acc. restricted	6.2	6.2	3.2	0.5	0.6	0.4	37.6	3.6	0.0	3.5	1.2	7.9	1.0	0.9	0.2	9.4
Negotiated	1.2	3.3	2.6	0.7	5.3	0.0	0.4	11.8	17.4	4.6	0.4	5.5	3.4	3.4	0.6	3.3
Acc. negotiated	0.0	2.8	0.0	0.0	0.1	0.0	0.1	0.9	0.0	0.2	0.0	0.2	0.7	0.2	0.0	0.9
Total	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Source: TED database

For all Member States, the open and restricted procedures were used most often by sub-central government bodies, with the exception of Italy where the accelerated restricted was used the most.

Apart from Italy, the accelerated restricted procedure was used relatively often in the UK (8%), Germany (6%) and Belgium (6%).

Although the directives limit the use of the negotiated procedure for central and sub-central government to exceptional occasions, it is used relatively often by sub-central government in Luxembourg (17% of all tenders published), Ireland (12%), Germany (6%), the UK (6%), France (6%) and the Netherlands (5%).

Several notices on the existence of a qualification system were published in Germany and Denmark.

In terms of the procedures used by sub-central government bodies, the open procedure was most commonly used for all types of contracts, with the exception of services where the restricted and accelerated restricted procedures were used more often.

At a Member State level, sub-central government in:

- (a) the UK mainly used the restricted procedure for works contracts;

- (b) Italy only used restricted and accelerated restricted procedures for supplies and services contracts;
- (c) Germany, Ireland, Luxembourg, the UK and Austria also used the negotiated procedure for services contracts.

Utilities

Table 11.8. Procedures used by utilities in 1995 (%)

Procedure	B	D	DK	E	F	GR	I	IRL	L	NL	P	UK	A	S	FIN	EUR -15
Qual. system	5.8	9.1	11.4	0.0	4.6	0.0	12.5	7.1	0.0	15.6	4.5	33.8	11.8	12.1	7.2	14.3
Open	29.9	27.5	8.3	83.8	14.8	69.7	9.7	11.6	0.0	14.2	81.8	1.9	42.7	15.6	38.6	17.3
Open recurring	0.0	0.0	0.0	0.0	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Restricted	17.0	11.1	14.8	16.2	41.2	30.3	54.5	12.9	0.0	29.1	13.6	20.1	3.1	3.6	17.5	25.4
Acc. restricted	0.0	0.0	0.0	0.0	0.1	0.0	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Negotiated	47.3	52.2	65.5	0.0	39.3	0.0	23.2	68.4	100	41.2	0.0	44.2	42.4	68.7	36.7	42.9
Acc. negotiated	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Source: TED database.

In general, the negotiated procedure was used most often by utilities (43% of all tender notices published), followed by the restricted procedure (25%) and the open procedure (17%). Notices on the existence of a qualification system accounted for 14% of all tender notices published.

Contrary to central and sub-central government, the negotiated procedure was used most often in the majority of Member States, varying from 100% of all tender notices published in Luxembourg to 41% in the Netherlands.

The Member States where utilities used different procedures included:

- (a) Spain, Greece and Portugal where the open procedure was predominant (84%, 70% and 82%, respectively);
- (b) Austria and Finland, where the open procedure was used most often (43% and 39%, respectively);
- (c) Italy and France, where the restricted procedure was used most often (55% and 41%, respectively).

Qualification systems were used extensively in most Member States (with the exception of Greece, Portugal and Spain), but particularly so in the UK and the Netherlands.

At an EUR-15 level, in terms of the procedures used by utilities for the different types of contract:

- (a) the negotiated procedure was used extensively by utilities for supplies and services contracts (48% and 45% respectively of total tenders published), whereas for works contracts the open or restricted procedure were used (35% or 32%);
- (b) qualification systems were used by utilities mainly for supplies and services contracts.

At a Member State level, utilities in all Member States used the negotiated procedure extensively, with the exception of Greece, Portugal and Spain.

Differences existed between Member States, particularly in France, Italy and the UK where utilities only used the restricted and negotiated procedures for all types of contracts.

11.4. Number of entities publishing

Table 11.8. Number of entities publishing in the Official Journal (1995)

Member State	Central government	Sub-central government	Utilities	Total
Belgium	27-48	98-144	44-77	169-269
Denmark	16-28	355-523	64-112	435-663
France	287-402	2,878-3,094	123-226	3,289-3,722
Germany	84-118	4,274-4,595	855-1,567	5,214-6,280
Greece	48-86	167-246	19-33	234-365
Ireland	26-46	63-93	19-33	108-172
Italy	93-130	2,084-2,240	185-339	2,362-2,709
Luxembourg	9-16	8-12	2-4	19-32
Netherlands	51-71	236-254	65-120	353-445
Portugal	25-45	60-88	6-10	91-143
Spain	34-48	458-492	3-5	495-545
UK	266-372	973-1,046	167-306	1,406-1,724
Austria	20-36	176-259	46-80	242-375
Finland	12-22	134-197	35-61	181-280
Sweden	51-92	442-651	69-120	562-863
Total	1,049-1,560	12,407-13,934	1,704-3,093	15,159-18,587

Source: TED database.

In 1995, the total number of European entities publishing in the OJ was between 15,000 and 18,600.

Sub-central government bodies accounted for the majority of this total, roughly 75%, whereas utilities accounted for 15% and central government bodies for the remaining 10%.

Germany has the largest number of entities publishing with around 5,200 to 6,300, followed by France (3,300–3,750), Italy (2,350–2,700) and the UK (1,400–1,750).

Differences between Member States in the number of central and sub-central government bodies publishing, reflect the structure of the public sector, with:

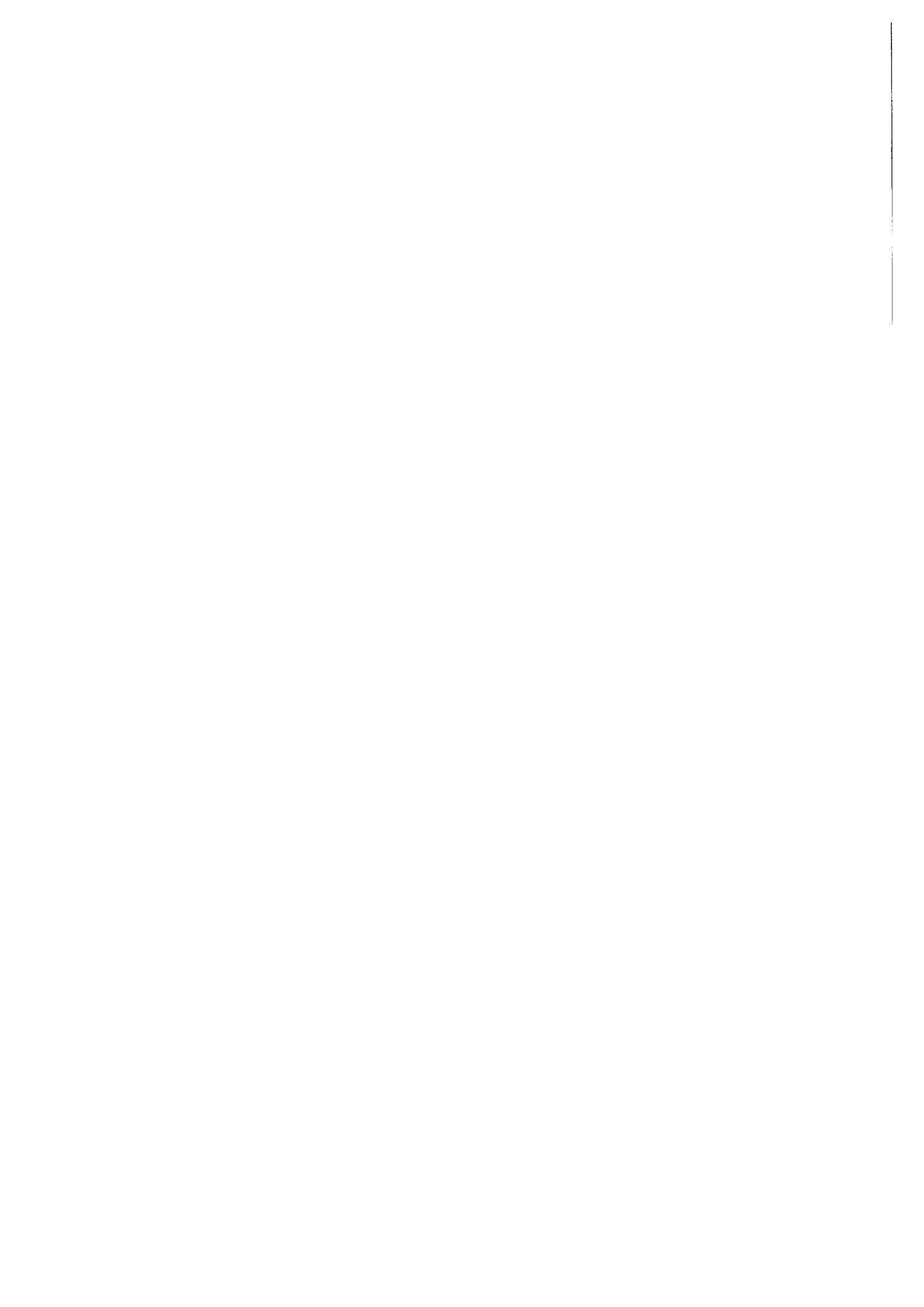
- (a) a more decentralized structure in Germany, Italy, Spain and the new Member States;
- (b) a more centralized structure in Belgium, France, Greece, Ireland, the Netherlands, Portugal and the UK.

Germany and the Netherlands had a relatively large number of utilities publishing, suggesting a highly fragmented utilities structure.

SECTION D

Market perceptions

This section provides an insight into the experiences and view of both purchasers (the demand side) and suppliers (the supply side) of the impact of the public procurement legislation.



12. Demand side

12.1. Overview

12.1.1. *Ex ante* hypothesis

Given the legislation' requirements, and assuming a positive supply-side response to new opportunities, it might be expected that purchasing entities will have:

- (a) moved towards publishing in the OJ;
- (b) experienced changes in the composition of their supplier bases, with an increase in the number of EU firms acting as suppliers;
- (c) experienced procurement savings.

12.1.2. Coverage

This chapter provides an analysis of the results of a survey carried out over a four-month period to determine purchasing entities' experience of the public procurement legislation. Specifically, the survey asked entities to describe:

- (a) changes in publication habits;
- (b) changes in use of tendering procedures;
- (c) the nature of any changes on the supply-side;
- (d) the nature of any changes in procurement practices and results, and the extent to which the legislation was seen to have played a part in any changes.

12.1.3. Data

Some 698 purchasing entities were targeted by the survey, covering:

- (a) central government ministries;
- (b) sub-central government bodies, including:
 - (i) regional and local government bodies,
 - (ii) uniformed services (fire and police),
 - (iii) purchasing consortia,
 - (iv) health bodies;
- (c) utilities:
 - (i) water,
 - (ii) energy (covering coal, and oil and gas exploration and extraction, electricity and gas generation and distribution),
 - (iii) transport (covering airports, ports, rail and urban transport),
 - (iv) telecommunications.

Central and sub-central government bodies were approached via a fax questionnaire accompanied by a letter from the Director-General of the European Commission's Directorate-General for the Internal Market and Financial Services, which explained the study's objectives, and requested the organization's assistance. For central government bodies, the official with overall responsibility for departmental/ministerial purchasing was targeted. Given the more fragmented nature of purchasing at a sub-central level, to ensure the most appropriate official assumed responsibility for the questionnaire's completion, a body's most senior

official was sent the questionnaire. For all utilities, a direct approach was made to the sector's European representative body, again to explain the survey's objectives, and secure their co-operation. In almost all instances, we were given considerable assistance, with a number of associations distributing the questionnaires to their members on our behalf.

A total of 502 questionnaires were returned by 429 entities. The larger number of responses is the result of organizations of all types distributing questionnaires to internal departments with autonomous purchasing responsibility. In terms of entities targeted, this represented a response rate of 62% although, as shown in Table 12.1, there were variations in Member States' responses. There were a particularly low number of responses from:

- (a) central government ministries in Germany, France and Spain;
- (b) Greece and Germany in general.

A number of Greek returns were received too late for inclusion. A review of these questionnaires indicated that they did not contradict the general findings and conclusions observed in the other 14 Member States.

Table 12.1. Member State and entity type responses

	Central government	Sub-central government	Utilities	Total
Belgium/Luxembourg	9	13	10	32
Germany	2	18	7	27
Denmark	22	22	10	54
Spain	2	23	21*	46
France	1	41	7	49
Greece	0	2	0*	2
Italy	6	42	9	57
Ireland	6	9	7	22
Netherlands	5	27	9	41
Portugal	3	10	5*	18
United Kingdom	9	53	25	87
Austria	4	6	10	20
Sweden	3	12	7	22
Finland	10	8	7	25
Total	82	286	134	502

Note: Since utilities in Greece, Spain and Portugal(*) were not subject to the Utilities Directive at the time of the survey, the questionnaire asked them for their experiences since 1990 and their intentions post-transposition (rather than pre- and post-directive) as for the other Member States.

The survey sample was drawn on a constrained Pareto basis. The approach was to target purchasers representing 80% of procurement at each level of government and utility type in each Member State. Hence for any Member State, the survey targeted:

- (a) central government ministries representing an estimated 80% of central government procurement, covering in the main ministries responsible for:
 - (i) defence,
 - (ii) public works,
 - (iii) transport,
 - (iv) education,

- (v) interior/home office,
- (vi) health,
- (vii) post and telecommunications;
- (b) purchasing entities at a regional level accounting for an estimated 80% of total regional procurement in the regions representing 80% of national GDP;
- (c) bodies representative of total local government procurement within sub-regions representing 80% of GDP or population of the regions described at (b);
- (d) the largest utilities representing 70–80% of procurement in the each of the sub-sectors as defined in Annexes I to X to the Utilities Directive.

As a result, the survey covered a wide range of:

- (a) entity sizes – ranging from large spending central government ministries, such as the Ministry of Defence, to local authorities and local fire services and, in a number of cases, independent purchasing units within local bodies;
- (b) purchasers focusing on works, supplies and services.

For the purposes of our analysis:

- (a) all returns have been taken into consideration;
- (b) an entity's focus of procurement has been defined as the element (works, supplies, services) which accounts for 70% or more of its purchasing.

The survey's results have been used as indicators of changes, employing a combination of direct comparisons (pre- and post-directive experience) and scoring systems, which are described in the appropriate sections. As highlighted above, although responses in some areas were disappointing, the quality and number of responses overall were sufficient to be considered reliable and indicative for qualitative inferences to be drawn, particularly since the results are consistent:

- (a) within and between Member States,
- (b) with those from the supply-side survey,
- (c) with implicit expectations based on previous studies in this area.

The results are also considered of particular value since, despite gaps, only those with responsibility for procurement can really know:

- (a) what has happened in practice;
- (b) their experiences and views of the legislation.

The information obtained from returned questionnaires was also supplemented and corroborated by:

- (a) interviews with some 80 entities which were re-contacted to clarify their responses;
- (b) a number of written submissions from entities (including some which declined to complete the questionnaire) and, in the case of utilities, their representative bodies which took up the questionnaire's invitation to provide additional comments.

Each section analyses the responses to a specific question(s) and, as such, has value in its own right. Nevertheless, individual section results should not be considered in isolation. Where

feasible, sections have been cross-referenced, but the overall conclusions have been arrived at by taking an holistic view of all results. These are described in the following section.

12.1.4. Key findings

Despite expected differences between Member States, types of purchasers and types of procurement, a number of consistent messages emerged from the survey.

At a global level the survey showed that the legislation has had a significant impact, but that whilst there have been a number of benefits, these are currently seen by purchasers to be outweighed by associated 'costs'.

The legislation has resulted in increased openness, with most respondents reporting having published more notices and now using the OJ.

The survey's results indicated that:

- (a) without the legislation, there would have been a more restrictive approach to purchasing;
- (b) there are still high levels of non-compliance, with sub-central government entities, in particular, considered only to be starting to fulfil the directives' requirements.

Whilst there were indications of continued non-compliance with the legislation's requirements, there were also entities which had been genuinely disappointed by the supply-side's response (to notices published in the OJ).

In general, whilst purchasing entities had a reasonable 'feel' for their domestic suppliers, their knowledge in relation to non-domestic suppliers, was very low, implying that, for most, any increases in non-domestic penetration have been minimal. This was confirmed by entities which were able to provide such information.

In relation to sub-central government's experiences, a number of entities in some of the largest Member States:

- (a) expressed disappointment at the lack of response to notices published;
- (b) reported that, despite the directives having been in force for almost seven years in relation to supplies, only recently had there been evidence of (any) new suppliers responding to calls for competition;
- (c) awareness of the rules at this level is still low. (The structure of sub-central government in Member States is likely to exacerbate non-publication, particularly where procurement is devolved to (small) independent units, whose procurement is not aggregated).

The 'cost' element of the legislation was most associated with:

- (a) more complex procurement,
- (b) more time-consuming procurement.

This 'cost' element of the legislation was exacerbated by generally perceived increases in both the total number of firms, and the number of non-domestic firms, submitting tenders not having, in general, been translated into changes in supplier bases, with:

- (a) only a minority of entities reporting real benefits – primarily lower contract prices – and even in such instances, this perception was based on ‘exceptional’ cases, such as:
 - (i) two instances where, in a strategic area, an innovative technical solution from a new non-domestic supplier resulted in savings of 50%,
 - (ii) purchase of railway rolling stock from a previously unknown EU supplier as the direct result of a notice placed in the OJ;
- (b) the legislation’s impact on any changes in supplier behaviour, such as improved service, perceived as minimal.

The lack of lower prices indicated that, despite an increase in new firms submitting tenders, they were:

- (a) either not competitive, or not competing on price;
- (b) pricing to national markets (minimizing any cost saving potential for the purchaser);
- (c) not selling across border (exporting direct) – the price reduction examples quoted above were, significantly, from suppliers selling direct from another Member State;
- (d) not stimulating competition (for the above and other reasons, such as domestic supplier apathy, lack of awareness and lack of concern).

An additional key finding not specifically covered by the survey, but consistently raised by entities which submitted additional comments, was the threat of legal action by suppliers. As a consequence of this and the legislation’s lack of clarity, entities have adopted a literal (and defensive) approach to implementation of the rules. However, by applying the directives’ requirements ‘to the letter’ rather than their ‘spirit’ in relation to, for example, supplier qualification:

- (a) administrative costs have increased,
- (b) potential new suppliers are (seen to be) deterred by the costs of completing extensive qualification documentation.

With the exception of some entities with a focus on works procurement, ‘economically most advantageous’ was the preferred award criterion for all types of entity in all Member States. However, the nature of award criteria used indicated that, despite claiming to be awarding on the basis of ‘economically most advantageous’, in most cases, purchasers chose on the basis of lowest price.

A number of utilities, particularly those operating in international markets, emphasized that, since they had been purchasing internationally prior to the directives, the legislation had only increased costs and the threat of legal action (see above). In addition, several also raised areas of ‘difficulty’ in relation to services, particularly in highly technical or specialist areas, such as certain types of insurance.

12.2. Nature of tendering

12.2.1. Impact of directives on means of advertising notices

Purchasing entities were asked where calls for tender were published pre- and post-1987 in terms of:

- (a) the OJ,

- (b) international press,
- (c) national press,
- (d) local press,
- (e) trade publications,
- (f) others,
- (g) nowhere.

The key finding was a major shift towards use of the OJ. In particular:

- (a) the majority of utilities had moved from publishing nowhere pre-directive;
- (b) the number of central and sub-central entities which had also published nowhere pre-directive had decreased, reflecting the broader scope of the legislation and, arguably, a greater awareness of the legislation's requirements.

The importance of the OJ as an advertising medium was highlighted by the fact that in the majority of Member States:

- (a) no entities had published, or were publishing, in the international press;
- (b) entities have, in general, not extended the range of publications in which they advertise (with the exception of the OJ).

12.2.2. Impact of directives on volume of notice publication

The general trend across entities in all Member States was for more calls for tender to have been published since the directives had come into force.

Table 12.2. Number of notices published after entry into force of EU directives – central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
More	1	1	13	1			3	4	4		6	1	2	5
Same	5	1	7	1	1		3	1	1	2	3	3	1	5
Fewer										1				
Base	8*	2	20	2	1	0**	6	5	5	3	9	4	3	10

* Balance of two are 'don't knows'.

** No responses were received from Greek central government ministries.

In most Member States, the majority of central government respondents reported publishing more notices.

Table 12.3. Number of notices published after entry into force of EU directives – sub-central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
More	4	6	12	7	25		23	4	18	4	31	2	10	5
Same	9	11	6	14	16	2	17	4	9	5	18	4	2	3
Fewer		1									3			
Base	13	18	18	21	41	2	40	8	27	9	52	6	12	8

In general, the majority of sub-central government purchasing entities in the larger Member States reported publishing more notices.

The range of entities contacted during the survey meant that, in view of the size of small entities' procurement budgets, some considered only a very few of their purchases were above threshold. This was also reflected by a number of entities which declined to participate on the basis that their purchasing budget was so small that none of their contracts came above the threshold. The extent to which this is correct, or whether it reflects a lack of understanding of the directives' aggregation rules is unclear. A number of respondents also highlighted that internal rules had required publication of contracts prior to the directives, and that since these covered contracts below the legislation's thresholds, the number of notices published had not changed, but above-threshold contracts were now published in the OJ.

Given this, it is not surprising that a large number of entities reported no change in their publication of tender notices.

Table 12.4. Number of notices published after entry into force of EU directives – utilities

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
More	7	5	7	5	5		6	4	7	1	22	3	3	7
Same	2	2	2	13	2		3	3	2	3	3	6	3	
Fewer													1	
Base	9	7	9	18	7	0*	9	7	9	4	25	9	7	7

* No responses were received from Greek utilities.

Since the majority of utilities did not publish calls for tender anywhere prior to entry into force of the Utilities Directive, it was expected that the majority of them would report an increase in publication. The situation in Spain and Portugal reflects the fact that:

- (a) the Utilities Directive had yet to come into force at the time of the survey;
- (b) a large number of small utilities responded to the survey in Spain, all of which were predominantly works focused, and had contracts below the ECU 5 million threshold.

12.2.3. Change in use of procedures and preferred procedure

A scoring system has been used to create an indicator of the way in which purchasers have changed their usage of different types of procedure since the directives came into force. Scores have been calculated by:

- (a) taking the pre- from the post-percentage use of a procedure by a purchaser;
- (b) dividing the difference by 5 to give a score (whereby the maximum score can be +/-20, namely +/-100/5);
- (c) summing individual scores and dividing by the number of purchasers to arrive at an average score.

As a result, within any Member State the sum of scores is zero.

To put any shifts into context, an additional table has been created which shows the currently most used procedure(s). (Analysis of actual publication procedures used is contained in Chapter 11.)

Table 12.5. Change in the use of tendering procedures by central government

	B/L	D	DK	E	F	GR*	I	IRL	NL	P	UK	A	S	FIN
Open	0.07		(1.00)				0.00	2.00	(2.60)	(0.07)	1.20	0.55	4.53	2.49
Restricted	0.00		2.97				0.20	(2.00)	2.64	0.00	0.96	(0.55)	12.33	(0.49)
Accelerated restricted	0.00		0.00				(0.13)	0.00	1.40	(3.20)	0.60	0.05	0.00	(1.46)
Restricted using a qualification system	0.07		0.25				0.43	0.00	0.00	0.00	(1.52)	0.00	0.00	0.03
Negotiated	0.00		(1.97)				0.17	0.00	(0.32)	2.60	(0.40)	(0.05)	(11.5)	(0.43)
Negotiated using a qualification system	0.00		0.00				(0.67)	0.00	(0.20)	0.00	0.60	0.00	0.00	0.00
Single tender	1.20		(0.08)				0.00	0.00	(0.52)	0.67	(1.44)	0.00	(0.33)	(0.43)
Other**	(1.33)		(0.17)				0.00	0.00	(0.40)	0.00	0.00	0.00	(6.00)	0.00
Base	6	2***	12	2***	1***	0	6	6	5	3	5	4	3	7

* No responses were received from Greek central government ministries.

** Includes 'unclassified' percentage returns, and combinations of different procedures – primarily the three types of restricted procedure.

*** Responses from Germany, France and Spain have not been reported as the small number of respondents is unrepresentative.

The principal shift in the use of tendering procedures at a central government level was towards more open procurement, with a move from negotiated and single tender to open and restricted. This move was most evident in the EU's more recent members (Austria, Sweden, Finland and Spain).

Other noticeable shifts were seen in:

- Denmark, with a move toward the restricted procedure, away from both open and negotiated;
- Italy, with a move toward the restricted procedure away from the negotiated;
- the Netherlands, with a move towards the restricted procedure, principally at the expense of the open procedure;
- Belgium and Portugal, where a surprising shift towards the negotiated and single tender procedures was reported.

The most used procedure tended to mirror the shifts recorded, although it was surprising that in almost all Member States, at least one body's most used procedure was either single tender or negotiated, particularly in Belgium. The reasons for this are unclear, since although some of the respondents were surprisingly small, there were also a number of significant purchasers where these 'exceptional' procedures were most used.

Table 12.6. Most used tendering procedure in 1994 – central government

	B/L	D	DK	E	F	GR*	I	IRL	NL	P	UK	A	S	FIN
Open	1		4				1	3	2	1		3		4
Restricted			12				2	2	1	1	7		1	3
Accelerated restricted													2	
Restricted using a qualification system							1							
Negotiated	3		2					1	1	1		1		
Negotiated using a qualification system							2							
Single tender	3		1								1			1
Other**									1		1			
Base	7	2***	12	2***	1***	0	6	6	5	3	9	4	3	8

* No responses were received from Greek central government ministries.

** Includes 'unclassified' percentage returns, and combinations of different procedures – primarily the three types of restricted procedure.

*** Responses from Germany, France and Spain have not been reported as the small number of respondents is unrepresentative.

Table 12.7. Change in the use of tendering procedures by sub-central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Open	0.16	1.36	3.41	1.89	1.25		2.43	4.22	2.34	0.50	0.86	0.17	11.00	4.17
Restricted	(0.66)	0.21	2.71	(0.19)	(1.05)		(1.53)	(2.56)	(0.03)	(0.10)	0.28	(0.17)	(0.29)	(3.83)
Accelerated restricted	0.00	0.00	(0.11)	0.00	(0.21)		0.82	0.56	0.10	0.05	0.11	0.00	0.09	0.00
Restricted using a qualification system	0.00	0.00	0.00	0.00	(0.02)		(0.15)	0.00	0.73	0.00	(0.23)	0.83	0.00	(0.40)
Negotiated	(1.42)	0.03	(3.50)	(1.43)	0.07		(1.09)	(0.02)	(3.04)	0.53	(0.45)	(1.00)	(10.4)	0.07
Negotiated using a qualification system	0.00	0.00	(1.99)	0.00	(0.01)		(0.41)	(1.78)	0.00	(0.03)	(0.01)	0.17	(0.36)	0.00
Single tender	0.10	(1.60)	(0.53)	(0.28)	(0.02)		(0.04)	(0.42)	(0.10)	(0.95)	(0.31)	0.00	(0.04)	0.00
Other*	1.82	0.00	0.00	0.00	0.00		(0.03)	0.00	0.00	0.00	(0.29)	0.00	0.00	0.00
Base	10	15	19	13	30	**	39	9	22	8	48	6	11	6

* Includes 'unclassified' percentage returns, and combinations of different procedures – primarily the three types of restricted procedure.

** Responses from Greece have not been reported as the small number of respondents is unrepresentative.

At the sub-central government level, there was a common shift towards use of the open procedure in all Member States, although the following had also seen a move towards use of the restricted procedure:

- (a) Belgium,
- (b) Denmark,
- (c) Italy,
- (d) the Netherlands,
- (e) the UK,
- (f) Austria.

In common with central government, sub-central government entities in Portugal also indicated a move towards an increased use of the negotiated procedure.

Table 12.8. Most used tendering procedure in 1994 – sub-central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Open	5	2	4	12	29		8	7	6	1	17	3	10	3
Restricted	3	3	12		5		17	2	11	6	18	3		3
Accelerated restricted														
Restricted using a qualification system	1						6				6			
Negotiated			1	2	7		3		6		1			2
Negotiated using a qualification system							4			1	1			
Single tender		6	1		1				3	1				1
Other*	1	5	1	1			1				4		2	
Base	10	16	19	13	40	2**	39	9	22	8	47	6	12	7

* Includes 'unclassified' percentage returns, and combinations of different procedures – primarily the three types of restricted procedure.

** Responses from Greece have not been reported as the small number of respondents is unrepresentative.

Although, as indicated by Table 12.8, the majority of sub-central government bodies used the open and restricted procedures most, a noticeable number were also using 'exceptional' procedures (negotiated, negotiated using a qualification system and single tender) most often, particularly in:

- (a) Germany,
- (b) France,
- (c) Italy,
- (d) the Netherlands.

Table 12.9. Change in the use of tendering procedures by utilities

	B/L	D	DK	E	F	GR*	I	IRL	NL	P	UK	A	S	FIN
Open	(1.98)	(0.46)	0.67	1.71	0.03		4.00	0.11	0.11	0.60	0.00	0.13	(0.40)	1.25
Restricted	0.00	(0.89)	(1.76)	(0.25)	(1.03)		(2.75)	(3.86)	0.60	(0.53)	(1.37)	(0.69)	0.00	1.00
Accelerated restricted	0.00	0.00	0.18	0.53	(0.33)		(0.25)	(0.71)	0.00	(0.07)	0.47	0.00	0.00	0.00
Restricted using a qualification system	2.10	0.14	0.00	(0.71)	(1.33)		1.00	0.200	1.43	0.00	1.57	0.00	0.40	0.00
Negotiated	0.10	1.49	0.84	(2.29)	0.70		(2.38)	3.91	(3.57)	0.00	0.46	0.89	(2.00)	(2.25)
Negotiated using a qualification system	0.74	(0.74)	0.73	0.01	2.33		1.25	0.63	2.37	0.33	2.73	0.22	1.60	0.00
Single tender	(0.96)	0.46	(0.67)	(0.33)	(0.37)		(0.88)	(0.14)	(0.94)	(0.33)	(1.17)	(0.56)	0.00	0.00
Other**	0.00	0.00	0.00	1.33	0.00		0.00	(0.14)	0.00	0.00	(0.89)	0.00	0.00	0.00
Base	10	7	9	15	6	0	8	7	7	3	18	9	5	4

* No responses were received from Greek utilities.

** Includes 'unclassified' percentage returns, and combinations of different procedures – primarily the three types of restricted procedure.

Although there were some Member States where a noticeable shift towards the open procedure was reported (Spain, Italy and Finland), the major movements were towards combinations of the restricted and negotiated procedures, with and without qualification systems:

- (a) Belgium, Italy, the Netherlands and the UK – restricted and negotiated with qualification systems;

- (b) Denmark and France – negotiated and negotiated with a qualification system;
- (c) Germany and Ireland – negotiated;
- (d) Spain – restricted and restricted with a qualification system.

Table 12.10. Most used tendering procedure in 1994 – utilities

	B/L	D	DK	E	F	GR*	I	IRL	NL	P	UK	A	S	FIN
Open	3		1	7			3	3	1		1	3	2	3
Restricted	1		2	4	2			2	2	2	6	1		2
Accelerated restricted														
Restricted using a qualification system	2			1	1		1				5			
Negotiated	2	5	3	1	2		1	2	3		6	5	4	
Negotiated using a qualification system	1		1	1	3		4		2	1	8	1	1	1
Single tender	2	2	1							1	2			
Other**	2		1	1					1					
Base	10	7	9	15	7	0	8	7	7	3	23	10	6	4

* No responses were received from Greek utilities.

** Includes 'unclassified' percentage returns, and combinations of different procedures – primarily the three types of restricted procedure.

In general, the most used procedure reflected the shifts in Table 12.9, although it was noticeable that there were still a number of utilities where 'single tender' was the most used procedure.

12.3. Preferred purchasing procedures

12.3.1. Preferred tendering procedure

Under procurement legislation:

- (a) entities covered by the Supplies, Works and Services Directives (central and sub-central government) may use the open and restricted procedure as a general rule, and the negotiated in 'exceptional' circumstances;
- (b) entities covered by the Utilities Directive (utilities) have, in essence, a free choice of procedures.

There was no discernible trend at a central government level in terms of the use of procedure. The reasons for preferring a particular procedure are described in the next section, but the range seen in Table 12.11 is likely to reflect the different types of procurement made by central government ministries, ranging from the Ministry of Defence, to ministries responsible for major IT procurement and projects. It is possible that use of the open procedure in Austria is a result of national legislation which has a preference for this procedure (although, as described above, entities do have a broader choice under the directives).

Table 12.11. Preferred tendering procedure for making strategic purchases – central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Open	1		3				1	4		1		4		3
Restricted	3		16				4	1	3		8		2	5
Negotiated	3		2				1				1		1	
Base	7	1*	21	2*	1*	0**	6	5	3	1	9	4	3	8

* Responses from Germany, France and Spain have not been reported as the small number of respondents is unrepresentative.

** No responses were received from Greek central government ministries.

Table 12.12. Preferred tendering procedure for making strategic purchases - sub-central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Open	5	5	5	19	34		14	6	13	10	15	5	6	5
Restricted	7	4	16	1	6		28	2	10		31	1	1	1
Negotiated	1	1	1						2		4		5	2
Base	13	10	22	20	40	2*	42	8	25	10	50	6	12	8

* Responses from Greece have not been reported as the small number of respondents is unrepresentative.

In terms of sub-central government entities surveyed, there were preferences for:

- (a) the open procedure in Spain, France, Ireland, Portugal, Austria and Finland;
- (b) the restricted procedure in Belgium, Denmark, Italy and the UK.

There was no clear preference in Germany, Greece and the Netherlands between open and restricted.

In view of the size of some sub-central bodies, such as purchasing consortia, large administrations and police and health authorities, some preference for the negotiated procedure for certain strategic purchases was expected. However, the extent to which such purchases fulfil the strict 'exceptions' criteria set out in the directives is unclear.

Table 12.13. Preferred tendering procedure for making strategic purchases – utilities

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Open	2		1	10			1		1	3		4		3
Restricted	3		5	6	2		3	3	3	2	8	2	2	1
Negotiated	5	6	4	3	6		5	4	5		17	4	4	3
Base	10	6	10	19	8	0*	9	7	9	5	25	10	6	7

* No responses were received from Greek utilities.

As expected, utilities expressed a general preference for the negotiated procedure.

12.3.2. Reasons for preferred tendering procedure

Purchasers were able to select a range of reasons for their preferred tendering procedure when making a strategic purchase. These have been prioritized (1 to 3) by:

- calculating the percentage of all purchasers selecting a particular reason;
- allocating 1 to the highest percentage;
- grouping percentages within a 10% range – hence a reason with 90% is grouped with one with 83%.

The reasons for preferring a particular procedure did vary. However, common to all was the importance of price, or, more precisely, that the preferred procedure was the best way to achieve better prices and value for money.

Table 12.14. Ranking of reasons for preferring the open procedure

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Better prices/value for money	2	2	1=	2=	1=	1	2=	3	1=	1=	1=	2	3	2
Access to a wider range of suppliers	1	1	1=	1	1=	1	1	2	1=	1=	1=	1	1	1
Easier administration	3		2=				3			3=	2		2	3=
More flexibility in specifications										3=				
Technological complexity			2=	2=				1		2=		3		3=
Faster and more efficient supplier selection			3	3	3		2=		2	2=	3			
Base	8	6	9	31	1	16	1	14	14	15	13	6	11	11

Note: 1: most important, 2: second most important, 3: third most important.

‘Access to a wider range of suppliers’ was the most important reason for choosing the open procedure in all Member States except Ireland, although its choice of ‘technological complexity’ could be interpreted as a variation on the same theme.

‘Better prices and value for money’ was the next most important reason selected, with ‘faster and more efficient supplier selection’ the third most selected reason.

Although, as for the other procedures, ‘better prices and value for money’ was an important reason for preferring the restricted procedures (see Table 12.15), its choice is driven more by ‘faster and more efficient supplier selection’. The directives covering central and sub-central government originally required entities to use the open procedure as a rule, with the restricted and negotiated procedures only permitted in special circumstances, which an entity had to record in order to justify its use. They were amended in 1993 to allow restricted to be used on an equal footing with the open procedure. It is important to distinguish between use of the restricted procedure by utilities and central and sub-central government entities.

Table 12.15. Ranking of reasons for preferring the restricted procedure

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Better prices/value for money	2	1=	1=	3=	1	1	1=	3=	2	2=	1=	2=	2	1=
Access to a wider range of suppliers		1=		3=			1=		3=		3	2=	3=	2
Easier administration	3	2=	1=				3	2=	3=	2=	1=		3=	1=
More flexibility in specifications					3			3=				1=		
Technological complexity		2=	3	1	2			2=	3=	1	2	1=	1	
Faster and more efficient supplier selection	1	1=	1	2			2	1	1	2=	1=	2=	3=	1=
Base	12	4	37	7	7	1	35	6	16	2	47	3	5	7

Note: 1: most important, 2: second most important, 3: third most important.

- (a) A utility may use the restricted procedure without a specific call for competition in the OJ if it is operating a supplier qualification system (which must have been advertised in the OJ).
- (b) A central or sub-central government body may use the restricted procedure, but only with a call for competition in the OJ (although it may also maintain a list of 'approved/qualified' suppliers). This approach has the benefit of informing all interested suppliers of an opportunity (meeting the legislation's aims) as well as, theoretically, giving a purchasing entity the ability to minimize effort by only inviting 'appropriate' firms to submit tenders (meeting practical/administrative constraints). However, as highlighted in Chapter 6, the issue of shortlisting is far from clear. As a practical consequence, many entities are loath to reduce the number of suppliers invited to submit tenders, obviating the benefits of the procedure.

Table 12.16. Ranking of reasons for preferring the negotiated procedure

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Better prices/value for money	3	1=	1	1=	1		1	1=	2=		1=	1	1=	1
Access to a wider range of suppliers											3=		3	
Easier administration		3						3		1=	3=			3
More flexibility in specifications	1	2=	3	1=	3		3	2=	2=		2=	2=	2=	
Due to technological complexity	2	1=	2		2		2	1=	1	1=	1=	2=	1=	2
Faster and more efficient supplier selection		2=						2=	3		2=	3	2=	
Base	9	7	7	3	6	-	6	4	7	2	22	4	10	5

Note: 1: most important, 2: second most important, 3: third most important.

As can be seen from Tables 12.10 and 12.13, utilities are the principal users of the negotiated procedure. (This is also to be expected since central and sub-central government entities may only award a contract using the negotiated procedure in exceptional cases.) As confirmed by a number of interviews and previous studies, the negotiated procedure is seen by purchasers not

only as the best way to achieve better prices and value for money, but reflects the more sophisticated, higher value strategic purchases made by utilities.

12.3.3. Award procedure and criteria

Preferred award procedure

All entities subject to the directives have a free choice when evaluating submissions according to:

- (a) lowest price,
- (b) 'economically most advantageous' tender.

The choices made by each purchasing entity type are described below. However, a consistent preference for 'economically most advantageous' was reported across Member States and purchasing entity types.

Table 12.17. Preferred award procedure – central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Lowest price	3		4				4	1						
Economically most advantageous	4	2	15	2	1		1	5	5	3	9	4	3	9
No preference			2				1							
Contract dependent														
Base	7	2	21	2	1	0*	6	6	5	3	9	4	3	9

* No responses were received from Greek central government ministries.

Most central government respondents expressed a preference for 'economically most advantageous', with the exception of some from Belgium, Denmark and Italy.

The result in Italy, as for sub-central government, reflects a greater emphasis on works contracts within the entities which responded, where national legislation requires lowest price to be used.

Table 12.18. Preferred award procedure – sub-central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Lowest price	6	1	1	1	3		20	1	3		6			
Economically most advantageous	5	16	19	19	36	2	18	8	19	10	46	6	12	7
No preference	1			2	2		3		3		1			
Contract dependent	1		2				1		1					
Base	13	17	22	22	41	2	42	9	26	10	53	6	12	7

As for central government, the majority of entities expressed a preference for most economically advantageous, with the exception of Italy.

Table 12.19. Preferred award procedure – utilities

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Lowest price	1		1	3			4	1	1			2		
Economically most advantageous	7	6	9	16	7		4	6	8	5	24	7	6	6
No preference	2	1		2			1				1	1		1
Contract dependent														
Base	10	7	10	21	7	0*	9	7	9	5	25	10	6	7

* No responses were received from Greek utilities.

Utilities similarly expressed a preference for economically most advantageous. Those that expressed a preference for lowest price were generally entities whose focus of procurement was works.

Award criteria when using economically most advantageous

Respondents were asked to rank the criteria used when making major strategic purchases from 1 to 3, with 1 the most important, 2 the second most important and 3 the third most important. Scores were calculated by:

- (a) ascribing 3 to the most important criterion, 2 to the second most important criterion, and 1 to the third most important criterion;
- (b) summing the scores for each criterion and dividing the total by the number of entities.

As a result, the maximum score for any criterion is 3, and any score greater than 1.5 is of above average importance.

The criteria respondents chose from were:

- (a) price,
- (b) compatibility,
- (c) whole life cost,
- (d) technical performance,
- (e) after sales service,
- (f) financial capacity,
- (g) quality,
- (h) compliance with specification,
- (i) other.

Purchasers have a free choice of award criteria, provided they relate to the performance of the specific contract.

Discussions with purchasers raised a number of key issues in relation to use of the economically most advantageous procedure.

- (a) The difference between an award criterion (against which a submission is evaluated) and a pre-qualification criterion (essentially factors which determine whether a supplier should be invited to submit a tender at all). It is for this reason that 'compliance with specification' was included as an option. However, we would contend, as do a number of entities interviewed, that this is an exclusion, and not an award criterion. It could be

argued that, since all specifications which comply with the directives are functional, rather than technical, it is feasible that the extent of compliance might be scored using a series of sub-criteria. Again, it is our experience that this level of sophistication is not common, and that 'technical performance' is the criterion under which such an evaluation would take place.

- (b) The quantification of award criteria. Although award criteria are required to be applied objectively, some criteria commonly used, such as 'quality', were considered by respondents to be impossible/difficult to evaluate in an objective fashion. As a result, subjective (and potentially biased) views are taken into account which can, albeit unwittingly, go against the legislation's requirements.

Table 12.20. Award criteria when judging major strategic purchases on the basis of 'economically most advantageous' – central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Price	<i>1.33</i>	2.00	1.52	2.00			2.80	2.20	1.80	1.67				2.11
Compatibility														
Whole life cost											1.56			
Technical performance		1.50									1.56		1.67	
After sales service		1.50												
Financial capacity														
Quality	<i>1.33</i>	2.50	1.57		3.00							2.00		
Compliance with specification		3.00		2.50				1.80	1.80	2.00	2.00		1.67	
Base	6	2	21	2	1	0*	5	5	5	3	9	4	3	9

Note: Belgium's highest scores have been included for comparative purposes and are indicated in italics.

* No responses were received from Greek central government ministries.

If 'compliance with specification' is excluded on the basis that it is a rejection rather than award criterion, the most important award criterion was 'price' for:

- (a) Italy,
- (b) Finland,
- (c) Spain,
- (d) Ireland,
- (e) the Netherlands,
- (f) Portugal.

For the other Member States, price was not the sole determinant, indicating a more sophisticated approach to submission evaluation.

Table 12.21. Award criteria when judging major strategic purchases on the basis of 'economically most advantageous' – sub-central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Price	1.92	1.81			1.77	2.00	2.62	<i>1.44</i>	1.50	1.60	1.88	2.33		2.25
Compatibility						3.00								
Whole life cost													1.50	
Technical performance														
After sales service														
Financial capacity														
Quality		1.63	1.55	1.91					2.25	1.70	1.33			1.50
Compliance with specification	1.58										1.55		2.17	
Base	12	16	22	22	40	2	39	9	24	13	49	6	12	8

Note: Ireland's highest score has been included for comparative purposes and is indicated in italics.

If 'compliance with specification' is excluded on the basis that it is a rejection rather than an award criterion, the most important award criterion was 'price' for:

- (a) Belgium,
- (b) France,
- (c) Italy,
- (d) Ireland,
- (e) Austria.

For other Member States, 'quality' and/or 'price' were the most important criteria, with the exception of Sweden, where 'whole life cost' was most important.

Table 12.22. Award criteria when judging major strategic purchases on the basis of 'economically most advantageous' – utilities

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Price	1.70	1.43	1.80				2.56	1.71				2.00		1.57
Compatibility														
Whole life cost									1.56		1.88		2.20	
Technical performance														
After sales service														
Financial capacity														
Quality		1.57		1.62						2.60		1.50		
Compliance with specification	2.00				2.00						1.60		1.80	
Base	10	7	10	21	7	0*	9	7	9	5	25	8	5	7

* No responses were received from Greek utilities.

If 'compliance with specification' is excluded on the basis that it is not an award criterion, the most important award criterion was 'price' for:

- (a) Belgium;
- (b) Denmark;

- (c) Italy;
- (d) Ireland.

Compared to central and sub-central government, 'whole life cost' was a more often quoted criterion by utilities, reflecting the more strategic nature of much of their procurement.

12.3.4. Reasons for rejection of tenders

Respondents were asked to rank (1 to 3) the most common reasons for rejecting tenders, with 1 the most common. Scores were then calculated, whereby:

- (a) the maximum score for any factor was 3,
- (b) any score in excess of 1.5 was of greater than average importance.

The reasons respondents chose from were that the tender(er):

- (a) was too expensive,
- (b) was submitted in a foreign language,
- (c) did not meet specifications,
- (d) could not provide after-sales support,
- (e) refused to accept terms and conditions,
- (f) had insufficient financial capacity,
- (g) did not meet other non-technical requirements.

Although the purchasing entities were able to choose from all the above reasons, there was an almost complete focus on:

- (a) price (tenders being too expensive),
- (b) failure to meet specifications.

The importance attached to the other reasons was minimal, with:

- (a) submissions in a foreign language and failure to meet other non-technical requirements not highlighted at all;
- (b) the inability to provide after-sales support only important in Germany (central government) and Austria (supplies);
- (c) refusal to accept terms and conditions highlighted by Germany (central government), Greece (sub-central government) and Austria (works);
- (d) insufficient financial capacity only in Greece (sub-central government).

However, the result was consistent with the information in Section 12.3.3, which demonstrated the emphasis placed by purchasers across the EU on the 'award' criteria of:

- (a) price,
- (b) compliance with specification.

The importance given to price was an expected response, and corroborates that given by suppliers in the supply-side survey in relation to their failure to win new business, both domestically and in other Member States (although in this instance, other factors were also considered to have played an equally important part).

Table 12.23 Reasons for rejection of tenders – price

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Purchasing entity														
Central government	1.88	2.50	2.48	3.00	3.00			2.17	2.20		1.78	2.50	2.33	2.67
Sub-central government	1.67	2.43	1.86	1.62	2.40	2.00	2.00	2.22		2.10	2.56	3.00	1.92	2.50
Utilities	2.60	2.71	2.30	2.50	2.43			2.29	2.44	1.80	2.36	2.20	1.83	2.43
Procurement focus														
Works	2.22	3.00	2.50	2.18	2.54		1.91	1.67	1.87	1.75	2.33	2.25	3.00	3.00
Supplies	1.50	1.71	2.17		2.40	2.00	2.14	2.00	1.80	2.50	2.44	2.67	1.60	2.57
Services	2.00	3.00	2.80	2.00				3.00		2.67	2.60		3.00	2.00

Table 12.24. Reasons for rejection of tenders – failure to meet specifications

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Purchasing entity														
Central government	2.38	3.00	1.95		2.00		2.20	2.17		2.67	2.78	2.25	2.33	2.33
Sub-central government	2.25		2.24		2.05	2.00	1.58	2.33	2.35	2.40	2.04	1.83	2.50	
Utilities	2.00	2.14	2.40	1.60	2.43		2.33	2.57	2.00	2.80	2.40	2.30	2.50	2.00
Procurement focus														
Works	1.67		2.50		1.93		1.64	2.67	2.20	2.75	1.78	1.75	2.00	
Supplies	2.88	1.71	2.08		2.60	2.00	1.86	2.80	1.60	2.50	2.25	2.00	2.50	1.71
Services	2.00			3.00	3.00		2.67	2.00	3.00	2.67	2.10		2.00	2.50

The emphasis placed by purchasers on 'failure to meet specifications' was unexpected, and represents a strong (implied) criticism of the quality of (potential new) suppliers.

Given the directives' requirements, and the fact that, as is discussed in subsequent sections of this chapter, more suppliers are, in general, submitting tenders, the need to administer poor submissions is likely to be seen as a negative feature of the legislation. The results of the supply-side survey in relation to those firms which had failed to win new business in other EU Member States also indicated some of the likely reasons for this, particularly:

- (a) lack of local presence,
- (b) inadequate marketing.

Both the above reason are likely to contribute to a poor comprehension of a purchaser's requirements.

The counter arguments to this, which were again highlighted by unsuccessful firms trying to sell to other EU Member States, are:

- (a) purchasers' resistance to new ideas and suppliers (and their way of addressing terms of reference);
- (b) the continued use of technical, as distinct from functional specifications, and national standards.

12.4. Changes in supplier response since the directives came into force

12.4.1. Overview

The following section looks at purchasing entities' perceptions of the way in which suppliers have responded to the opportunities published in the OJ from a number of perspectives, namely changes in the:

- (a) number of firms expressing interest in becoming suppliers, and in those actually submitting tenders;
- (b) nationality of firms submitting tenders;
- (c) types of firm submitting tenders.

12.4.2. Numbers of firms expressing interest and submitting tenders

Table 12.25. Changes in the number of firms expressing interest in becoming suppliers

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government														
More	3	1	11	1			4	4			5	2	2	2
Fewer									1					
No change	4	1	8	1	1		2	2	4	3	4	2	1	7
Sub-central government														
More	3	5	11	7	8	2	24	5	14	2	37	2	7	3
Fewer			1					1	1	2				
No change	10	12	9	15	33		17	4	12	7	13	4	5	4
Utilities														
More	9	6	7	9	4		5	7	9	2	20	5	6	6
Fewer														
No change	1	1	3	10	2		4			2	5	1	4	1

Overall, most purchasing entities had experienced more firms expressing interest in becoming suppliers. In broad terms, the number of entities reporting more expressions of interest was similar to the numbers which reported publishing more notices since the directives came into force, with the principal exception of sub-central government bodies in France. The focus of procurement in French sub-central government bodies was primarily works, with officials to whom we spoke quoting a lack of interest on behalf of contractors (even those nearby) to bid.

Most utilities, in particular, reported an increase, reflecting:

- (a) their lack of publication pre-directive;
- (b) the operation by many of qualification systems (requiring suppliers to express their interest prior to being qualified and added to a list of potential tenderers).

It was to be expected that the number of purchasers reporting an increase in the actual number of firms submitting tenders would be lower than those reporting an increase in firms expressing interest. This was, in general, the case, although it was more pronounced in:

- (a) central government in Denmark (4 versus 11),
- (b) sub-central government and utilities in the UK (18 versus 37 and 5 versus 20).

Table 12.26. Changes in the number of firms submitting tenders

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government														
More	2		4	1			4	3	2		2	2		1
Fewer			2						1					
No change	6	2	13	1	1		1	3	2	3	7	2	3	9
Sub-central government														
More	2	2	10	5	14	2	24	5	10	2	18	2	5	3
Fewer	1	1					1		2	1	3		1	
No change	10	13	11	18	27		16	4	15	7	30	4	6	4
Utilities														
More	8	6	4	10	4		4	7	6	2	5	4	3	4
Fewer			1									1		
No change	2	1	5	9	3		5		3	2	20	5	3	3

12.4.3. Changes in the nationality of firms submitting tenders

The following section looks at purchasing entities' perceptions of the extent to which there have been increases in the nationality of firms submitting tenders, the nationalities being classified as:

- (a) EU,
- (b) non-EU,
- (c) domestic.

Table 12.27. Increases in the nationality of firms submitting tenders - central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
EU firms*	1		2				1	2	1		1	2		1
Non-EU firms*			2						1			1		
Domestic firms			4				4	4	1		2			
No change	7	2	14	2	1		1	4	3	3	6	2	3	9
Base	9	2	22	2	1	0	6	6	5	3	9	4	3	10

* Includes representative and sales offices. Individual responses do not add to base as respondents could select more than one option, and some did not respond.

Most central government ministries reported no change in the nationality of firms submitting tenders. This is likely to reflect the fact that central government purchasing entities:

- (a) had been subject to the rules for longest, with some of them applying the pre-1987 rules;
- (b) were more likely to have already been targeted by new suppliers due to their high visibility.

Although the majority of sub-central government purchasers reported no change, a consistent proportion had received more tenders from:

- (a) EU firms,
- (b) non-EU firms,
- (c) domestic firms.

Table 12.28. Increases in the nationality of firms submitting tenders – sub-central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
EU firms*	2	4	3	4	11	2	5	3	6	1	14	4	2	1
Non-EU firms*	1	1	5	1	1		1		3		6			1
Domestic firms	1	2	5	3	7	1	16		5	3	15		3	3
No change	11	14	16	15	27		23	6	16	6	27	2	10	4
Base	13	18	22	23	41	2	42	9	27	10	53	6	12	8

* Includes representative and sales offices. Individual responses do not add to base as respondents could select more than one option, and some did not respond.

Table 12.29. Increases in the nationality of firms submitting tenders – utilities

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
EU firms*	7	4	5	3	5		2	6	5	2	6	6	3	5
Non-EU firms*	3	2						3	1	1	2	1	2	1
Domestic firms	2	3	4	5	3		4	1	1	1	5			1
No change	3	3	5	14	2		5	1	3	2	16	4	3	3
Base	10	7	10	21	7	0	9	7	9	5	25	10	7	7

* Includes representative and sales offices. Individual responses do not add to base as respondents could select more than one option, and some did not respond.

The majority of utilities in most Member State had experienced an increase in EU firms submitting tenders. Spain and Portugal, which were not covered by the directives at the time of the survey, had a less positive experience. The high number of utilities in the UK which reported 'no change' reflects the views of operators in the oil and gas exploration and extraction sector since they reported having been operating and sourcing internationally before the Utilities Directive came into force.

12.4.4. Changes in the nature of firms submitting tenders

The following section looks at purchasing entities' perceptions of the extent to which there have been increases in different types of 'organizations' submitting tenders, the organizations being classified as:

- (a) large firms,
- (b) SMEs,
- (c) international consortia,
- (d) domestic consortia.

The majority of central government ministries had perceived no change in the nature of firms submitting tenders.

Table 12.30. Increase in the nature of firms submitting tenders – central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Large firms	1		2				2		5		1	1		1
SMEs	1		6	1			3	2	1	1		1		2
International consortia			1				1					1		1
Domestic consortia			3				1							1
No change	6	2	12	1	1		3	4		2	8	2	3	7
Base	9	2	22	2	1	0	6	6	5	3	9	4	3	10

Note: Figures in columns do not add to base since positive responses are not mutually exclusive.

Table 12.31 Increase in the nature of firms submitting tenders – sub-central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Large firms	1	4	7	2	7	1	8	3	8	1	18		2	
SMEs	1	4	8	5	8	1	15	1	6	3	8		3	2
International consortia			3		1		1	2	1	1	2			1
Domestic consortia			4	1			10		3	1	4			1
No change	12	13	12	17	30	1	15	5	13	5	29	6	8	5
Base	13	18	22	23	41	2	42	9	27	10	53	6	12	8

Note: Figures in columns do not add to base since positive responses are not mutually exclusive.

As for central government purchasers, the majority of sub-central entities had perceived no change in the nature of firms submitting tenders, with the exceptions of:

- (a) Italy – large firms, SMEs and domestic consortia,
- (b) the Netherlands – large firms and SMEs,
- (c) Portugal – SMEs.

In broad terms, however, both large firms and SMEs appear to have responded in all Member States.

Table 12.32. Increase in the nature of firms submitting tenders – utilities

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Large firms	5	5	6	8	4			5	6		8	3	3	4
SMEs	3	3	4	2	3		1	3	3		3	1	2	2
International consortia	4		1		2			1	3		4			1
Domestic consortia	1	1		5			1		4		3			
No change	4	2	4	7	3		7	1	4		15	6	2	2
Base	10	7	10	21	7	0	9	7	9	5	25	10	7	7

Note: Figures in columns do not add to base since positive responses are not mutually exclusive.

In contrast to both central and sub-central government, the majority of utilities had perceived changes in the nature of firms submitting tenders, with the exceptions of:

- (a) Italy,

- (b) the UK (although this again reflects the views of the exploration sector),
(c) Austria.

As might have been expected, more large firms had submitted tenders than any other type of supplier (corroborating the findings of the supply-side survey in sectors with a utilities focus). However, there had been perceived increases across all types of supplier, including SMEs. International and domestic consortia were more in evidence among utilities than for central and sub-central government, reflecting the size and nature of their procurement.

12.5. Changes in supplier base

12.5.1. Overview

The following section looks at purchasing entities' perceptions of the way in which changes in the profile of firms submitting tenders in response to opportunities published in the OJ had been translated into changes in the composition of their supplier bases. This is considered in terms of the:

- (a) nationality of firms,
(b) nature of firms.

12.5.2. Nationality

Table 12.33. Changes to the nationality mix of supplier base – central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Domestic suppliers														
More			1	1				1						1
Fewer			2				2				1			
Same	6	1	15	1	1		4	5	5	5	8		3	6
Don't know	3	1	4							1		4		3
Sales/rep office of an EU supplier														
More			1	1				1	2		1			1
Fewer														
Same	6	1	8				1	1	2		8	2	3	4
Don't know	3	1	13	1	1		5	4	1	3	2	2		5
Sales/rep office of a non-EU supplier														
More			1				1	1	1		1			
Fewer														1
Same	1	1	6	1				1	3		5	1	2	3
Don't know	8	1	15	1	1		5	4	1	3	5	3	1	6
Suppliers from another EU Member State														
More			2	1			2		1		1	1		
Fewer														
Same	4	1	8				2	4	3		4	1	2	
Don't know	5	1	12	1	1		2	2	1	3	4	2	1	1
Non-EU suppliers														
More			1				1				1			
Fewer												1		
Same	3	1	7	1				2	4		4	1	2	3
Don't know	6	1	14	1	1		5	4	1	3	4	2	1	7
Base	9	2	22	2	1	0	6	6	5	3	9	4	3	10

The responses from central government were consistent across most Member States.

The majority of entities had a good feel for the domestic element of their supplier base, with most having perceived no change in the number of such suppliers, although in both Italy and the UK several ministries reported a reduction in domestic suppliers.

In contrast knowledge of the number of non-domestic suppliers was very low. Some entities advised that they:

- (a) either did not segment their supplier base in this way (they were 'nationality blind');
- (b) or that they found it difficult to categorize suppliers by nationality.

A number of purchasers also pointed out that, in a global economy, such an exercise was pointless, since even if a supplier was recognized as being domestic, the origin of any goods could be any number of countries.

Of those entities which had a feel for this, a noticeable minority considered that they now had more non-domestic suppliers than before the directives came into force.

Table 12.34. Changes to the nationality mix of supplier base – sub-central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Domestic suppliers														
More			2		2		1		2		2			
Fewer		2	2	1	1	1	7	2		2	8		1	
Same	12	16	18	14	36	1	26	7	24	7	36		11	7
Don't know	1			8	2		8		1	1	7	6		1
Sales/rep office of an EU supplier														
More	2	2	4	3	2	1	8		7	1	9		2	1
Fewer											2			
Same	7	8	5	5	14		5	7	7	4	16	6	9	4
Don't know	4	8	13	15	25	1	29	2	13	5	26		1	3
Sales/rep office of a non-EU supplier														
More		1					4	1			3		1	
Fewer														
Same	6	7	9	4	8	1	2	3	10	2	18	2	9	4
Don't know	7	10	13	19	33	1	36	5	17	8	32	4	2	4
Suppliers from another EU Member State														
More	1	1	3	1	3		2	2	5	1	5	1		1
Fewer														
Same	6	6	5	3	9	1	4	2	8	1	15	4	6	3
Don't know	6	11	14	19	29	1	36	5	14	8	33	1	6	4
Non-EU suppliers														
More			1		1		2				2			
Fewer														
Same	7	7	6	4	10	1	2	2	10	1	14	2	7	3
Don't know	6	11	15	19	30	1	38	7	17	9	37	4	5	5
Base	13	18	22	23	41	2	42	9	27	10	53	6	12	8

In common with central government, the majority of sub-central entities had a good feel for the domestic element of their supplier base. In contrast to central government most Member States had a number of entities which reported:

- (a) a decrease in the number of domestic suppliers;
 (b) increases in both sales/representative offices of EU suppliers and suppliers from other EU Member States.

A number of entities reported an increase in non-EU suppliers, but this was generally confined to larger entities in the larger Member States.

Table 12.35. Changes to the nationality mix of supplier base – utilities

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Domestic suppliers														
More	2		1	1			1							
Fewer	1	3	2	3	3		1	2	2		4		2	2
Same	7	4	6	12	2		6	5	7	3	19	3	4	4
Don't know			1	5	2		1			2	2	7	1	1
Sales/rep office of an EU supplier														
More	4	2	2	5	1		2	2	1	1	3	2	3	1
Fewer	1				1				1		1			
Same	5	4	3	5	1		2	4	5	1	14	6	3	4
Don't know		1	5	11	4		5	1	2	3	7	2	1	2
Sales/rep office of a non-EU supplier														
More	1			1					1	1	2			
Fewer			1								1			
Same	5	3	3	3	3		2	3	5	1	13	5	3	5
Don't know	4	4	6	17	4	0	7	4	3	3	9	5	4	2
Suppliers from another EU Member State														
More	4	2	1	3	3		1	4	4	1	2	2		2
Fewer							1	1						
Same	5	4	4	3	2	1	4	1	4	1	16	5	4	3
Don't know	1	1	5	15	2	1	3	1	1	3	7	3	3	2
Non-EU suppliers														
More	1	2						1			2			
Fewer							1							
Same	7	4	4	5	4		3	3	5	1	16	8	5	5
Don't know	2	1	6	16	3		5	3	4	4	7	2	2	2
Base	10	7	10	21	7		9	7	9	5	25	10	7	7

In common with both central and sub-central government entities, the majority of utilities had a good feel for the domestic element of their supplier base. In common with sub-central government most Member States reported:

- (a) a decrease in the number of domestic suppliers,
 (b) increases in both sales/representative offices of EU suppliers and suppliers from another EU Member State.

There was little reported change in respect of non-EU suppliers.

12.5.3. Changes in the nature of companies

Table 12.36. Changes to the company mix of supplier base – central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Multinational companies														
More							1		1			1		
Fewer														
Same	6	1	7		1			3	3	1	8	2	2	5
Don't know	3	1	15	2			5	3	1	2	1	1	1	5
Large national firms														
More			1						3					
Fewer										1	1			
Same	5	1	9	2	1		5	4	2	1	8	2	2	4
Don't know	4	1	12				1	2		1		2	1	6
SMEs														
More			1						2					
Fewer									3	1	1	1		
Same	9	1	13	2	1		4	5		1	7	3	3	3
Don't know		1	8				2	1		1	1			7
National consortia														
More											1			
Fewer			1											
Same	2		7	1			3	3	4		4	1	1	3
Don't know	7	2	14	1	1		3	4	1	3	4	3	2	7
International consortia														
More											1			
Fewer														
Same	2		4					1	4		3	2	1	3
Don't know	7	2	18	2	1		6	5	1	3	5	2	2	7
Base	9	2	22	2	1	0	6	6	5	3	9	4	3	10

As described in Section 12.4.3 the majority of central government ministries had perceived no change in the nature of firms submitting tenders. Only a few entities had perceived changes to their supplier bases:

- (a) an increase in SMEs in Denmark;
- (b) some increase in multinational (large) companies in Italy;
- (c) increases in large firms and multinational companies in the Netherlands.

Table 12.37. Changes to the company mix of supplier base – sub-central government

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Multinational companies														
More		1	2	1	2	1	6	4	3	2	11		1	
Fewer														
Same	5	7	11	12	12	1	8	5	10	4	21	4	10	4
Don't know	8	10	9	12	27		28		14	4	21	2	1	4
Large national firms														
More		1	1	3	4		4	2	3	2	11			
Fewer				1	2		2	1	1		1		1	
Same	9	6	12	10	22	1	21	6	19	6	28	5	11	4
Don't know	4	11	9	9	13	1	15		4	2	13	1		4
SMEs														
More		1	1	1	4		7	1	2		3		2	
Fewer	1		1		1	1	3	3	2	2	5			
Same	9	15	15	12	25	1	21	5	22	7	29	6	9	4
Don't know	3	2	4	10	11		11		1	1	16		1	4
National consortia														
More			1	1			2			1	4			
Fewer				1							1			
Same	6	5	11	6	7		10	1	5	1	16	3	5	4
Don't know	7	13	10	15	34	2	30	8	22	8	32	3	7	4
International consortia														
More					1		1				2			
Fewer											2			
Same	4	5	9	4	4		4	1	3		11	3	5	1
Don't know	9	13	35	19	37	2	37	8	24	10	38	3	7	7
Base	13	18	22	23	41	2	42	9	27	10	53	6	12	8

Although, with the exceptions of Italy, the Netherlands and Portugal, most sub-central entities had not perceived any changes in the nature of firms on their supplier basis, in most Member States some entities reported an increase in the number of multinational companies and large national firms.

Similarly, most Member States had entities which reported an increase in the number of SMEs on their supplier bases, although there were also a number which reported a decrease.

Table 12.38. Changes to the company mix of supplier base – utilities

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Multinational companies														
More	1		3	3	1			1	3	2	5	1		2
Fewer														
Same	8	3	3	7	4		6	6	5		18	6	5	3
Don't know	1	4	4	11	2		3		1	3	2	3	2	2
Large national firms														
More		2	4					1	2	1	4		1	
Fewer	1		1	2	2				1	1	4			2
Same	8	4	2	12	3		7	6	6		16	9	4	3
Don't know	1	1	3	7	2		2			3	1	1	2	2
SMEs														
More	1						1	1	2	1	1		1	
Fewer			3	2					1	1	5	1		
Same	8	7	6	10	5		4	6	6		18	8	4	4
Don't know	1		1	9	2		4			3	1	1	2	3
National consortia														
More				1			1		2	1	4			
Fewer	1		1		1		1							
Same	6	6	5	4	2		1	4	4		8	6	3	3
Don't know	3	1	4	16	4		6	3	3	4	13	4	4	4
International consortia														
More	1		1	3	2			1	2	1	6	1		
Fewer														
Same	6	5	2	4	1		1	4	3		7	3	2	4
Don't know	3	2	7	14	4		8	2	4	4	12	6	5	3
Base	10	7	10	21	7	0	9	7	9	5	25	10	7	7

The main change identifiable in respect of utilities was the increase in most Member States of multinational companies. Although there were also increases reported in large national firms and SMEs in half the Member States, half also reported decreases.

12.6. Factors contributing to changes in procurement practices and results

The following section analyses the factors which purchasing entities considered to be most important in terms of changes in their procurement:

- (a) practices – the way procurements are made,
- (b) results – what is purchased.

Each factor is considered by:

- (a) purchasing entity type (central government, sub-central government, utilities),
- (b) the focus of an entity's purchasing (works, supplies, services).

Respondents were asked to rank, 1 to 3, the importance of a series of factors, with 1 being the most important. Scores were then calculated, whereby:

- (a) the maximum score for any factor was 3,
- (b) any score in excess of 1.5 was of greater than average importance.

Respondents chose from:

- (a) publishing in the OJ,
- (b) EU procurement legislation,
- (c) national public procurement legislation,
- (d) economic performance, such as recessions,
- (e) internal organizational changes, such as restructuring,
- (f) the completion of the single European market,
- (g) the GATT Agreement/trade liberalization,
- (h) supplier restructuring,
- (i) increased product/project complexity,
- (j) changes in product technology/innovation.

Specific changes to both practices and results are described in Section 12.7.

Although respondents were able to choose from any of the above reasons, there was an almost complete focus on:

- (a) publishing in the OJ,
- (b) EU procurement legislation,
- (c) national public procurement legislation,
- (d) economic performance, such as recessions.

The importance attached to the other factors was minimal, with:

- (a) internal organizational changes, such as restructuring, important for only central government in the UK (1.63), sub-central government in Greece (1.5), services procurement in Germany (2.0) and Spain (3.0), and supplies procurement in Greece (1.5) and Italy (2.0);
- (b) the completion of the single European market, highlighted only by central government in Germany (1.5), works procurement in Ireland (1.67) and Finland (2.0), and supplies procurement in Austria (2.0);
- (c) the GATT Agreement/trade liberalization, highlighted by only central government in Germany (1.5);
- (d) supplier restructuring, highlighted by utilities in France (3.0 practices and 2.0 results), works procurement results in Germany (1.5) and Austria (1.5), and supplies procurement results in Austria (2.3);
- (e) increased product/project complexity, which was highlighted only for works procurement practices in Sweden (3.0);
- (f) changes in product technology/innovation, which was highlighted for central government results in Finland (1.5) and utilities practices and results in Spain (2.0).

Publication in the OJ, although only an element of the procurement legislation's requirements, was considered separately since it is core to the success of a single market in public procurement. If an entity does not publish, (new) suppliers cannot, by definition, respond.

Although, as might be expected, the requirement was seen by more entities as having more importance for their **practices**, the importance ascribed to it by some utilities, in particular, indicates that publication alone is of benefit.

Table 12.39. Importance of publishing in the Official Journal for procurement practices and results – purchasing entity type

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government Practices	1.60	1.50		2.00								2.25		
Results		2.00												
Sub-central government Practices						1.50		1.56						1.67
Results						1.50								
Utilities Practices	1.90		1.63		1.71			1.57					2.17	
Results	1.50		1.71										2.00	

Table 12.40. Importance of publishing in the Official Journal for procurement practices and results – focus of procurement

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Works Practices		2.00						2.67						3.00
Results	1.60									1.50				
Supplies Practices	1.83					1.50			1.80					
Results						1.50								
Services Practices	2.00											2.00		3.00
Results	1.50													

Similarly, the importance of the publication requirement was greater for **practices** than results when considered by type of procurement.

Table 12.41. Importance of EU procurement legislation for procurement practices and results – purchasing entity type

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government Practices	1.60	3.00	2.07				1.80	2.80	3.00			1.50		1.67
Results			1.53	1.50	3.00		2.00	1.50	2.00					
Sub-central government Practices	1.67		2.00			2.00	2.21	1.67	1.71		1.96	1.67	1.92	
Results			1.62			2.00	1.63							
Utilities Practices	2.00		2.50		2.00		2.00	2.29	2.67		1.71	1.70		
Results	1.67		2.29					2.00						

EU legislation was of higher than average importance in most Member States for all types of purchasing entity type in terms of **practices**. There were, however, a number of Member States where national procurement legislation was considered to be more important (Table 12.44):

- Germany – utilities,
- Spain – central and sub-central government,
- France – central government,

- (d) Portugal – central and sub-central government, and utilities,
- (e) Sweden – central government and utilities.

EU legislation was of greater than average importance in fewer Member States in terms of **results**. There were again a number of Member States where national procurement legislation was considered to be more important (Table 12.44):

- (a) Spain – sub-central government,
- (b) France – sub-central government,
- (c) Ireland – sub-central government,
- (d) Portugal – central and sub-central government,
- (e) Austria – sub-central government,
- (f) Sweden – sub-central government and utilities,
- (g) Finland – utilities.

Table 12.42. Importance of EU procurement legislation for procurement practices and results – focus of procurement

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Works														
Practices	1.71		2.50				1.80	2.00	2.00	1.67	1.56	1.50		2.00
Results			1.40				2.00			1.50				
Supplies														
Practices	2.33		2.10			2.00	2.71	2.80	2.00		1.73	2.00	1.70	2.17
Results			2.00	2.00		2.00	2.00	2.00		2.00				
Services														
Practices	2.50	1.71	1.67				1.71	2.00	3.00				3.00	2.00
Results			1.67		3.00		1.60	2.00	3.00				3.00	

EU legislation was of above average importance in most Member States for all types of procurement in respect of **practices**. There were, however, a number of Member States where national procurement legislation was considered more important (Table 12.44):

- (a) Germany – works,
- (b) Spain – works and services,
- (c) France – work and supplies,
- (d) Portugal – supplies and services,
- (e) Austria – works,
- (f) Sweden – works.

EU legislation was of above average importance in fewer Member States in respect of **results**. There were again a number of Member States where national procurement legislation was considered to be more important (Table 12.44):

- (a) Germany – works,
- (b) Spain – works and services,
- (c) France – work and supplies,
- (d) Portugal – supplies and services,
- (e) the UK – supplies,
- (f) Austria – works,
- (g) Finland – works and supplies.

Table 12.43. Importance of national procurement legislation for procurement practices and results – purchasing entity type

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government														
Practices	1.56			3.00	3.00		2.20		1.75	2.67		2.50	2.67	
Results					3.00		2.67	1.50	1.75	3.00				
Sub-central government														
Practices				2.40	2.25	1.50	1.63			1.86		2.50	2.25	2.00
Results	1.57			2.25	2.04	1.50		1.33		2.00		1.83	1.82	
Utilities														
Practices		1.57					1.50			2.00		1.70	2.00	
Results	1.50											2.00	2.00	1.71

National procurement legislation was of above average importance in most Member States for all purchasing entity types in respect of **practices**. Its importance in Austria, Sweden and Finland is likely to reflect these countries' more recent coverage by EU rules, whilst Portuguese utilities are not, in any case, subject to the Utilities Directive until 1998.

National procurement legislation was of higher than average importance in most Member States for all purchasing entity types in respect of **results**. This was particularly so at sub-central government level.

Table 12.44. Importance of national procurement legislation for procurement practices and results – focus of procurement

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Works														
Practices	1.57	1.50		1.69	2.24		1.80			2.00		2.50	2.00	
Results		2.00		1.73	2.13		1.83			1.50		1.75		3.00
Supplies														
Practices					2.60	1.50				2.67	2.00	2.33	2.20	2.33
Results					2.20	1.50				3.00	1.78			1.67
Services														
Practices	1.50		1.67	3.00			1.86			3.00			2.00	
Results			2.33	3.00			2.00	3.00		3.00			2.00	

National procurement legislation was of above average importance in most Member States for all types of procurement in respect of both **practices** and **results**.

Table 12.45. Importance of economic performance, such as recessions, for procurement practices and results – purchasing entity type

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government														
Practices														
Results	2.25	2.50		1.50								2.25		
Sub-central government														
Practices						1.50								
Results		1.70		1.50		1.50						2.00		2.00
Utilities														
Practices														
Results					1.71							1.80		1.86

Table 12.46. Importance of economic performance, such as recessions, for procurement practices and results – focus of procurement

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Works														
Practices		1.50												
Results											1.56	1.50		
Supplies														
Practices						1.50								
Results						1.50						2.33		1.50
Services														
Practices									2.00					
Results		3.00							2.00					2.00

The economy's performance was of above average importance in only a few Member States, mostly relating to **results**:

- (a) Belgium – central government,
- (b) Germany – central and sub-central government, works and services,
- (c) Spain – central and sub-central government,
- (d) France – utilities,
- (e) Greece – sub-central government and supplies,
- (f) the Netherlands – services,
- (g) the UK – works,
- (h) Austria – central and sub-central government, utilities, works and supplies,
- (i) Finland – sub-central government and utilities, supplies and services.

12.7. Nature of changes and the impact of legislation

The following section:

- (a) looks at changes which purchasing entities had experienced since the directives came into force;
- (b) examines the extent to which the EU legislation was perceived by purchasing entities to have contributed to such changes.

The following possible changes, which are a combination of potential demand-side and supply-side responses to the legislation's requirements, are covered:

- (a) wider choice of suppliers,
- (b) increased number of tenderers,
- (c) improvement in tender quality,
- (d) lower contract prices,
- (e) the advent of new technology,
- (f) more efficient procurement procedures,
- (g) lower cost of procurement,
- (h) improved quality,
- (i) more complex procurement,
- (j) improved supplier service,
- (k) more time-consuming procurement,
- (l) lack of serious responses and/or tenders.

For any change experienced, the entity was asked to assess the extent to which the public procurement legislation had been the cause, namely:

- (a) none,
- (b) partly,
- (c) entirely.

Table 12.47. The impact of public procurement legislation on choice of suppliers – purchasing entity type

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government	9	2	22	2	1	0	6	6	5	3	9	4	3	10
Experienced	2	2	5	1			3	5	4		8	2	1	2
Legislation's impact:														
None			1					1			1			
Partly	2	1	2	1			3	3	4		6	1	1	2
Entirely		1	2					1			1	1		
Sub-central government	13	18	22	23	41	2	42	9	27	10	53	6	12	8
Experienced	4	6	9	9	16	1	23	8	15	6	34	4	5	3
Legislation's impact:														
None				1	4		4	3	4		2	1	5	
Partly	3	4	9	5	12	1	13	4	7	5	27	1	5	2
Entirely	1	2		3			6	1	4	1	5	2		1
Utilities	10	7	10	21	7	0	9	7	9	5	25	10	7	7
Experienced	8	4	6	6	6		5	6	9	3	18	5	6	4
Legislation's impact:														
None				1	1		1			1	1			
Partly	6	1	6	4	5		4	4	6	2	13	2	5	3
Entirely	2	3		1				2	3		4	3	1	1

The number of entities which reported now having a wider choice of suppliers was broadly in line with that which had reported an increase in the number of firms submitting tenders (Table 12.26). Without exception, the majority of these entities, independent of Member State or purchasing entity type, ascribed this increase to the EU procurement legislation either in part, or entirely.

Central government purchasers appeared to have experienced this less than sub-central government entities, with utilities most likely to have experienced it. As for other elements of the survey, this would seem to reflect the relative period for which the entities have been covered, as well as, in the case of central and sub-central government, the size and importance of their procurement.

Table 12.48. The impact of public procurement legislation on number of tenders received – purchasing entity type

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government	9	2	22	2	1	0	6	6	5	3	9	4	3	10
Experienced	2	1	5	1			3	4	2		5	3	1	3
Legislation's impact:														
None	1							1	1		1			1
Partly	1		3	1			3	2	1		4	1	1	2
Entirely		1	2					1				2		
Sub-central government	13	18	22	23	41	2	42	9	27	10	53	6	12	8
Experienced	3	6	6	9	15	2	29	7	14	3	30	4	6	2
Legislation's impact:														
None	1	2		2	3		6	2	2	1	2			
Partly	2	2	3	5	7	2	18	4	6		24	2	5	1
Entirely		2	3	2	5		5	1	6	2	4	2	1	1
Utilities	10	7	10	21	7	0	9	7	9	5	25	10	7	7
Experienced	5	6	7	7	4		3	6	7	3	9	8	3	5
Legislation's impact:														
None				1	1		1			1	1	1	1	4
Partly	3	3	5	4	2		2	3	5	2	4	2	2	1
Entirely	2	3	2	2	1			3	2		4	5		1

The number of entities which reported receiving more tenders again broadly reflected that which had reported an increase in the number of firms submitting tenders since the directives came into force (Table 12.26).

For the vast majority of entities of all types, this increase was ascribed partly or entirely to the legislation.

Table 12.49. The impact of public procurement legislation on tender quality – purchasing entity type

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government	9	2	22	2	1	0	6	6	5	3	9	4	3	10
Experienced	2	1	4	1			2	2	2	1	6	2	3	3
Legislation's impact:														
None	2							1			3		1	
Partly		1	4	1			2	1	1	1	3	1	2	3
Entirely									1			1		
Sub-central government	13	18	22	23	41	2	42	9	27	10	53	6	12	8
Experienced	2	5	6	4	7	1	19	4	12	2	15	1	6	1
Legislation's impact:														
None	2	2		1	5		4	2	3		4			
Partly		2	4	3	2	1	12	2	6	2	11	1	5	1
Entirely		1	2				3		3				1	
Utilities	10	7	10	21	7	0	9	7	9	5	25	10	7	7
Experienced	2		3	4			3	3	5	3	5	1	2	
Legislation's impact:														
None			1				1			1	4		1	
Partly	2		2	4			1	3	3	2	1	1	1	
Entirely							1		2					

Fewer entities reported an improvement in tender quality than those which had experienced an increase in the number of tenders received. This was particularly so in relation to utilities. However, of those that had experienced an improvement, most attributed this in part, and a minority entirely, due to the legislation.

Table 12.50. The impact of public procurement legislation on contract prices – purchasing entity type

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government	9	2	22	2	1	0	6	6	5	3	9	4	3	10
Experienced	1		7				2	3	2	1	5	2	1	3
Legislation's impact:														
None	1		2					2			4			2
Partly			5				2	1	2	1	1	2	1	1
Entirely														
Sub-central government	13	18	22	23	41	2	42	9	27	10	53	6	12	8
Experienced	2	7	11	1	7	2	17	7	19	4	20	4	6	2
Legislation's impact:														
None	1	1	1	1	4		3	5	3		7	1		
Partly	1	5	10		3	2	11	2	14	3	13	3	6	2
Entirely		1					3		2	1				
Utilities	10	7	10	21	7	0	9	7	9	5	25	10	7	7
Experienced	5	5	5	1	5		7	4	5	1	11	8	2	2
Legislation's impact:														
None		1		1	2		3		1	1	4	2	1	1
Partly	5	4	5		3		3	4	3		7	5	1	1
Entirely							1		1			1		

In most Member States at all levels of purchasing entity type, a significant minority had experienced lower contract prices, although this was more noticeable among utilities than for central and sub-central government. In almost all cases, the majority of entities which had experienced lower prices ascribed this in part to the legislation.

Table 12.51. The impact of public procurement legislation on new technology – purchasing entity type

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government	9	2	22	2	1	0	6	6	5	3	9	4	3	10
Experienced	1	2	3					2	4		4	2	1	2
Legislation's impact:														
None	1	2	2					2			3			1
Partly			1						4		1	2	1	1
Entirely														
Sub-central government	13	18	22	23	41	2	42	9	27	10	53	6	12	8
Experienced	4	4	4	6	2	2	12	4	10	2	16		8	2
Legislation's impact:														
None	2	2	1	2	1		2	2	6		8			
Partly	2	2	3	2	1	2	8	2	4	2	8		3	2
Entirely				2			2						5	
Utilities	10	7	10	21	7	0	9	7	9	5	25	10	7	7
Experienced	1	4	2	6	2		2	4	2	2	9	2	3	2
Legislation's impact:														
None		1		2	2			1	1	2	7		1	2
Partly		3	2	4			2	3	1		2	2	1	
Entirely	1												1	

Only a minority of entities had experienced changes in technology, with this more important for utilities than for central and sub-central government.

However, for those that had experienced changes in technology, in general most considered the legislation to have contributed in part, at least, to such developments. This was confirmed by a number of interviews where a number of purchasers had benefited from innovative approaches put forward by new suppliers. This had, in turn, resulted in considerable cost savings.

Table 12.52. The impact of public procurement legislation on efficiency of procurement procedures – purchasing entity type

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government	9	2	22	2	1	0	6	6	5	3	9	4	3	10
Experienced			3				1	3	2		7		1	2
Legislation's impact:														
None			1								4			1
Partly			2				1	3	2		2		1	1
Entirely											1			
Sub-central government	13	18	22	23	41	2	42	9	27	10	53	6	12	8
Experienced	2	4	6	5	7	1	17	6	11	1	17	1	3	2
Legislation's impact:														
None	2	2	2		1		7	3	4		4			
Partly		2	4	3	6	1	6	2	4	1	11	1	3	2
Entirely				2			4	1	3		2			
Utilities	10	7	10	21	7	0	9	7	9	5	25	10	7	7
Experienced	4	1	3	1	2		3	3	5	2	11	1	1	
Legislation's impact:														
None	1		1	1					1	1	3			
Partly	3	1	2		2		3	2	3	1	6	1	1	
Entirely								1	1		2			

At central government level only a minority of entities reported having experienced improvements to their procurement procedures, with these limited to seven Member States. However, most of those that had experienced such a change attributed it in part to the legislation.

Although only a minority at sub-central government level reported having experienced improvements to their procurement procedures, in contrast to central government, this was common to all Member States (except Belgium). Again, most of those that had experienced such a change attributed this in part to the legislation, although a number in five Member States also attributed it entirely to the legislation.

Again, only a minority of utilities considered that they now had more efficient procurement procedures, although, like sub-central government, at least one entity in each Member State (except Greece and Finland) reported this. Significantly, however, the vast majority of these utilities attributed efficiency improvements to the legislation in part.

Table 12.53. The impact of public procurement legislation on the cost of procurement – purchasing entity type

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government	9	2	22	2	1	0	6	6	5	3	9	4	3	10
Experienced			3	1			1	1	1	2	3		1	1
Legislation's impact:														
None			1					1	1		3		1	1
Partly			2	1						2				
Entirely							1							
Sub-central government	13	18	22	23	41	2	42	9	27	10	53	6	12	8
Experienced		3	4	3	1	2	10	2	11	4	8			
Legislation's impact:														
None		2		2	1		1	2	6		3			
Partly		1	4	1		2	7		5	3	5			
Entirely							2			1				
Utilities	10	7	10	21	7	0	9	7	9	5	25	10	7	7
Experienced	2	1	1	2	1		2	1	2		6		1	
Legislation's impact:														
None		1		2	1		1				4		1	
Partly	2		1				1	1	1		2			
Entirely									1					

Only a very few central government entities had experienced lower costs of procurement, although they were spread across nine Member States. For the majority, procurement legislation was not a contributory factor.

Although, similarly, only a minority of sub-central government entities had experienced lower costs of procurement, the majority considered the legislation to have been partly responsible.

Although utilities in most Member States had experienced lower costs of procurement, only a minority considered the legislation to have been partly responsible.

Table 12.54. The impact of public procurement legislation on quality of tenders – purchasing entity type

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government	9	2	22	2	1	0	6	6	5	3	9	4	3	10
Experienced	1	1	1				1	2	1		7	1	2	1
Legislation's impact:														
None	1	1						1			5	1	1	1
Partly			1				1	1	1		2		1	
Entirely														
Sub-central government	13	18	22	23	41	2	42	9	27	10	53	6	12	8
Experienced	3	3	3	6	7	2	11	4	13	1	15	1	8	
Legislation's impact:														
None	2	2		1	5	2	2	1	3		7			
Partly	1	1	3	4	2		8	1	8	1	7	1	5	
Entirely				1			1	2	2		1		3	
Utilities	10	7	10	21	7	0	9	7	9	5	25	10	7	7
Experienced	1		2	7	1		1	3	4	3	7	2	2	
Legislation's impact:														
None			1	2	1					1	4			
Partly			1	5			1	3	3	2	3	2	1	
Entirely	1								1				1	

Only a minority of central government entities had experienced an improvement in tender quality, with the majority of these ascribing any such change to factors other than the legislation.

In contrast, whilst still only a minority of sub-central government entities and utilities had experienced an improvement in tender quality, the majority of them in both cases attributed this in part, or entirely, to the legislation.

Table 12.55. The impact of public procurement legislation on the complexity of procurement – purchasing entity type

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government	9	2	22	2	1	0	6	6	5	3	9	4	3	10
Experienced	4	2	14				1	3	5	2	7	3	3	1
Legislation's impact:														
None	1	1	5										1	
Partly		1	6					1	3	1	5	2	2	1
Entirely	3		3				1	2	2	1	2	1		
Sub-central government	13	18	22	23	41	2	42	9	27	10	53	6	12	8
Experienced	6	9	10	8	6	1	22	8	16	6	41	6	9	
Legislation's impact:														
None	2	2				1	4	1	1		2	2		
Partly	3	3	4	5	2		10	4	6	3	15	1	5	
Entirely	1	4	6	3	4		8	3	9	3	24	3	4	
Utilities	10	7	10	21	7	0	9	7	9	5	25	10	7	7
Experienced	6	5	6	2	6		3	6	7	3	18	9	6	3
Legislation's impact:														
None				1	1						4			
Partly	4	1	3		2		2	4	4	3	3	2	5	1
Entirely	2	4	3	1	3		1	2	3		11	7	1	2

A majority of entities at all levels in most Member States reported having experienced more complex procurement since the directives came into force, with the vast majority attributing this in part, or entirely, to the legislation.

Table 12.56. The impact of public procurement legislation on supplier service – purchasing entity type

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government	9	2	22	2	1	0	6	6	5	3	9	4	3	10
Experienced			2	1				1			4	2	1	1
Legislation's impact:														
None			1					1			3		1	
Partly			1	1							1	1		
Entirely												1		1
Sub-central government	13	18	22	23	41	2	42	9	27	10	53	6	12	8
Experienced	2	5	3	6		1	8	4	7		13		1	
Legislation's impact:														
None	1	2	3	1				2	1		5			
Partly	1	2		4			7	1	6		6		1	
Entirely		1		1		1	1	1			2			
Utilities	10	7	10	21	7	0	9	7	9	5	25	10	7	7
Experienced	2	1	3	2	1		1		2		8	1	1	
Legislation's impact:														
None			2	1	1						5			
Partly		1	1	1			1		1		2		1	
Entirely	2								1		1	1		

Very few central government entities in seven of the Member States had perceived an improvement in supplier service, with legislation only an important factor for a minority of these.

Although, at a sub-central government level, an improvement had been seen in most Member States, this was again only the case for a minority of entities. However, the majority of those that had experienced an improvement attributed it in part, or entirely, to the procurement legislation.

Similarly, although at least one utility in most Member States had seen an improvement, this was only a minority in each Member State. However, in most cases, procurement legislation was considered to have been the cause or a contributory factor of this change.

Table 12.57. The impact of public procurement legislation on procurement timescales – purchasing entity type

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government	9	2	22	2	1	0	6	6	5	3	9	4	3	10
Experienced	4	2	13		1		2	5	5	2	7	3	3	5
Legislation's impact:														
None			3						1				1	
Partly		2	2					1	4		3	2		1
Entirely	4		8		1		2	4		2	4	1	2	4
Sub-central government	13	18	22	23	41	2	42	9	27	10	53	6	12	8
Experienced	6	11	12	15	32	1	26	9	19	5	42	6	10	6
Legislation's impact:														
None	2	1		2	5	1	5	1	1		2			
Partly		6	3	6	8		11	4	7	2	12		2	1
Entirely	4	4	9	7	19		10	4	11	3	28	6	8	5
Utilities	10	7	10	21	7	0	9	7	9	5	25	10	7	7
Experienced	6	5	6	4	5		8	7	8	2	22	10	5	5
Legislation's impact:														
None			1	1			1				1		1	
Partly	3		1		2		4	2	3	1	6	1	3	3
Entirely	3	5	4	3	3		3	5	5	1	15	9	1	2

A majority of entities at all levels in all Member States (except the Spanish central government) reported having experienced more time-consuming procurement since the directives came into force, with the vast majority attributing this change in part, or entirely, to the legislation.

Table 12.58. The impact of public procurement legislation on the seriousness of responses and/or tenders – purchasing entity type

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
Central government	9	2	22	2	1	0	6	6	5	3	9	4	3	10
Experienced			1				1	2	1	1	3		1	
Legislation's impact:														
None								1			1		1	
Partly							1	1	1	1	2			
Entirely			1											
Sub-central government	13	18	22	23	41	2	42	9	27	10	53	6	12	8
Experienced	1	4	3	2	3	1	3	2	7	2	13		2	1
Legislation's impact:														
None		2	2	2	2	1		2	4	1	5			
Partly		2	1		1		3		3	1	3		1	
Entirely	1										5		1	1
Utilities	10	7	10	21	7	0	9	7	9	5	25	10	7	7
Experienced	1	3	1	1			1		2		5	2	2	
Legislation's impact:														
None				1			1		1		1		1	
Partly		3									2	1	1	
Entirely	1		1						1		2	1		

Very few entities at central government level highlighted the issue of having to deal with a lack of serious responses and/or tenders, although of those that did, the majority attributed this

in part to the legislation. Although only a few entities at sub-central government level highlighted this as an issue, it was common to all Member States.

Some utilities in most Member States highlighted this issue with, in common with central government, the majority attributing it in part, or entirely, to the legislation.

13. Supply side

13.1. Overview

13.1.1. *Ex ante* hypothesis

In 1987 it was assumed that:

- (a) the legislation would result in greater awareness of opportunities and more fairness in contract awards;
- (b) this would be reflected in penetration of previously closed markets – domestic and other EU – by competitive suppliers.

13.1.2. Coverage

This chapter provides an analysis of the results of a survey carried out to determine the extent to which suppliers perceive the barriers to open and fair procurement identified by the Cecchini study (European Commission, 1988) to have been overcome. Specifically, the survey determined the extent to which:

- (a) firms use the OJ or TED to identify business opportunities;
- (b) information in the OJ and TED related to domestic public-sector and utilities contracts has resulted in the identification of additional business opportunities, the degree and reasons for resultant successes or failures, and firms' intentions;
- (c) information in the OJ and TED related to public-sector and utilities contracts in other Member States has resulted in the identification of additional business opportunities, the degree and reasons for resultant successes or failures, and firms' intentions;
- (d) firms considered information on public-sector and utilities contracts (covered by the directives) to be adequate;
- (e) firms considered there to have been an increase in non-domestic players competing for and winning business from their domestic public-sector/utilities customers.

13.1.3. Data

Our approach was to:

- (a) focus our sample on the procurement-sensitive supplying sectors, accounting for some 62% of the value of procurement;
- (b) ensure that the large Member States and major supplying sectors had adequate representation for the purposes of making inferences about the total population.

Quota samples were drawn on a 4:1 basis from TED and Kompass and other business directories to ensure representation of all Member States and procurement-sensitive sectors. Random samples were drawn in each cell (Member State and supplying sector). In total 6,000 companies were drawn from:

- (a) published CANs in 1994 and 1995,
- (b) Kompass and other business directories.

This approach yielded an effective sample of 1,608 companies, which was representative of the size of firms selling to the public sector/utilities within the quotas.

Because telephone-based industrial market research response rates are difficult to predict due to the problem of finding the target respondent 'in and free', a target and minimum realized sample of 2,000 and 1,500 were set. A sample of 1,608 companies was realized (Table 13.1), covering a cross-section of company sizes, in particular SM&Es, as well as companies which act as subcontractors to suppliers to the public sector/utilities (Table 13.2).

In some instances, due to the manner in which firms responded:

- (a) sample sizes in some Member States became so small that estimated percentages would be misleading;
- (b) samples in other Member States, despite being relatively small, were considered since estimated percentages were consistent with the results where sample sizes were adequate.

These are highlighted in the text where appropriate.

A bias in the sample was identified in the form of the CANs-based sample containing approximately 50% more OJ/TED users than that drawn from Kompas and other business directories. For the bulk of the analysis this bias is irrelevant, since the focus is on those respondents who are users of the OJ/TED.

However, since OJ/TED users had a higher propensity to win additional domestic and export business, the large number of OJ/TED users in the CANs-based sample would lead to an overstatement of any quantitative estimates of:

- (a) overall use of the OJ and TED (Figures 13.1 to 13.3);
- (b) overall success rates in relation to domestic business won as a result of the OJ and TED (Figures 13.11 to 13.13);
- (c) overall success rates in relation to non-domestic business won as a result of the OJ and TED (Figures 13.22 to 13.24).

In these particular instances, bias in the CANs-based sample was removed by adjusting all values by the ratio:

$$\frac{p_1}{p_2}$$

where p_1 = the proportion of Kompas-based respondents reading the OJ/TED and p_2 = the proportion of CANs-based respondents reading the OJ/TED.

Estimates of p_1 and p_2 based on the sample averages were 0.41 and 0.62 respectively, yielding an average adjustment factor of 0.66 (0.41/0.62).

With market research surveys of this nature, there are two approaches to the treatment of 'don't know's':

- (a) classifying them as 'no';
- (b) allocating them pro-rata between 'yes' and 'no'.

In all questions, it is far from clear whether some of the 'don't know's could really be 'yes's. Given this, we have adopted a conservative approach and classified them as 'no's, accepting that, in some cases, this may result in an extremely small underestimate.

The central selection criterion for firms surveyed was that they should, at a minimum, be selling to the public sector and/or utilities in their own Member State.

Survey respondents were managers with specific responsibility for public-sector/utilities markets.

Table 13.1. Member State and sectoral coverage

	315	316	33	341/2	344	351	362	37	453	471/2	502	83	Total
D	15	9	24	21	20	20	11	11	10	11	24	24	200
F	19	9	24	20	20	20	9	11	11	10	23	24	200
I	19	5	24	22	22	19	10	10	7	8	29	22	197
UK	25	10	27	22	23	15	7	7	12	4	24	25	211*
E	14	8	18	14	15	14	8	8	10	8	18	18	153
B/L	8	4	13	10	10	11	5	5	5	5	12	12	100
NL	10	4	12	10	9	10	5	4	6	4	12	12	98
DK	6	3	9	6	6	5	3	3	3	3	9	9	65
P	5	5	7	6	8	5	3	3	2	1	9	7	61
IRL	4	3	6	5	5	4	3	4	3	3	6	7	53
GR	4	4	3	6	6	3	1	4	4	2	6	7	50
A	11	4	12	8	10	8	5	6	6	5	13	12	100
S	6	4	9	6	6	5	4	4	4	4	9	9	70
SF	4	3	6	6	5	3	3	3	2	3	6	6	50
	150	75	194	162	165	142	77	83	85	71	200	194	1,608

UK figures do not total 211 since, due to a computer error, NACE identifying codes for 14 records were lost.

To assist readers, Appendix A gives the sectors corresponding to the NACE codes in the tables and figures.

Table 13.2. Company size and subcontractor coverage

Company characteristics	Number	Percentage
Small (less than 100 employees)	817	51
Medium (101-250 employees)	298	19
Large (251+ employees)	493	31
Total	1,608	100
Subcontractors	655	41

13.1.4. Key findings

Supply-side structure

Across all Member States, and within most sectors, there were a significant number of non-domestic subsidiaries selling to the public sector/utilities.

Overall, 40% of firms surveyed were selling, or had tried to sell, to other (non-domestic) EU markets in various ways, of which:

- (a) 31% were currently selling to public-sector/utilities customers in other EU Member States;
- (b) 9% had tried to sell to public-sector/utilities customers in other EU Member States (but were not now doing so).

37% of firms surveyed had not tried to sell to other Member States. Some 35% of these firms (13% of all firms surveyed) reported identification of opportunities as a key problem.

Overall outcome from use of the OJ and TED

Overall, 41% of all firms surveyed had obtained information from the OJ and TED, although there were differences between Member States, and a significantly higher percentage of large firms (69%) obtained information from the OJ and TED than medium-sized (53%) and small (34%) companies.

As a result of opportunities identified from the OJ and TED, 13% of all firms surveyed had won additional domestic business.

Overall, some 30% of firms which used the OJ and TED had identified additional business opportunities in other EU Member States, and almost 10% of firms which used the OJ and TED had won additional business as a result, some 4% of all firms surveyed.

Large firms had been most successful in obtaining additional new business in both domestic and non-domestic markets as a result of opportunities identified in the OJ and TED. However, those small and medium-sized firms which had used the OJ and TED, were as successful as large companies in winning business.

The OJ and TED were seen in a positive fashion by those firms which had obtained information from them, with over 80% intending/expecting to submit at least as many tenders in response to notices in the future.

Impact of publication and notification requirements for domestic business

Of the firms which had obtained information from the OJ and TED, almost half had identified additional domestic business opportunities.

Response rates to new opportunities were very high, with over 90% having submitted tenders, and more than 70% of those submitting having won business as a result.

Of those firms which had won business as a result of the OJ and TED, success was generally size- and sector-independent.

Price was the major reason given by firms for failing to win additional business from opportunities identified in the OJ and TED. Whilst demand-side barriers were perceived to play a role – particularly reluctance on behalf of purchasers to accept new suppliers and ideas – this was offset by an acknowledgement of insufficient local presence and inadequate marketing.

Of the firms which had identified additional domestic business opportunities, 85% intended to submit at least as many tenders in the future.

Impact of publication and notification requirements for non-domestic business

A significantly higher percentage of firms reading the OJ/TED sell to other EU Member States than those not reading the OJ/TED.

The higher percentage readership of the OJ and TED in a Member State, the higher the percentage of firms selling to other EU Member States.

A significantly higher percentage of larger companies had won business than medium-sized and small companies.

Response rates, in common with those for additional domestic opportunities, were high, with over 80% of those which had identified new opportunities having submitted tenders. Of these, 44% had subsequently won business.

Firms attributed their success to a range of factors. Whilst price was important, equal importance of service, quality and technical innovation indicated:

- (a) successful non-domestic bidders were not succeeding on price alone;
- (b) purchasers were awarding contracts on the basis of the 'economically most advantageous' tender.

The most important reason for failing to win business was purchasers' reluctance to take new suppliers seriously, but firms also acknowledged price and insufficient local presence as contributory factors.

Most firms considered the cost of submitting tenders for non-domestic business to be greater than for domestic business. Marketing and bid preparation itself were the most important additional costs.

Over 80% of all firms which had identified additional non-domestic opportunities intended to submit at least as many tenders in the future.

Adequacy of information

Of those firms which reported using the OJ and TED, some 67% (32% of all firms interviewed) considered the information contained in notices adequate for business purposes.

At a general level, the quality of information provided was seen to be lacking, since:

- (a) 9% of all firms interviewed had tried to sell to other EU Member States, but were not now doing so;
- (b) of the 58% of firms which had not tried to sell to other EU Member States, the principal reasons given were difficulty in identifying opportunities (13%) and the complexity of administrative procedures (10%).

Perceived increase in competition from non-domestic firms

Overall, 36% of all firms surveyed had noticed an increase in non-domestic firms competing for, and winning, business from their own public-sector and utilities customers.

This perception was supported by other survey results, principally that:

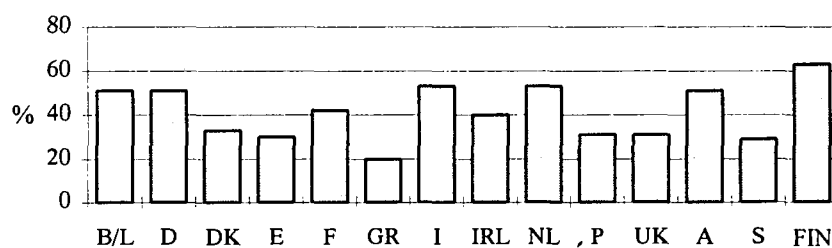
- (a) 31% of all firms surveyed were currently selling to public-sector/utilities customers in other EU Member States;
- (b) 21% of all firms surveyed were selling through offices/companies based in other Member States (although clearly there is a degree of overlap, and the extent to which firms actually know whether competitors in their own markets are non-domestic subsidiaries is debatable).

13.2. Overall awareness

From a supply-side perspective the key measure of increasing awareness of public procurement opportunities is the extent to which suppliers use the OJ or its electronic version, TED. Fairness and transparency are crucial once a tender process has commenced. However, if a potential supplier is unaware of the opportunity in the first place, fairness and transparency are, in essence, academic. If a notice published in the OJ is unfair, a supplier does have the ability to challenge it, but if it does not appear, the supplier can do nothing.

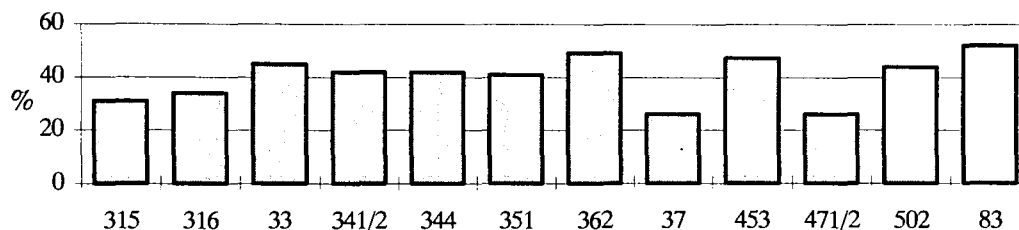
Some 41% of all firms surveyed reported that they obtained information on business opportunities from the OJ or TED, although there were variations between Member States, sectors and company sizes.

Figure 13.1. Use of the OJ and TED – Member State



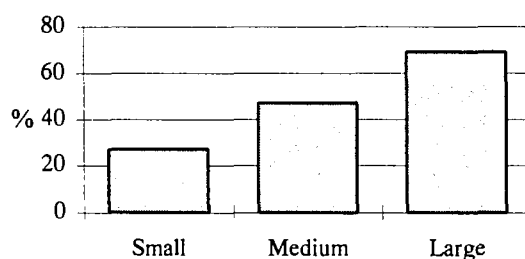
Sample: All companies selling to the public sector/utilities (1,608) adjusted to remove CANs bias.

The percentage of firms which reported that they obtained information from the OJ and TED ranged from 20% in Greece to 63% in Finland.

Figure 13.2. Use of the OJ and TED – sector

Sample: All companies selling to the public sector/utilities (1,608) adjusted to remove CANs bias.

From a sectoral perspective, differences were less pronounced, ranging from 26% of paper and stationery (NACE 471/2) and medical equipment (NACE 37) firms and 31% of boiler and metal structures firms (NACE 315); to 52% of business services firms (NACE 83).

Figure 13.3. Use of the OJ and TED – company size

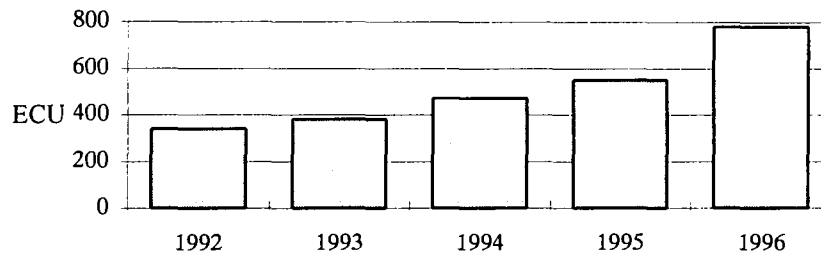
Sample: All companies selling to the public sector/utilities (1,608) adjusted to remove CANs bias.

There were significant differences in the size of companies which reported obtaining information from the OJ and TED, with a higher percentage of large firms (69%) than of small (27%) and medium-sized companies (47%).

This lower level of SME usage is likely to reflect their:

- (a) acknowledged lower general levels of awareness,
- (b) lesser involvement (and ability to be involved) in major public-sector contracts.

An additional reason is likely to be that neither the OJ nor TED is provided free (although Community-funded bodies, such as Euro Info Centres (EICs), do provide information services at reduced prices). For an SME, the cost of subscribing to the OJ or TED could be a barrier. The annual subscription to the OJ has more than doubled since 1992 (Figure 13.4).

Figure 13.4. Annual subscription to 'S' series of the Official Journal, 1992-96

Source: 'S' Series Official Journal (1992-96).

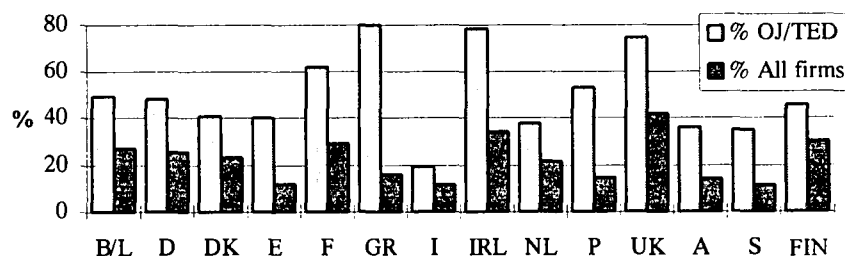
13.3. Impact of publication requirements with regard to domestic public-sector markets

The 1988 report, *The cost of 'non-Europe' in public procurement*, showed that in addition to a lack of intra-European (cross-border) trade, domestic public-sector markets were often as insular, with, for example, purchasers in neighbouring regions paying significantly different prices for the same or similar products. As a result, the opening up of public procurement was also thought likely to lead to an increase in inter-Member State trade.

The OJ/TED is the only universal source of information on public-sector/utilities opportunities in a Member State. The aim of the survey was to determine whether firms using this source have identified opportunities which they would not otherwise have identified, a subset of which resulted in 'additional business'. This 'additional' business is considered over and above any increase in business through historic channels.

13.3.1. New opportunity identification

Of all firms which reported having obtained information from the OJ or TED, almost half had identified additional domestic opportunities as a result. This represented 23% of all firms interviewed.

Figure 13.5. Additional domestic opportunities from the OJ and TED – Member State

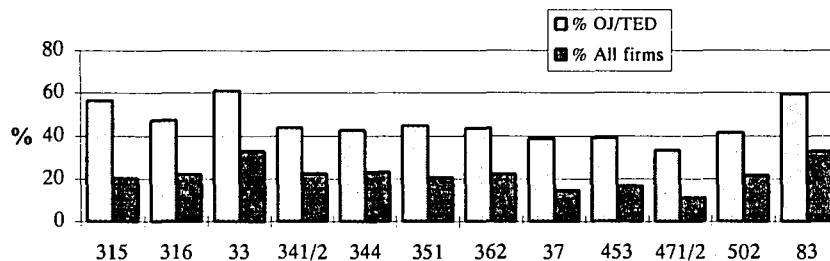
Sample: All companies selling to the public sector/utilities (1,608), and all companies selling to the public sector/utilities and obtaining information from the OJ and TED (775).

With the exception of Italy, where only 19% of OJ/TED users had identified additional domestic opportunities, the levels of identification ranged from 35% in Sweden to around 80% in Greece and Ireland.

Considered as a percentage of all firms surveyed, however, a different picture emerged, reflecting the lower usage of the OJ and TED described in Section 13.2.1:

- (a) Greece 16%,
- (b) Portugal 15%,
- (c) Austria 14%,
- (d) Spain 12%,
- (e) Sweden 10%.

Figure 13.6. Additional domestic opportunities from the OJ and TED – sector



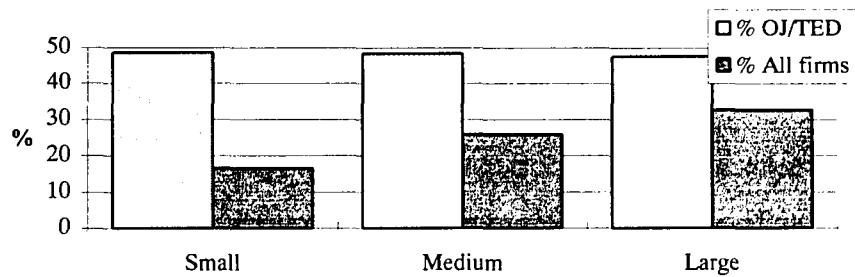
Sample: All companies selling to the public sector/utilities (1,608), and all companies selling to the public sector/utilities and obtaining information from the OJ and TED (775).

In contrast, from a sectoral perspective – as for the use of the OJ and TED in general – there were less pronounced differences between sectors in terms of those firms which did obtain information from the OJ and TED, with most on or around 40%, representing around 23% of all firms surveyed

Least successful were paper and stationery firms (NACE 471/2), where only 33% had identified additional opportunities, representing only 11% of all firms surveyed. This situation is likely to reflect both the commodity nature of these products, and the dominance of SME suppliers focusing on local markets.

Most successful were firms in the office machinery (NACE 33) and business services (NACE 83) sectors, where around 60% of firms using the OJ and TED had identified new opportunities, representing some 33% of all firms surveyed.

Although 39% of firms using the OJ and TED in the medical equipment (NACE 37) and clothing (NACE 453) sectors had identified additional opportunities, this represented only 14% and 16% respectively of all firms surveyed.

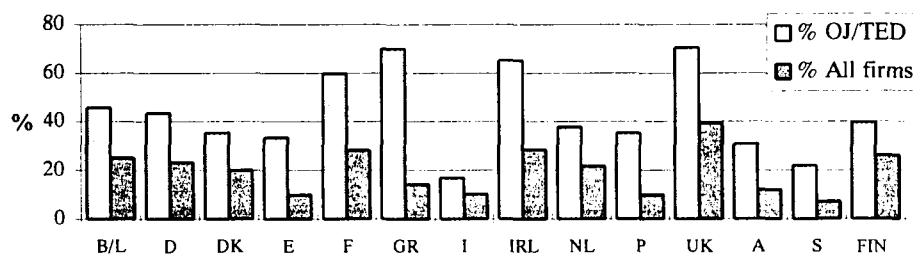
Figure 13.7. Additional domestic opportunities from the OJ and TED – company size

Sample: All companies selling to the public sector/utilities (1,608), and all companies selling to the public sector/utilities and obtaining information from the OJ and TED (775).

For firms which obtained information from the OJ and TED, the percentages that had identified additional opportunities were broadly size-independent (around 50%). As a percentage of all firms surveyed, however, a higher percentage of large firms (33%) had identified opportunities than had medium-sized (26%) and small (17%) firms.

13.3.2. Response to new opportunities

The overall response to additional domestic business opportunities was very positive, with 90% of firms which had identified new opportunities submitting tenders. This represented 44% of all firms which obtained information from the OJ and TED, and 21% of all firms surveyed.

Figure 13.8. Positive response to additional domestic opportunities identified from the OJ and TED – Member State

Sample: All companies selling to the public sector/utilities (1,608), and all companies selling to the public sector/utilities and obtaining information from the OJ and TED (775).

The response rate to additional domestic business opportunities was equally high across all Member States, with most between 30 and 45%, although they did range from 17% of Italian and 22% of Swedish firms, to between 60% and 70% of French, Greek, Irish and UK firms.

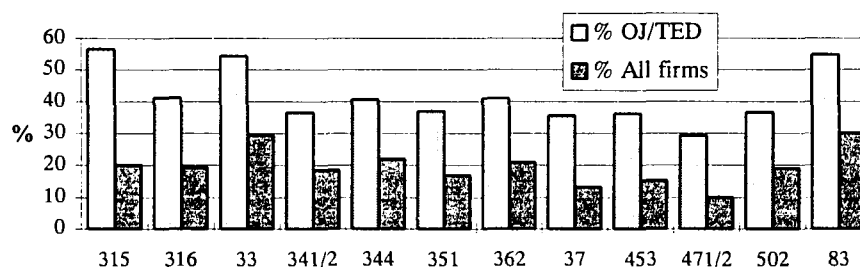
Considered as a percentage of all firms surveyed, however, a different picture emerged, reflecting the level of usage of the OJ and TED described in Section 13.2.1. The highest were:

- (a) UK 39%,
- (b) France 28%,
- (c) Finland 26%.

The lowest were:

- (a) Greece 14%,
- (b) Austria 12%,
- (c) Italy 11%,
- (d) Portugal 10%,
- (e) Spain 10%,
- (f) Sweden 7%.

Figure 13.9. Positive response to additional domestic opportunities identified from the OJ and TED – sector



Sample: All companies selling to the public sector/utilities (1,608), and all companies selling to the public sector/utilities and obtaining information from the OJ and TED (775).

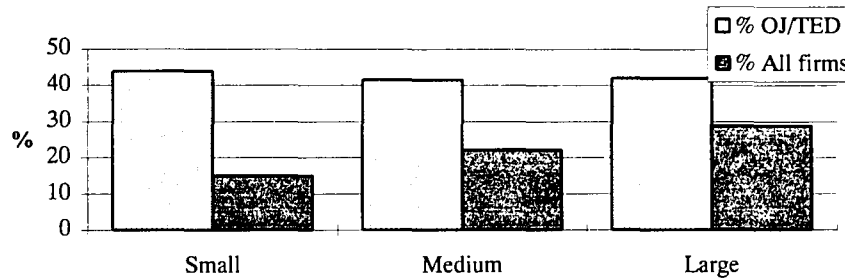
The sectoral response rate to additional domestic business opportunities varied less than by Member State, ranging from 57% to 29%:

- (a) 55–57%: boilers and metal structures (NACE 315), office machinery (NACE 33), and business services (NACE 83);
- (b) around 40%: telecommunications equipment (NACE 344), office furniture (NACE 316), railway rolling stock (NACE 362);
- (c) 35–37%: medical equipment (NACE 37), clothing (NACE 453), power generation/distribution equipment (NACE 341/2), construction (NACE 502);
- (d) 29%: paper and stationery (NACE 471/2).

In contrast to Member States, considered as a percentage of all firms surveyed, differences were less pronounced:

- (a) 29%: office machinery (NACE 33) and business services (NACE 83);
- (b) 19–21%: construction (NACE 502), boilers and metal structures (NACE 315), railway rolling stock (NACE 362), telecommunications equipment (NACE 344);
- (c) 17–19%: motor vehicles (NACE 351), power generation/distribution equipment (NACE 341/2), office furniture (NACE 316);
- (d) 13–15%: medical equipment (NACE 37), clothing (NACE 453);
- (e) 10%: paper and stationery (NACE 471/2).

Figure 13.10. Positive response to additional domestic opportunities identified from the OJ and TED – company size



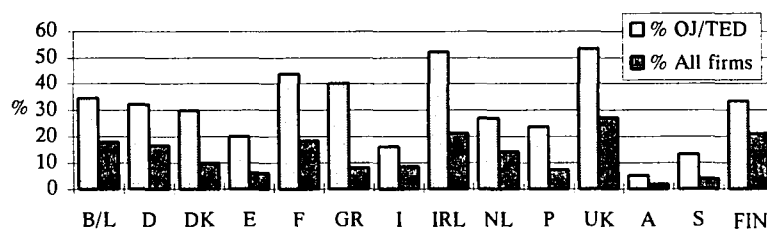
Sample: All companies selling to the public sector/utilities (1,608), and all companies selling to the public sector/utilities and obtaining information from the OJ and TED (775).

There was little difference between company sizes, with around 43% of firms using the OJ and TED submitting tenders. As a percentage of all firms surveyed, a higher percentage of large companies submitted tenders – 29% versus 22% of medium-sized and 15% of small companies.

13.3.3. Results of tenders submitted in relation to additional domestic business opportunities

The overall success rate in relation to additional domestic business opportunities was positive, with over 70% of firms which had submitted tenders in response to new opportunities identified from the OJ and TED winning new business. This represented 32% of all firms which obtained information from the OJ and TED, and 13% of all firms surveyed.

Figure 13.11. Success rates from tenders submitted in respect of additional domestic business opportunities in the OJ and TED – Member State



Sample: All companies selling to the public sector/utilities (1,608), and all companies selling to the public sector/utilities and obtaining information from the OJ and TED (775) adjusted to remove CANs bias.

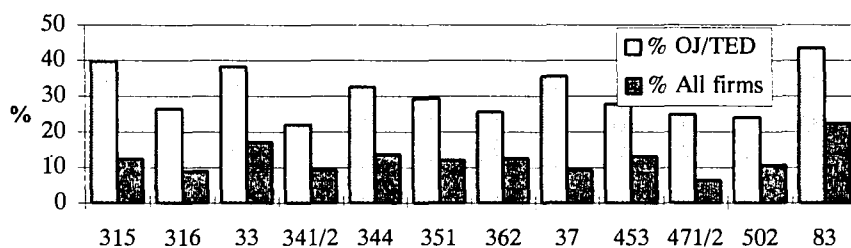
As a percentage of firms which obtained information from the OJ and TED, most Member States had a success rate of around 30%, but:

- the most successful were the UK (53%), Ireland (52%), France (44%), Greece (40%);
- the least successful were Sweden (13%), Italy (10%), Austria (5%).

As a percentage of all firms surveyed, however, success rates were lower, and also showed a wider and more differentiated range:

- (a) UK: 27%,
- (b) Ireland, Finland: 21%,
- (c) Belgium, France: 18%,
- (d) Netherlands, Germany: 14–16%,
- (e) Italy, Denmark: 9–10%,
- (f) Spain, Greece, Portugal, Austria, Sweden: 2–8%.

Figure 13.12. Success rates from tenders submitted in respect of additional domestic business opportunities in the OJ and TED – sector



Sample: All companies selling to the public sector/utilities (1,608), and all companies selling to the public sector/utilities and obtaining information from the OJ and TED (775)) adjusted to remove CANs bias.

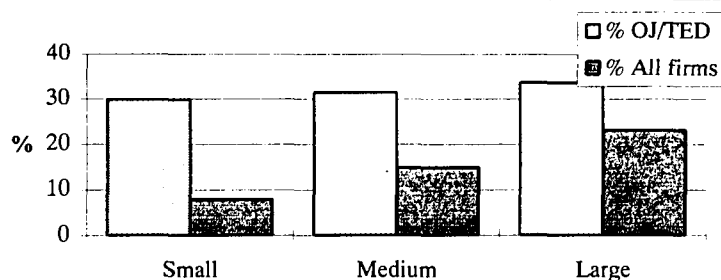
The variation in reported success rates by sector was similar to that reported by Member State.

As a percentage of firms which obtained information from the OJ and TED, the most successful sectors were business services (NACE 83), boilers and metal structures (NACE 315), office machinery (NACE 33), medical equipment (NACE 37) and telecommunications equipment (NACE 344) with between 33% and 43% having won business. Other sectors had success rates of between 22% and 29%.

As a percentage of all firms surveyed, however, success rates were lower, and showed a different profile:

- (a) business services (NACE 83) firms led, with a success rate of 22%;
- (b) office machinery (NACE 33) with a success rate of 17%;
- (c) remaining sectors having success rates of between 9% and 14%, with the exception of paper and stationery firms (NACE 471/2) with only a 6% success rate.

Figure 13.13. Success rates from tenders submitted in respect of additional domestic business opportunities in the OJ and TED – company size



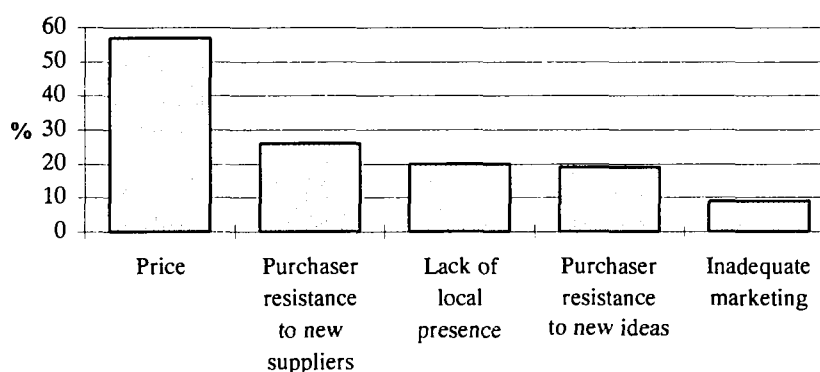
Sample: All companies selling to the public sector/utilities (1,608), and all companies selling to the public sector/utilities and obtaining information from the OJ and TED (775) adjusted to remove CANs bias.

As a percentage of firms which obtained information from the OJ and TED, there was no appreciable difference between the success rates of large (34%), medium-sized (31%) and small (30%) firms, but as a percentage of all firms surveyed, differences in success rates were more pronounced:

- (a) large – 23%,
- (b) medium – 15%,
- (c) small – 8%.

13.3.4. Reasons for failure to win business

Figure 13.14. Reasons for failure to win new additional domestic business



Sample: All firms which had failed to win business having submitted tenders in response to notices in the OJ/TED (69).

The predominant reason given for failure to win new domestic business, irrespective of Member State, sector or company size was price.

Firms which had failed to win new business also acknowledged their own inadequacies:

- (a) insufficient local presence (20%),

(b) inadequate marketing (9%).

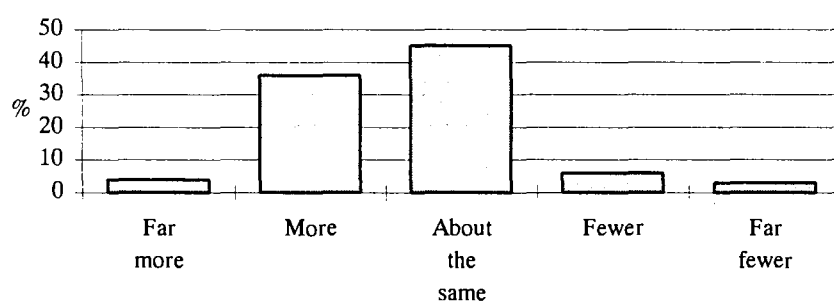
By the same token, a number of 'non-tariff barriers' were also identified, namely purchaser reluctance to accept:

- (a) new ideas (19%),
- (b) potential new suppliers (26%).

From a sectoral perspective, price was given as the principal reason for failing to win new business.

13.3.5. Intentions

Figure 13.15. Intentions with regard to the submission of tenders in response to future domestic business opportunities identified in the OJ or TED



Sample: All firms which had identified additional business opportunities in the OJ/TED (373).

Overall, the vast majority of firms (85%) which had already identified new domestic opportunities reported intending to submit at least as many tenders in the future in response to additional business opportunities identified in the OJ or TED, irrespective of Member State, sector and company size.

This represented 41% of all firms which had obtained information from the OJ and TED, and 20% of all firms surveyed.

13.4. Impact of publication requirements with regard to non-domestic Member State public-sector markets

13.4.1. New opportunity identification

Of the firms which reported using the OJ and TED to obtain information on public-sector/utilities business, some 30% had identified additional opportunities in other EU Member States as a result.

A significantly higher percentage of firms using the OJ and TED sell to other EU Member States than those not using the OJ and TED.

Table 13.3. Relationship between OJ and TED usage and firms selling to other EU Member States – company size

Company size	Use OJ/TED		Do not use OJ/TED	
	Firms selling to other EU Member States	Base (100%)	Firms selling to other EU Member States	Base (100%)
Large	169 (50%)	338	37 (30%)	122
Medium	60 (38%)	159	33 (28%)	118
Small	85 (31%)	278	87 (17%)	518

A significantly higher proportion of large than medium, and medium than small, firms, which are users of the OJ and TED, sell to other EU Member States.

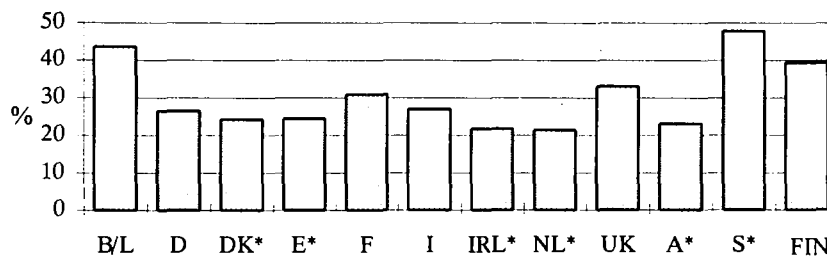
Independent of company size, a significantly higher proportion of OJ/TED users than non OJ/TED users sell to other EU Member States.

Table 13.4. Relationship between OJ and TED usage and firms selling to other EU Member States – Member State

Member state	Use OJ/TED		Do not use OJ/TED	
	Firms selling to other EU Member States	Base (100%)	Firms selling to other EU Member States	Base (100%)
Belgium/Luxembourg	27 (49%)	55	11 (24%)	45
Germany	55 (52%)	106	27 (35%)	77
Denmark	12 (32%)	37	7 (26%)	27
Spain	17 (38%)	45	10 (10%)	101
France	44 (47%)	94	19 (21%)	92
Greece	1 (10%)	10	-	40
Italy	37 (31%)	119	5 (7%)	73
Ireland	9 (39%)	23	10 (36%)	28
Netherlands	19 (34%)	56	11 (31%)	35
Portugal	2 (12%)	17	5 (12%)	41
United Kingdom	48 (41%)	118	22 (26%)	85
Austria	15 (38%)	39	15 (28%)	54
Sweden	13 (57%)	23	13 (30%)	44
Finland	15 (45%)	33	3 (19%)	16

The level of OJ and TED usage in Member States was positively correlated with selling to other EU Member States; the greater the usage, the higher the number of firms selling to other EU Member States.

Figure 13.16. Additional opportunities in other EU Member States identified from the OJ and TED – Member State

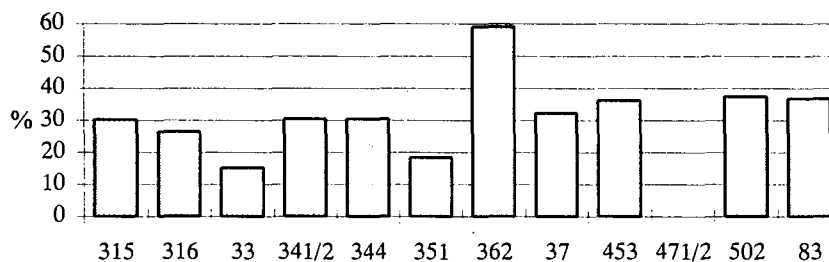


Sample: All firms using the OJ/TED which had identified additional non-domestic opportunities (775). Greece and Portugal are not analysed since estimated percentages are not statistically significant. All Member States highlighted by * have samples which are small (between 5 and 13). They have been considered because the estimated percentages are statistically significant and consistent with the results of the other Member States where samples are adequate.

The percentage of firms which had identified additional opportunities in other EU Member States from the OJ or TED ranged from Sweden (48%) and Belgium (44%), to the Netherlands (21%).

For most Member States between 23% and 29% of firms had identified additional non-domestic business opportunities.

Figure 13.17. Additional opportunities in other EU Member States from the OJ and TED – sector



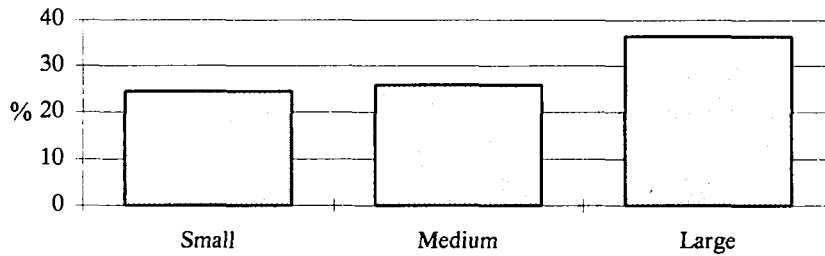
Sample: All firms using the OJ/TED (775) which had identified additional non-domestic opportunities.

Sectoral differences were more pronounced with regard to the identification of additional new business opportunities in other Member States:

- no firms in the paper and stationery sector (NACE 471/2);
- 15% of firms in the office machinery sector (NACE 33) and 18% of firms in the motor vehicles sector (NACE 351);
- 26–30% of firms in the boilers and metal structures (NACE 315), office furniture (NACE 316), power generation/distribution equipment (NACE 341/2) and telecommunications equipment (NACE 344) sectors;

- (d) 32–38% of firms in the medical equipment (NACE 37), clothing (NACE 453), business services (NACE 83) and construction (NACE 502) sectors;
- (e) 57% of firms in the railway rolling stock (NACE 362) sector.

Figure 13.18. Additional opportunities in other EU Member States from the OJ and TED – company size



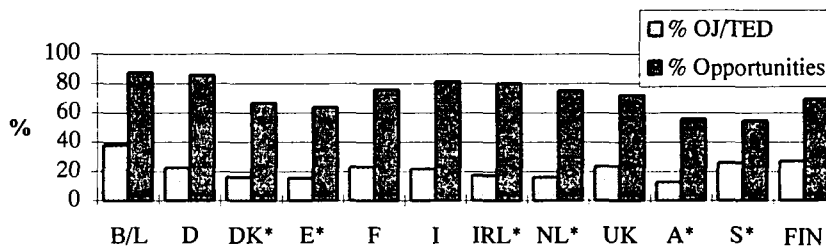
Sample: All firms using the OJ/TED (775) which had identified additional non-domestic opportunities.

In terms of company size, large firms had been most successful with 36% identifying new opportunities. However, the difference between medium-sized and small companies was not significant – 26% compared to 24%.

13.4.2. Response to new opportunities

In common with additional domestic opportunities, the overall response to additional opportunities in other Member States was positive, with over 70% of firms having responded to calls for tender. This represented 21% of all firms which had obtained information from the OJ or TED.

Figure 13.19. Positive response to additional opportunities in other EU Member States identified in the OJ and TED – Member State



Sample: All firms using the OJ/TED (775), and all firms which had identified additional non-domestic opportunities (232). Greece and Portugal are not analysed since estimated percentages are not statistically significant. All Member States highlighted by * have samples which are small (between 5 and 13). They have been considered because the estimated percentages are statistically significant and consistent with the results of the other Member States where samples are adequate.

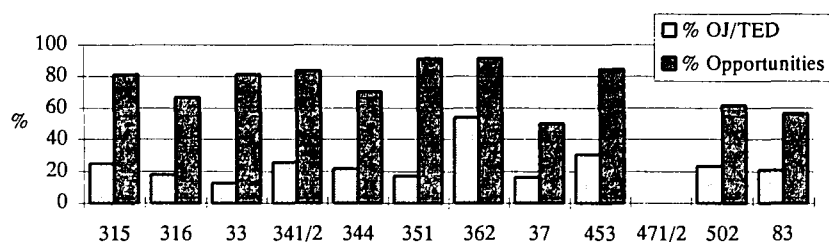
The percentage of firms which had submitted tenders in response to additional non-domestic opportunities ranged from 55% in Sweden to 88% in Belgium with, in general, the larger Member States having higher response rates:

- (a) Germany: 86%,
- (b) Italy: 81%,
- (c) France: 76%,
- (d) Netherlands: 75%,
- (e) UK: 72%.

The exceptions to this were Ireland and Finland, which had 80% and 69% response rates, and Spain, which had a 64% response rate.

As percentages of all firms which had used the OJ and TED, a broadly similar profile was evident, with the exception of Sweden and Finland which had higher response rates (26% and 27%) than all Member States other than Belgium (38%).

Figure 13.20. Positive response to additional opportunities in other EU Member States identified in the OJ and TED – sector

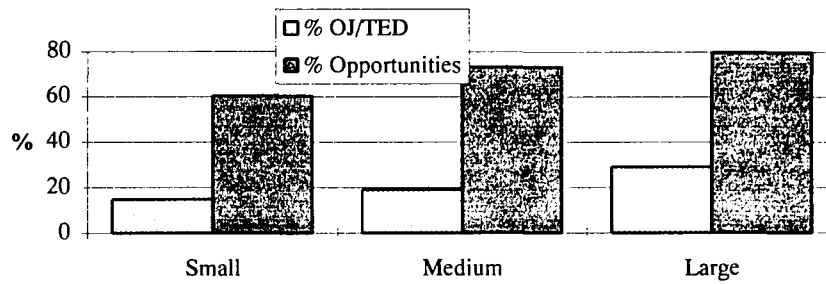


Sample: All firms using the OJ/TED (775) and all firms which had identified additional non-domestic opportunities (232).

The response rate to additional opportunities was somewhat wider between sectors than between Member States, ranging from 0% for paper and stationery firms (NACE 471/2) – reflecting the lack of any additional opportunities identified – to 50% for medical equipment firms (NACE 37) and 91% for firms active in the railway rolling stock sector (NACE 362).

As percentages of all firms which had used the OJ and TED, however, response rates were broadly similar to those in the Member States in the range of 17% to 31%. The exception to this was railway rolling stock (NACE 362), where 54% of all firms which had used the OJ and TED had submitted tenders in other EU Member States.

Figure 13.21. Positive response to additional opportunities in other EU Member States identified in the OJ and TED – company size



Sample: All firms using the OJ/TED (775) and all firms which had identified additional non-domestic opportunities (232).

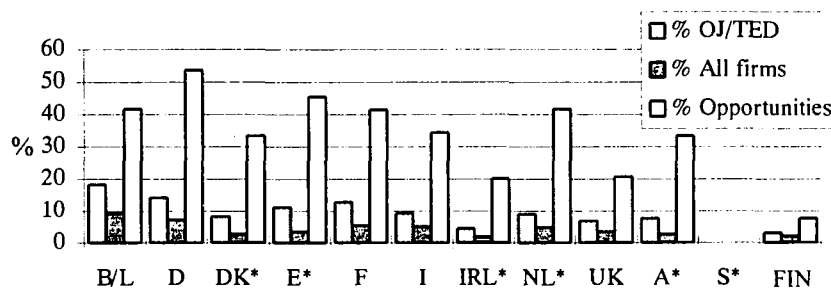
A significantly higher percentage of large companies (80%) than medium-sized (73%) and small (60%) firms had submitted tenders in response to additional opportunities identified.

As a percentage of all firms which had used the OJ and TED, this difference was more pronounced, with 29% of large companies having submitted tenders, in comparison with 19% and 15% for medium-sized and small firms respectively.

13.4.3. Results of tenders submitted

The overall success rate in relation to additional non-domestic business opportunities identified in the OJ and TED was positive, with some 44% of firms which had submitted tenders having won new business. This represented almost 10% of all firms which obtained information from the OJ and TED, and 4% of all firms surveyed.

Figure 13.22. Success rates for tenders submitted in respect of additional business opportunities in other EU Member States identified in the OJ and TED – Member State



Sample: All firms selling to other EU Member States (500), using the OJ/TED (775), and all firms which had identified additional non-domestic opportunities (232). Greece and Portugal are not analysed since estimated percentages are not statistically significant. All Member States highlighted by * have samples which are small (between 5 and 13). They have been considered because the estimated percentages are statistically significant and consistent with the results of the other Member States where samples are adequate. Results are adjusted to remove CAN bias.

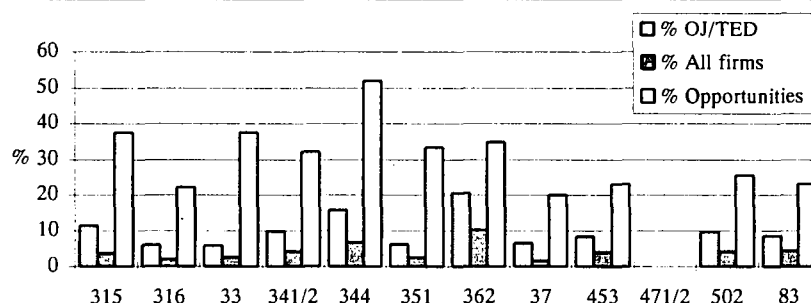
Success rates for firms which had submitted tenders in response to additional non-domestic opportunities ranged from 0 to 54%, with, in general, firms from the larger Member States most successful:

- (a) 54%: Germany,
- (b) 41–45%: France, Netherlands, Belgium and Spain,
- (c) 33–34%: Italy, Denmark,
- (d) 17–21%: UK, Ireland,
- (e) 8%: Finland,
- (f) 0%: Sweden.

As percentages of all firms which had used the OJ and TED, a broadly similar order was seen, although firms in Belgium (18%) were more successful than those in Germany (14%). As a percentage of all firms surveyed, a similar profile also emerged:

- (a) 9%: Belgium,
- (b) 7%: Germany,
- (c) 5%: France, Italy, Netherlands,
- (d) 3%: Denmark, Spain, UK, Austria,
- (e) 2%: Ireland, Finland,
- (f) 0%: Sweden.

Figure 13.23. Success rates for tenders submitted in respect of additional business opportunities in other EU Member States identified in the OJ and TED – sector



Sample: All firms selling to other EU Member States (500), using the OJ/TED (775), and all firms which had identified additional non-domestic opportunities (232). Results are adjusted to remove CAN bias.

At a sectoral level, success rates varied from 0–52%:

- (a) 52%: telecommunications equipment (NACE 344),
- (b) 38%: boilers and metal structures (NACE 315), office machinery (NACE 33),
- (c) 33–35%: motor vehicles (NACE 351), railway rolling stock (NACE 362), power generation/distribution equipment (NACE 341/2),
- (d) 26%: construction (NACE 502),
- (e) 20–23%: medical equipment (NACE 37), clothing (NACE 453), business services (NACE 83), office furniture (NACE 316).

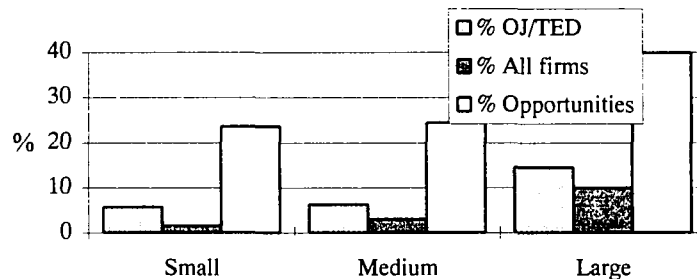
As percentages of firms which had used the OJ and TED, however, a different profile was seen:

- (a) 21%: railway rolling stock (NACE 362),
- (b) 16%: telecommunications equipment (NACE 344),
- (c) 11%: boilers and metal structures (NACE 315),
- (d) 10%: power generation/distribution equipment (NACE 341/2), construction (NACE 502),
- (e) 8%: clothing (NACE 453), business services (NACE 83),
- (f) 6%: office furniture (NACE 316), motor vehicles (NACE 351), medical equipment (NACE 37), office machinery (NACE 33).

As percentages of all firms surveyed, a slightly different profile was seen:

- (a) 10%: railway rolling stock (NACE 362),
- (b) 7%: telecommunications equipment (NACE 344),
- (c) 4%: boilers and metal structures (NACE 315), power generation/distribution equipment (NACE 341/2), clothing (NACE 453), construction (NACE 502), business services (NACE 83),
- (d) 3%: office machinery (NACE 33), motor vehicles (NACE 351),
- (e) 2%: medical equipment (NACE 37), office furniture (NACE 316).

Figure 13.24. Success rates for tenders submitted in respect of additional business opportunities in other EU Member States identified in the OJ and TED – company size



Sample: All firms selling to other EU Member States (500), using the OJ/TED (775), and all firms which had identified additional non-domestic opportunities (232). Results are adjusted to remove CAN bias.

A significantly higher percentage of large companies (40%) than medium-sized (26%) and small (24%) firms had won business resulting from tenders submitted in response to additional opportunities.

As percentages of all firms which had used the OJ and TED, this difference was more pronounced, with 14% of large companies having won business, versus 6% for both medium-sized and small firms.

As percentages of all firms surveyed, successes resulting from using the OJ and TED accounted for 10% of large, 3% of medium-sized and 2% of small companies.

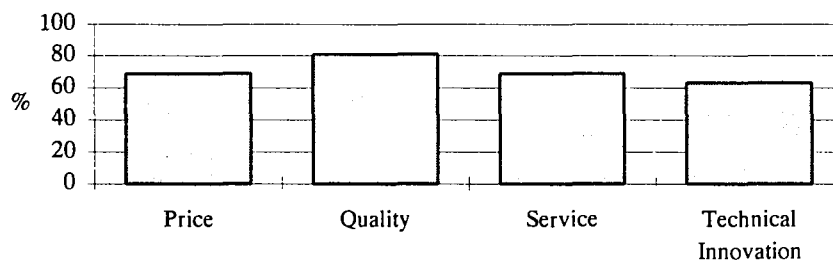
Whilst large companies' higher success rate is not unsurprising, given their greater resources, their more flexible approach to bidding for cross-border business is also likely to be a contributory factor. Only 38% of all large firms selling in other EU Member States did so individually (as a single supplier only) compared to 57% of small and 54% of medium-sized companies. Such an approach is more likely to overcome both the demand- and supply-side barriers to success described in Section 13.4.5. Further, 45% of all large firms selling in other EU Member States did so both as a single supplier and as part of a consortium, compared with 25% of small and 31% of medium-sized suppliers.

13.4.4. Reasons for success in winning new business

No one particular reason emerged for winning new business, although the equal importance given to price, quality, service and technical innovation would seem to reflect:

- (a) the use of the 'economically most advantageous' award criterion (rather than lowest price);
- (b) the fact that successful cross-border suppliers are selling on a range of criteria, rather than looking to enter such markets solely on the basis of price.

Figure 13.25. Reasons given for success in other EU Member States identified in the OJ and TED

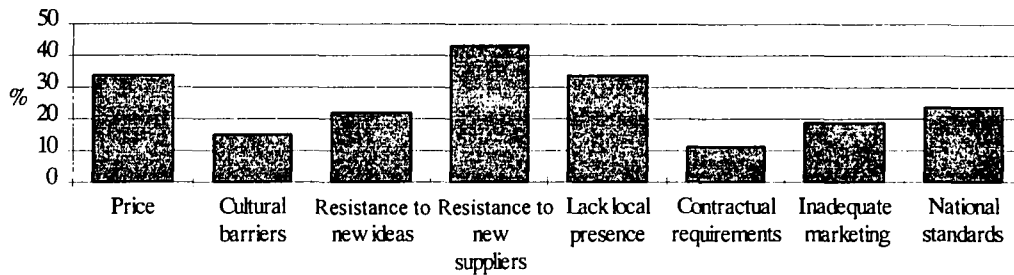


Sample: All firms which had won additional business in other EU Member States as a result of opportunities identified in the OJ/TED (75).

13.4.5. Reasons for failure to win new business

Firms which had failed to win business in other EU Member States attributed this to a range of practical and administrative reasons associated with both their own business and purchasers (Figure 13.26). This indicates that barriers to selling cross-border are a combination of demand- and supply-side factors.

Figure 13.26. Reasons given for failure to win business in other EU Member States in respect of opportunities identified in the OJ and TED



Sample: All firms which had failed to win business as a result of opportunities identified in the OJ/TED (94).

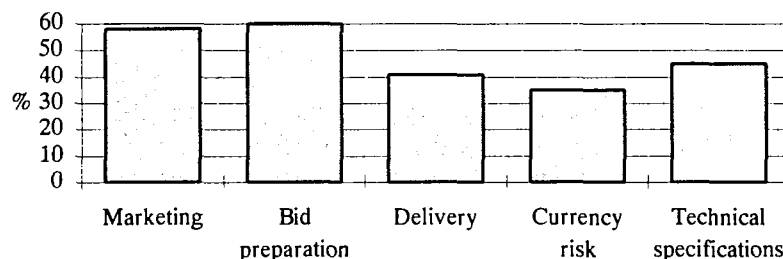
The most important factor highlighted by 43% of firms was the reluctance of purchasers to consider new suppliers seriously. At the same time, however, some 34% highlighted an insufficient local presence and 34% price as factors, both of which are likely to have contributed to demand-side reluctance to take them seriously.

The reluctance by purchasers to accept new ideas (22%) and reference to national standards (24%) are clear demand-side barriers, but these are likely to be exacerbated by suppliers' acknowledged insufficient local presence (34%) and lack of sufficient resources to market effectively (18%).

13.4.6. Resource requirements

Over half (55%) of the firms submitting tenders in response to non-domestic EU business considered this more expensive than submitting in their own Member State.

Figure 13.27. Reasons for higher cost of submitting tenders in other EU Member States identified in the OJ or TED



Sample: All firms which had identified additional non-domestic opportunities (232).

The major additional costs identified by firms were marketing (58%) and actual bid preparation (60%), irrespective of Member State, sector and company size.

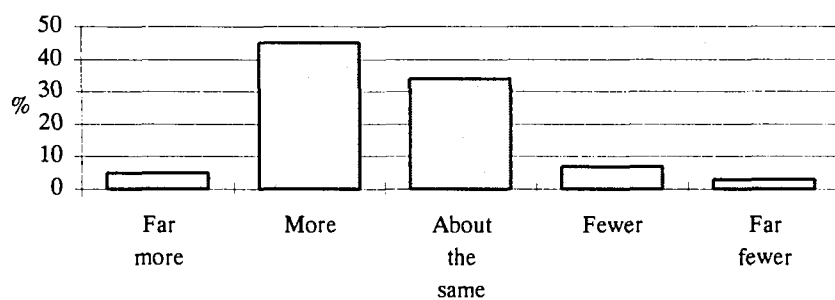
The issue of meeting different technical specifications was highlighted by 45% of firms, but was more important for medium-sized and large companies. Similarly, although minimizing currency risk was highlighted by 35% of firms, it was more important for large (39%) than medium-sized and small companies (27% and 33% respectively). This is likely to reflect the larger and more technically complex projects targeted by larger firms.

Delivery was highlighted by 41% of firms, but was particularly important to companies in railway rolling stock (57%).

13.4.7. Intentions

The vast majority of firms (84%) which had already identified additional non-domestic opportunities reported their intention to submit at least as many tenders in the future in response to additional business opportunities identified in the OJ or TED, irrespective of Member State, sector and company size.

Figure 13.28. Intentions with regard to the submission of tenders in response to future business opportunities in other EU Member States identified in the OJ and TED



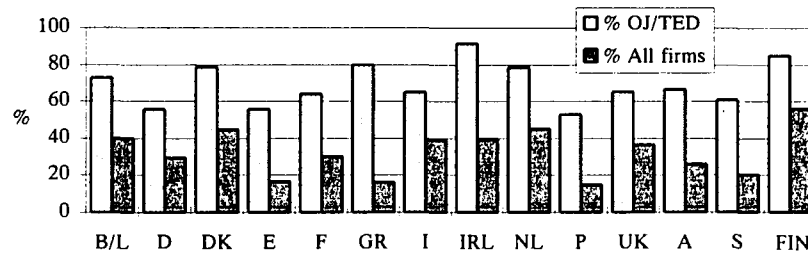
Sample: All firms which had identified additional non-domestic opportunities (232).

13.5. Adequacy of information

The key determinant of the adequacy of the information provided in the OJ and TED is the extent to which businesses are able to use it in a practical fashion. At one level, the fact that firms had submitted tenders, won business as a result, and intended to submit more tenders indicates that they had been able to use the information provided on contracts to make decisions. (The results of this are described in previous sections.)

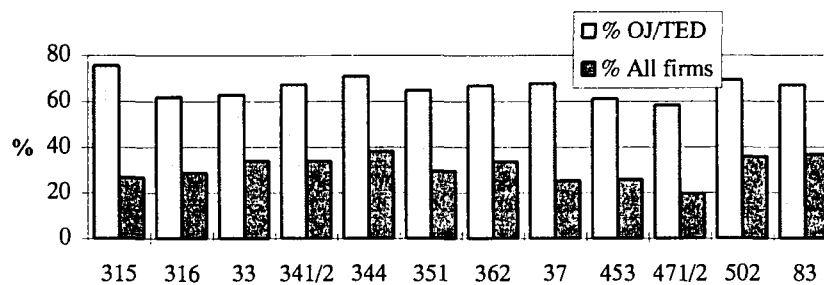
Of the firms which do obtain information from the OJ and TED, overall 67% considered the type of information which is provided by purchasing entities in notices to be adequate for their business purposes. This represented 32% of all firms surveyed.

In addition, 23% of those firms, which had not tried to sell in other EU Member States quoted difficulty in identifying opportunities as a reason.

Figure 13.29. Adequacy of information provided in the OJ and TED – Member State

Sample: All companies selling to the public sector/utilities (1,608), and all companies selling to the public sector/utilities and obtaining information from the OJ and TED (775).

The results at a Member State level indicated that, in general, firms do find the information given in notices valuable. This was reflected by the fact that the percentage of respondents saying they found information useful at least equals, and in most cases considerably exceeds, the percentage of firms which reported having identified additional opportunities. This implies that, at the very least, firms found the information useful, even if it served only to confirm existing market knowledge.

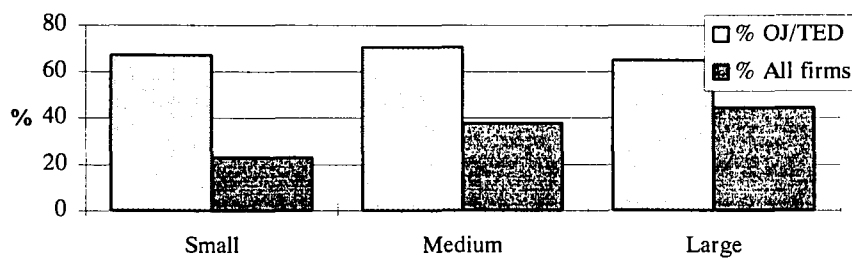
Figure 13.30. Adequacy of information provided in the OJ and TED – sector

Sample: All companies selling to the public sector/utilities (1,608), and all companies selling to the public sector/utilities and obtaining information from the OJ and TED (775).

At a sectoral level, the majority of all firms which had used the OJ and TED considered the information they obtained adequate, ranging from 58% of firms in the paper and stationery sector (NACE 471/2) to 75% of those active in boilers and metal structures (NACE 315).

However, when considered as a percentage of all firms surveyed:

- those sectors which had been most successful in winning new business were more positive (office machinery, power generation/distribution equipment, telecommunications equipment, railway rolling stock, construction and business services);
- paper and stationery firms, which had been least successful in relation to both domestic and non-domestic business, were least positive.

Figure 13.31. Adequacy of information provided in the OJ and TED – company size

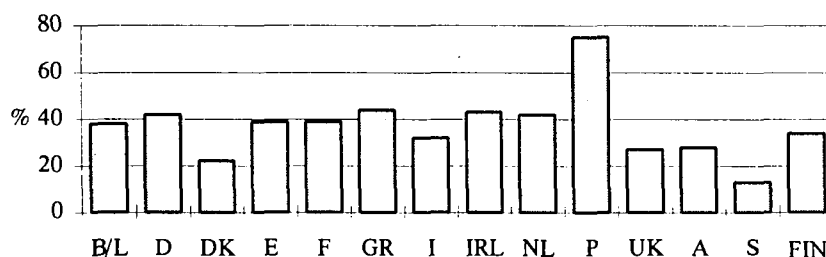
Sample: All companies selling to the public sector/utilities (1,608), and all companies selling to the public sector/utilities and obtaining information from the OJ and TED (775).

As for both Member State and sector, a higher percentage of firms in each size category found OJ and TED information useful than had identified business opportunities.

Whilst there was little difference between firms in each size category which did use the OJ and TED which found information adequate – large 65%, medium 70% and small 67% – as a percentage of all firms surveyed, small firms were at a clearer disadvantage – 23% versus 38% for medium-sized and 44% for large companies.

13.6. Extent of new market entrants

Overall, 36% of firms had noticed an increase in non-domestic companies bidding for and winning business from their own domestic public-sector/utilities markets. This level of 'market penetration' is supported by the fact that 31% of all firms interviewed reported that they sold to the public sector/utilities in other Member States.

Figure 13.32. Extent of new market entrants – Member State

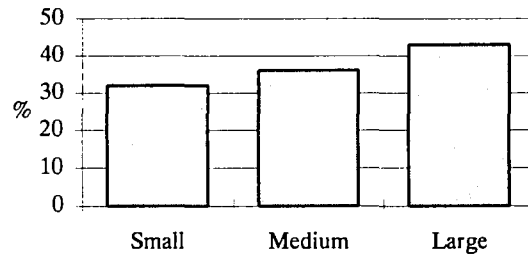
Sample: All companies selling to the public sector/utilities (1,608).

In general, around 40% of firms in most Member States had perceived an increase in successful non-domestic competition in their home markets, with the exceptions of:

- (a) Portugal (75%),
- (b) the UK (27%),

- (c) Denmark (22%),
- (d) Sweden (13%).

Figure 13.33. Extent of new market entrants – company size



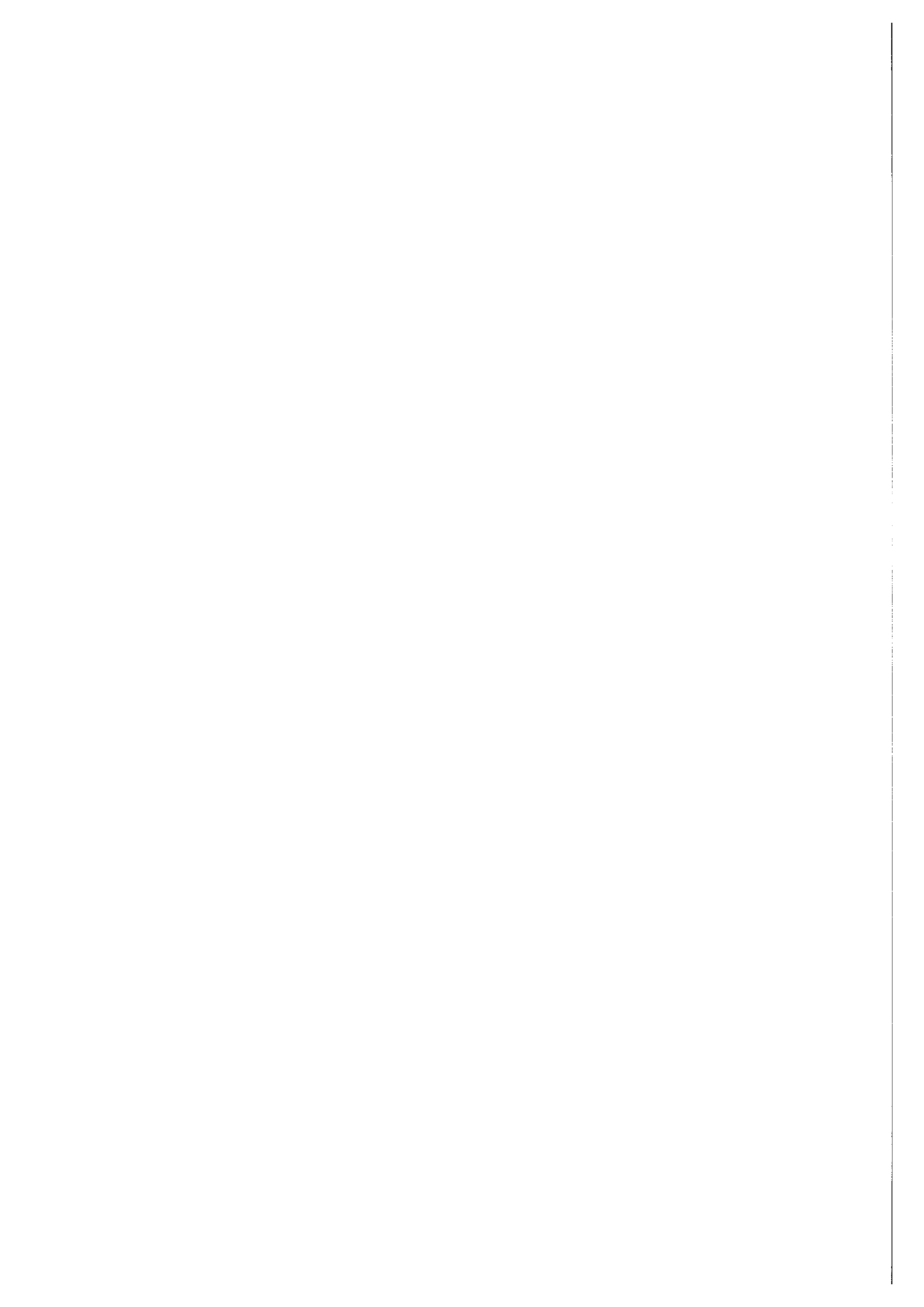
Sample: All companies selling to the public sector/utilities (1,608).

A higher percentage of large companies (43%) had perceived an increase in competition. This was reflected by the higher percentage of large companies selling to other EU Member States.

SECTION E

Economic analysis

This section outlines trends in a number of key indicators in relation to 'procurement sensitive' supply sectors.



14. Trade analysis

14.1. Overview

14.1.1. *Ex ante* hypothesis

In view of the very low levels of import penetration in the public sector compared to those in the private sector and the existence of large price differences for the same or similar products purchased by the public sector, the starting hypothesis was that the completion of the internal market in public procurement would lead to:

- (a) an increase in intra-European trade in products bought primarily by the public sector;
- (b) a higher share of total public purchases in Europe originating from non-domestic suppliers and/or manufacturers.

14.1.2. Coverage

This chapter provides estimates of the extent to which changes have taken place in cross-border trade in selected 'procurement sensitive' sectors and products since the implementation of the procurement legislation. More specifically, the analysis was concerned with measuring change in:

- (a) intra- and extra-EU trade in 'procurement sensitive' sectors and products;
- (b) the share of imports, either direct or indirect, as a percentage of total public-sector purchases.

The sector and product focus in the trade and import penetration analysis was primarily the shopping list of selected:

- (a) 'procurement-sensitive' sectors, which combined account for over 60% of total procurement;
- (b) indicator products within these sectors, which, in 1987 and 1990, demonstrated significant price differences.

Additionally, the indicator products were considered in terms of their prime purchaser:

- (a) the public sector, for high-tech/strategic products, such as transformers, power cables and railway rolling stock;
- (b) the private sector, for low-tech products, such as office furniture, copier paper, uniforms and telephone handsets.

This segmentation was introduced to take account of differences in distribution channels, with:

- (a) low-tech products often being purchased via intermediaries, such as local wholesalers/distributors, value-added resellers, importers, etc.;
- (b) high-tech products being purchased either directly from a manufacturer or as part of a large system.

Although the visible trade analysis was, by definition, restricted to supplies, invisibles (works and services) were taken into account within:

- (a) the analysis of public-sector import penetration by using the supply-side survey, which covered also construction and business services, as its primary data source (see below);
- (b) the case studies on construction (Chapter 22) and consulting engineering (Chapter 20).

14.1.3. Data

Trade flows

The trade-flow analysis was based on data collected from the Comext database (Eurostat, 1995) covering the EUR-12 Member States as reporting countries.

Problems with the data were identified in the form of substantial discrepancies between the import figures recorded by an importing country and the export data of the relevant exporting country, which, according to Eurostat, was due to exports, in certain cases:

- (a) not being recorded in the imports of the trading partner because on arrival at their destination they were placed under a transit procedure or in a customs warehouse;
- (b) being recorded in the imports of the importing Member States with a different value, not only because of the rule 'exports-fob, imports-cif', but above all as a result of special situations such as trade between associated companies with revaluing of imports, inclusion or exclusion of monetary compensatory amounts on agricultural products, and declaration of the value to be used for calculating VAT as the statistical value;
- (c) being recorded in the imports of the trading partner:
 - (i) during a later period (affects the overall figures and the figures by type of goods),
 - (ii) under a different statistical heading (affects the figures by type by type of goods);
- (d) being recorded in the trading partner's imports according to different methods:
 - (i) because not all the cases in which the Regulation may apply have been settled (ships' store, postal consignments, confidential data, aircraft maintenance, etc.),
 - (ii) because it was impossible to eliminate all the errors in data returns or in the processing and forwarding of results,
 - (iii) because there were still a certain number of fraudulent declarations.

For the purpose of consistency, we have used EUR-12 export data to measure intra-EC imports on the basis that total intra-EC exports in a sector equal total intra-EC imports.

Analysis at the intra-EC level covers the period 1988–92, since:

- (a) at the time of writing, 1995 product level trade data were not available;
- (b) the introduction of a new intra-EC data collection system in 1993 (Intrastat System) has made 1993 figures unreliable and 1994 figures not comparable with pre-1993 statistics.

Even if 1995 data were available, an extended coverage to 1994 and 1995 would not be valid since:

- (a) the proportion of the unexplained variation associated with the trend analysis was generally of the order of 30%;
- (b) any new trend based on two points (1994 and 1995) would have no meaning.

Public-sector import penetration

In general, there is no systematic recording or analysis of the national origin of purchases by entities despite the existence of reporting requirements for public-sector bodies and the utilities as laid down in the current directives. Although some Member States have submitted returns to the Commission on their procurement, the required level of detail is not available, since:

- (a) the coverage of the reporting requirements varies between the directives in terms of above- and below-threshold purchases. For example, utilities are only required to report below-threshold procurement;
- (b) only a small number of Member States have provided returns to the Commission;
- (c) returns are generally only available for central government bodies;
- (d) individual Member State returns are inconsistent in terms of segmentation and level of detail provided, and therefore not comparable;
- (e) the available Member State returns provide only an insight into direct purchases of foreign origin, and provide no information on indirect purchases.

In addition, taking into account the problems concerning the application of aggregation rules, the definition of discrete operating units, etc. as discussed in Chapters 5 to 9, it is not surprising that the Member State returns with respect to above-threshold purchases vary from 16 to 93% coverage (see Table 10.6). This, combined with the lack of necessary detail, calls into question their reliability.

Therefore, no consistent data exist on the value of purchases from foreign suppliers nor of purchases of foreign origin from domestic suppliers. To provide this information at a sufficient level of detail for 1994 would require the entities participating in the demand-side survey to undertake a significant amount of work at an individual contract level, which was not feasible within the scope of this study.

Since no data exist or are collectable on imports into the public sector below central government level and into the utilities in individual Member States, it was not possible to use demand-side data to make sound estimates of import penetration by supplying sector or in total for each Member State.

A more reliable source of information is private-sector companies supplying the public sector or utilities, since they keep detailed records of their exports and imports. In general, this information is published in their annual reports at regional level, permitting identification of exports to the (rest of the) EU and third countries.

The supply-side survey provides the following (high-quality) data on a representative sample of 1,608 suppliers to the public sector, broken down by Member State, supplying sector and company size:

- (a) total turnover,
- (b) percentage of turnover supplied to the domestic public sector,
- (c) percentage of turnover exported to the public sector in other EU Member States,
- (d) percentage of domestic public-sector sales imported.

Using the supply-side sample data (where possible, cross-referenced with the Member State returns), estimates of intra-EU direct and total indirect import penetration by supplying sector and Member State were made, based on the following assumptions:

- (a) the value of intra-EU public-sector exports in a sector is equal to that of intra-EU public-sector imports;
- (b) the total value of sales to the public sector in the EU provides a good estimate of the value of EU public-sector consumption.

The estimates of third country, direct import penetration for central government as contained in Member State returns have been used to estimate direct extra-EU public-sector import penetration. The problems described above with differences in coverage and level of detail of the Member State returns are of less importance when estimating direct extra-EU import penetration, since overall levels of direct extra-EU imports into the public sector are reported to be very low and, therefore, any inaccuracies will have little impact on the total estimates.

14.1.4. Key findings

Trade flows

In terms of the strategic products analysed, which are primarily bought by the public sector, there has been an overall increase in trade at both intra- and extra-EC level, with the exception of locomotives and goods wagons. Extra-EC trade balances have been improving over the period 1988–92 with a particularly sharp rise in exports for transformers, X-ray apparatus, and telephonic and telegraphic switching apparatus.

For these products, Germany, France and, to a lesser extent, the UK showed the largest increases in both intra-EC and extra-EC trade.

Regarding the shopping-list products which are bought both by the public and the private sector, there has generally been a larger increase in trade at both intra-EC and extra-EC levels than for the strategic public-sector purchases. Computers and network servers represented the only exception within the overall trend of increasing trade, whereas uniforms showed a particularly sharp increase in extra-EC imports, mainly from low-wage countries.

Generally, the UK and Italy have mostly benefited, while Germany and France experienced smaller increases.

Public-sector import penetration

In 1994, an estimated 96–98% of total EU public-sector purchases was procured from domestic suppliers. When indirect foreign purchases are included, i.e. purchases via domestic suppliers such as subsidiaries, agents or importers, an estimated 7–13% of total European public-sector purchases was of non-domestic origin.

Of the direct imports into the public sector, other European suppliers accounted for an estimated 2–3% of total EU public-sector purchases in 1994. Third country suppliers accounted for less than 0.5%.

The level of public-sector import penetration showed large variations between the 'procurement sensitive' sectors. In general, public-sector purchases, which are complex and have a relatively high technology content, such as medical equipment, railway rolling stock and office machinery, showed a high level of cross-border trade.

At an individual Member State level, the larger Member States showed lower levels of public-sector import penetration than the smaller Member States.

Compared to 1987, public-sector import penetration increased from 6% to an estimated average of 10% in 1994.

14.2. Trade flows

14.2.1. Overview

The trade flows analysis was aimed at highlighting the major changes in trade of 'procurement sensitive products' at intra-EC and extra-EC level for each of the EUR-12 countries.

Changes and trends in trade flows were analysed in terms of:

- (a) intra-EC and extra-EC trade balances,
- (b) intra-EC and extra-EC imports.

The analysed products were segmented into two major categories on the basis of the importance of the public sector relative to that of the private sector:

- (a) products mainly and/or exclusively bought by the public sector, such as:
 - (i) telephonic and telegraphic switching apparatus,
 - (ii) transformers,
 - (iii) super-heated boilers,
 - (iv) locomotives and goods wagons,
 - (v) cardiac monitors and X-ray apparatus;
- (b) products primarily purchased by the private sector, such as:
 - (i) network servers and personal computers,
 - (ii) paper,
 - (iii) metal furniture (filing cabinets, shelves, office desks and fixed armchairs),
 - (iv) cars, buses and vans,
 - (v) uniforms,
 - (vi) telephone handsets.

14.2.2. Products bought primarily by the public sector

Table 14.1 shows the changes in trade flows of telephonic and telegraphic switching apparatus identified within the combined nomenclature code 851730000.

This product is principally purchased by national telecommunications network operators directly from manufacturers.

Table 14.1. Telephonic and telegraphic switching apparatus¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988		(13,176)	47,734	(3,255)	(13,357)	16,861	(4,502)	(28,336)	1,355	50,018	(12,546)	(40,795)
1992		(39,779)	114,433	(15,525)	9,359	33,430	(4,523)	(34,387)	(2,800)	(39,990)	(18,746)	(1,471)
Trend ²			+++	**								+++
Imports												
1988	175,700	30,316	7,578	3,671	14,351	6,170	4,506	28,808	3,173	16,381	12,557	48,188
1992	275,257	48,426	14,372	16,743	23,184	23,689	4,523	39,355	4,592	61,040	18,816	20,828
Trend ²			+	++		+			++	++		+++
EXTRA-EC												
Trade balance												
1988	259,100	7,193	193,315	9,804	(3,630)	59,327	(729)	1,303	9,804	50,667	(536)	(58,608)
1993	907,019	7,901	652,590	(254)	127,239	100,840	(2,321)	8,954	(254)	1,516	(1,548)	16,753
Trend ²												
Imports												
1988	125,645	1,535	13,901	196	5,559	6,017	736	1,273	1,131	6,297	667	88,333
1993	208,035	27,056	38,306	2,769	25,417	8,722	14,256	24,003	504	43,170	10,284	13,346
Trend ²			+++					+				+++

Notes: ¹ Telephonic or telegraphic switching apparatus (CN 851730000).

² Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

Source: Comext database (Eurostat, 1995).

Table 14.1 shows:

- an increase in intra-EC trade, predominantly imports with the exception of Greece, showing a more consistent increase in extra-EC imports;
- an increasingly dominant position of Germany and France at both intra- and extra-EC level as shown by the positive trends and trade surpluses for both countries;
- a significant improvement in the UK trade balance at intra-EC as well at extra-EC level, mainly due to reduced imports;
- a significant increase in Dutch intra and extra-EC imports;
- a substantial increase in the extra-EC trade balance mainly due to the dominant position of German and French exports;
- a substantial increase in extra-EC imports for all the countries with the exception of the UK (decreasing imports) and France (static imports).

Table 14.2. Railway locomotive¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	(185)	(20)	0	0	85	0	112	64	(20)	0	(37)
1992	-	224	27,295	0	(79,671)	149,240	(27)	565	(1)	(97,154)	0	(470)
Trend ²			++		*	+						
Imports												
1988	465	193	213	0	0	3	0	0	0	20	0	37
1992	177,371	0	39	0	79,671	167	27	0	1	97,154	0	511
Trend ²												
EXTRA-EC												
Trade balance												
1988	210,087	1	2,946	0	(171)	206,683	0	0	0	0	0	628
1993	18,923	0	18,686	0	0	34	0	159 ³	0	0	0	215
Trend ²												
Imports												
1988	1,171	0	0	0	171	1,000	0	0	0	0	0	0
1993	27,761	0	27,761	0	0	0	0	0	0	0	0	0
Trend ²												

Notes: ¹ Rail locomotive powered from an external source of electricity.

² Positive trend: + ($0.6 \leq r^2 < 0.75$), ++ ($0.75 \leq r^2 < 0.85$), +++ ($r^2 \geq 0.85$).

Negative trend: * ($0.6 \leq r^2 < 0.75$), ** ($0.75 \leq r^2 < 0.85$), *** ($r^2 \geq 0.85$).

³ 1992 value.

Source: Comext database (Eurostat, 1995).

Table 14.2 refers to the trade flows of railway locomotives. Due to the nature of the product it is not possible to spot trends since there are big fluctuations in value on an annual basis.

Table 14.2 shows:

- an increase in intra-EC trade mainly related to Dutch and Spanish imports;
- Germany and France are the leading exporters in the EC with significant positive intra- and extra-EC trade balance;
- intra-EC imports in Spain have increased considerably over the period 1988–92.

Table 14.3. Goods wagons¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	(305)	786	0	(14)	312	0	(16)	(14)	(40)	14	(722)
1992	-	6,018	(34)	27	16	(5,076)	0	6	0	0	(16)	(941)
Trend ²												
Imports												
1988	2,523	351	335	0	14	981	0	50	14	41	0	736
1992	6,095	0	34	0	0	5,104	0	0	0	0	16	941
Trend ²												
EXTRA-EC												
Trade balance												
1988	5,345	3,959	992	4	0	2	0	(178)	0	0	0	566
1993	(5,449)	(3,245)	(2,187)	0	(6)	(36)	0	43	0	0	0	(18)
Trend ²												
Imports												
1988	412	0	101	0	0	0	0	382	0	0	0	9
1993	6,138	3,245	2,848	0	6	41	0	0	0	0	0	18
Trend ²												

Notes: ¹ Railway or tramway goods vans and wagons, covered and closed (excl. those specially designed for the transport of highly radioactive materials, tank wagons and the like and insulated, refrigerated or self-discharging goods vans and wagons).

² Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

Source: Comext database (Eurostat, 1995).

Table 14.3 refers to the trade flows of goods wagons. Due to the nature of the product it is not possible to spot particularly significant trends since there are big fluctuations in value on a yearly basis.

Table 14.3 shows:

- a generally low level of trade at intra-EC and extra-EC level;
- a negative extra-EC trade balance in 1993 largely composed of Germany and Belgian imports.

Table 14.4. Transformers¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	(1,742)	(408)	(3,480)	(507)	(165)	(2)	4,130	(528)	1,201	2,020	(250)
1992	-	(1,766)	(1,652)	(2,743)	(6,466)	820	(588)	3,700	1,061	902	3,880	2,855
Trend ²												
Imports												
1988	21,326	3,876	8,412	3,530	638	749	2	40	532	2,799	24	725
1992	33,657	7,811	8,690	2,743	6,467	3,685	588	46	1,288	2,256	53	27
Trend ²	++	+++			+++	+						
EXTRA-EC												
Trade balance												
1988	96,829	25,335	40,697	(5,225)	2,205	13,594	(1,335)	10,221	0	1,594	817	8,926
1992	225,911	44,636	48,954	(10,640)	3,687	77,872	0	30,555	(968)	12,677	2,410	16,728
Trend ²	+++	++			+++	++		+	**		+++	
Imports												
1988	21,756	13	9,367	5,515	0	1,086	1,335	448	0	1,489	0	2,503
1992	37,902	1,836	12,115	10,642	93	2,104	0	493	968	0	733	8,918
Trend ²							**		++	*		

Notes: ¹ Liquid dielectric transformers, having a power handling capacity > 10,000 kVA (CN 85042300).

² Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

Source: Comext database (Eurostat, 1995).

Table 14.4 shows the changes in trade flows of transformers as identified in combined nomenclature code 85042300.

Table 14.4 shows:

- an increase in intra-EC trade with a particularly strong trend in import growth for Spain, Belgium-Luxembourg;
- decreasing imports for the UK, Denmark and the Netherlands at intra-EC level;
- a substantial rise in the UK intra-EC balance due to both export growth and import decline;
- a strong positive trend in the extra-EC trade balance with substantial improvements for Belgium-Luxembourg, France, Italy and the UK;
- a general increase in extra-EC imports with the exception of Greece and the Netherlands.

Table 14.5. Cable¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	(608)	18,146	(13,542)	(4,680)	1,887	(1,794)	22,002	5,006	(10,638)	(2,216)	(13,558)
1992	-	887	(13,014)	(7,787)	(10,967)	(5,179)	(2,859)	40,603	18,859	(19,091)	(4,601)	3,147
Trend ²			**	+++	*	**	**	+++				++
Imports												
1988	143,064	10,937	30,029	13,748	5,659	18,673	1,794	9,654	2,568	26,055	2,329	21,613
1992	236,147	16,057	68,158	8,497	14,784	35,620	2,934	15,958	4,759	30,709	6,853	31,830
Trend ²	+++	+++	+++	**	++	+++	++					
EXTRA-EC												
Trade balance												
1988	(22,401)	6,379	(6,401)	(1,665)	(2,791)	19,552	(894)	7,468	(2,996)	(4,038)	58	(37,073)
1993	(6,739)	1,688	4,564	(920)	909	14,783	(1,530)	18,392	6,572	(5,356)	(164)	(45,677)
Trend ²		+++	+	++					++			
Imports												
1988	131,005	2,938	43,781	2,107	4,919	10,917	932	6,691	4,838	10,344	398	43,140
1993	189,377	4,344	58,864	1,988	5,434	18,500	2,509	11,404	5,695	11,566	998	68,075
Trend ²	+	+	+				+					

Notes: ¹ Co-axial cable and other co-axial electric conductors, insulated (CN 8544200).

² Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

Source: Comext database (Eurostat, 1995).

Table 14.5 shows the change of trade flows of co-axial cables as defined in the combined nomenclature code 8544200.

Table 14.5 shows:

- a strong positive trend in intra-EC trade;
- Italy, Ireland (major net-exporters) and the UK are the main countries to have benefited from the changes;
- Denmark is the only country to show a substantial decrease in intra-EC imports;
- an overall extra-EC trade deficit, mainly due to the good performance of Italy and Ireland and Germany over the same period;
- the extra-EC trade balance for Belgium, Greece and the UK to have deteriorated due to a sharp rise in imports.

Table 14.6. Cardiac monitor¹('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1989	-	123	1,822	(128)	(2,629)	(2,826)	(50)	6,022	897	(2,982)	1,318	(1,569)
1992	-	(268)	818	(90)	(1,115)	(1,935)	(389)	4,846	1,443	(2,774)	1,767	(468)
Trend ²			***	**	+		***					
Imports												
1989	17,049	696	2,603	202	2,641	3,226	159	1,394	166	2,982	198	2,784
1992	18,675	1,022	2,632	134	1,190	3,197	396	832	165	4,603	372	2,297
Trend ²		+++		++	*		+					
EXTRA-EC												
Trade balance												
1989	(11,919)	(719)	(2,873)	(305)	(436)	(3,338)	(567)	119	(244)	(1,166)	1,632	(4,022)
1993	(13,871)	(1,270)	(4,836)	(60)	(434)	(4,303)	(138)	409	33	(1,276)	1,485	(3,481)
Trend ²				+++			+++					
Imports												
1989	18,498	821	5,626	344	455	3,776	567	846	308	1,166	102	4,487
1993	24,486	1,465	8,460	130	457	5,376	147	1,761	5	2,214	539	3,932
Trend ²	++			***		+	***					

Notes: ¹ Black and white or other monochrome video monitors (CN 85282020).

² Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

Source: Comext database (Eurostat, 1995).

Table 14.6 shows the changes in trade flow of cardiac monitors identified in combined nomenclature code 85282020.

Table 14.6 does not show many significant changes over the period 1988–93. In particular:

- Italy, Portugal, Ireland and Germany are the net exporters at intra-EC level, while all other Member States show a negative trade balance;
- overall intra- and extra-EC trade was static.

Table 14.7. X-ray apparatus¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	6,993	70,319	(3,099)	(8,879)	(19,444)	(4,617)	8,338	(2,527)	(26,532)	(4,411)	(16,141)
1992	-	(10,897)	85,304	(2,442)	(18,066)	(1,371)	(10,004)	(29,107)	(1,581)	32,035	(5,974)	(37,897)
Trend ²		**						***		++		***
Imports												
1988	208,486	15,897	32,084	4,305	13,175	50,475	4,624	26,238	2,614	26,532	4,548	27,994
1992	403,418	41,076	77,309	6,882	29,000	63,421	10,004	67,069	2,074	55,183	5,988	45,412
Trend ²	+++	+++	+++					+++		+++		
EXTRA-EC												
Trade balance												
1988	349,124	4,140	321,965	(1,244)	(801)	61,130	(1,272)	(9,053)	(569)	(28,022)	(505)	3,355
1993	746,907	21,286	507,911	(1,121)	16,975	94,957	(340)	5,672	161	93,122	(1,386)	9,670
Trend ²	++	+++	+					+		+	**	++
Imports												
1988	131,056	4,631	25,365	1,704	12,677	19,803	1,272	22,239	569	28,022	515	14,259
1993	202,763	6,368	54,829	2,598	3,843	49,961	376	11,620	113	57,937	1,468	13,650
Trend ²												

Notes: ¹ Apparatus based on the use of X-rays, for medical, surgical, dental or veterinary use (CN 84719390).

² Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

Source: Comext database (Eurostat, 1995).

Table 14.7 shows the changes in trade flow of apparatus based on the use of X-rays, as identified in the combined nomenclature code 84719390.

Table 14.7 shows:

- a strong positive trend in intra-EC trade;
- Germany and the Netherlands are the only countries to show a positive intra-EC trade balance, improving over the period 1988–92;
- other countries, with the exception of Ireland and France, show a deteriorating intra-EC trade balance with a particular strong negative trend for Italy;
- a strong positive trend in intra-EC imports for Belgium-Luxembourg, Italy, Germany and Netherlands;
- a positive trend in the overall extra-EC trade balance for Germany, Belgium-Luxembourg, the Netherlands, Italy and the UK, particularly due to the relatively higher exports increases.

Table 14.8. Boilers¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	(106)	102	91	19	(276)	(104)	725	(238)	15	(386)	160
1992	-	(426)	638	86	169	(110)	(181)	189	(261)	(80)	(122)	100
Trend ²												
Imports												
1988	4,145	437	732	102	89	945	104	250	239	391	398	456
1992	2,733	447	403	64	40	356	181	414	261	190	125	249
Trend ²	*					*						
EXTRA-EC												
Trade balance												
1988	6,216	(62)	3,509	188	91	1,340	1	553	(30)	(3)	11	618
1993	5,226	522	3,980	6	95	908	3	(1,141)	0	7	0	845
Trend ²		**										
Imports												
1988	1,127	68	908	0	4	68	0	12	30	11	0	26
1993	6,047	7	3,857	33	0	162	0	1,940	0	25	0	23
Trend ²	++		+++									

Notes: ¹ Super-heated water boilers (CN 840220).

² Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

Source: Comext database (Eurostat, 1995).

Table 14.8 shows the changes in trade flow of super-heated boilers identified by the combined nomenclature code 840220. The product is usually supplied to the public sector (utilities) as a part of a system, not as a single product.

Table 14.8 shows:

- (a) a negative trend in overall intra-EC trade;
- (b) Germany has the largest trade surplus;
- (c) a significant decrease in intra-EC imports for France (with decreasing exports) and Germany (with increasing exports);
- (d) an overall positive extra-EC trade balance, with only Italy exhibiting a deteriorating trade balance at both extra- and intra-EC levels;
- (e) a significant increase of extra-EC trade as shown by a substantial increase in imports and exports over the 1988–93 period;
- (f) a considerable increase in extra-EC imports for:
 - (i) Italy, with a strong negative extra-EC trade balance,
 - (ii) Germany, which was a major net exporter at both extra- and intra-EC level.

14.2.3. Products bought primarily by the private sector

Table 14.9. Network server¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	15,562	20,168	(3,370)	(14,790)	(17,322)	(562)	(7,588)	(4,424)	(1,304)	(1,663)	15,295
1992	-	3,144	(5,295)	(749)	(1,666)	(3,386)	(121)	(1,765)	(1,566)	(1)	(771)	12,172
Trend ²				+++		+++						
Imports												
1988	123,313	9,686	17,292	3,775	16,130	21,702	562	11,283	7,104	13,399	1,665	20,713
1992	51,509	4,828	12,460	825	3,838	7,770	121	5,811	2,043	8,783	805	4,224
Trend ²	***			***		***						***
EXTRA-EC												
Trade balance												
1988	(252,889)	(7,700)	(93,895)	(5,264)	(7,202)	(9,521)	(173)	(42,555)	(2,956)	(15,058)	(200)	(68,365)
1993	(92,408)	(20,374)	(21,783)	3,984	(4,548)	(13,643)	(26)	(23,924)	(15,220)	(24,139)	(384)	25,949
Trend ²	+++	***	+++	++			+					
Imports												
1988	314,503	10,539	115,007	6,367	9,549	12,849	180	57,252	3,422	16,728	207	82,403
1993	199,870	23,631	31,435	3,189	5,910	19,535	26	29,369	28,977	26,231	406	31,161
Trend ²	***	++	***	***			*					**

Notes: ¹ Storage units for digital automatic data processing machines (CN 84719390).

² Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

Source: Comext database (Eurostat, 1995).

Table 14.9 shows the changes in trade of storage units for digital automatic data processing machines identified by the combined nomenclature code 84719390.

In particular, Table 14.9 shows:

- a strong negative trend in intra-EC trade value;
- the UK and Belgium are the only countries with a positive intra-EC trade balance;
- all other Member States had a negative but improving intra-EC trade balance, reflecting a decrease in imports;
- an overall extra-EC trade deficit, with the UK enjoying a positive balance, and Denmark and Germany significantly reduced deficits.

Table 14.10. Personal computer¹ (million ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	(63.6)	9.8	(36.8)	(72)	(89.4)	(6.8)	(152)	757	(5)	(15)	(326)
1992	-	(36.4)	(38.8)	(41.5)	(54.8)	(99)	(5)	(114)	392	(67)	(15)	80
Trend ²								+	+			++
Imports												
1988	1,492	221	225	42	74	221	6.7	160	15	155	15.5	488
1992	1,074	190	235	45	61	190	5.0	123	13	133	16.8	193
Trend ²	**	***										***
EXTRA-EC												
Trade balance												
1988	(709.6)	(11.1)	(173.7)	(9.8)	(31.7)	(94.3)	(7.8)	(14.5)	147	(255)	(8)	(250)
1992	(572)	(8.0)	(224)	(9.7)	(50.7)	(134)	(3.3)	(35.8)	135	(57)	(14.3)	(170)
Trend ²												
Imports												
1988	1,286	16.6	319	13	36	203	7.8	33.4	6.4	291	8.3	349
1992	1,275	14.0	373	14	65	206	3.3	45.8	6.6	75	15.8	458
Trend ²												

Notes: ¹ Digital automatic data processing machines, combined with an input and output unit, with a random access memory of a capacity > 512 kilobyte (CN 84712090).

² Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

Source: Comext database (Eurostat, 1995).

Table 14.10 shows the changes in trade for personal computers as identified within the combined nomenclature code 84712090.

Table 14.10 shows:

- a negative trend in intra-EC trade over the period 1988–92;
- Ireland and the UK are the net exporters at intra-EC level;
- a general decrease in extra-EC trade;
- Ireland is the only EC country to have a positive extra-EC trade balance.

Table 14.11. Car¹ (million ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1989	-	37	1,199	(88)	2,902	362	(160)	(1,427)	(111)	(427)	(451)	(1,836)
1992	-	349	(520)	(49)	4,941	282	(536)	(2,876)	(97)	(499)	(610)	(384)
Trend ²												
Imports												
1989	11,007	1,073	1,282	95	399	2,177	160	2,469	121	581	575	2,072
1992	14,170	1,075	3,022	81	424	2,570	536	3,682	110	549	923	1,196
Trend ²	+++		+				+++				+	*
EXTRA-EC												
Trade balance												
1989	(1,219)	(268)	(396)	(55)	278	422	(55)	(60)	(64)	(240)	(42)	(729)
1993	13	826	(503)	(77)	376	286	(77)	135	(74)	(360)	(93)	(342)
Trend ²												
Imports												
1989	2,816	275	316	60.8	32	275	64	235	65	246	42	744
1993	2,885	299	345	80.3	47	298	160	111	74	377	102	430
Trend ²				+				*			+++	*

Notes: 1 Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading No 87.02), including station wagons and racing cars, with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity 1000<cc<1500 (CN 87032219).

2 Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

Source: Comext database (Eurostat, 1995).

Table 14.11 shows the changes in trade flows of cars. The product is generally supplied to the public sector both directly from manufacturers or through local dealers according to the size of contracts.

Table 14.11 shows:

- (a) Spain, France, and Belgium are the net exporters at intra-EC level;
- (b) a significantly improving trade balance (intra and extra) for the UK;
- (b) intra-EC imports have generally increased with a strong trend for Greece and with the exception of the UK, Ireland, the Netherlands and Belgium-Luxembourg showing decreasing imports;
- (c) Italy and the UK benefited from decreasing extra-EC imports and Denmark and Portugal suffered from rising extra-EC imports.

Table 14.12. Van¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	90,281	6,563	(7,946)	94,714	(33,396)	(12,177)	45,588	(1,534)	(21,815)	5,425	(165,707)
1992	-	(20,811)	(85,612)	(12,087)	(68,764)	(26,434)	(47,569)	(30,822)	(2,687)	(34,380)	2,804	326,360
Trend ²		***			*			**				++
Imports												
1988	611,433	33,808	92,004	8,233	14,434	135,430	12,187	22,858	3,302	31,577	41,177	216,425
1992	659,627	43,578	146,023	12,656	122,228	131,506	47,588	63,089	3,024	38,786	12,020	39,131
Trend ²			++					+				**
EXTRA-EC												
Trade balance												
1988	(8,797)	48,757	80,352	(5,717)	14,030	41,231	(47,171)	2,228	(2,208)	(13,260)	170	(127,209)
1992	(77,411)	17,489	11,854	(26,857)	9,636	78,061	(109,592)	(7,817)	(43)	(27,211)	448	(23,379)
Trend ²	**	***	***	**			***		+++	***		+++
Imports												
1988	299,596	9,517	44,195	6,948	1,154	21,048	47,230	13,563	2,208	17,432	0	136,301
1992	288,288	6,202	48,112	27,015	2,330	9,792	109,626	19,792	43	29,860	129	35,387
Trend ²				++			+++			+++		***

Notes: ¹ Motor vehicles for the transport of goods, with spark-ignition internal combustion piston engine, of a gross vehicle weight \leq 5 tonnes, of a cylinder capacity \leq 2 800 cc, new (CN 87043191).

² Positive trend: $+(0.6 \leq r^2 < 0.75)$, $++ (0.75 \leq r^2 < 0.85)$, $+++ (r^2 \geq 0.85)$.

Negative trend: $*(0.6 \leq r^2 < 0.75)$, $** (0.75 \leq r^2 < 0.85)$, $*** (r^2 \geq 0.85)$.

Source: Comext database (Eurostat, 1995).

Table 14.12 shows the change in trade flows of vans at intra- and extra-EC level. The product is generally supplied to the public sector both directly from manufacturers or through local dealers according to the contract size.

Table 14.12 shows:

- (a) there was no significant change in total intra-EC trade between 1988 and 1992;
- (b) at country level:
 - (i) intra-EC trade balances for Belgium-Luxembourg, Italy and Spain deteriorated,
 - (ii) the UK moved from a negative to a positive trade balance due to a substantial and consistent decrease in imports,
 - (iii) Germany and Italy suffered a rising trend in imports,
 - (iv) substantial growth of Spanish intra-EC imports;
- (c) total extra-EC deteriorated trade balance, except for the UK (strong positive trend), France, Ireland and Portugal;
- (d) the large negative trend in extra-EC trade balance:
 - (i) Germany, Belgium-Luxembourg mainly due to decreasing exports,
 - (ii) Denmark, Greece and the Netherlands mainly due to rising imports.

Table 14.13. Bus¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	90,420	110,000	(9,272)	(8,098)	(87,500)	(1,852)	(41,687)	(1,612)	(437)	21,921	(71,883)
1992	-	91,093	25,117	(3,451)	(1,344)	(71,017)	(3,013)	(40,887)	(6,934)	43,458	13,295	(46,317)
Trend ²			*			+				+		
Imports												
1988	353,612	23,708	28,441	9,708	13,594	117,083	1,852	44,824	1,627	38,411	475	73,889
1992	496,962	42,918	129,714	15,367	21,951	143,444	4,732	42,715	7,269	35,210	203	53,439
Trend ²	+	++	+++	+++								
EXTRA-EC												
Trade balance												
1988	388,671	61,865	226,674	(632)	16,453	57,502	(537)	18,355	(48)	3,516	5,415	108
1992	354,873	73,952	181,021	1,684	33,898	32,013	(592)	12,799	0	5,071	5,438	9,589
Trend ²			*									++
Imports												
1988	9,519	298	1,448	2,130	0	242	537	285	48	1,964	0	2,567
1992	30,645	1,085	16,320	3,440	731	2,304	1,625	318	0	407	10	4,205
Trend ²									*			

Notes: 1 Motor vehicles for the transport of ≥ 10 persons, including driver, with compression-ignition internal combustion piston engine diesel or semi-diesel, of a cylinder capacity of $> 2500 \text{ cm}^3$, new (CN 87021011).

2 Positive trend: $+(0.6 \leq r^2 < 0.75)$, $++(0.75 \leq r^2 < 0.85)$, $+++ (r^2 \geq 0.85)$.

Negative trend: $*(0.6 \leq r^2 < 0.75)$, $** (0.75 \leq r^2 < 0.85)$, $*** (r^2 \geq 0.85)$.

Source: Comext database (Eurostat, 1995).

Table 14.13 shows the changes in trade flows of buses. The product is usually supplied to the public sector directly by the manufacturers or by local dealers according to the size and number of buses ordered.

Table 14.13 shows:

- an increase of intra-EC trade over the period 1988–92;
- a significant rise in imports for Belgium-Luxembourg, Germany and Denmark;
- a significant deterioration in intra-EC trade balance for Germany and Ireland;
- a significant improvement in intra-EC trade balance for the Netherlands, reflecting a positive trend in exports;
- an improvement in intra-EC trade balance of the UK, mainly due to a decrease in imports;
- a large and static extra-EC trade surplus, with only Greece having an extra-EC trade deficit;
- overall extra-EC exports and imports increased substantially.

Table 14.14. Uniforms¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	2,662	(10,307)	2,485	(509)	(5,050)	4,868	8,211	2,753	(3,743)	2,424	(3,796)
1992	-	3,748	(29,634)	13,938	(2,852)	(5,599)	4,198	21,357	(608)	(6,415)	4,119	(2,245)
Trend ²			**	+++	**			++	***		++	
Imports												
1988	49,172	4,181	16,242	1,280	630	6,724	484	785	2,225	8,615	149	7,859
1992	64,505	10,911	39,389	2,242	2,892	7,647	731	1,244	1,832	18,120	2,712	6,658
Trend ²	++		++		++				*	+++	+++	
EXTRA-EC												
Trade balance												
1988	(50,275)	(5,957)	(49,777)	1,551	458	(9,840)	261	1,436	212	(2,806)	9,213	4,974
1993	(151,116)	(10,198)	(108,083)	(355)	(1,038)	(33,697)	(36)	(1,242)	2,909	(6,717)	6,745	596
Trend ²	***		***	**	***	***				*		
Imports												
1988	95,725	7,720	56,300	3,129	66	13,559	71	4,281	65	4,203	67	6,264
1993	186,459	10,976	114,814	3,756	1,353	37,413	137	5,125	427	8,129	265	4,064
Trend ²	+++		+++		++						++	++

Notes: ¹ Men's or boys' industrial and occupational clothing of cotton (CN 62032210, 62032310, 62033210, 62033310, 62033310, 62033911, 62034211, 62034211, 62034311).

² Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

Source: Comext database (Eurostat, 1995).

Table 14.14 shows the changes in trade flows for men's or boys' industrial and occupational clothing.

Reference to this aggregate in relation to the uniforms has been made under the assumption that if a country has a competitive and/or comparative advantage in professional clothing, it is likely to exist in the uniforms market as well.

Table 14.14 shows:

- a positive trend in intra-EC trade increase;
- Italy and Denmark benefited mostly from the changes;
- Germany experienced a significant deterioration, reflecting the German and French situations;
- the extra-EC trade balanced deteriorated of the German and French trade balance;
- the UK is the only European country to show a decrease in extra-EC imports.

Table 14.15. Filing cabinets¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	(1,173)	(690)	353	129	538	(79)	(464)	(1,691)	(215)	(232)	3,526
1992	-	(1,854)	(4,704)	256	(953)	(2,275)	(1,196)	(1,292)	(3,968)	(615)	(581)	17,180
Trend ²			**		***	***			**			***
Imports												
1988	15,114	1,890	3,333	600	357	2,281	79	892	1,746	1,524	233	2,177
1992	31,041	1,584	9,327	599	1,987	3,817	1,196	1,793	4,075	3,434	581	1,879
Trend ²	+++		+++		+++				+++			
EXTRA-EC												
Trade balance												
1988	108	(695)	(283)	657	(371)	366	(3)	165	8	(778)	65	977
1993	3,415	(393)	(732)	220	(210)	(1,314)	(22)	1,399	339	(1,168)	(24)	5,320
Trend ²							*				*	
Imports												
1988	10,427	785	2,216	431	552	905	16	167	84	1,123	13	4,135
1993	12,542	424	3,801	423	567	2,696	30	335	52	1,848	31	2,335
Trend ²								+				

Notes: ¹ Filing cabinets, card-index cabinets, paper trays, paper rests, pen trays, office-stamp stands and similar office or desk equipment, of base metal (CN 83040000).

² Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

Source: Comext database (Eurostat, 1995).

Table 14.15 shows the changes in trade flows of filing cabinets at intra- and extra-EC level.

Filing cabinets are typically supplied to the public and private sectors in Member States by local wholesalers, which purchase directly from manufacturers.

Table 14.15 shows:

- a strong positive trend in intra-EC trade;
- a negative and deteriorating intra-EC trade balance in all Member States other than the UK and Denmark;
- a growing and substantial UK trade balance at intra-EC as well as at extra-EC level;
- a growing extra-EC trade balance, reflecting the UK's extra-EC positive export trend;
- substantial growth in extra-EC imports for France, Germany and Italy.

Table 14.16. Shelf¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	(7,012)	6,599	(436)	(1,022)	(13,268)	(786)	26,561	(3,521)	(6,303)	(592)	(222)
1992	-	(4,478)	4,774	1	(3,175)	(19,462)	(2,171)	24,305	(4,862)	(2,233)	(1,198)	8,499
trend ²							***					+
Imports												
1988	85,073	9,440	14,813	1,676	2,241	2,2019	786	3,833	4,265	12,075	735	13,192
1992	126,601	19,429	19,795	1,183	7,228	30,982	2,183	6,149	6,554	16,275	2,844	13,979
trend ²	+	+++			+		+++		+			
EXTRA-EC												
Trade balance												
1988	35,351	(719)	12,442	(699)	1,599	7,558	2	20,330	(97)	(707)	27	(4,385)
1993	38,244	(1,681)	11,997	(372)	487	6,313	209	22,722	(293)	(843)	762	(1,057)
trend ²								+			+	
Imports												
1988	19,701	873	3,189	1,878	81	1,862	8	797	120	1,296	59	9,538
1993	29,518	2,717	9,964	2,273	999	1,736	56	768	571	3,506	61	6,867
trend ²	+++	++	+++		++				+	+		++

Notes: ¹ Metal furniture for offices, of > 80 cm in height (excl. drawing tables, cupboards with doors, shutters or flaps, and seats) (CN 94031099).

² Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

Source: Comext database, Eurostat 1995.

Table 14.16 shows the changes in trade flows of metal shelving identified within the combined nomenclature 94031099. The product is usually imported by wholesalers, which supply the public sector as well as the private sector.

Table 14.16 shows:

- a positive trend in intra-EC trade over the period 1988–92;
- Germany and Italy are the only countries with a positive trade balance at both intra-EC and extra-EC level;
- the UK has benefited from the changes through export growth as shown by the trade-balance improvement at both intra and extra-EC levels;
- a substantial increase in Belgian intra-EC exports as reflected in an improved trade balance with increased imports;
- a strong negative trend for the Greek intra-EC trade balance;
- a substantial growth in extra-EC exports for Germany and Belgium-Luxembourg.

Table 14.17. Office desk¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	(4,015)	5616	323	4,002	(1,772)	(153)	532	(209)	2,081	(141)	(6,264)
1992	-	(2,227)	(1,767)	1,863	6,835	(799)	(226)	672	(162)	(1,025)	470	(3,634)
Trend ²			**	+++	+++		***					
Imports												
1988	27,108	6,050	2,783	81	542	3,329	156	546	228	6,462	290	6,639
1992	35,623	7,194	8,080	60	914	3,855	230	496	192	9,793	511	4,298
Trend ²		+	+++				+++			+		
EXTRA-EC												
Trade balance												
1988	8,528	72	4,034	725	1,328	59	12	1,091	-	448	471	288
1993	9,813	145	3,522	(254)	1,084	627	61	1,690	(2)	1,014	1,405	521
Trend ²											*	
Imports												
1988	3,095	29	398	39	20	2,037	1	3	0	259	2	307
1993	4,573	40	1,324	1,150	186	798	0	133	2	442	1	497
Trend ²			+++		++							

Notes: ¹ Office desks, with metal frames (CN 94031051).

² Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

Source: Comext database (Eurostat, 1995).

Table 14.17 shows the changes in trade flows of office desks with a metal frame at intra- and extra-EC level. Office desks are typically supplied to the public and private sector in Member States by local wholesalers, which purchase directly from manufacturers.

Table 14.17 shows:

- an increase in trade at both intra- and extra-EC level;
- a strong positive trend for the Danish and Spanish intra-EC trade balances;
- a strong growth in German imports at both intra-EC and extra-EC level;
- a negative trend for the Greek intra-EC trade balance reflecting import growth;
- substantial improvement of the UK intra-EC trade balance;
- the absence of significant changes at extra-EC level, with the exception of substantial import increases in Germany and Denmark.

Table 14.18. Fixed armchair¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	(3,062)	7,872	(3,788)	5,694	(26,919)	(1,679)	52,589	1,229	(17,923)	(877)	(13,135)
1992	-	(7,964)	(46,135)	1,667	6,395	(24,484)	(1,885)	101,983	2,952	(9,597)	(3,173)	(19,760)
Trend ²		***	***	+++				+++	++		***	
Imports												
1988	152,923	15,350	37,107	5,756	2,498	39,729	1,690	5,107	453	29,549	1,293	14,389
1992	238,513	20,165	88,259	4,794	7,083	48,691	1,888	5,710	1,022	33,233	3,561	24,109
Trend ²	+++	+	+++		+++	+++			+	++	+++	
EXTRA-EC												
Trade balance												
1988	65,868	40	16,719	2,900	7,495	291	8	38,953	(176)	1,858	99	(2,319)
1993	41,580	(1,400)	(1,979)	(126)	7,705	(308)	(155)	43,835	31	(5,918)	505	(610)
Trend ²	**	**	**							***		
Imports												
1988	35,762	589	13,602	2,335	384	11,053	20	693	186	2,385	69	4,446
1993	60,209	1,658	29,325	3,976	2,474	9,888	161	830	93	8,235	206	3,363
Trend ²	+++	+	+++			**			+++		+++	

Notes: ¹ Upholstered seats, with metal frames (excl. seats for aircraft or motor vehicles, swivel seats with variable height adjustments and medical, dental or surgical furniture) (CN 9401700).

² Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

Source: Comext database (Eurostat, 1995).

Table 14.18 shows the changes in trade flows of fixed armchairs. Fixed armchairs are typically supplied to the public and private sectors in Member States by local wholesalers, which purchase them directly from manufacturers.

Table 14.18 shows:

- a strong positive trend in intra-EC trade;
- a significant negative trend in intra-EC trade balances in Belgium, Germany and Portugal and a positive trend in Denmark, Italy and Ireland;
- Italy is the main beneficiary in terms of intra-EC trade;
- an overall positive but deteriorating extra-EC trade balance which could be negative without Italy;
- a substantial growth in extra-EC imports, with a particularly strong trend for Germany, Portugal and Ireland;

Table 14.19. Copier paper¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	(16,855)	23,903	(1,566)	(2,302)	2,769	(576)	(5,536)	(1,948)	16,618	1,630	(16,137)
1992	-	(22,625)	(900)	(3,399)	(19,473)	69,278	(2,766)	(24,501)	(2,823)	11,721	3,154	(7,665)
Trend ²			***		**							
Imports												
1988	102,157	18,458	21,072	1,574	2,359	11,969	575	6,647	2,043	9,660	226	2,7571
1992	209,124	25,625	49,265	4,912	20,478	18,333	2,817	26,534	2,969	21,099	3,437	33,654
Trend ²			+++	+++	++						+	
EXTRA-EC												
Trade balance												
1988	(247,857)	(22,866)	(98,675)	(6,924)	(4,021)	(12,537)	(1,319)	(4,614)	(64)	(2,919)	99	(94,017)
1993	(313,111)	(47,897)	(96,966)	(3,817)	(16,707)	(32,253)	(5,966)	(22,770)	(530)	(15,061)	(1,671)	(69,473)
Trend ²		***		+			**			***	*	
Imports												
1988	275,039	23,248	107,090	7,007	4,297	17,192	1,319	8,255	64	6,003	63	100,501
1993	364,251	48,876	120,919	4,010	17,379	45,280	6,026	24,620	532	20,307	2,252	74,050
Trend ²		+++					++				++	

Notes: ¹ Paper and paperboard for writing, printing or other graphic purposes, in strips or rolls with a width of ≤ 15 cm, in rectangular or square sheets, with no side measuring > 36 cm when unfolded, or cut into shapes other than rectangles or squares (CN 48235990).

² Positive trend: $+(0.6 \leq r^2 < 0.75)$, $++(0.75 \leq r^2 < 0.85)$, $+++ (r^2 \geq 0.85)$.
Negative trend: $*(0.6 \leq r^2 < 0.75)$, $** (0.75 \leq r^2 < 0.85)$, $*** (r^2 \geq 0.85)$.

Source: Comext database (Eurostat, 1995).

Table 14.19 shows the changes in trade flows of paper for writing and printing purposes. Paper is typically supplied to the public and private sectors in Member States by local wholesalers, which purchase them directly from manufacturers.

Table 14.19 shows:

- a substantial growth in intra-EC trade over the period 1988–92;
- France is the major beneficiary and Germany, Denmark and Spain are the principal losers;
- a significant change in the extra-EC trade balance, which was negative between 1988 and 1993.

Table 14.20. Telephone handset¹ ('000 ECU in current prices)

	EUR-12	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK
INTRA-EC												
Trade balance												
1988	-	(2,965)	22,788	1,521	(671)	(11,471)	(1,514)	(7,276)	(244)	(7,591)	(2,112)	9,535
1992	-	8,108	(8,563)	5,703	(579)	(5,696)	(7,244)	(13,547)	(7,736)	(10,945)	7,314	33,183
Trend ²		+	*				*		*		+	+++
Imports												
1988	71,581	11,936	4,900	1,043	2,025	14,135	1,523	10,068	2,557	14,560	3,068	5,764
1992	242,050	20,290	67,017	5,766	12,461	43,598	7,278	21,998	9,829	33,565	12,496	7,754
Trend ²		+	+++	+++		+	+	++	+	+		
EXTRA-EC												
Trade balance												
1988	(177,756)	(2,967)	(11,907)	13,215	2,063	1,135	(11,506)	(35,592)	(1,927)	(17,816)	(1,586)	(110,868)
1993	(478,017)	(49,176)	(287,416)	5,827	(711)	(23,142)	(9,363)	(27,614)	(1,466)	(62,733)	(3,185)	(97,038)
Trend ²	***	***	***		**					***		
Imports												
1988	297,523	11,940	53,166	2,830	11,533	12,398	11,533	39,638	2,650	21,096	1,931	134,435
1993	691,315	52,254	275,418	10,196	9,700	51,149	9,700	49,201	3,184	69,364	4,765	140,135
Trend ²	+++	+++	+++		++	+++				+++		

Notes: ¹ Telephone handsets (CN 85171000).

² Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

Source: Comext database (Eurostat, 1995).

Table 14.20 shows the changes in trade flows of telephone handsets. Telephone handsets are supplied to the public and private sectors by network operators and a wide range of intermediaries.

Table 14.20 shows:

- (a) a substantial increase in intra-EC trade;
- (b) countries that have mostly benefited from the change at intra-EC level are:
 - (i) the UK, Belgium-Luxembourg, Denmark and Portugal, with a positive and improving trade balance,
 - (ii) France with a negative but improving trade balance;
- (c) a strong negative trend in the overall extra-EC trade balance due to the substantial and consistent growth of imports;
- (d) a strong rise in extra-EC imports and deteriorating trade balance for Belgium-Luxembourg, Germany, France and the Netherlands.

14.3. Import penetration

14.3.1. Overview

Public-sector import penetration is defined as:

$$\frac{\text{public - sector purchases of foreign origin}}{\text{total public sector purchases}}$$

Public-sector purchases of foreign origin equal the sum of direct and indirect imports by the public sector. A direct import is a purchase from a supplier from outside the purchaser's national territory. An indirect import is a purchase of foreign origin from a supplier operating inside the purchaser's national territory.

This analysis provides estimates of total public-sector import penetration for 1994 segmented by:

- (a) nature of import (i.e. direct/indirect and intra-/extra-EU),
- (b) Member State,
- (c) supplying sector.

In addition, a comparison has been made between these estimates and those for 1987 contained in the Cecchini report (where available) to determine whether any changes have taken place since the implementation of the directives.

Using the results of the supply-side survey, estimates of public-sector import penetration are provided in the form of a range with:

- (a) an upper limit, whereby the 'don't know' responses are disregarded under the assumption that respondents are truly unaware of the percentage of their sales to the public sector in other EU Member States, or the percentage of public-sector sales imported;
- (b) a lower limit, whereby 'don't know' responses are interpreted as no (0%) public-sector sales to other EU Member States or no (0%) imports under the assumption that if the company was exporting a measurable share, respondents, i.e. sales or commercial directors, would be aware of this and able to provide an estimate.

14.3.2. Public-sector import penetration

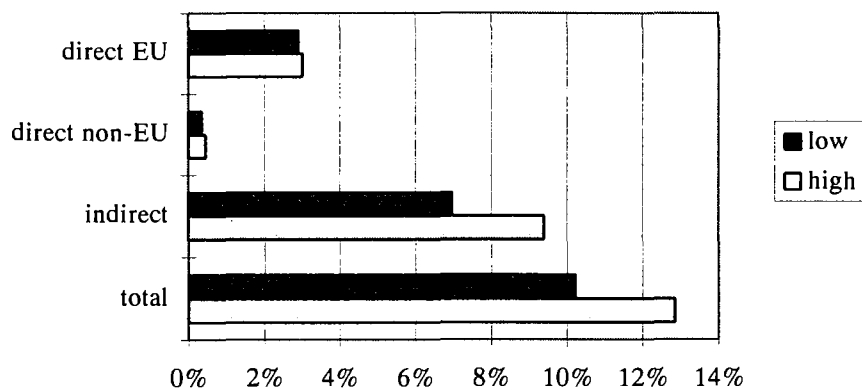
Supply-side survey results

Based on the results of the supply-side survey (covering only the 'procurement sensitive' sectors), an estimated 3–4% of European public procurement was purchased directly from foreign suppliers in 1994. When indirect foreign purchases (via domestic suppliers) are included, 10–13% of public-sector purchases was estimated to be of foreign origin.

The bulk of the direct public-sector imports in the 'procurement sensitive' areas came from suppliers in other EU Member States, representing an estimated 3–3.5% of public-sector purchases in 1994. Suppliers from third countries accounted for around 0.5% of public-sector purchases in 1994.

Figure 14.1 summarizes the breakdown of the public-sector import penetration for purchases of a 'procurement sensitive' nature, based on the results of the supply-side survey.

Figure 14.1. Public-sector import penetration for 'procurement sensitive' sectors/ products (supply-side survey results, 1994)



Sources: Supply-side survey questions 26, 27 and 28.
Member States' statistical reports, DG XV, 1995.

Total upper and lower estimates

It should be noted that the estimates in Figure 14.1 are solely based on an analysis of public-sector purchases from suppliers in the 'procurement sensitive' sectors as opposed to all sectors supplying to the public sector and utilities. Despite the fact that these 'procurement sensitive' sectors account for a large share of total public procurement (63% in 1987), their import penetration estimates cannot be assumed to be representative of public-sector import penetration in the remaining supplying sectors, since the latter's goods and services are less tradable, or not tradable at all.

For example, public-sector purchases from foreign suppliers will be negligible in the areas of:

- (a) electric power,
- (b) lodging and catering services,
- (c) recovery and repair services,
- (d) communication and transport services, etc.

Notable exceptions include:

- (a) pharmaceuticals,
- (b) industrial equipment, including mining equipment.

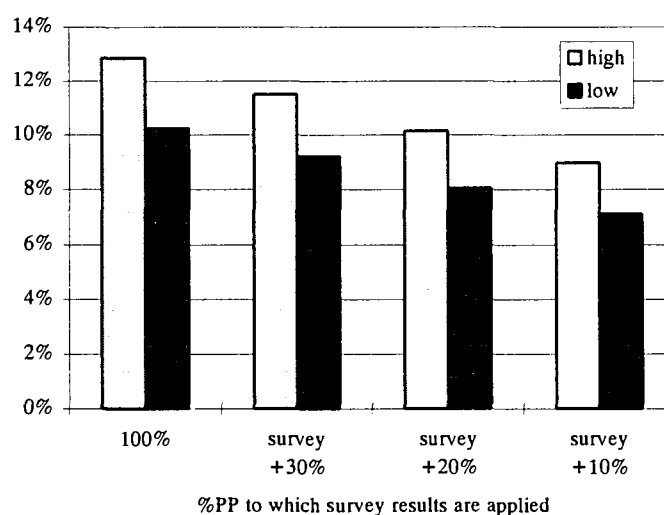
In total these two sectors represent an estimated 4–4.5% of public purchasing.

Therefore, the levels of public-sector import penetration for the supplying sectors not covered in the survey are expected to be significantly lower than the estimates based on the results from the supply-side survey, but they cannot be assumed to be negligible, due to cross-border purchasing by the public sector in the areas of pharmaceuticals and industrial equipment.

Figure 14.2 displays the results of a sensitivity analysis of public-sector import penetration in relation to share of total public procurement covered by the survey results, namely 63%, assuming that this subset of sectors is representative of:

- (a) the total market (100%),
- (b) 90% of the total market,
- (c) 80% of the total market,
- (d) 70% of the total market.

Figure 14.2. Public-sector import penetration by percentage of public purchasing to which the supply-side survey results apply (1994)



Sources: Supply-side survey questions 26, 27 and 28.
Member States' statistical reports, DG XV, 1995.

Taking account of the sectors where no trade is considered feasible, an upper limit to the coverage has been assumed at survey +10% (73% of the total market).

Using the results of the sensitivity analysis, Table 14.21 provides estimated ranges for total public-sector import penetration in 1994 broken down by type and origin. The actual level of imports into the public sector and utilities is likely to be closer to the lower limit.

Table 14.21. Total public sector import penetration in 1994

Type	Origin	100% of PP covered by survey results	Survey+10% of PP covered by survey results	Total estimate
Direct	Intra-EU	2.9-3.0%	2.0-2.1%	2.0-3.0%
	Extra-EU	0.4-0.5%	0.2-0.3%	0.2-0.5%
Indirect	Intra- and Extra-EU	3.3-3.5%	2.2-2.4%	2.2-3.5%
	Intra- and Extra-EU	6.9-9.4%	4.9-6.6%	4.9-9.4%
Total	Intra- and Extra-EU	10.2-12.9%	7.1-9.0%	7.1-12.9%

Sources: Supply-side survey questions 26, 27 and 28.
Member States' statistical reports, DG XV, 1995.

Based on the results presented in Table 14.21, an estimated 96–98% of total EU public-sector purchases in 1994 was procured from domestic suppliers. When indirect foreign purchases (via domestic suppliers such as subsidiaries, agents or importers) are included, an estimated 87–93% of total European public-sector purchases was of domestic origin.

Of the goods and services purchased directly from foreign suppliers (those in other Member States accounted for the majority), an estimated 2–3% of total European public-sector purchases in 1994. Third country suppliers accounted for less than an estimated 0.5%.

It was not possible to use the supply-side survey results to make reliable estimates of the geographic breakdown of indirect foreign purchases.

Examples of difficulties in estimating the value of imports as a share of total public-sector sales can be found in the following sectors:

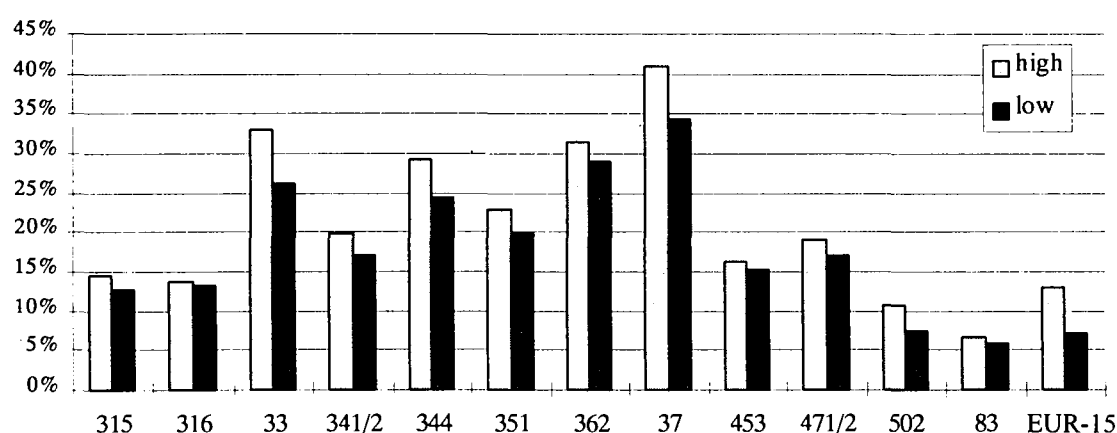
- (a) uniforms, where design is carried out domestically, fabrics and textiles are bought from an importer in another EU Member State, and the actual goods are produced outside Europe (mainly North Africa);
- (b) office machinery and motor vehicles, where the actual product is partially or completely assembled domestically, but the individual components are imported from around the globe.

14.3.3. Public-sector import penetration by sector

Upper and lower estimates

Figure 14.3 shows the importance of non-domestic suppliers to the public sector and utilities segmented by supplying sector.

Figure 14.3. Estimated public-sector import penetration by supplying sector (1994)



Sources: Supply-side survey questions 26, 27 and 28.
Member States' statistical reports, DG XV, 1995.

The level of public-sector import penetration varies significantly between the supplying sectors surveyed. Estimates range from 34–41% for medical equipment purchases to 6–7% for

business services. This compares with an estimated average of 7–13% for all EU public-sector purchases.

In general, public-sector purchases which are complex and have a higher technology content have a high level of cross-border trade:

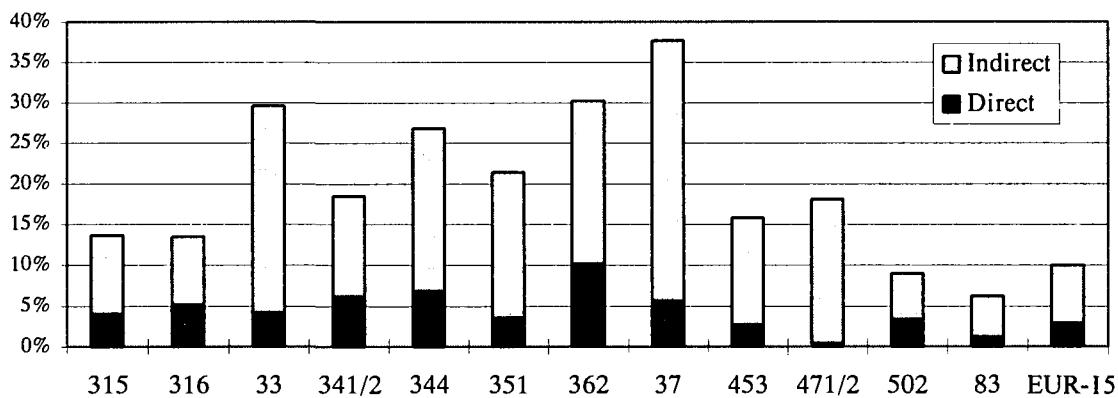
- (a) medical equipment (34–41%);
- (b) office machinery (26–33%);
- (c) railway rolling stock (29–32%).

Other sectors supplying to the public sector and utilities with a high level of import penetration are motor vehicles (20–23%) and power equipment (17–20%).

Direct versus indirect import penetration

Figure 14.4 provides a breakdown between direct and indirect public-sector import penetration.

Figure 14.4. Direct and indirect public-sector import penetration by supplying sector (1994)



Note: Figures are based on the mean of the upper and lower estimates.

Sources: Supply-side survey questions 26, 27 and 28.

Member States' statistical reports, DG XV, 1995.

The majority of public-sector purchases of foreign origin is imported indirectly (via domestic suppliers). Supplying sectors with high levels of indirect imports are:

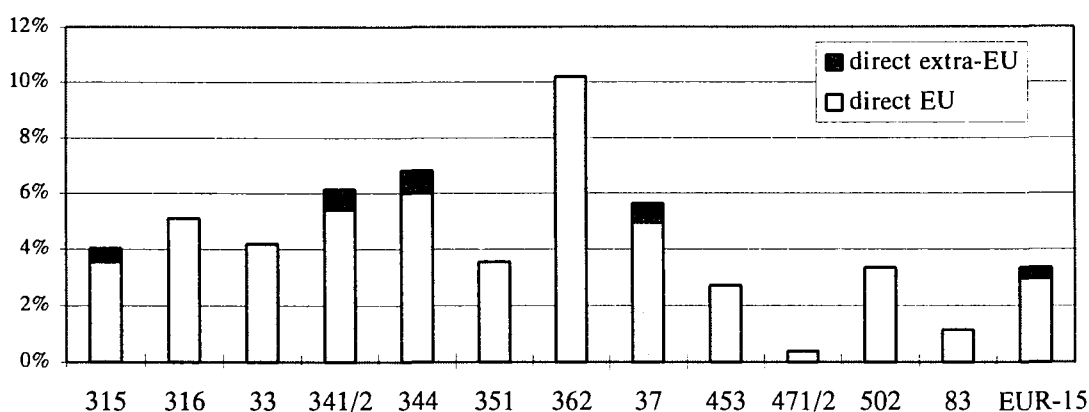
- (a) paper and stationery;
- (b) office machinery;
- (c) medical equipment;
- (d) motor vehicles;
- (e) uniforms.

Construction shows a relatively high proportion of public-sector sales being imported directly. This is mainly due to subcontracting activities abroad being classified as sales to the public sector in another EU Member State.

Third country participation

The extent to which third country suppliers in the different sectors surveyed are participating in direct public-sector purchases from foreign suppliers is shown in Figure 14.5.

Figure 14.5 Geographic breakdown of total direct public-sector import penetration by supplying sector (1994)



Note: Figures are based on the mean of the upper and lower estimates.

Sources: Supply-side survey questions 26, 27 and 28.

Member States' statistical reports, DG XV, 1995.

Direct imports from third countries are minimal in the 'procurement sensitive' sectors. Supplying sectors where third country suppliers have a measurable impact on the total of public-sector sales from foreign suppliers are:

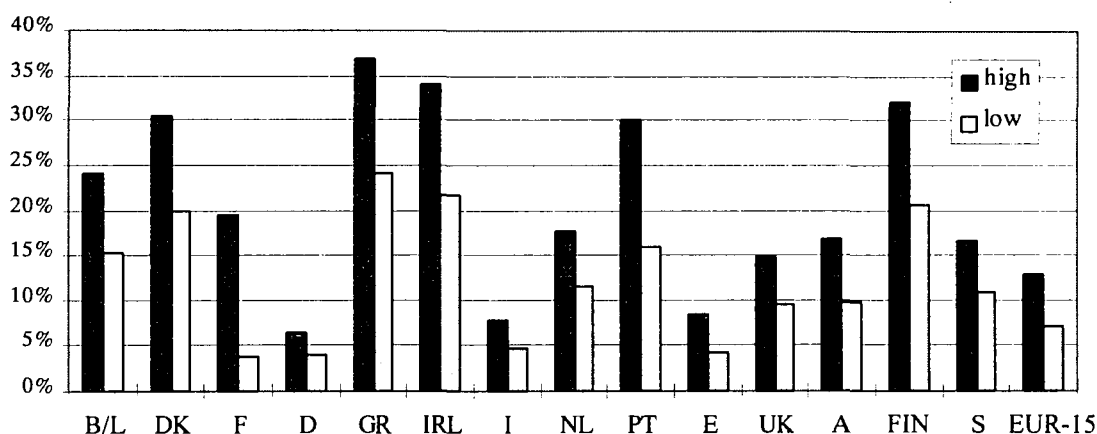
- (a) boilers and vessels, mainly nuclear technology;
- (b) power generating equipment;
- (c) telecommunications equipment;
- (d) medical equipment.

This does not imply that EU public-sector markets are entirely closed to third country suppliers. It is more indicative of (an implicit) public-sector requirement for a domestic presence in some shape or form (see case studies). In consequence, third country suppliers mainly benefit through indirect public-sector imports.

14.3.4. Public-sector import penetration by Member State

Under the assumption that the relation between direct and indirect public-sector imports estimated for the EU as a whole is applicable to individual Member States, a broad estimate for total public-sector import penetration by Member State was made by using this relationship and the indirect public-sector import estimates from the supply-side survey.

The estimates of public-sector import penetration are shown in Figure 14.6.

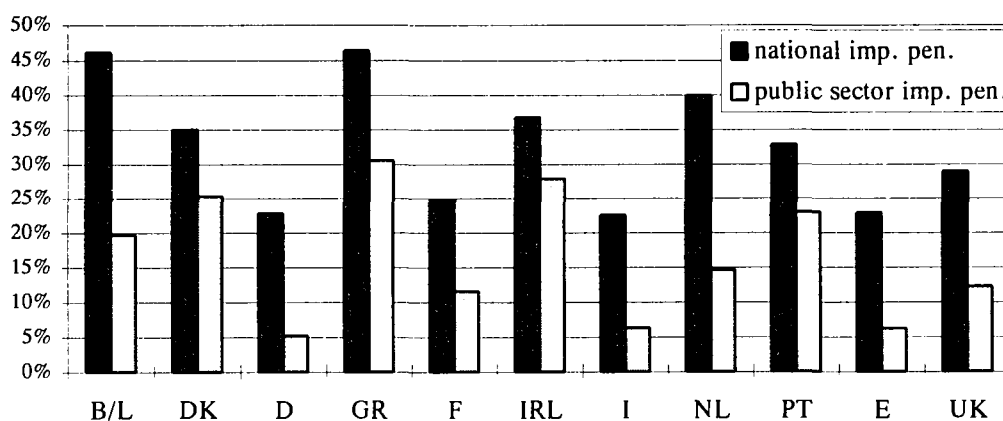
Figure 14.6. Estimated public-sector import penetration by Member State (1994)

Sources: Supply-side survey questions 26, 27 and 28.
Member States' statistical reports, DG XV, 1995.

In general, purchases of foreign origin appeared to account for a lower share of total public-sector procurement in the larger Member States compared to the smaller Member States. The higher levels of import penetration in the smaller Member States reflect the more limited scope of the domestic industry, particularly where strategic purchases are concerned.

14.3.5. Public sector – national import penetration

The levels of public-sector import penetration compared to those of the national economies as a whole are shown in Figure 14.7.

Figure 14.7. Public-sector import penetration compared to national import penetration

Note: National import penetration is calculated as total imports over apparent consumption.

Sources: Supply-side survey.
EuroStrategy Consultants estimates.
Eurostat.

The analysis in Figure 14.7 demonstrates that the levels of public-sector import penetration for most Member States are significantly lower than their national counterparts. From this it may be inferred that the private sector has a substantially higher share of total purchases originating from non-domestic suppliers than the public sector.

Excluding the smaller Member States, the 'public:national' sector import penetration ratios vary significantly:

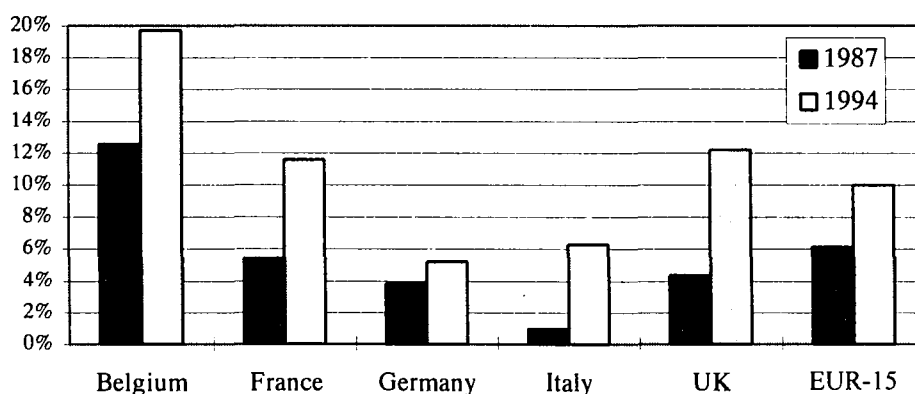
- (a) 0.29 in Germany,
- (b) 0.39 in Spain,
- (c) 0.42 in Italy,
- (d) 0.55 in the UK,
- (e) 0.67 in France.

14.3.6. Change in public-sector import penetration

An important aspect of measuring the effectiveness of the public procurement legislation is to analyse the nature and structure of any changes in levels of imports into the public sector since the directives came into force.

Figure 14.8 shows, for the larger Member States and Belgium, the estimated changes between 1987 and 1994 in total imports into the public sector.

Figure 14.8. Estimated change in public-sector import penetration for selected countries between 1987 and 1994



Note: Estimates for 1994 are based on the average of the upper and lower limits.

Sources: *Cost of non-Europe in public sector procurement*, Tables I.6.2.9 and II, p. 175 [European Commission, 1988]. Table 4.7.

The analysis in Figure 14.8 demonstrates that overall import penetration levels into the public sector have increased from 6% in 1987 to an estimated 10% in 1994. The larger Member States showed significant increases, with the exception of Germany:

- (a) an increase from 4% to 12% in the UK,
- (b) an increase from 1% to 6% in Italy,
- (c) an increase from 5% to 12% in France.

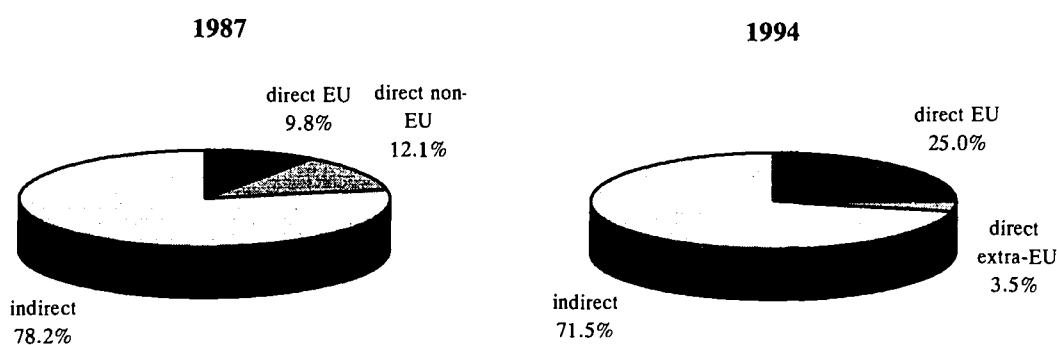
The small increase in Germany might be partly explained by the fact that in 1987 public-sector purchases from and via East Germany were classified as imports, whereas since unification these purchases are classified as purchases of domestic origin.

Also in Belgium, which is considered to be representative of the smaller EU Member States, import penetration into the public sector increased significantly, from 12% in 1987 to around 20% in 1994.

Not only do absolute changes in import penetration rates provide an insight into changing purchasing practices of the European public sector and utilities, but the changes in structure of import penetration also provide valuable information on whether European or third country suppliers are participating equally in the changes and in what form: direct or indirect via subsidiaries.

Figure 14.9 provides a broad analysis of the changes in structure of public-sector import penetration.

Figure 14.9. Change in public-sector import penetration breakdown between 1987 and 1994



EU public-sector import penetration 6%

EU public-sector import penetration 10%

Sources: *Cost of non-Europe in public sector procurement*, Tables I.6.2.9 and II, p. 175 [European Commission, 1988]. Table 4.7

The analysis in Figure 14.9 of the change in public-sector import penetration structure demonstrates that:

- direct imports in 1994 accounted for a larger share of total purchases of foreign origin than in 1987;
- the increase in direct imports is entirely accounted for by intra-EU trade;
- the importance of direct public-sector imports from third countries has decreased.

The decrease in direct extra-EU import penetration reflects the change in supply-side structure and, in particular, that of third country participation via subsidiaries and sales offices established in the EU. This is supported by the supply-side survey results, where extra-EU subsidiaries reported a higher average indirect import penetration rate than domestic and other EU companies.

15. Price disparities

15.1. Overview

15.1.1. *Ex ante* hypothesis

In 1987, the EU public procurement markets were characterized by:

- (a) large price differences between and within Member States for similarly specified products;
- (b) being closed to new suppliers from other Member States and generally.

It was assumed that the opening up of public procurement to pan-European competition would lead to price convergence in tradable sectors.

15.1.2. Coverage

The price analysis focused primarily on the shopping list of selected:

- (a) 'procurement sensitive' sectors, which combined account for over 60% of total procurement;
- (b) indicator products within these sectors, which, in 1987 and 1990, demonstrated significant price differences.

Additionally, the indicator products were considered in terms of their technology content as:

- (a) low-tech products, such as office furniture, copier paper, uniforms and telephone handsets;
- (b) high-tech products, which include strategic products bought primarily by the public sector, such as transformers, power cables and railway rolling stock.

This segmentation was introduced to take account of differences in distribution channels, and thus, in pricing, with:

- (a) low-tech products often being purchased via intermediaries, such as local wholesalers/distributors, value-added resellers, importers, etc.;
- (b) high-tech products being purchased either directly from a manufacturer or as part of a large system.

The overall aim of the price analysis was to ascertain:

- (a) whether price differences still existed in 1994 for the same or similar procurements between Member States of the European Union;
- (b) whether there has been a degree of price convergence since 1987, taking into account the impacts of:
 - (i) differential inflation,
 - (ii) exchange rate movements.

15.1.3. Data

Considerable difficulties were encountered in obtaining reliable price data, since this information is, understandably, highly sensitive. As a result, it was necessary to obtain price data from a range of sources:

- (a) the report *The cost of non-Europe in public sector procurement* (European Commission, 1988);
- (b) the report *Implications of opening up public procurement in Greece, Italy, Portugal and Spain* (European Commission, 1990);
- (c) Eurostat;
- (d) price data created by DRI for a study undertaken for the European Commission on price convergence (European Commission, 1997).

Despite the limited availability of price data, comparisons of prices between Member States and over time (1987–94) are considered reliable indicators of price differences for the same or similar products within the EU, since:

- (a) data sources are not significantly different, due to:
 - (i) all data referring to prices paid by purchasers,
 - (ii) the Cecchini study (European Commission, 1988) and DRI figures all being based on Eurostat data;
- (b) any changes in product over time, which happen universally or only in one country, are irrelevant. What matters is purchaser behaviour. For example, in a case study interview it emerged that one utility in one Member State had purchased a technologically advanced product in another Member State at a third of the domestic price. Despite this, all other utilities in the first Member State continued to buy the outdated technology, domestically at the higher price;
- (c) there is a value in showing price data for the individual years to identify the level and nature of price disparities between Member States.

Cost of non-Europe

Data were available for most target procurements from the report *The cost of non-Europe in public sector procurement*, with the exception of PCs and network servers, which were not widely purchased in 1986, and which were included in the 1995/96 survey to reflect changes in technology.

Excluded sectors

Data from the report *Implications of opening up public procurement in Greece, Italy, Portugal and Spain* were limited to strategic purchases bought by utilities and to the four Member States studied.

Eurostat

Eurostat, which obtains comprehensive price data from all Member States, was unable to provide us with the raw price information at a product level for confidentiality reasons. However, it was able to provide us with a range of indices for many of the target products for 1994, having, as requested, calculated the indices using the products' current prices for 1994.

converted to a common ECU base at current exchange rates. It was unable to provide us with similar data for 1990.

DRI

The DRI study for the Commission, *Price competition and price convergence* (European Commission, 1997), provided information on prices for products primarily bought by the private sector, and which are of a comparable nature to those bought by the public sector, i.e. the equipment goods.

Since the price information was inclusive of taxes, an adjustment was made by removing value-added tax (VAT) under the assumption that equipment goods are subject to the standard rate of VAT in all Member States.

15.1.4. Key findings

Overall, there is no conclusive evidence of price convergence between Member States for products bought by the public sector. There are some exceptions for certain products where a degree of price convergence has occurred between 1987 and 1994, such as cardiac monitors, buses and office machinery, which are generally purchased direct from the manufacturer.

Since no clear price convergence has been identified, it can be assumed that the competition effect predicted by the Cecchini report in relation to the opening of public procurement has not yet materialized. Therefore, any price changes observed within a Member State can only be attributed to factors other than the single market in public procurement.

Despite the continued existence of price differences in 1994, the relative position of Member States in terms of absolute prices has changed between 1987 and 1994 for certain products, which can be partly explained by:

- (a) exchange rate movements;
- (b) differences in inflation rates.

Regarding price disparities for comparable products bought primarily by the private sector, no clear price convergence was observed between 1985 and 1993, except for transport equipment, such as motor vehicles, bikes, ships, and aircraft.

15.2. Member State disparities

15.2.1. Disparities in 1987 and 1990

Tables 15.1 and 15.2 show the level of price disparities in 1987 and 1990 for products bought by the public sector split by:

- (a) low-tech products;
- (b) high-tech products.

Table 15.1. Price indices in 1987 (100 = lowest price)

Product	Belgium	France	Germany	Italy	UK
<i>Low-tech products</i>					
Fixed armchair	118	133	162	100	141
Filing cabinet	126	154	132	183	100
Shelf	227	165	163	110	100
School desk	201	187	283	126	100
Office desk	197	211	256	100	174
Typewriter	101	117	100	146	144
Uniform	259	158	100	186	124
Copier paper	115	142	153	100	118
Telephone handset	207	300	355	183	100
<i>High-tech products</i>					
Power cable	150	105	101	105	100
Transformer	100	117	117	102	154
Cardiac monitor	108	114	119	118	100
X-ray machine	133	155	153	217	100
Average of car	100	109	103	116	119
Van b6	100	102	119	122	122
Van b7	100	134	111	122	122
Bus d8	-	113	101	129	100
Bus d14	100	131	110	-	133
Goods wagon	121	100	136	112	117

Source: *Cost of non-Europe in public sector procurement*, Tables II.3.1 and II.3.2 (European Commission, 1988).

Table 15.2. Price indices in 1990 (100 = lowest price)

Product	D	E	F	GR	I	P	UK
<i>Low-tech products</i>							
Telephone handset	270	244	241	170	241	233	100
<i>High-tech products</i>							
Transformer 1000 kVA	118	100	156	189	-	147	129
Transformer 100 kVA	140	100	122	213	134	144	194
Generating set	-	110	100	-	-	152	-
Steam boiler 0.6 M Kc/h	100	-	161	139	-	104	-
Steam boiler 30 M Kc/h	-	100	129	-	159	-	-
Water pump	179	103	235	176	100	120	-
Goods wagon	-	203	100	109	177	166	145
Railway rail 50 or 60 kg/m	100	104	101	113	112	131	105
Citybus	206	-	249	-	328	100	213
Bus chassis MAN 16330	118	100	-	115	110	130	-
Telephone cables	223	166	211	100	-	-	-
Power cables	139	139	135	100	-	-	-
Pipes	100	-	106	-	-	153	-
Average of car	101	108	103	124	103	101	100
Average of office machinery	107	148	127	113	135	100	113

Note: 1990 price indices from DRI study.

Source: *Opening up public procurement in the excluded sectors*, Annex I.1 (European Commission, 1992).

On the basis of Tables 15.1 and 15.2, price disparities between Member States were extensive in 1987 and 1990, with the greatest disparities for:

- (a) low-tech products, telephone handsets being up to 350% more expensive in Germany than in the UK in 1987;
- (b) high-tech products, X-ray machines being up to 200% more expensive in Italy than in the UK.

In addition, there seems to be no consistent relationship in certain Member States being cheaper in one product area and more expensive in others.

Since these products are highly tradable, the price disparities demonstrated the significant potential price savings in 1987 and 1990 by purchasing from other Member States, even when allowing for extra transport costs.

15.2.2. Price convergence

Table 15.3. Price indices in 1994 (100 = lowest price)

	B	D	DK	E	F	GR	I	IRL	NL	P	UK	A	S	FIN
<i>Low-tech</i>														
Swivel chair	198	306	214	108	273	100	130	159	265	-	-	-	154	206
Filing cabinet	117	195	154	112	177	-	123	101	-	-	136	100	146	-
Shelf	123	149	127	176	-	-	112	116	-	117	100	124	148	-
Office desk	-	244	103	164	150	-	100	125	195	-	176	125	-	-
Typewriter	-	148	154	-	178	-	124	120	-	129	123	100	127	125
Copier paper	144	122	175	-	171	-	100	104	135	134	169	119	100	174
<i>High-tech</i>														
Transformer	172	-	119	-	151	100	-	133	129	163	109	152	104	104
Cardiac monitor	-	125	-	127	129	147	123	130	118	151	126	-	110	100
Dental X-ray machine	116	258	147	156	208	-	150	161	-	100	195	306	132	-
Goods wagon	-	-	-	107	100	-	135	145	-	228	141	216	126	-
Bus	104	140	200	100	-	-	135	119	145	-	130	143	132	170
Van	102	128	127	111	120	139	100	111	119	127	118	-	119	149
Lorry	122	153	114	134	168	127	155	100	140	113	118	148	126	135
Average of car	100	133	109	125	135	138	119	110	128	136	117	-	-	-
Avg. of office mach.	101	109	112	115	110	121	103	102	140	136	100	-	-	-

Note: 1994 price indices from DRI study.

Source: Eurostat, 1995.

Regarding the prices for 1994, Table 15.3 shows that compared to the price disparities in 1987 and 1990:

- (a) there are still significant price differences between Member States for products bought by the public sector;

- (b) the relative position of Member States in terms of absolute prices has changed for certain products.

Both low-tech and high-tech products still show large price differences – up to 300% – between Member States, with the greatest disparities for:

- (a) low-tech products, swivel chairs being 300% more expensive in Germany than in Greece, and office desks being over 240% more expensive in Germany than in Italy;
 (b) high-tech products, X-ray machines being over 300% more expensive in Austria than in Portugal, and goods wagons still being over 220% more expensive in Portugal than in France.

Despite the continued existence of significant price differences between Member States, a degree of price convergence might still have occurred as a result of increased competition between certain Member States. Table 15.4 identifies the level of price convergence by showing changes in the coefficient of variation, where possible, between:

- (a) 1987 and 1994 for Belgium, France, Germany, Italy and the UK – five Member States;
 (b) 1990 and 1994 for France, Germany, Greece, Italy, Portugal, Spain and the UK – seven Member States.

Table 15.4. Price convergence

	Coefficient of variation ¹ 1987 (5 Member States)	Coefficient of variation ¹ 1994 (5 Member States)	Coefficient of variation ¹ 1990 (7 Member States)	Coefficient of variation ¹ 1994 (7 Member States)
<i>Low-tech</i>				
Filing cabinet	0.23	0.23	-	-
Shelf	0.33	0.17	-	-
Office desk	0.31	0.36	-	-
Typewriter	0.18	0.18	-	-
Copier paper	0.17	0.22	-	-
<i>High-tech</i>				
Transformer	0.18	0.22	0.22	0.24
Cardiac monitor	0.07	0.02	-	-
X-ray machine	0.28	0.30	-	-
Goods wagon	0.11	0.18	0.27	0.36
Bus	0.12	0.13	0.38	0.14
Van	0.10	0.11	-	-
Average of car ²	0.07	0.12	0.08	0.07
Avg. of office mach. ²	-	-	0.14	0.11

Notes: ¹ Coefficient of variation is defined as standard deviation divided by the mean.

² 1993 price indices from DRI study.

Source: Tables 15.1, 15.2 and 15.3.

For the low-tech products, Table 15.4 shows that except for shelves no price convergence has occurred. Excluding shelves, overall price disparities for low-tech products have remained the same or even increased in some cases.

In terms of high-tech products, some price convergence has occurred since 1990 for cardiac monitors, buses and office machinery. Price disparities have increased for transformers, X-ray machines and goods wagons.

Compared to the high-tech products, price disparities for low-tech products appear to be higher on average, both in 1987 and 1994, which might be explained by the fact that low-tech products are in the main supplied to the public sector via wholesalers and distributors which have pricing policies largely uninfluenced by international trade.

In general, no conclusive evidence exists for a measurable degree of price convergence between Member States for products bought by the public sector. There are some exceptions, pertaining to high-tech products.

15.2.3. Exchange rates and inflation

Table 15.5. Impact of exchange rates and inflation on price disparities

Member State	Change in exchange rate against ECU (1987-94) (%)	Compounded annual inflation (1988-94) (%)
Belgium	8.5	20
Denmark	4.5	21
France	5.2	21
Germany	7.6	24
Greece	-34.6	173
Ireland	-2.3	21
Italy	-21.9	44
Luxembourg	8.5	23
Netherlands	8.1	18
Portugal	-17.4	89
Spain	-10.5	47
United Kingdom	-9.1	42
Austria	26.9	24
Finland	-5.8	32
Sweden	-6.3	49

Source: Eurostat, 1995.

Table 15.5 shows the variation in exchange rates and inflation rates between 1987 and 1994, and therefore in theory, should have had a considerable impact on price competitiveness in the individual Member States, with:

- (a) Greece, Italy, Portugal, Spain and the UK showing large decreases in ECU exchange rates and relatively high inflation rates;
- (b) the Benelux countries, Germany and, to a lesser extent, France showing increases in ECU exchange rates and relatively low inflation rates.

The impact of these factors on the competitive position of Member States is demonstrated in the relative price changes for certain products, with:

- (a) transformers having changed from being the cheapest in Belgium and the most expensive in the UK in 1987 and Greece in 1990, to being the most expensive in Belgium in 1994 and the cheapest in the UK and Greece;
- (b) the relative price of filing cabinets having increased substantially in Germany and come down in Italy and the UK between 1987 and 1994.

However, the changes in exchange rates and inflation rates are not conclusive in explaining changes in price levels between Member States. For example, France remained the cheapest producer of goods wagons, with total price disparities increasing as shown by the coefficient of variation. Other factors affecting relative price levels are:

- (a) recessionary pressures,
- (b) unemployment,
- (c) increases in productivity,
- (d) global developments in technology.

15.3. Public- and private-sector disparities

Price disparities for products primarily bought by the private sector were significant in 1993, as shown by the high coefficients of variation for a range of equipment goods (Table 15.6).

Table 15.6. Coefficients of variation¹ for selected equipment goods for EUR-12

Equipment goods	1980	1985	1990	1993
Structural metal products	0.16	0.09	0.13	0.18
Products of boilermaking	0.25	0.20	0.12	0.30
Tools and finished metal articles	0.20	0.14	0.24	0.29
Agricultural machinery and tractors	0.21	0.11	0.08	0.13
Machine tools for metal working	0.20	0.15	0.18	0.51
Machinery equipment for mining, building and civil engineering	0.14	0.10	0.10	0.20
Textile machinery	0.19	0.21	0.12	0.17
Machinery for food, chemicals, rubber, packaging	0.12	0.17	0.12	0.16
Machinery for working wood, paper	0.18	0.12	0.16	0.38
Other machinery and mechanical equipment	0.12	0.09	0.12	0.19
Office and data processing machines	0.12	0.11	0.11	0.12
Precision instruments	0.18	0.15	0.17	0.20
Optical instruments, photographic material	0.18	0.15	0.17	0.20
Electrical equipment including lighting	0.18	0.07	0.16	0.16
Telecommunications equipment, meters	0.18	0.14	0.21	0.14
Electronic equipment, radios and televisions	0.24	0.15	0.17	0.16
Motor vehicles and engines	0.21	0.20	0.09	0.10
Ships	0.29	0.22	0.19	0.09
Trains, railway equipment	0.36	0.34	0.23	0.12
Aircraft, helicopters, aeronautical equipment	0.23	0.23	0.19	0.09
Other transport equipment (bicycles, motorcycles, etc.)	0.22	0.21	0.18	0.08

¹ Coefficient of variation is defined as standard deviation divided by the mean.

Sources: *Price competition and price convergence* (European Commission, 1997).
EuroStrategy Consultants adjustments to exclude VAT.

Overall, the DRI study concluded that:

- (a) there had been a general trend towards price convergence in the EUR-12 over the period 1980–93 and this trend was more pronounced for equipment goods than for energy, services and construction, the former more likely to reflect high levels of trade and, in particular, openness to competition from other EU producers;
- (b) the tendency for prices to converge has been comparatively greater in the three newer Member States (Greece, Portugal and Spain) than in the EUR-9, suggesting a ‘catch-up’ effect of integration.

This is also shown in Table 15.6, where the majority of products showed a degree of price convergence between 1980 and 1993. However, when excluding 1980 to allow for a comparison with the public sector, no clear price convergence has occurred between 1985 and 1993 for the majority of the equipment goods, with the exception of transport equipment.



16. Supply-side structure

16.1. Overview

16.1.1. *Ex ante* hypothesis

The introduction of competition into previously closed markets was expected to result in price reductions and improved efficiency in both 'commodity' and strategic areas.

Additionally, restructuring was expected in certain strategic industries along pan-European lines via joint ventures, mergers and acquisitions, and alliances to create global players capable of benefiting from the single European market and competing with the US and Japanese giants.

16.1.2. Coverage

This section analyses the change in supply-side structure of the 'procurement sensitive' sectors over the period 1987–94 in terms of changes in:

- (a) output, as measured by production volumes;
- (b) employment;
- (c) industry specialization, as defined by the Balassa index;
- (d) supplier concentration, covering:
 - (i) the degree of concentration within the industry,
 - (ii) merger and acquisition activity.

The Balassa index is indicative of the importance of an industry in a Member State's economy in relation to the other EU countries. The index is defined as:

$$SI = \frac{\left(\frac{Q_{ij}}{Q_j} \right)}{\left(\frac{Q_{ic-j}}{Q_{c-j}} \right)}$$

where

Q_{ij} = output of product i of country j ,

Q_j = total output of country j ,

Q_{ic-j} = output of product i in the EU minus output of product i of country j ,

Q_{c-j} = total output in the EU minus total output of country j ,

and

$0 < SI < 1$ low degree of specialization,

$1 < SI < 2$ some degree of specialization,

$SI > 2$ high degree of specialization.

This analysis was carried out at the lowest level of aggregation for which sufficient and reliable statistics were available. For the majority of sectors, this was at a NACE three-digit level.

16.1.3. Data

The sources used for the collection of data on production, employment and industry specialization are:

- (a) Eurostat 1994–95,
- (b) DEBA, industry and database estimates, 1994–95,
- (c) *Basic statistics of the Community*, Eurostat 1993, 1995,
- (d) industry publications.

The main data sources used for supplier concentration were:

- (a) *Panorama of EU industry 1995/96*,
- (b) industry publications,
- (c) company accounts.

Where possible, the analysis covered the 1987–94 period.

16.1.4. Key findings

In all industries, there has been a significant reduction in employment.

In the ‘commodity’ areas, there has been a redistribution of market shares between Member States, resulting in changes in specialization.

For strategic industries, significant restructuring resulted in increased supplier concentration and the creation of global players in the telecommunications, railway rolling stock and power generation sectors.

16.2. Telecommunications equipment

16.2.1. Size

The telecommunications equipment industry in Europe has undergone a period of significant rationalization, with total output and employment decreasing. The UK, Denmark and Spain accounted for the bulk of this decrease. Germany and Belgium were the only Member States with a positive trend in volume output.

France and Germany are still the largest producers of telecommunications equipment and accounted for over half of EU output in 1994.

16.2.3. Supplier concentration

The European telecommunications equipment industry is characterized by a high degree of supplier concentration, reflecting the restructuring of the supply side since 1987, principally by mergers and acquisitions. Today, the market for telecommunications equipment is dominated by three global players:

- (a) Alcatel, whose communications division’s 1994 sales amounted to ECU 10.2 billion;
- (b) Ericsson, whose 1994 sales turnover was ECU 5.7 billion;
- (c) Siemens, whose 1994 telecommunications turnover was ECU 10.2 billion.

For these companies, 40–60% of sales were accounted for by the public sector.

Table 16.1. Telecommunications equipment

	B	D	DK	E	F	I	IRL	NL	UK	A	S	FIN	Total
Production (ECU bn 1993 prices)													
1988	792	5,601	112	1,761	4,147	3,061	242	786	2,818	357	1,508	288	21,473
1994	851	6,511	95	1,087	4,003	3,018	188	787	1,372	359	1,091	255	19,616
% CAGR 88-94	1.2	2.5	(2.4)	(7.7)	(0.6)	(0.2)	(4.1)	0.0	(11.3)	(5.3)	(2.0)	(0.3)	(1.5)
Trend ¹			**				**		***	***			
Balassa index													
1988	1.11	1.03	0.24	1.17	1.00	0.91	1.92	0.80	0.85	0.61	2.32	0.89	-
1993	1.67	1.12	0.27	0.98	1.08	0.95	1.40	1.06	0.52	0.64	2.09	1.04	-
Employment² (‘000s)													
1988	-	447	-	28	90	51	6	-	207	-	-	-	912
1994	-	387	-	18	81	59	6	-	156	-	-	-	772

Notes: ¹ Positive trend: + ($0.6 \leq r^2 < 0.75$), ++ ($0.75 \leq r^2 < 0.85$), +++ ($r^2 \geq 0.85$).

Negative trend: * ($0.6 \leq r^2 < 0.75$), ** ($0.75 \leq r^2 < 0.85$), *** ($r^2 \geq 0.85$).

² Figures refer to NACE 344 (Telecommunication, electrical and measuring, electro-medical equipment).

Sources: VISA database, Eurostat 1995.

Profile of the world-wide telecommunications industry, Elsevier Advanced Technology, 1995.

DEBA, industry and database estimates.

Company accounts, 1994/95.

Basic statistics of the Community, 1989, 1993, 1995, Eurostat.

16.2.3. Specialization

The trend in merger and acquisitions since 1987 has resulted in a redistribution of telecommunications equipment production within the EU to the extent that most Member States exhibited around average specialization, with the exception of Sweden, which had a relatively high degree of specialization with a Balassa index of 2.09 in 1993.

The reduction in the degree of specialization in Sweden simply reflects Ericsson's policy of shifting production to key centres in EU.

16.3. Railway rolling stock

16.3.1. Size

The EU railway rolling stock industry has grown substantially in the period 1987–94, at a rate of 6.6% per annum, suggesting an increase in competitiveness. A successful rationalization process appears to be underlying this growth, as indicated by the substantial reductions in employment in the UK, Italy and, to a lesser extent, Spain.

The French industry in particular, followed by that of Germany, has experienced significant growth compared to the rest of the EU.

16.3.2. Supplier concentration

The industry rationalization is also demonstrated by the significant increase in supplier concentration. Since 1987, when over 15 major producers existed in Europe, only three main players have emerged, focusing on providing total transportation systems:

- (a) Adtranz, the most recent alliance between ABB and AEG in Germany;
- (b) GEC-Alsthom, a joint-venture between GEC in the UK and Alcatel in France;
- (c) Siemens in Germany.

Table 16.2. Railway rolling stock (NACE 362)

	D	E	F	GR	I	UK	DK/B/P	EUR-12
Production (ECU m 1990 prices)								
1987	677	525	848	26	1,181	1,198	109	4,565
1994	1,093	780	2,453	34	1,148	1,426	188	7,138
% CAGR 87-94	7.0	5.8	16.4	3.9	(0.4)	2.5	9.2	6.6
Trend ¹	++	+	++				++	++
Balassa index								
1987	0.55	1.73	0.92	0.52	1.75	1.59	-	-
1993	0.67	2.08	2.17	0.40	0.35	1.49	-	-
Employment (‘000s)								
1987	10.4	11.3	10.2	2.6	15.3	19.6	2.1	71.5
1994	12.2	10.6	16.7	1.9	10.7	13.9	2.2	68.3

Notes: ¹ Positive trend: $+(0.6 \leq r^2 < 0.75)$, $++ (0.75 \leq r^2 < 0.85)$, $+++ (r^2 \geq 0.85)$.
Negative trend: $*(0.6 \leq r^2 < 0.75)$, $** (0.75 \leq r^2 < 0.85)$, $*** (r^2 \geq 0.85)$.

Sources: VISA database, Eurostat 1995.
DEBA, industry and database estimates.
Company accounts, 1994/95.
Basic statistics of the Community, 1989, 1993, 1995, Eurostat.

Of particular note is the joint venture between GEC and Alsthom, and the mergers and alliances of ABB, both of which occurred as a competitive response to the opportunities created by the single European market, and, in particular, the single market in public procurement.

In addition to these leading suppliers, there are a number of national players whose future market position has yet to be decided. As most recent major projects have been awarded to consortia, their future success appears to lie in strategic alliances, such as Ansaldo's collaborative agreement with Breda Ferroviaria and Siemens.

16.4. Power generation and distribution equipment

16.4.1. Size

In terms of volume output, the power generation and distribution equipment industry in Europe has grown significantly in the period 1987–94, at a rate of nearly 3% per annum. The German industry remained the largest by far, accounting for over 40% of total European

volume output in 1994. As suggested by the large decrease in employment, the output increases were accompanied by industry restructuring.

Table 16.3. Power generation and distribution equipment¹

	B	D	DK	E	F	GR	I	IRL	NL	P	UK	EUR-12
Production (ECU mn 1990 prices)												
1987	1,719	29,460	-	3,457	14,365	380	10,216	-	-	463	9,610	73,043
1994	1,684	36,740	-	4,495	16,037	395	12,988	-	-	602	10,936	87,797
% CAGR 87-94	(0.7)	3.2	-	3.8	1.6	0.5	3.5	-	-	3.9	1.9	2.7
Trend ²		+++		++								++
Balassa index												
1987	0.63	2.01	-	0.58	0.96	0.39	0.77	-	-	0.64	0.76	-
1993	0.63	1.89	-	0.53	1.01	0.38	0.76	-	-	0.75	0.80	-
Employment (‘000s)												
1987	16 ³	392	-	47	170	5	107	4.9	-	11	178	965
1994	14 ⁴	342	-	37	143	4	88	7.0 ³	-	13 ³	137	814

Note ¹ Data refer to the aggregation of NACE 342 (Electrical machinery), NACE 341 (Insulated wires and cables), NACE 343 (Electrical Equipment for industrial use, batteries and accumulators).

² Positive trend: + (0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

³ 1990 figure.

⁴ 1993 figure.

Sources: VISA database, Eurostat 1995.

Panorama of EU industry 1995/96, Eurostat.

DEBA, industry and database estimates.

Basic statistics of the Community, 1989, 1993, 1995, Eurostat.

16.4.2. Supplier concentration

Both in the cable and wire industry (NACE 341) and the power generation equipment industry supplier concentration is high and increasing. In the cable and wire industry, concentration increased mainly through cross-border mergers and acquisitions by the largest suppliers:

- (a) Alcatel (F),
- (b) BICC (UK),
- (c) Pirelli (I),
- (d) ABB and Siemens (D),
- (e) Nokia (S/FIN).

The power generation equipment industry has become more concentrated through cross-border alliances aimed at providing large turn-key systems:

- (a) ABB and Siemens (D),
- (b) GEC-Alsthom (UK/F).

16.4.3. Specialization

The trend in cross-border mergers and acquisitions, particularly in the cable and wire industry, has resulted in some redistribution of production within the EU, with:

- (a) German specialization decreasing from 2.01 to 1.89, reflecting the restructuring which occurred in the German industry following unification;
- (b) France and the UK showing a slight increase in specialization as a result of the successful joint-venture between GEC and Alcatel.

16.5. Boilers and metal containers

Table 16.4. Boilers and metal containers (NACE 315)

	B	D	DK	E	F	GR	I	IRL	NL	P ³	UK	EUR-12
Production (ECU m 1990 prices)												
1987	242	5,813	197	727	5,998	36	1,210	41	287	114	2,311	16,984
1994	525	5,475	410	762	5,710	15	1,797	67	420	30	2,486	17,375
% CAGR 87-94	11.72	(0.85)	7.27	0.68	(0.70)	(11.8)	5.81	7.27	5.6	(17.3)	1.05	0.57
Trend ¹			+++			**	++	+++	++			
Balassa index												
1987	0.47	1.49	0.48	0.53	2.18	0.17	0.39	0.33	0.33	0.70	0.78	-
1993	0.83	1.41	0.88	0.47	1.79	0.05	0.50	0.40	0.43	0.16	0.89	-
Employment (^{000s})												
1987	3.6	67	2.9	13	74	0.9	16	0.6	4.2	4.5	40	227
1994	6.8	64	3.5 ²	10	68	0.4	16	0.8	5.1	1.0 ³	32	208

Notes: ¹ Positive trend: + (0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).
Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

² 1993 figure.

³ Break in series between 1989 and 1990. Figures are not comparable.

Sources: VISA database, Eurostat, 1995.

Panorama of EU industry 1995/96, Eurostat.

DEBA, industry and database estimates.

Basic statistics of the Community, 1989, 1993, 1995, Eurostat.

15.5.1. Size

In general, the EU industry for boilers and metal containers has only experienced a marginal growth in output since 1987, with Belgium, Denmark, Ireland, Italy and the Netherlands seeing output rise and other Member States experiencing no change or declining output.

In terms of employment, the industry has shrunk in the period 1987–94, most notably in the UK and France, reflecting a continuing process of restructuring and rationalization among the larger players.

16.5.2. Concentration

The boilers and metal containers industry in Europe is dominated by a small number of large players, following a period of significant mergers and acquisitions activity, which is still ongoing. From more than 20 major companies in 1987, several large integrated global players have emerged, including:

- (a) Deutsche Babcock (D),
 (b) Alstom (F),
 (c) Dexion International, a subsidiary of Interlake (US),
 (d) CLN (I).

16.5.3. Specialization

In terms of specialization as measured by the Balassa index, the boiler and metal container industry accounted for a relatively large, but decreasing, share of total industry in Germany and France, whereas the other Member States showed no significant degree of specialization.

16.6. Office machinery

Table 16.5. Office machinery (NACE 33)

	B	D	DK	E	F	GR	I ³	IRL	NL	P	UK	EUR-12
Production (ECU m 1990 prices)												
1987	120	10,241	115	860	8,196	-	6,685	2,779	-	-	7,713	37,675
1994	106	14,350	211	1,194	7,702	-	10,638	3,178	-	-	18,799	58,615
% CAGR 87-94	(1.7)	4.9	9.1	4.8	(0.9)	-	6.9	1.9	-	-	13.5	6.5
Trend ¹			++	+		-	++				+++	+++
Balassa index												
1987	0.08	1.25	0.15	0.28	1.04	-	1.02	10.3	-	-	1.19	-
1993	0.07	0.98	0.17	0.28	0.85	-	0.85	10.6	-	-	2.03	-
Employment (^{000s)}												
1987	1.2	91.8	2.3	3.3	49.9	-	43.3	6.3	-	-	41.0	246
1994	0.9	67.8	1.4 ²	3.0	48.9	-	25.8	8.4	-	-	55.8	217
Share of top ten vendors												
1991	76.5	74.2	82.2	68.0	76.6	-	78.9	-	74.7	-	72.4	-
1993	60.5	56.6	62.0	53.9	60.3	-	62.9	-	61.1	-	51.1	-

Notes: ¹ Positive trend: $+(0.6 \leq r^2 < 0.75)$, $++ (0.75 \leq r^2 < 0.85)$, $+++ (r^2 \geq 0.85)$.
Negative trend: $*(0.6 \leq r^2 < 0.75)$, $** (0.75 \leq r^2 < 0.85)$, $*** (r^2 \geq 0.85)$.

² 1993 figure.

³ Break in series between 1988 and 1989

Sources: VISA database, Eurostat, 1995.

Panorama of EU industry 1995/96, Eurostat.

Enterprises in Europe, Eurostat, 1994.

DEBA, industry and database estimates.

Basic statistics of the Community, 1989, 1993, 1995, Eurostat.

16.6.1. Size

In terms of output, the European office machinery industry has grown substantially in the period 1987–94, at a rate of 6.5% per annum. The significant reductions in employment, particularly in Germany and Italy, indicate ongoing restructuring and a shift to a more specialized manufacturing industry. This shift is particularly noticeable in Ireland and the UK, both of which have attracted substantial flows of foreign direct investment from mainly North-American and Japanese players.

16.6.2. Concentration

The office machinery industry is characterized by a high degree of concentration, albeit decreasing as indicated by the top ten market shares over the period 1991–93. The major players include only three European companies – Groupe Bull, Olivetti and Siemens-Nixdorf – with the others being predominately American, such as IBM, Digital Equipment, Compaq, Hewlett Packard, etc.

16.6.3. Specialization

The three Member States with large national suppliers, France, Germany and Italy, experienced a reduction in specialization, which is indicative of the competitive pressures from third country suppliers. The high and increasing levels of specialization in Ireland and the UK reflect the successful attraction of foreign investments.

16.7. Motor vehicles

Table 16.6. Motor vehicles (NACE 351)

	B/L	D	DK	E	F	GR	I	IRL	NL	P ²	UK	EUR-12
Production (ECU m 1990 prices)												
1987	-	74,485	-	17,457	38,241	102	18,613	-	-	677	18,806 ³	179,955
1994	-	72,861	-	18,603	40,075	256	16,466	-	-	962	19,291	181,167
% CAGR 87-94	-	(0.1)	-	0.9	0.7	13.9	(1.7)	-	-	5.2	1.3 ⁴	0.1
Trend ¹						++						
Balassa index												
1987	-	2.11	-	1.34	1.05	0.06	0.55	-	-	0.37	0.58 ³	-
1993	-	1.86	-	1.12	1.13	0.10	0.41	-	-	0.46	0.66	-
Employment ('000s)												
1987	-	555	-	99	225	1.0	138	-	-	5.3	-	1213
1994	-	466	-	90	190	1.7	113	-	-	6.9	124 ³	1024

Notes: ¹ Positive trend: $+(0.6 \leq r^2 < 0.75)$, $++ (0.75 \leq r^2 < 0.85)$, $+++ (r^2 \geq 0.85)$

Negative trend: $*(0.6 \leq r^2 < 0.75)$, $** (0.75 \leq r^2 < 0.85)$, $*** (r^2 \geq 0.85)$.

² Break in series between 1989 and 1990.

³ 1992 figure.

⁴ % CAGR from 1992 to 1994.

Sources: VISA database, Eurostat, 1995.

The new car market in Europe, The Economist Intelligence Unit, 1992/93.

DEBA, industry and database estimates.

Basic statistics of the Community, 1989, 1993, 1995, Eurostat.

16.7.1 Size

The European automotive industry experienced stagnating output volumes in recent years, which were mainly recession related. Overall volume output grew by a mere 0.1% per annum between 1987 and 1994. As suggested by the significant decrease in employment, the industry is in a continuous state of cost cutting.

16.7.2. Concentration

A high degree of supplier concentration characterizes the European automotive industry, with in:

- (a) Germany, nine companies accounting for 81% of turnover;
- (b) Italy, five companies accounting for 86% of turnover;
- (c) France, five companies accounting for 84% of turnover;
- (d) the UK, seven companies accounting for 80% of turnover;
- (e) Spain, five companies accounting for 81% of turnover.

Since 1987, concentration in the industry has increased, with the number of independent manufacturers having reduced. Partnerships and alliances are increasingly regarded as providing the most cost-effective method of developing a competitive product portfolio and reducing dependence on domestic markets, as demonstrated by the:

- (a) alliance between Iveco and Ford in light commercial vehicles;
- (b) acquisition of Rover group by BMW;
- (c) alliances between PSA and Fiat, Ford and VW for the development and production of a multipurpose vehicle.

16.7.3. Specialization

The increase in concentration through acquisitions and partnerships has, apart from differences in ownership, not resulted in a significant redistribution of automotive manufacturing in Europe, as demonstrated by relatively unchanged specialization levels over the period 1987–94. The German industry is an exception with a decreasing specialization from 2.11 in 1987 to 1.86 in 1994.

16.8. Clothing

Table 16.7. Clothing (NACE 453)

	B	D	DK	E	F	GR	I	IRL	NL	P	UK	EUR-12
Production (ECU m 1990 prices)												
1987	1,117	9,757	454	3,457	7,126	593	10,924	-	-	1,988 ²	5,870	41,031
1994	1,613	8,761	387	5,119	6,487	630	13,504	-	-	1,692	5,507	44,480
% CAGR 87–94	5.4	(1.5)	(2.6)	5.7	(1.3)	0.9	3.1	-	-	(4.0)	(0.9)	1.2
Trend ¹	+++			++								
Balassa index												
1987	0.86	0.95	0.39	1.10	0.82	1.32	1.73	-	-	3.9 ²	0.85	-
1993	1.21	0.73	0.47	1.23	0.82	1.14	1.85	-	-	4.4	0.80	-
Employment (‘000s)												
1987	26	157	8	87	139	30	156	-	-	112 ²	192	863
1994	18	90	6 ³	79	96	22	134	-	-	114	142	740

Notes: ¹ Positive trend: + (0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

² 1990 figure.

Sources: VISA database, Eurostat, 1995.

Panorama of EU industry 1995/96, Eurostat.

DEBA, industry and database estimates.

Basic statistics of the Community, 1989, 1993, 1995, Eurostat.

Since no statistics at a lower level of aggregation are available, exhaustive conclusions on the basis of Table 16.7 can be misleading, as uniform manufacturing represents only a very small part of the overall clothing industry.

A more comprehensive analysis of changes in the supply-side structure in the uniform manufacturing is provided in the case study on uniforms (see Chapter 21).

16.9. Metal furniture

Table 16.8. Metal furniture (NACE 316)

	B/L	D	DK	E	F	GR	I	IRL	NL	P	UK	EUR-12
Production (ECU m 1990 prices)												
1987	244	2,857	315	1,002	1,405	-	1,576	-	-	-	1,043	8,443
1994	292	3,625	397	1,360	1,534	-	1,623	-	-	-	1,060	9,899
% CAGR 87-94	2.6	3.5	3.4	4.5	1.3	-	0.4	-	-	-	0.2	2.3
Trend ¹												
Balassa index												
1987	0.86	1.40	1.47	1.45	0.73	-	0.96	-	-	-	0.64	-
1993	0.77	1.44	1.51	1.62	0.66	-	0.87	-	-	-	0.62	-
Employment (^{'000s})												
1987	3.3	34.0	3.9	15.0	20.5	-	14.5	-	5.3	-	17.1	114
1994	3.1 ²	37.0	3.5 ²	17.0	18.4	-	14.0	-	5.8	-	17.1	115

Notes: ¹ Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

² 1993 figure.

Sources: VISA database, Eurostat, 1995.

Panorama of EU industry 1995/96, Eurostat.

DEBA, industry and database estimates.

Basic statistics of the Community, 1989, 1993, 1995, Eurostat.

16.9.1. Size

Output in the metal furniture industry has increased in the period 1987–94, whereas total employment in the industry remained static, indicating increased productivity. Germany alone accounted for nearly all the output increase.

16.9.2. Supplier concentration

The metal furniture industry is highly fragmented and dominated by SMEs. The average size of firms has increased recently, suggesting that concentration in the industry is growing.

16.9.3. Specialization

Recent concentration trends in the industry appeared to have redistributed some of the production, with small increases in specialization in Germany, Denmark and Spain, and similar decreases in Belgium, France, Italy and the UK.

16.10. Paper and stationery

Table 16.9. Paper (NACE 472)

	B	D	DK	E	F	GR	I	IRL	NL	P	UK	EUR-12
Production (ECU m 1990 prices)												
1987	1,188	9,546	782	2,478	7,454	311	4,504	-	1,895	309	8,592	37,308
1994	1,277	13,233	884	3,194	9,750	237	6,972	-	2,181	265	9,280	47,462
% CAGR 87-94	1.0	4.8	1.8	3.7	3.9	(3.8)	6.4	-	2.0	(2.2)	1.1	3.5
Trend ¹		++		+++	+++	***	+++		+++	**		+++
Balassa index												
1987	1.02	1.04	0.84	0.92	0.97	0.64	0.66	-	1.05	0.87	1.49	-
1993	0.87	1.07	0.85	0.79	1.04	0.43	0.78	-	1.02	0.53	1.40	-
Employment ('000s)												
1987	10.6	100	7.4	24.0	68.8	3.9	34.0	-	15.5	5.9	110	383
1994	11.0	108	6.5 ²	22.7	68.7	4.3	32.7	-	15.9 ²	3.7 ²	97	372

Notes: ¹ Positive trend: +(0.6 ≤ r² < 0.75), ++ (0.75 ≤ r² < 0.85), +++ (r² ≥ 0.85).

Negative trend: * (0.6 ≤ r² < 0.75), ** (0.75 ≤ r² < 0.85), *** (r² ≥ 0.85).

² 1993 figure.

Sources: VISA database, Eurostat, 1995.

DEBA, industry and database estimates.

Basic statistics of the Community, 1989, 1993, 1995, Eurostat.

16.10.1. Size

EU output has grown by 30% between 1987 and 1994 with no significant change in employment. This indicates a productivity gain of over 3% per annum.

16.10.2. Concentration

The paper industry has traditionally been fragmented with a large number of producers and widely dispersed production facilities, located close to the market. However, the industry has recently experienced a surge in mergers and acquisition activity, focused on rationalizing fragmented production.

16.10.3. Specialization

The recent concentration and rationalization trends appear to have resulted in redistribution of some of EU production, with specialization decreasing slightly in the UK and Spain, and increasing in Germany, France, and Italy.

In view of these industry changes, it should be noted that the public sector generally purchases paper and stationery mainly from local wholesalers, which are characterized by a highly fragmented structure. In addition, the public sector, in contrast to the private sector, is not the dominant purchaser in the paper and stationery industry. In this respect, any changes in the supply-side structure cannot be related to the opening up of the European public procurement markets.

16.11. Civil engineering

Table 16.10 Civil engineering (NACE 502)

	B	D ¹	DK	E	F	I	IRL	NL	P	UK	A	S	FIN	EUR-15
Production changes (1991 constant prices)														
% CAGR 87-95	6.2	4.5	0.0	6.2	1.0	(4.2)	3.3 ⁵	2.1	8.3	4.4	1.74	5.4	(2.8)	2.4
% CAGR 91-95	12	2.6	1.0	(5.5)	(3.6)	(8.5)	-	2.0	5.2	(3.2)	1.79	8.0	(6.0)	(1.6)
Employment ('000s)														
1987	198	1,739	191	926	1,588	1,615	71	371	354	1,592	124	278	184	9,230
1991	235	1,984	157	1,273	1,651	1,681	78	389	363	1,698	134	312	179	10,136
1995 ³	233	2,672	175	1,033	1,460 ⁴	1,563	71 ⁵	387	340	1,355	134	215	117	9,926
%CAGR 87-95	2.0	5.5	(1.0)	1.4	(1.0)	(0.5)	0.0	0.5	(0.5)	(2.0)	1.0	(3.2)	(5.5)	1.2
%CAGR 91-95	(0.2)	7.7	(2.7)	(5.1)	(3.0)	(2.4)	(4.6)	(0.1)	(1.6)	(5.5)	0.0	(8.9)	(10.0)	(1.0)

Notes: ¹ Break in series in 1991 (West Germany and East Germany).

² Total does not include Greece and Luxembourg.

³ 1991 break series for Germany (West Germany and East Germany after 1991).

⁴ 1995 figures are FIEC estimates.

⁵ 1994 figure.

⁶ 1993 figure.

Source: Year-on-year percentage variation of production in 1991 prices, FIEC 12/95.

16.11.1. Size

Overall, total output increased between 1987 and 1994 at a rate of 2.4% per annum. However, as a result of the economic recession, a sharp downturn in construction output in the first half of the 1990s was experienced by all Member States, other than Germany which benefited from rebuilding the infrastructure in the eastern *Länder*. This is also reflected in the sharp fall in employment in the construction industry since 1991.

16.11.2. Supplier concentration

As in 1987, a small number of large national contractors dominated the civil engineering sector in 1994. The level of concentration has increased due to recession, forcing further rationalization through closures, mergers and acquisitions. Out of the top 19 companies in Europe, France dominates with eight (four of which are in the top seven), followed by the UK and Germany both with four, and Sweden, Spain and the Netherlands with one each.

SECTION F

Case studies

This section examines in detail six sectors that were identified as being most likely to have been affected by the creation of a single market in public procurement.



17. Telecommunications equipment

17.1. Overview

17.1.1. *Ex ante* hypothesis

In 1987, the EC telecommunications equipment market was characterized by:

- (a) being generally uncompetitive in global terms, supporting a range of (incompatible) digital technology;
- (b) having a surplus of both systems and producers;
- (c) benefiting from nationalistic procurement policies.

It was assumed that the opening up of public telecommunications markets to global competition would lead to:

- (a) a redistribution of markets shares within the industry with Alcatel and Siemens being net gainers;
- (b) an increase in extra-EU import penetration, mostly from the USA, Canada and Sweden;
- (c) the public telecoms operators enjoying substantial procurement savings.

17.1.2. Coverage

The main items of telecommunications equipment purchased by the public sector are public switches, cables and telephone hand-sets.

This case study will focus on public switching equipment, which accounts for some 40% of telecommunications procurement. Telecommunications equipment represents some 35% of products classified under NACE 344, which includes medical equipment.

17.1.3. Data

The following information sources have been used in this case study:

- (a) *Profile of the world-wide telecommunication industry*, Elsevier Advanced Technology, 1995, for telecommunications equipment market size and production, defined by sector as well as at product level;
- (b) Comext database, Eurostat, 1995, for the trade flow analysis at public procurement sensitive product level;
- (c) interviews carried out with marketing directors of some European and non-European leading companies. Their feedback has been used for public procurement legislation impact analysis, market evolution trends and scenario drawing;
- (d) *Panorama of EU industry 1995/96*, Eurostat 1995, for data on industry structure, trade and feedback in relation to industry evolution.

17.1.4. Key findings

The EU telecommunications equipment market has undergone fundamental change since 1987:

- (a) the supply-side has been restructured and is today dominated by three economically strong and technologically advanced European groups;
- (b) equipment prices have come down by 20–30% in nominal terms;
- (c) market leaders – Alcatel, Siemens and Ericsson – have transferred production to other Member States to ensure access to local (public-sector) markets;
- (d) indirect import penetration has risen significantly, largely in components;
- (e) the EU's trade surplus with the rest of the world has been growing steadily since 1987, reflecting the industry's competitiveness on the world stage.

The main drivers of change have been the globalization of the market for telecommunications services, which has been the motor of liberalization. Service providers operating networks – the entities covered by the Utilities Directive – have responded by demanding the best technical solutions.

Although much of the *ex ante* hypothesis has been achieved, the role of the Utilities Directive, which came into force in January 1993 in most Member States, has been strictly limited.

Liberalization of network services in January 1998 will accelerate the changes already in progress and is likely to contribute to the achievement of a competitive and fair 'public procurement' market almost overnight.

17.2. Evolution of the telecommunications market

17.2.1. Drivers of change

Since 1987, the key drivers of change influencing the demand for telecommunications equipment in the EU have been:

- (a) liberalization of the provision of telecommunications services,
- (b) technological developments,
- (c) privatization,
- (d) globalization.

These drivers are inextricably linked:

- (a) the liberalization of the provision of mobile communications, satellite and value added services has led to the opening up of the market for a range of telecommunications equipment;
- (b) the privatization of British Telecommunications (BT) in the UK resulted in:
 - (i) the company being subject to commercial pressures in respect of bottom-line performance and of loss of market share due to licences being granted to new network operators,
 - (ii) other Member States planning to adopt the UK mode;
- (c) Integrated Services Digital Network (ISDN) and other related technologies have contributed to product standardization;
- (d) the rapid globalization of the telecommunications market, coupled with the need to compete internationally with low cost service providers, has benefited equipment suppliers from the USA and Sweden.

17.2.2. Demand side (1987-94)

Structure

The most radical change in the structure of demand has occurred in the UK:

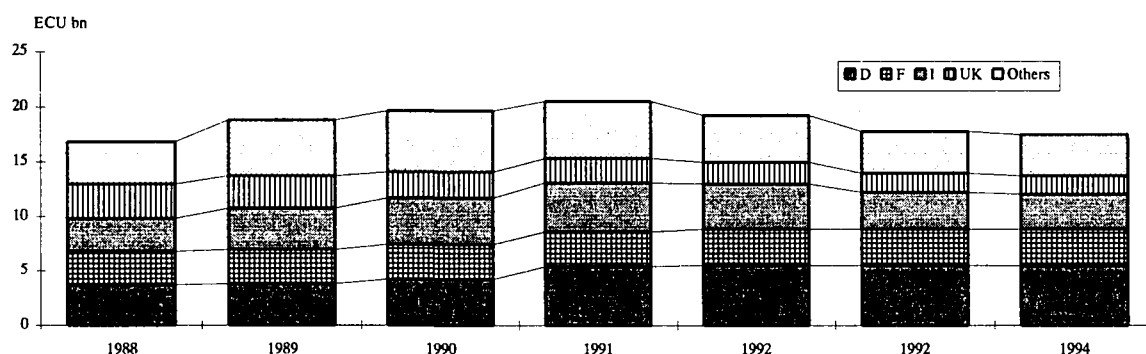
- (a) BT was privatized and became a quoted company on the London Stock Exchange;
- (b) network carrier licences have been granted to Mercury Communications and Energis.

With the exception of Spain, where Telefonica is a private company, 33% owned by the state, and the UK, where BT is a publicly quoted company, all other network carriers are still state owned or controlled. However, most tend to be run along commercial lines with no noticeable state influence on their purchasing policies.

Market size

The EU market for telecommunications equipment in 1994 was worth some ECU 18 billion.

Figure 17.1. Telecommunications equipment market in Europe¹



¹ Excludes Portugal, Greece and Luxembourg and mobile communication equipment.

Sources: *Profile of the world-wide telecommunications industry*, Elsevier Advanced Technology, 1995.

Panorama of EU industry 1995/96, Eurostat.

The recession of the early 1990s had only a limited impact on public procurement in telecommunications. To a great extent the market was buoyed by:

- (a) the commercial imperative to respond to demand for new technologies,
- (b) infrastructure requirements resulting from German unification.

The situation was somewhat different in the area of public switching equipment, where current price expenditure fell by some 22% between 1988 and 1993 (Table 17.1).

Table 17.1 Public switching equipment market (million ECU)

	1988	1993	Percentage change 1988-93
Germany	2,355	1,412	-40.04
France	1,291	1,450	12.32
Italy	1,678	1,462	-12.87
United Kingdom	1,245	763	-38.71
Total	6,595	5,087	-22.56

Sources: *Profile of the world-wide telecommunications industry*, Elsevier Advanced Technology, 1995.
Panorama of EU industry 1995/96, Eurostat.

Rather than a decline in volume demand, this situation is seen more to reflect:

- (a) the introduction of new technologies offering better performance/price ratios;
- (b) the increase in the number of foreign competitors operating in national markets as a result of mergers and acquisitions, and establishment of national presences;
- (c) overall price reductions of 20-30%.

Concentration of supply

In 1987, Member State markets were dominated by a small number of national champions. Today, the national markets are still served by a small number of suppliers. However, they are not exclusively national champions, reflecting cross-border mergers and acquisitions.

The most important suppliers in the larger Member States are described below.

Key suppliers – France

Alcatel Cit, which is the largest unit of Alcatel's Network system group is an acknowledged world leader in digital telephone switching equipment with operations in 14 other countries. Public switching equipment sales in 1993 accounted for roughly 60% of the company's total revenue (FF 10.1 billion). In the same year, network operators in Belgium, Denmark, France, Germany, Ireland, Italy, Portugal and Spain placed orders for Alcatel's 1000 systems.

Matra-Ericsson Telecommunication is the other major player in France, and is a joint venture between Ericsson and Matra Communication. It produces and markets Ericsson AXE switches in France.

Key suppliers – Germany

Siemens, which developed the advanced EWSD switch has been improving its presence abroad through alliances and acquisitions. In 1989 the company bought 40% of GPT, part of GEC Plessey (UK). In 1993 it took control of Teleco Cavi (Italy) and Cablestream Ltd (UK). In 1995 the company created a new equipment supplier in Italy through the merger of Italtel and Siemens Telecommunications.

Table 17.2. Key recent acquisitions, mergers, joint ventures, agreements and contracts in the last years

Companies concerned	Details
Siemens GPT	1989. Siemens bought 40% in GPT, a GEC Alsthom subsidiary
Alcatel Telettra	October 1990. Alcatel agreed to acquire Fiat's 90% shareholding in Telettra
Alcatel Alsthom Alcatel	March 1992. ITT sold its 30% stake in Alcatel to Alcatel Alsthom
Ericsson Schrack	March 1991. Ericsson, with a group of Austrian banks, agreed to buy 83% of the Austrian telecommunication supplier. In 1993 Ericsson increased its holding from 50% to 80%
Ericsson Intracom	Ericsson acquired a 15% stake in Intracom, the biggest telecommunications equipment supplier in Greece
Northern Telecom STC Alcatel	March 1991. Northern Telecom acquired STC for US\$ 2.6 billion. STC was merged with NT's existing European operation to form a new company, Northern Telecom Europe. In 1993 Alcatel took over STC submarine systems investigations
Bell Atlantic STET	Bell Atlantic and STET have formed a joint venture to develop software for large telephone networks
Ericsson, STET Hellas Panafon consortium	Greece became an important market for Ericsson in 1993: Panafon consortium signed a contract for the delivery of GSM equipment into the year 1997 and STET Hellas ordered SKR 300 million worth turnkey equipment
AEG, Matra Communication	They are to jointly develop and market mobile and switches. AEG has taken a small stake in Matra Communication
Northern Telecom Matra	Northern Telecom sells off STC to Alcatel and increases its stake in Matra Communication from 20% to 50%
Northern Telecom	In July 1994, Northern Telecom signed a contract with Concert Communications Co.
Ericsson Mercury Communication	Mercury has awarded a contract to Ericsson for AXE digital switching equipment - value around US\$ 17 million
Alcatel	In 1993 network operators in Belgium, Denmark, France, Germany, Italy, Ireland, Norway, Portugal, Spain and the UK placed orders for Alcatel I000 systems
Ericsson Hans Kolbe & Co.	1991. Ericsson buys a 51% stake in Hans Kolbe & Co. (D)
Siemens and Italtel	1995. They join their production activities through the creation of the company Telsi

Sources: *Profile of the world-wide telecommunications industry*. Elsevier Advanced Technology, 1995.
Financial Times, 1992-95.

Alcatel's presence in Germany is substantial and is increasing following the growth of Deutsche Telekom orders. In 1993 switching equipment production was DM 2,715 million, with an increase of 20% on 1991.

DeTeWe's public communication system divisions accounted for 53% (DM 500 million) of company turnover in 1993, and it has developed a technical co-operation agreement with Ericsson and Fuba.

Ericsson strengthened its presence in the German market with the acquisition of the local manufacturer Hans Kolbe & Co. in 1991.

Key suppliers – Italy

Italtel is 80% owned by STET, a wholly owned subsidiary of another state holding IRI and 20% by AT&T. Italtel is a major supplier of Linea UT public switching equipment and has an

estimated 50% share of its domestic market. In response to increased competition the manufacturing company Telsi was formed with Siemens in 1995.

Alcatel Face is a subsidiary of Alcatel Italia Spa, one of the country's major suppliers of telecommunication equipment, and is responsible for the production of the public switching system known as System 12.

Telettra, previously owned by Fiat, is now part of Alcatel Italia, which owns 75% of the shares with an option to purchase the remaining 25%.

Siemens Telecommunications, a wholly owned subsidiary of Siemens AG, is increasing its activities in public communications following the joint venture with Italtel in 1995, when it formed Telsi (manufacturing facilities).

Ericsson Fatme, a subsidiary of Ericsson Spa, is a major supplier of AXE public switching equipment and telecommunications equipment.

Key suppliers – United Kingdom

GPT is the result of a joint venture between Siemens (40%) and GEC Plessey (60%). Due to a serious decline in orders, the company has been going through a major rationalization programme.

Northern Telecom Europe is the European headquarters of the largest Canadian telecommunications equipment manufacturer. In the recent past, European activities have been growing through the acquisition of a stake in Matra Communication (F) and the establishment of 2,500 people in R&D units, 1,500 of them in the UK. In 1994 they created a multimedia alliance with Mitsubishi, focusing on the development of ATM switching equipment. In 1994 the company signed a contract with Concert Co., the joint venture between BT and MCI, to supply advanced switching equipment.

Ericsson (UK) had a turnover in 1993 of UK£ 309 million, 95% of which was from the domestic market. BT and Mercury are the biggest customers of its public systems division.

17.2.3. Supply side (1987–94)

Supplier concentration

The European telecommunications equipment market is characterized by a high degree of supplier concentration, reflecting the restructuring of the supply side since 1987, principally by mergers and acquisitions. Today, the market for telecommunications equipment is dominated by three global players:

- (a) Alcatel, whose communications division's 1994 sales amounted to ECU 10.2 billion;
- (b) Ericsson, whose 1994 sales turnover was ECU 5.7 billion;
- (c) Siemens, whose 1994 telecommunications turnover was ECU 10.2 billion.

For these three companies, 40–60% of sales were accounted for by the public sector.

Supply-side specialization

The importance of the telecommunications equipment sector in national output of a Member State relative to the rest of the EU has been measured by the Balassa index.

If the index is between 0 and 1, the Member State has a low degree of specialization in telecommunications equipment manufacture. If it falls between 1 and 2, there is above average, but not high specialization. If it is greater than 2, the Member State is considered to have a high degree of specialization.

Table 17.3 shows the Balassa index for the northern EU Member States.

Table 17.3. Balassa index

	1988	1990	1993
Belgium	1.11	1.35	1.67
Sweden	2.32	2.21	2.09
Ireland	1.92	1.45	1.40
Germany	1.03	0.94	1.12
France	1.00	0.91	1.08
Netherlands	0.80	0.87	1.06
Finland	0.89	1.21	1.04
Spain	1.17	1.53	0.98
Italy	0.91	1.08	0.95
Austria	0.61	0.53	0.64
United Kingdom	0.85	0.63	0.52
Denmark	0.24	0.24	0.27

Sources: *Profile of the world-wide telecommunications industry*, Elsevier Advanced Technology, 1995.
Panorama of EU industry 1995/96, Eurostat.

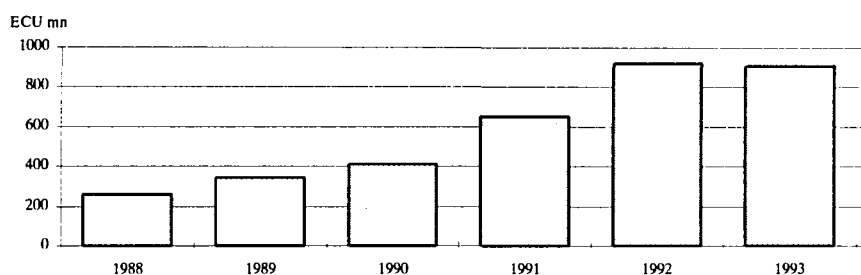
The trend in mergers and acquisitions since 1987 has resulted in a redistribution of telecommunications equipment production within the EU. As a result, most Member States exhibit around average specialization. The most notable changes were in Belgium and Spain.

This analysis is consistent with a Europe-wide restructuring of the telecommunications equipment industry.

Competitiveness

The restructuring of the European telecommunications industry has led to improved competitiveness in European and global markets. In particular, the EU has improved its position as a net exporter of public sector telecommunications equipment since 1987.

Figure 17.2. Extra-EUR-12 trade balance of telephonic and telegraphic switching apparatus



Source: Comext database, Eurostat, 1995.

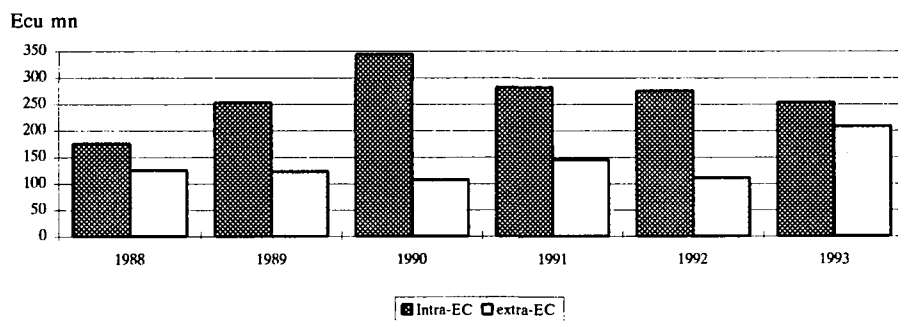
Bearing in mind the sharp reduction in equipment prices since 1987 and the nominal trade balance with the rest of the world in 1993, EU equipment suppliers have been successful in exporting to third countries.

Today, EU telecommunications equipment suppliers are competitive in terms of technology and price with North American players, with Alcatel, Siemens and Ericsson playing an increasingly important role in world markets. To maintain their position, they are investing ECU 1–2 billion per annum on R&D.

Trade flows

Intra-EU trade in telecommunications equipment has increased significantly in real terms since 1987. However, the key measure of the health of the EU industry is extra-EU trade.

Figure 17.3. EUR-12 imports of telephonic and telegraphic switching apparatus



Source: Comext database, Eurostat, 1995.

From 1993 the intra-Community flows have been collected using new procedures (Intrastat system).

The sharp rise in the extra-EC trade balance and relatively static increase in extra-EC imports, coupled with the reported reduction in the nominal price of telecommunications equipment, indicates a fourfold increase in real extra-EC exports. This situation is confirmed by the supply-side survey results which show:

- (a) import penetration levels having risen from 8% in 1987 to over 25% in 1994;
- (b) extra-EU import penetration levels of under 1%;
- (c) intra-EU direct and indirect import penetration levels of 6% and 19% respectively.

The restructuring of the EU telecommunications industry has contributed to a significant increase in indirect imports of telecommunications equipment.

17.3. Impact of the single European market

17.3.1. History

The main drivers of change since 1987 have been:

- (a) technological developments,
- (b) market liberalization and globalization,
- (c) privatization.

Although the implementation of the Utilities Directive was not seen by either the supply side or the demand side as a major factor, the *ex ante* hypothesis is well on the way to being achieved with the aims of the legislation clearly being met:

- (a) strong European players are competing effectively in global markets;
- (b) although supplier concentration is extremely high, with three groups dominating the EU supply-side, intra- and extra-EU competition has resulted in:
 - (i) improved manufacturing efficiency,
 - (ii) a significant reduction in nominal prices of equipment,
 - (iii) high levels of investment in R&D;
- (c) a restructured EU industry, where local manufacturing presence through acquisitions and mergers has substituted for direct exporting.

17.3.2. Future

The key drivers of the future are considered to be:

- (a) liberalization of the EU telecommunications market;
- (b) establishment of a truly global telecommunications market, where the technical and legal barriers between providers of telecommunications, IT and media services will be swept aside;
- (c) privatization of the EU network providers.

On 1 January 1998, the market for all telecommunications services in the EU will be liberalized in all Member States other than Denmark, Portugal and Greece. This will be reflected in an acceleration of the trend in mergers and acquisitions among service providers to create world-class information services companies.

Liberalization will herald a rapid move to privatization of the national telecommunications companies in most Member States. Joint ventures and strategic alliances will blur the boundaries between equipment suppliers and service providers.

There is little doubt that the new market environment will promote efficient procurement and, therefore, facilitate the achievement of the aims of the Utilities Directive. However, in certain

circumstances, the strict application of the legislation may be in conflict with the commercial decisions of the providers, for example, strategic alliances between purchasers and equipment suppliers.

18. Railway rolling stock

18.1 Overview

18.1.1. *Ex ante* hypothesis

Historically, the market for railway rolling stock has been characterized by 'national champions' supported by subsidies and reserved national markets. In 1987, however, it was assumed that the opening up of public procurement in a situation of technical harmonization would lead to:

- (a) a weakening of the historically strong ties between purchasers and their traditional suppliers;
- (b) increased supplier concentration through mergers and acquisitions, allowing companies to take advantage of economies of scale in production and R&D; increased trade in subcomponents and assembled locomotives;
- (d) significantly increased import penetration;
- (e) price reductions of 20–30%.

18.1.2. Coverage

This case study considers the railway sector as defined by NACE 362, namely:

- (a) locomotives powered from an external source of electricity,
- (b) diesel-electric locomotives,
- (c) railway and tramway goods vans and wagons, covered and closed.

18.1.3. Sources

The following sources of information have been used in this case study:

- (a) *The cost of non-Europe in public sector procurement* (Cecchini report), European Commission, 1988;
- (b) *Panorama of EU industry 1995/96*, Eurostat;
- (c) DEBA, for production and trade statistics;
- (d) Comext database for trade statistics;
- (e) interviews with senior executives of major European organizations involved in the railway rolling stock industry;
- (f) the annual reports of major industry players.

Some problems arising with these sources were, however, encountered, including:

- (a) significant omissions in national data from DEBA;
- (b) the difficulty of identifying trends in either production or trade because of the project-based nature of the industry.

18.1.4. Key findings

On the demand side, governments are being pressured to liberalize previously heavily subsidized national markets and increase the operational independence of network operators.

Similarly, deregulation, privatization and separation of network management from the provision of services is creating competition between service providers, further weakening the links between purchasers and traditional suppliers. As a result, the concentration of supply has reduced in the majority of Member States.

Since 1987, these developments are considered to have resulted in price reductions of the order of 20–30%.

On the supply side, over-capacity due to reduced public sector expenditure and the high cost of R&D have resulted in a radical process of rationalization since 1987, significantly increasing supplier concentration. The industry is now dominated by three major players – Adtranz, GEC-Alsthom and Siemens – all having a strong presence in other Member States.

The public procurement legislation has had little impact on the competitiveness of the industry as the varied technical standards employed by national railways provide an inherent advantage to traditional suppliers which were either involved in their development, or have prior experience of them.

Only in the market for new urban-/mass-transit systems has the increased transparency caused by the directives been considered a key factor in opening up the markets to competition.

18.2. Evolution of the railway rolling stock industry

18.2.1. Drivers of change

The main drivers of change influencing the industry are:

- (a) deregulation,
- (b) privatization,
- (c) the economy,
- (d) technology,
- (e) public procurement legislation.

18.2.2. Demand side (1987–94)

Structure

The railway transport industry comprises public transport companies engaged in the transport of passengers and goods by rail, and can be classified into two main groups:

- (a) national/regional railway networks – DB (Germany), SNCF (France), FS (Italy) and BR (UK);
- (b) local transport companies operating in a single city, town or suburban area.

In 1987, both groups were essentially closed to foreign suppliers, with government transportation policy playing an important role within the wider context of social policy. As a result, large subsidies to the state-owned network operators were the norm.

As continued budgetary constraints since 1987 have made it difficult for Member States to support rail networks through subsidized transport tariffs and investment, governments are being pressured to liberalize markets and increase the operational independence of network

operators. As demonstrated by the privatization process in the UK, this is reflected in a more commercially orientated approach towards purchasing.

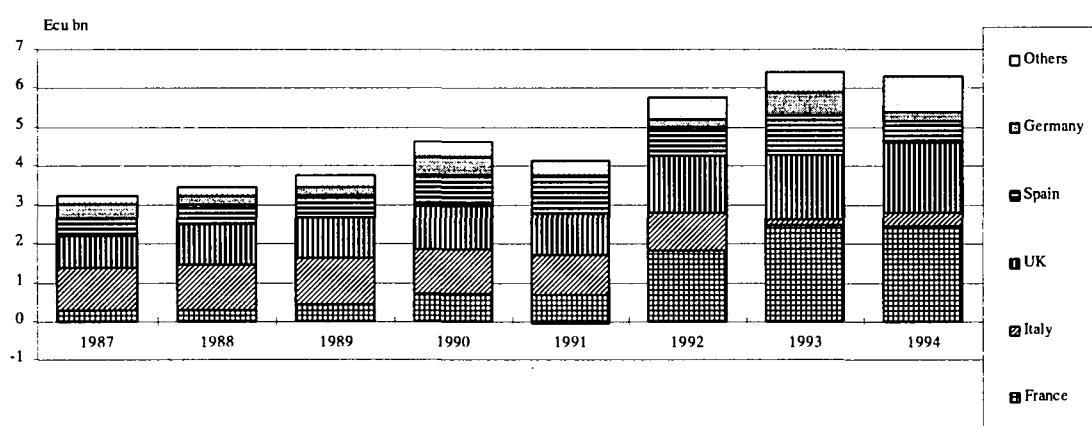
Similarly, deregulation and the separation of network management from the provision of services are creating competition between service providers which is further weakening the links between purchasers and their traditional suppliers. These new purchasers are increasingly demanding complete system solutions, as provided by build, operate and transfer (BOT) schemes.

The ongoing harmonization of technical standards is also allowing suppliers not originally involved in the development of equipment, to enter previously closed markets by the creation of a more unified industry and its concurrent economies of scale in production and R&D.

Market size

In 1987, apparent consumption of railway rolling stock equipment in Europe was ECU 3.2 billion (Figure 18.1), of which the most important markets were Italy (34%), the UK (26%), Spain (14%), Germany (11%) and France (9%).

Figure 18.1. EUR-12 apparent consumption



Source: DEBA.

By 1994, the investment cycle had changed in favour of the French and UK markets, when apparent consumption was ECU 2.4 billion (39%) in France, and ECU 1.8 billion (28%) in the UK, a direct result of the Channel Tunnel and (in France) of other high speed link projects.

Concentration of supply

Since 1987 when 'national champions' supported by government subsidies and reserved national markets were commonplace, increased competition, reduced budgets and other commercial pressures have resulted in a reduced concentration of supply in the majority of Member States. Where previously traditional suppliers would have been used (many of which have now closed or been taken over), purchasers now seek tenders from a number of pan-European manufacturers in an attempt to obtain better value for money.

18.2.3. Supply side (1987–94)

Supplier concentration

In 1987, Member States able to afford protection of their railway rolling-stock industry supported national companies at national and international levels through subsidies, exclusive contract awards and the use of technical barriers. This led to 'national champions' creating different systems and locomotive designs, causing diseconomies of scale in production and R&D.

In 1987, the major manufacturers were:

- (a) France – Alstom;
- (b) Germany – AEG, Siemens and BBC (electromotive parts), and Krauss Maffei, Krupp Mak and Thyssen Henschel (mechanical parts);
- (c) Italy – over 40 companies made rolling stock, most of which were subsidiaries, subcontractors or licensees of the major mechanical contractors, major companies being Fiat Ferroviaria (locomotives), Breda and Ansaldo;
- (d) the UK – GEC Transportation, GEC Traction (electrical parts), BREL (the engineering group of British Rail), Brush Electrical Machines (locomotives), and Metro Cammel (multiple units and metro trains).

Since 1987, the industry has undergone a process of rationalization through joint ventures and mergers, significantly increasing supplier concentration. As indicated in Figure 18.2, three major companies have grown from the industry's rationalization process, and now focus on providing total systems:

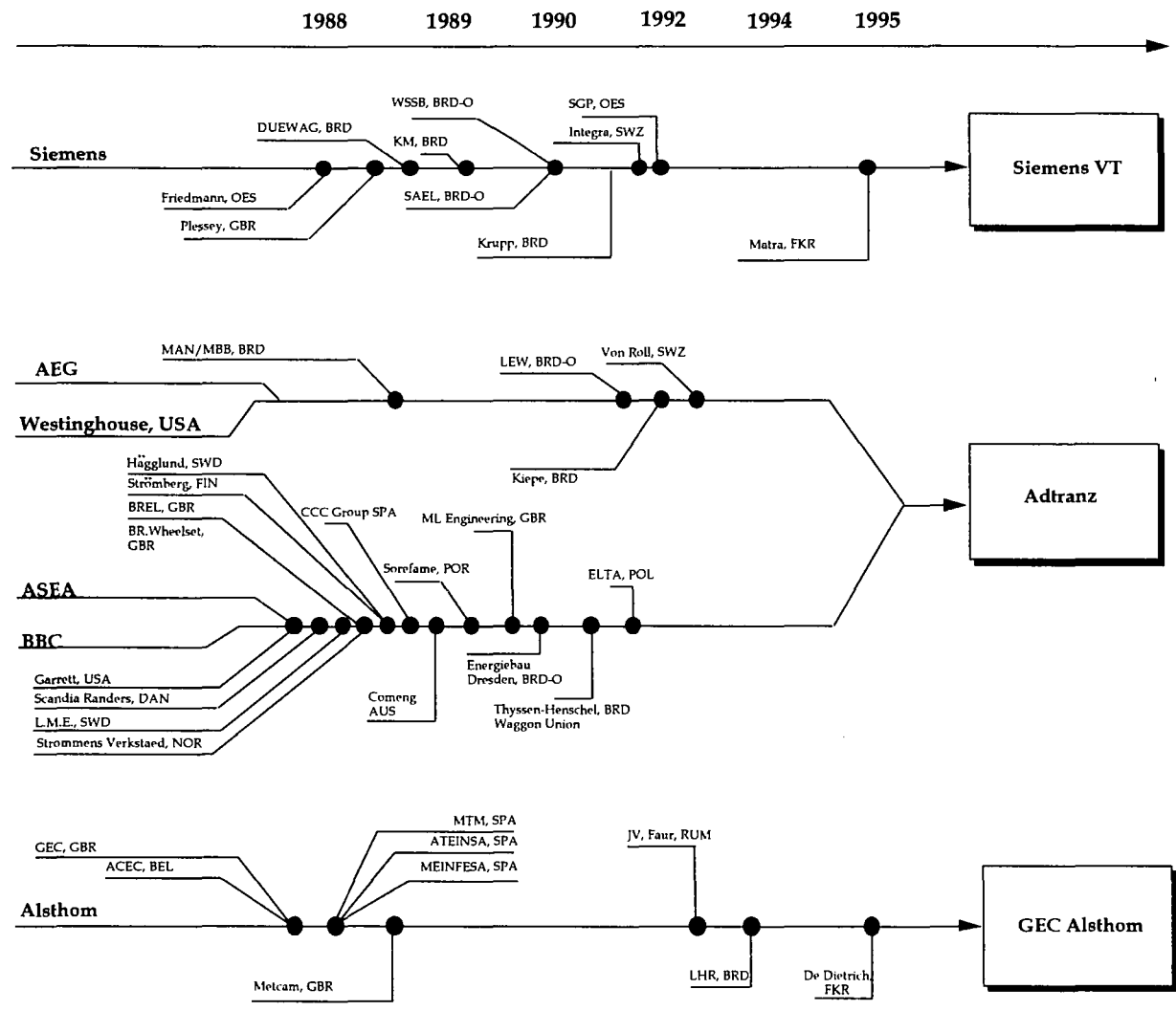
- (a) Adtranz, an alliance between ABB and AEG,
- (b) GEC-Alstom, a joint venture between GEC and Alstom,
- (c) Siemens.

Of particular note is the joint venture between GEC and Alstom, and the mergers and alliances of ABB, both of which occurred as a competitive response to the opportunities created by the single European market, and in particular, the public procurement legislation.

In addition to these leading suppliers, there are a number of national players whose future market position has yet to be decided. As most recent major projects have been awarded to consortia, their future success appears to lie in strategic alliances, such as Ansaldo's collaborative agreement with Breda Ferroviaria and Siemens.

Bombardier, a leading Canadian supplier in the North American market, is now increasing its presence in Europe, with operations in Belgium (BN), France (ANF-Industrie), Germany, Austria and the UK. It has already been awarded a number of important contracts and has had a strong involvement in manufacturing double and single deck wagons for the Channel Tunnel operators.

Figure 18.2. Evolution of Europe's three leading suppliers



Source: EuroStrategy Consultants interview programme.

Supply-side specialization

The importance of the railway rolling-stock sector in national output of a Member State relative to the rest of the EU has been measured by the Balassa index (see Table 18.1).

The trend in mergers and acquisitions since 1987 has resulted in a redistribution of production within the EU. The greatest movements have been in:

- (a) France, where the index increased from 0.92 to 2.17, reflecting increased demand created by the high-speed rail links, and the winning of large contracts in the Far East by GEC-Alsthom, for which production takes place in France;
- (b) Italy, where the index decreased from 1.75 to 0.35, reflecting reduced public expenditure, falling prices, rationalization of production, and the movement abroad of part of Ansaldo's production.

Table 18.1. Balassa index

	1987	1993
France	0.92	2.17
Spain	1.73	2.08
United Kingdom	1.59	1.49
Germany	0.55	0.67
Greece	0.52	0.40
Italy	1.75	0.35

Sources: VISA database, Eurostat, 1995.
Basic statistics of the Community, 1993, 1995, Eurostat.

Competitiveness

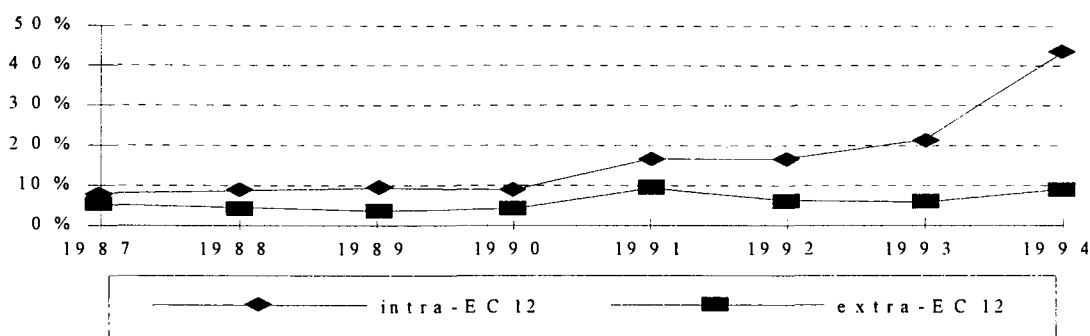
Since 1987, competitiveness within the railway rolling-stock industry has increased significantly, with major suppliers interviewed during the study reporting average price reductions of 20–30%. This has been brought about by the dramatic rationalization process which has seen:

- (a) a large reduction in the number of independent manufacturers in Europe;
- (b) a decrease in industry over-capacity;
- (c) redistribution of employment between Member States;
- (d) a fall in industry employment by 8% over the period;
- (e) increasing use of consortia among smaller suppliers seeking to compete with larger players;
- (f) amortization of R&D over larger markets.

Trade flow analysis

In 1987 total extra-EUR-12 and intra-EUR-12 imports amounted to ECU 169 million and 259 million respectively. The 1987 EUR-12 trade balance was ECU 672 million, compared with the 1994 value of ECU 545 million. Taking into account the suggested 20–30% reduction in prices over the same period, however, the 1994 figure is broadly comparable to that of 1987.

Over the period, imports have risen at both the intra-EUR-12 (ECU 2.7 billion) and extra-EUR-12 (ECU 571 million) level. In particular, intra-EUR-12 import penetration has increased considerably from 8% to 44% (see Figure 18.3), mainly due to the large European projects involving transnational collaboration, and the increase in the trade of components and subcomponents.

Figure 18.3. Extra-EUR-12 and intra-EUR-12 import penetration

Source: DEBA.

As a result of the fluctuations in trade flows caused by large projects, for example, the Channel Tunnel, analysis of import penetration at either national or product level is impractical.

As regards public-sector import penetration, direct imports from the EU meet some 11% of total requirements, a high figure in relation to comparable industries, for example, the power equipment sector. Direct non-EU imports are minimal but total indirect imports represent nearly 21%, giving a total import penetration of some 32%.

18.3. Impact of the single European market

18.3.1. History

Although the public procurement legislation has improved transparency and increased availability of information on business opportunities, in general, its impact on competitiveness has been negligible. Variations in the technical specifications of national networks provide an inherent advantage to traditional suppliers, which were either involved in their development, or have prior experience of them.

One leading manufacturer, however, did suggest the directives have been useful in the market for new urban-/mass-transit systems, as the greater transparency combined with the absence of established standards, allows more open competition.

More important in industry development has been a reduction in public-sector expenditure and a reduced willingness to subsidize 'national champions', resulting in a rationalized industry and the emergence of three dominant players with manufacturing operations in the majority of Member States.

18.3.2. Future

The industry will be driven towards higher supplier concentration, potentially through a merger or joint agreement between two of the largest players, creating further opportunities for economies of scale at a European level. Driving this will be a continued increase in:

- (a) technical harmonization, particularly at regional and local levels;
- (b) interoperability between networks nationally.

These changes will help to ensure the emergence of a European industry with European products able to compete globally.

19. Power generation equipment

19.1. Overview

19.1.1. *Ex ante* hypothesis

In 1987, the EC power equipment market was characterized by:

- (a) a lack of cross-border trade between the major producing Member States (France, Germany, Italy and the UK), although all competed in smaller markets, such as Greece;
- (b) significant EC overcapacity (although this was more pronounced in boilers than in turbine generators);
- (c) dependence on export business due to fluctuating and negligible domestic business;
- (d) difficulty in comparing prices bid for particular contracts as they were largely unrelated to costs;
- (e) public sector support, via nationalistic purchasing policies, subsidies and aid;
- (f) the major barrier to trade being national standards.

Although at the time most firms considered the opening of the market to intra-EC competition highly improbable, with any short-term impact unlikely, it was assumed that:

- (a) there would be an increase in Far East (boilers) and US and EFTA (turbine generators) penetration of markets;
- (b) some firms would merge and others close;
- (c) prices would fall by 20% (boilers) and 10% (turbine generators);
- (d) specialization among remaining EC players leading to increased cross-border trade – representing 20% import penetration.

19.1.2. Coverage

The case study's focus is the main strategic items of generation equipment purchased by power generators:

- (a) boilers,
- (b) turbine generators.

19.1.3. Data

The following sources have been used for this case study:

- (a) DEBA,
- (b) Comext database, Eurostat,
- (c) *Panorama of EU industry 1995/96*, Eurostat, 1995,
- (d) interviews carried out with the marketing directors of leading European companies.

The availability of industry data at both European and Member State levels is severely limited, due to the small number of suppliers and consequent need for high levels of confidentiality. Despite this, there is no shortage of opinions on broad market issues and trends.

Statistics are not produced at the level of boilers and turbine generators. They are subsumed within NACE 342 (electrical machinery) which covers equipment related to both generation and distribution (covering products, such as transformers, switchgear and protection and control equipment). Consequently, NACE 342 data have been used, with appropriate comments to put them into context.

19.1.4. Key findings

The electricity generation industry is moving, via a process of liberalization and privatization, towards greater private sector involvement and more market-driven behaviour. Together with the impact of the recession, general reductions in infrastructure investment, over capacity and increased competition from North American suppliers, have caused equipment prices to fall between 30% and 40% since 1990.

The public procurement legislation has acted as an accelerator of these changes, but despite its existence, some markets have been slow to liberalize. While technical harmonization has increased cross-border trade, the industry is still hampered by internal and external barriers, such as enlarged testing requirements and certification activities.

The supply side has begun to restructure in response to these changes, with manufacturers trying to enter national markets, either through consortia or acquisitions, but significant adjustment has not yet taken place. However, over the next 18 months, a number of manufacturers are predicting large job losses.

19.2. Evolution of the power generation equipment market

19.2.1. Drivers of change

Since 1987, the key drivers of change influencing the demand for power generation equipment in the EU have been:

- (a) economic performance,
- (b) harmonization of technical standards across the EU,
- (c) environmental legislation,
- (d) privatization and deregulation (in some Member States),
- (e) public procurement legislation.

In the medium to long term, the creation of the Internal Energy Market (IEM) and Third Party Access (TPA) mechanisms will have a significant impact on EU power generation, but has not, to date, exerted any great influence on the nature of demand for equipment.

19.2.2. Demand side (1987–94)

Structure

Since 1987, the electricity industry has undergone a number of changes:

- (a) in Belgium, the three private generators (Ebes, Intercom and Unerg) were grouped together in 1990 to form a new entity, Electrabel;
- (b) in the former East Germany, the main generator and transmission system operator, VEAG, was privatized;

- (c) in Ireland, ESB has now segmented generation, transmission and distribution activities to accommodate developments in regulation at the European level;
- (d) in Italy, ENEL was incorporated as a joint stock company in 1992 and is awaiting privatization;
- (e) in Portugal, EDP has been substantially reorganized and power generation is now open to competition;
- (f) in Spain, there have been a number of mergers and asset swaps, with the industry comprising private and public companies, but being dominated by just four;
- (g) in the UK, the industry was privatized in 1990/91, creating 15 suppliers, a transmission company and three principal generators in England and Wales, and two vertically integrated suppliers and a nuclear generator in Scotland. Since then, there has been a number of takeovers and mergers within the industry, and the nuclear generators are being prepared for privatization.

These trends, together with reduced public-sector spending, are leading to an increasingly commercial approach towards purchasing from generators, many of which are facing open competition for the first time. Additionally, there is increasing interest in cost reductions, turnkey projects, possible private-sector finance for new projects, and independent power producers (which are considered by many to be a growing market).

Market size

Apparent consumption of electrical machinery as defined by NACE 342 (generation and distribution equipment) is estimated at ECU 35–40 billion in 1993. Segmentation covering only power generation equipment is not possible due to gaps in available data and inconsistent classification between Member States. Additionally, estimation of this market is not considered useful, given that much investment is project-based and varies significantly from year to year.

The market for power generating equipment has, however, been declining in recent years as saturated markets, falling fossil fuel prices and increased use of energy saving measures slow demand for electricity. Additionally, it can be expected that future investment by utilities will be orientated towards replacement rather than capacity increases, as they come to the end of a substantial programme of works.

Concentration of supply

With few exceptions, concentration of supply continues to remain high, with the major manufacturers reporting little increase in the openness of markets. Many purchasers remain reluctant to consider equipment from non-traditional, often non-national, suppliers, citing technical differences and testing requirements as justification.

The German market, for example, is considered reserved for German manufacturers, and although the Italians have had some success in exporting to France, their home market is considered closed to all but Italian manufacturers.

19.2.3. Supply side (1987–94)

Supplier concentration

The market for turbine generators and boilers is dominated by a small number of large players. Several of these have changed since 1987 due to mergers and acquisitions, the most well known of which was the GEC-Alsthom joint venture in 1989. The group now has manufacturing facilities in the UK, France, Belgium, Italy and Germany. Other developments include:

- (a) Deutsche Babcock's (D) acquisition of Thomassen (NL),
- (b) GEC-Alsthom's (UK-F) sale of its boiler business to Foster Wheeler (USA),
- (c) Mitsubishi's (JPN) acquisition of Babcock Engineering (UK),
- (d) GE's (USA) purchase of Nuovopine (I),
- (e) ABB's (CH-S) purchase of some of the activities of Westinghouse (USA).

In addition to these developments, ABB and Siemens have made strategic investments in Eastern Europe in an attempt to penetrate these emerging markets and acquire low-cost manufacturing facilities. Furthermore, through a licensing agreement, Ansaldo now has access to Siemens gas turbine technology.

In the market for gas turbines, the principal manufacturers are now GEC-Alsthom, Siemens, ABB, Fiat and Ansaldo, which together have an estimated 80% of the EU market. Other large manufacturers include Reyrolle Parsons (UK), Kvaerner (N) and Eline (A).

In the boiler market, Deutsche Babcock (D) is the market leader. Other major suppliers include Foster Wheeler (USA) following their recent acquisition of GEC-Alsthom's boiler business, Babcock Mitsubishi, Babcock Spain, Steenmüller (D), Lentjes (D), Cockerill (B) and Stork (NL).

Competitiveness

Since 1990, competition has increased and major manufacturers report price reductions of between 30% and 40% as a result of:

- (a) previously artificially high prices,
- (b) worldwide overcapacity,
- (c) aggressive pricing, particularly from US and Italian players,
- (d) the use of low-cost labour in Eastern Europe,
- (e) the preoccupation with costs by purchasers, particularly with restrictions on public sector expenditure.

Increasing competitiveness is also evidenced by the reductions in employment within the sector, with the UK and France losing 25% and 28% of their workforce respectively in the ten years to 1993. Further job losses are expected over the next 18 months as price cutting and rationalization continue.

Trade flow analysis

Traditionally, the power generation equipment market has been characterized by high levels of exports, to the extent that over 50% of turnover of some of the major German companies is

realized in export markets, the majority of which are outside Europe. At NACE 342 level, Germany accounted for over 40% (ECU 10.6 billion) of total EU export trade in 1993, followed by France with 20% (ECU 4.9 billion), the UK with 13% (ECU 3.2 billion) and Italy with 9% (ECU 2.3 billion).

In 1994, estimated direct public-sector extra-EU import penetration was less than 1% (see Section 14.3), and direct public-sector intra-EU import penetration was over 5%. With total indirect imports of approximately 13%, total public-sector import penetration is estimated at between 17% and 20%. This indicates a changing preference for non-national suppliers as a result of rationalization through mergers and acquisitions on the supply side and increased pressure on costs on the demand side.

19.3. Impact of the single European market

19.3.1. History

In 1987, the EC power generation equipment market was characterized by a lack of cross-border trade, in many cases due to reserved markets and subsidies for national suppliers. While the market has opened to non-national competition, the public procurement legislation is regarded by major suppliers only as an accelerator of processes already begun. More important in achieving the claimed 30–40% reduction in prices has been the impact of the recession, a preoccupation with costs by purchasers, overcapacity and increased competition from non-EU players.

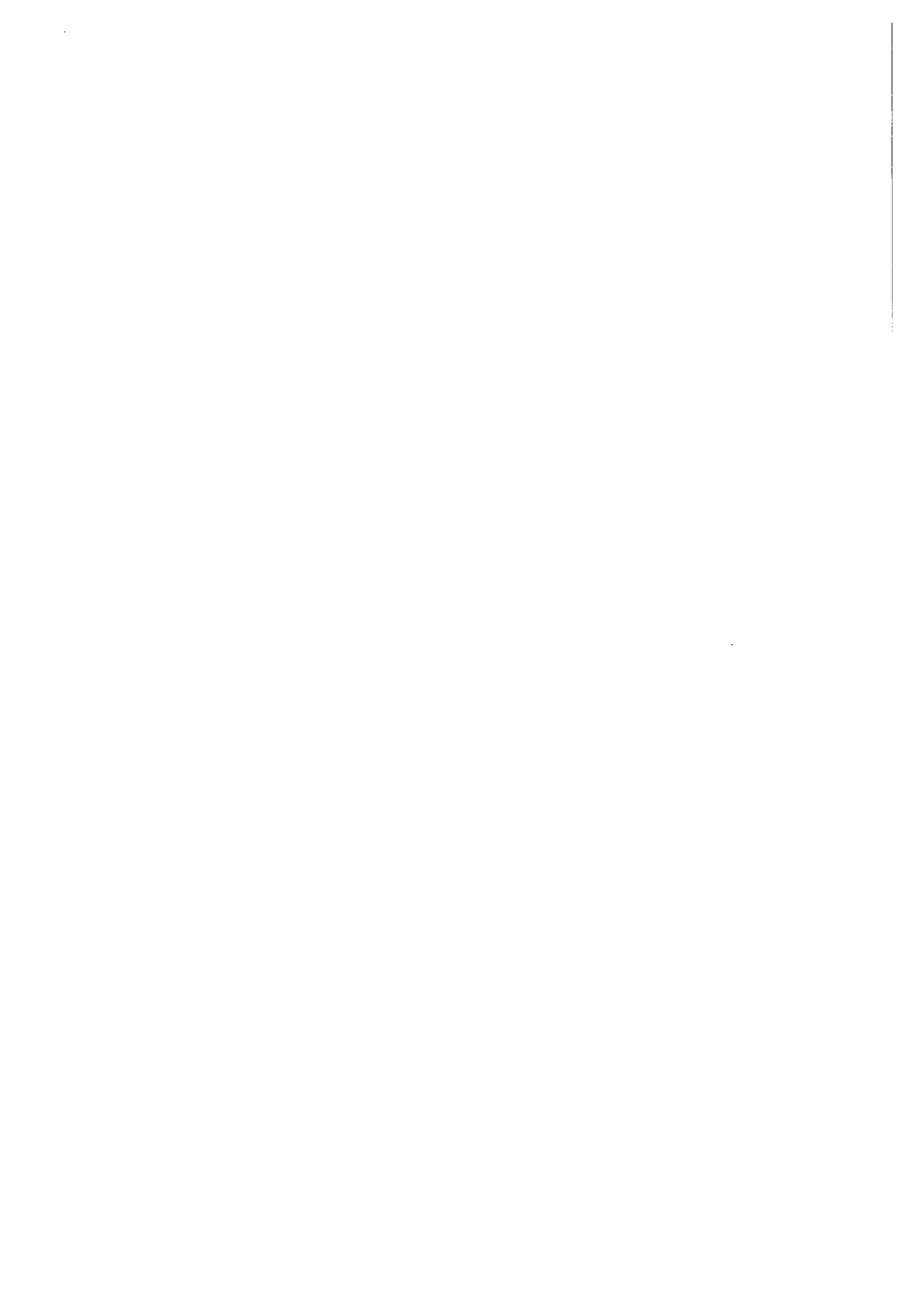
Despite these changes, the perception among major suppliers is that some markets have been slow to liberalize, particularly Germany and Italy, which are considered not to have awarded any significant business in this sector to non-national suppliers. The response of manufacturers has been to obtain a local presence in national markets, either through consortia or acquisition. As a result, GEC-Alsthom, for example, now has manufacturing facilities in Austria, Belgium, Italy, Germany, the UK and France.

19.3.2. Future

On the demand side, although the public sector will continue to play a major role in the future, the importance of the private sector in power generation will increase as liberalization of power generation and privatization of national monopolies gathers pace. This will continue to exert downward pressure on prices, and suppliers will increasingly be required to become financially and managerially involved in completed projects.

Demand for new power generation equipment in the EU will continue to remain depressed and the next international opportunity will be North America where the power generation industry faces the need to renew an ageing infrastructure. Stronger demand in their home market will strengthen the position of US suppliers globally, which will result in continued aggressive pricing in an attempt to gain further market share in Europe.

There will be continued rationalization within the industry accompanied by drastic reductions in employment over the next few years. However, the structure is not expected to change significantly.



20. Engineering consultancy

20.1. Overview

20.1.1. *Ex ante* hypothesis

In 1987, differences in culture, standards, regulations on fees and the mutual recognition of qualifications between Member States represented significant barriers to entry for non-national suppliers. It was thought that increasing competition as a result of the opening-up of public procurement and the move towards common European standards would lead to:

- (a) an increase in cross-border trade, particularly among the large, independent engineering consultancies;
- (b) reductions in price and convergence of fees across Europe.

20.1.2. Coverage

This case study considers the consulting engineering sector as defined by NACE 837, namely the initiation, research, design and monitoring of the execution of all forms of engineering projects and systems. It focuses on professional, stand-alone engineering consultancies, as these are the principal suppliers within the EU and their activities are most readily identifiable.

20.1.3. Data

The following sources of information have been used in this case study:

- (a) European Federation of Engineering Consulting Associations (EFCA), *Industry panorama*, 1993.
- (b) *In-house engineering consultancy within the public sector*, White Book, EFCA, June 1995.
- (c) *Statistical analysis related to the EU Services Directive*, Danish Association of Consulting Engineers, March 1996.
- (d) *The top 150 consulting engineering and/or architectural groups*, Arkitekt & Ingenjörföretagen, January 1996.
- (e) *International projects entrusted to members during 1995*, British Association of Consulting Engineers, 1996.
- (f) Cecchini report, *The cost of non-Europe in public sector procurement*, European Commission, 1988.
- (g) Interviews with senior executives of major European organizations involved in the engineering consultancy industry.

Comparison of data at a European level, however, was hampered by a shortage of reliable statistics on this relatively specialized but fragmented sector, and in particular Member State differences in the:

- (a) classification of consulting engineering activities,
- (b) nature of associated professional activities,
- (c) nature of demand.

20.1.4. Key findings

In 1987, the engineering consultancy market was generally fragmented on both the supply and the demand side. This has not changed significantly, although a dramatic reduction in demand has reduced prices and increased the intensity of competition. This effect, however, has taken place nationally, with cross-border EU activity remaining low (3–4% of revenue), despite the continued success of European consultancies outside Europe.

There is a trend towards large companies becoming larger and seeking to use strategic partnerships and consortia as a means of developing intra-European business. Presently, however, the positions of the leading consultancies in the UK, Germany and the Netherlands have not altered markedly because of continued barriers to intra-EU trade, including differences in fee regulations and qualifications required.

20.2. Evolution of the engineering consultancy market

20.2.1. Drivers of change

The major drivers of change are:

- (a) Economic constraints – the recession, coupled with cut-backs in public expenditure, has seriously affected investment levels across Europe and resulted in a reduction of activities in home markets and an increase in the emerging and more dynamic markets of the Far and Middle East.
- (b) Nature of demand:
 - (i) Demand for a full range of services within a single company is increasing the critical mass necessary to compete effectively. Together with an accelerating rate of technological change, this is leading to strategic alliances, partnerships and increased subcontracting to specialist consultancies, as firms are unable to justify the investment necessary to provide all services in-house.
 - (ii) Reduced public-sector expenditure has resulted in demand for contractors to address issues of risk management by providing guaranteed levels of performance from the project on its completion. This is particularly relevant in the UK, where the Public Finance Initiative has seen the private sector invest some ECU 6 billion in public-sector projects over the past year.

20.2.2. Demand side (1987–94)

Structure

The public-sector demand for civil engineering services is related to investments in the following areas:

- (a) transport systems and infrastructure,
- (b) building and housing: administrative buildings and other building and structures,
- (c) water supply and environmental projects,
- (d) energy supply and related infrastructure,
- (e) telecommunications,
- (f) industrial complexes.

The nature of consulting engineering varies significantly from country to country, as does its profitability. National markets are still separated by major differences relating to bureaucratic procedures, fee regulations and pre-qualification criteria. Generally, however, at Member State level, the fragmented nature of demand has changed little since 1987.

Market size

Estimation of market size is frustrated by the ill-defined contours of the supply side. Projects are often carried out by contractors which provide engineering services incidental to their other activities, making it difficult to isolate the consulting component from the cost of the overall project.

The European Federation of Engineering Consulting Associations (EFCA), however, estimates the volume of investments in Europe requiring engineering consultancy in 1992 to be approximately ECU 670 billion. As consulting engineering typically represents 8–9% of the cost of a project, the value of the market could be of the order of ECU 55 billion, of which they estimate the public-sector share to be ECU 17 billion.

The only data available on the industry as a whole are provided by EFCA, whose members represent approximately 40% of engineering consultants in Europe. On the basis of their 1993 turnover of ECU 13 billion, the total market is estimated at ECU 31 billion. The ECU 24 billion difference between this value and the initial estimate of ECU 55 billion represents the value of consulting engineering services provided in-house by both the public and private sectors.

EFCA estimates that as much as 40% of the ECU 17 billion public-sector consulting market is effectively closed to competition as projects are automatically passed through to existing in-house facilities.

Concentration of supply

Concentration of supply varies across Europe, depending on the nature of the supply side. In Member States such as the UK and the Netherlands, which have a tradition of large, independent engineering consultancies, concentration is relatively low. Conversely, in Member States where the supply side is dominated by purchasers' in-house facilities and there are fewer independent consultancies, for example France and Italy, concentration is considerably higher as work is carried out internally.

20.2.3. Supply side (1987–94)

Supplier concentration

The consulting sector can be characterized by two distinct groupings as regards supplier concentration, namely those companies which traditionally operate within the construction industry, and those which are stand-alone and not controlled by any companies with manufacturing or contracting interests.

In Member States such as Italy and France, the industry tends to be dominated by small and medium-sized enterprises, resulting in low supplier concentration. However, contractors in the UK, the Netherlands and, to a lesser extent, Germany, tend to be large, usually independent,

stand-alone consultancies. Consequently, supplier concentration is relatively high, particularly where large public-sector projects are concerned.

There is a strong relationship between national concentration of supply, sales turnover and the ability of domestic suppliers to compete in the international arena. As Table 20.1 indicates, almost one in three of the top 150 companies, and 15 of the top 40, are UK-based, while in France, only five companies appear in the top 150, and one in the top 40.

Table 20.1. Nationality of the top 150 European consulting engineering companies in the EU

Member State	Number of companies within the top 150
United Kingdom	48
Germany	27
Sweden	17
Netherlands	14
Spain	7
Finland	7
Denmark	7
France	5
Italy	1
Others ¹	24

Note: ¹ Includes Switzerland, Poland, Norway, Portugal.

Source: Danish Association of Consulting Engineers, 1996.

Table 20.2 provides a summary of key facts on the top 40 consulting engineering practices in Europe.

Competitiveness

Since 1987, competitiveness within the consulting engineering sector has increased, price levels have fallen sharply and fees are converging. These trends have been driven by the economic constraints facing public purchasers, which have led to greater emphasis on price when evaluating tenders.

Trade flow analysis

Major players in the industry suggest only 3–4% of sales are typically intra-European. A number of reasons on both the demand and supply sides account for this:

- (a) public authorities are inclined to discriminate against non-national companies;
- (b) there are a number of legislative and bureaucratic differences between Member States;
- (c) there is often a lack of recognition of non-national qualifications;
- (d) saturated markets and decreasing demand have generally reduced profit margins across Europe making it more difficult for non-national companies to penetrate unfamiliar markets;
- (e) in general, suppliers concentrate on domestic markets and non-EU countries.

Table 20.2. Major European companies

	Company	Services	Nationality	Employees	Cumulative employees	Turnover (million ECU)	Cumulative value (million ECU)
1	Heidemij Group	MN	NL	4,584	4,584	386	386
2	Gibb & Partners/Law Co. Group	MD	UK/USA	4,500	9,084	294	680
3	Jaakko Poyry Group	MD	FIN	4,500	13,584	228	908
4	Mott MacDonald Group	MD	UK	4,436	18,020	222	1,130
5	Over Arup Partnership	MD	UK	4,250	22,270	202	1,332
6	WS Atkins Ltd	MD	UK	3,841	26,111	249	1,581
7	Fugro NV	CE	NL	3,454	29,565	310	1,891
8	Acer Consultants	MD	UK	3,250	32,815	178	2,069
9	Pell Frischman Group Ltd	MD	UK	2,730	35,545	486	2,555
10	Maunsell Group	CE	UK	2,515	38,060	116	2,671
11	Rust Limited	CE	UK	2,383	40,443	137	2,808
12	DHV Group	MD	NL	2,356	42,799	195	3,003
13	Sir William Halcrow & Partner	MD	UK	2,234	45,033	115	3,118
14	Lahmeyer International GmbH	MD	D	2,132	47,165	183	3,301
15	Carl Bro Group	MD	DK	2,085	49,250	142	3,443
16	COWI consult	MD	DK	1,983	51,233	148	3,591
17	Scott Wilson Kirkpatrick	MD	UK	1,946	53,179	97	3,688
18	VBBgroup	MD	S	1,868	55,047	144	3,832
19	J&W Group	MD	S	1,809	56,856	133	3,965
20	Electrowatt Engineering Services	E,I	CH	1,712	58,568	162	4,127
21	Ramboll, Hannemann & Hojlund	MD	DK	1,661	60,229	128	4,255
22	Dorsch Consult Ing. GmbH	MD	D	1,660	61,889	102	4,357
23	Tebodin, Consultants & engineers	MD	NL	1,650	63,539	106	4,463
24	Oranjewoud group	MD	NL	1,664	65,203	117	4,580
25	Fichtner Group	MD	D	1,337	66,540	119	4,699
26	AF-Group	I,E,M	S	1,321	67,861	80	4,779
27	Babtie Group	MD	UK	1,240	69,101	60	4,839
28	Binnie & Partners	CE	UK	1,203	70,304	63	4,902
29	Serete group	MD	F	1,200	71,504	323	5,225
30	Haskoning BV	MD	NL	1,100	72,604	82	5,307
31	Haas Consult Group	MD	D	1100	73,704	55	5,362
32	Scandiaconsult Group	MD	S	1013	74,717	64	5,426
33	Mouchel Group	PM,CE	UK	980	75,697	59	5,485
34	Tawn Group	MD	NL	979	76,676	50	5,535
35	Initec	MD	E	938	77,614	83	5,618
36	High Point plc	MD	UK	920	78,534	34	5,652
37	Parkman Group	MD	UK	880	79,414	34	5,686
38	GOPA	MD	D	820	80,234	192	5,878
39	Sener	MD	E	815	81,049	57	5,935
40	BDP	MD	UK	760	81,809	46	5,981

Notes: PM = project management, A = architecture, CE =civil engineering, E =electrical, M =mechanical, I =industrial, MD = multi-disciplinary.

Source: Arkitekt & Ingenjöröretagen, 1996.

Analysis of published notices provides further evidence of very small trade flows. As Table 20.3 indicates, although transparency has increased dramatically, even over the period of one year, cross-border activities as measured by the number of contracts awarded to non-domestic suppliers, are strictly limited.

Table 20.3. Published notices and awarded contracts

Country	Number of notices 1994	Number of notices 1995	Contracts awarded to foreign companies 1995	Total contract awards publ. 1995
Austria	1	27	0	3
Belgium	0	10	0	23
Germany	177	428	2	113
Denmark	44	98	5	37
Spain	38	279	0	35
France	172	486	0	120
United Kingdom	317	527	0	182
Italy	23	72	3	23
Netherlands	26	64	3	45
Sweden	19	58	2	157
Portugal	2	37	0	3
Others	88	197	5	134
Total	907	2,283	20	875

Source: Danish Association of Consulting Engineers.

20.3. Impact of the single European market

20.3.1. History

In general, the impact of the single market has been minimal on the general nature of the consulting engineering market. As in 1987, it continues to be strongly influenced by cultural attitudes towards design and the role of consulting engineers. Freedom of movement of persons and services has not resulted in a substantial increase in cross-border activities.

Although the public procurement legislation has increased awareness of opportunities within the EU, its effect has been marginal as evidenced by the small percentage of business won by non-national suppliers. Two areas of particular concern within the industry are that:

- (a) it cannot impact the estimated 40% of public-sector engineering consulting which is provided in-house;
- (b) some companies consider it has had a negative impact on their traditionally close relationship with architects. 'Automatic' sub-contracting by a winning architect to the engineering consultancy which helped prepare a proposal is no longer possible in a number of cases, leading to unrecovered costs and duplication of work with new consultancies with which they are unfamiliar.

20.3.2. Future

Development of the consulting engineering industry is closely related to the evolution of the construction industry. Thus, it can be expected that continued reductions in public expenditure for infrastructure projects will lead to increased competition, resulting in:

- (a) pressure to market-test and outsource in-house service providers, opening up previously closed internal markets;
- (b) more widespread use of public-/private-sector partnerships as alternatives to traditional methods of finance;
- (c) increased rationalization and use of collaborative agreements, particularly by the large, independent consultancies in the UK and the Netherlands seeking to penetrate non-national markets.

Rationalization will also continue as public-sector purchasers increasingly demand complete solutions (design, build and operate), particularly in Member States where historically the supply side has been fragmented. This will lead to the provision of engineering consultancy services by larger and more cost-effective multidisciplinary consultancies.



21. Uniforms

21.1. Overview

21.1.1. *Ex ante* hypothesis

In 1987, the public sector was an insignificant purchaser of clothing with the exception of uniforms for the military, emergency services and health services. In common with the textiles and clothing sector in general, uniform manufacturing was dominated by SMEs, with little in the way of cross-border trade, and significant price variations between Member States.

The opening up of public-sector markets was expected to lead to an increase in cross-border trade, with competitive suppliers taking advantage of significant price disparities, although the extent to which 'smaller' SMEs would benefit was not clear.

21.1.2. Coverage

Public-sector demand for uniforms is principally for:

- (a) military type uniforms (army, police, etc.),
- (b) civil uniforms (fire brigades, city councils, post office, railways operators, etc.),
- (c) professional workwear/uniforms (primarily hospitals).

Demand can be further segmented by:

- (a) purchasing entity size:
 - (i) more than 1,000 employees,
 - (ii) fewer than 1,000 employees;
- (b) purchasing requirements:
 - (i) bespoke/tailored items, procured with a greater emphasis on quality and delivery,
 - (ii) standard items purchased primarily on price.

The markets most sensitive to the public procurement legislation are purchasers with more than 1,000 employees buying standard items – high volume standard items, with the military (Ministry of Defence and police forces) the key purchaser.

21.1.3. Data

The case study is based primarily on qualitative information since there are no European statistics at the level of uniforms, as defined above. As a result, the principal sources of information were in-depth interviews with senior executives from leading companies and trade associations.

Trade flow analysis has been carried out on 'men's and boys' industrial and occupational clothes' as the category closest to 'uniforms'.

21.1.4. Key findings

The public procurement legislation has played a role in opening up previously closed markets, but other factors have been as important, such as a decline in demand which was reflected in an increase in the intensity of supply-side competition.

The experience of major suppliers indicates that:

- (a) the potential for purchasers to continue to discriminate against new suppliers, even when complying with the legislation, is considerable;
- (b) non-compliance, in particular by splitting contracts (failing to aggregate), is still widespread, especially in smaller (sub-central) purchasers.

The benefits of increased cross-border trade have only been realized by the industry's largest players. There is a strong perception, even among larger suppliers that have been successful in selling across borders, that key markets are still closed to non-domestic suppliers.

SMEs have continued to focus on local and regional markets since they:

- (a) lack the resource to compete for non-domestic business,
- (b) do not consider other markets to be truly open and fair.

In addition, the legislation is seen to have complicated the tendering process with additional bureaucracy in relation to, for example, (pre-)qualification, which is particularly burdensome for SMEs.

There is an apparent contradiction between the continued closed nature of regional and local markets, with purchasers still showing a national preference, and reported reductions in prices. It appears, however, that, in common with several other case-study sectors, purchasers have used the legislation as a means of driving down prices whilst keeping the same suppliers.

21.2. Evolution of the uniforms market

21.2.1. Drivers of change

The major drivers of change in the market since 1987 have been:

- (a) reductions in public spending,
- (b) changes in public-sector uniform procurement strategies,
- (c) public procurement legislation,
- (d) increases in public-sector outsourcing and privatization.

21.2.2. Demand side (1987–94)

Structure

The overall structure of the demand side has not changed substantially since 1987, with the exception of some Member States, such as the Netherlands and the UK, where certain public-sector services have been outsourced, such as:

- (a) security,
- (b) waste management,
- (c) health.

This has, in practice, taken these activities into the private sector.

The principal purchaser of uniforms in each Member State is the Ministry of Defence, followed by centralized uniformed services, such as the police in some Member States.

Market size

No market size statistics are available for uniforms. However, as the result of a decline in overall demand, the total EUR-15 market is estimated at ECU 3–4 billion (approximately 0.5% of total procurement). The decline in demand between 1987 and 1994 is attributed to:

- (a) budget constraints in most Member States, with a general reduction in order volumes;
- (b) reductions in the size of key markets, such as defence (due to spending cuts as a result of the end of the Cold War) and customs (due to the single market).

The nature of demand has also changed, with:

- (a) a shift away from the traditional practice of purchasing a standard number of uniforms per employee to one based on a 'wear-and-tear' replacement policy, with purchasers placing more frequent smaller orders;
- (b) increases in the number of female employees changing the nature of uniform specifications;
- (c) an increase in the number of tenders being published in the Official Journal.

Concentration of supply

There is evidence to suggest that sub-central markets are being served by fewer suppliers due to exits from the market by a number of firms. At the larger end of the market, little change is seen to have taken place, with the exception of some new larger non-domestic operators.

21.2.3. Supply side (1987–94)

Supplier concentration

The supply side is dominated by SMEs, with even the largest players only medium-sized, compared with those in other sectors. Most firms have continued to focus on their local and regional public-sector markets, with resource constraints and perceived barriers to entry discouraging attempts to sell across borders.

The reduction in overall demand has led to some concentration of supply. A number of companies, which had maintained a public-sector uniforms capacity alongside private-sector production, have exited this market segment, closing down operations to focus on the (higher margin) private-sector market.

The subsequent decline in employment has also been exacerbated by a shift in production towards lower-cost facilities in North Africa and Eastern Europe. However, these

developments are not unique to uniforms, and reflect a general trend in the clothing and textiles industry.

Supply-side specialization

The nature and (un)availability of statistics for this sector mean use of the Balassa index of specialization is not possible. At a qualitative level, there was no evidence to suggest that any significant changes had taken place from this perspective.

Competitiveness

Reductions in overall demand, combined with changes in purchasing policy have, as described above, led to increased supplier concentration. Despite a reduction in the number of players, pressure on prices has still been significant.

In the majority of Member States and market segments, prices are considered to have reduced significantly. Published figures are unavailable, but industry estimates of reductions were of 20–30%. These reductions were attributed to a combination of:

- (a) increased cross-border competition in high-volume market segments;
- (b) entry into the market of wholesalers sourcing from low-cost non-EU producers, and therefore without domestic suppliers' national cost base;
- (c) use of 'lowest price' by local/regional purchasers.

Public-sector import penetration

Despite the dominance of SMEs, the larger players from most Member States, such as Induico from Spain (the EU's market leader), Syntex from Belgium and Albatross from Portugal, have been actively involved in cross-border public-sector markets. Non-domestic players are seen to have been successful in winning market share. In the key defence market segment, it is estimated such firms now account for:

- (a) 40% of the Italian market (versus 0% in 1987),
- (b) 50–60% of the Dutch market,
- (c) an increasing share of the French market.

Whilst the larger players have been successful in penetrating volume markets, this is not seen to have extended to the lower volume market segment.

These developments were reflected in estimates of EU public-sector import penetration in 1994 of between 15.3% and 16.2%, of which:

- (a) some 2.7% represented direct imports,
- (b) 12.6–13.5% represented indirect imports.

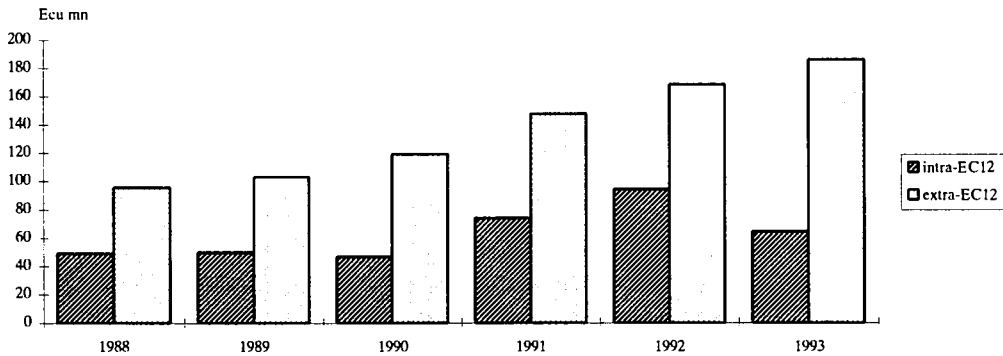
Trade flow analysis

Changes in the supply side are reflected in trade statistics (Figure 21.1). These show imports had increased:

- (a) at intra-EUR-12 level from some ECU 49 million in 1988 to ECU 64 million in 1993;

- (b) at extra-EUR-12 level from around ECU 100 million in 1988 to over ECU 180 million in 1993, reflecting the shifts in production to outside Europe.

Figure 21.1. Imports into EUR-12 of men's or boys' workwear

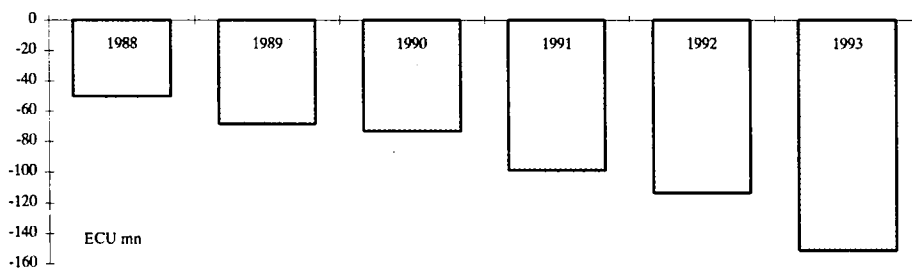


Note: 1993 figures have been collected using new procedures (Intrastat system).

Source: Comext database, Eurostat, 1995.

The shift in production outside of the EU has resulted in a trebling of the EUR-12 trade balance to over ECU 150 million (Figure 21.2).

Figure 21.2. Trade balance – men's or boys' workwear



Note: 1993 figures have been collected using new procedures (Intrastat system).

Source: Comext database, Eurostat, 1995.

21.3. Impact of the single European market

21.3.1. History

The key impact of the single European market on the industry has been the free movement of goods, which has:

- (a) reduced delays and transport costs,
- (b) facilitated market access.

In addition, the abolition of import quotas has increased the market share of non-EU countries, resulting in a shifting of uniform production to North Africa and Eastern Europe.

The public procurement legislation is seen to have led to an increase in:

- (a) openness (publication of notices),
- (b) non-domestic firms winning business.

Despite this, a number of major barriers to achievement of the legislation's aims (areas of non-compliance) were highlighted:

- (a) a lack of adequate/appropriate procedures to tackle infringements – firms are reluctant to 'take on' (potential) customers under the present arrangements;
- (b) the intangible nature of award criteria used by purchasers means that they can be (and are perceived to be) used to favour preferred suppliers;
- (c) although legally correct, response times given for submission of tenders are often inadequate;
- (d) awarding authorities are still splitting contracts and avoiding having to publish tender notices by not aggregating annual requirements at either a departmental or an entity level;
- (e) specifications are frequently not functional, but, for example, define specific fabric characteristics which give preferred suppliers a competitive edge;
- (f) the tendering process introduced by some purchasers to comply with the legislation's requirements has resulted in excessive bureaucracy which acts as a deterrent to potential new suppliers.

21.3.2. Future

No new major drivers were highlighted with regard to future market developments, with a continuation of the current trends considered most likely.

It would appear unlikely that, given the preponderance of SMEs in the sector, any significant increase in cross-border, or even intra-Member State, business will take place if the current (perceived) way in which purchasers have implemented the legislation's requirements continues.

22. Construction

22.1. Overview

22.1.1. *Ex ante* hypothesis

By the 1980s, European civil engineering contractors had earned a global reputation by winning major projects – roads, power stations, dams, railways, tunnels, etc. – in Africa, Asia, the Middle East, and South America. However, despite being members of the EC and, in particular, the public sector in EC Member States being subject to the Public Works Directive (71/305/EEC), intra-EC public-sector trade in construction and civil engineering was minimal. As a rule, only national champions were invited to compete for major public contracts.

In 1987, it was assumed that the opening up of public-sector construction markets to intra-EU competition would lead to:

- (a) growth in intra-EU trade in major civil engineering projects;
- (b) changes in the domestic supplier base within Member States, with medium-sized – and small – contractors gaining access to previously closed local markets;
- (c) major players establishing in other Member States by means of mergers/acquisitions, joint ventures, strategic alliances (including EEIGs) and project-based consortia;
- (d) a general lowering of contract prices.

22.1.2. Coverage

Public works covers the expenditure by central government, sub-central government and utilities on civil and structural engineering, including maintenance and repairs as defined by NACE 500. Typical projects are roads, bridges, tunnels, power stations, railways, airport terminals and runways, ports, offices, etc.

Since the ECU 5 million publication threshold in the Public Works and the works section of the Utilities Directives applies to the size of individual contracts, this case study will focus on civil engineering, where the contracts tend to be large and more easily tradeable.

22.1.3. Data

The following sources of information have been used in this case study:

- (a) Cecchini report, *The cost of non-Europe in public procurement*, European Commission, 1988;
- (b) International European Construction Federation (FIEC) sector publication, report number 37, December 1995;
- (c) *The state of the construction industry* UK Department of the Environment, 1996;
- (d) Annual Report on the Italian Construction Industry, (Associazione Nazionale Costruttori Edili), 1995;
- (e) German Construction Industry, *Hauptverband der Deutschen Bauindustrie eV*, 1994;
- (f) *Panorama of EU industry 1995/96*, Eurostat;
- (g) interviews with senior executives of major European organizations involved in the domestic construction industry.

22.1.4. Key findings

The overall impact of the single European market and public procurement legislation on the EU civil engineering market has been minimal in comparison with the changes brought about by declining demand due to reduced public finance for infrastructure investments. The result has been a dramatic rise in competition with prices falling throughout Europe.

The majority of large civil engineering contracts, however, continue to be won by national suppliers, although in a small number of cases, non-national suppliers are being used to drive down prices of traditional suppliers. What success there has been in developing intra-EU trade is due to smaller specialist subcontractors which have had significant success in exporting their know-how throughout Europe.

The supply side continues to be dominated by a small number of large national contractors in France, Germany and the UK. The level of concentration has increased slightly due to the recession, forcing further mergers and acquisitions at national as well as at international level.

The existing market structure will not remain static indefinitely, and the most likely competitive response will be an upsurge in mergers and acquisitions, particularly among the leading French and German players, as they seek to restructure and rationalize their operations, eliminate competition and penetrate non-national markets through cross-border ownership.

22.2. Evolution of the construction market

22.2.1. Drivers of change

Construction output is very much a barometer of the economic cycle, with large projects being postponed in times of economic downturn.

Since 1987, the key drivers of change influencing construction demand and supply in the area of public-sector projects have been:

- (a) economic recession,
- (b) German unification,
- (c) the creation of the single European market and implementation of the Public Works and Utilities Directives.

22.2.2. Demand side (1987–94)

Structure

With the exception of the UK, where utilities in the water, power, gas, ports/airports and telecommunications sectors have been privatized, the structure of purchasing entities and their responsibilities have not changed appreciably since 1987.

Market size

The EU construction market in 1994 was worth an estimated ECU 650 billion,⁵² of which public works accounted for almost 40%. Some 60% of public works expenditure was on civil engineering projects (including maintenance and repairs).

The economic recession of the first half of the 1990s was reflected in a sharp downturn in construction output in all Member States other than Germany which benefited from rebuilding of the infrastructure in the eastern *Länder*. With all governments putting pressure on public spending and operating relatively high interest rate policies in order to reduce public deficits, major civil engineering projects suffered disproportionately (see Figure 22.1).

Table 22.1. New construction output in the major EU markets (million ECU in 1991 prices)

	Year	Constr.	Civil engineering	Public non-residential	Constr. (%)	Civil eng. (%)	Public non-residential (%)
France	1987	75,172	17,311	7,496	100	23	10
	1991	86,059	21,606	8,288	100	25	9.6
	1994	78,207	19,229	11,731	100	25	15
Germany ¹	1987	145,302	21,644	14,066	100	15	10
	1991	198,931	27,687	16,990	100	14	8.5
	1994	245,381	31,360	17,878	100	13	7
Italy	1987	86,632	12,819	5,788	100	14.8	6.7
	1991	96,472	12,905	7,739	100	13.3	8
	1994	83,904	9,271	5,458	100	11	7
UK	1987	67,210	9,925	8,378	100	14.7	12.4
	1991	73,078	13,385	12,597	100	18.3	17
	1994	69,548	11,390	11,218	100	17	16
Spain	1987	42,542	8,944	2,125	100	21	4.9
	1991	59,940	18,169	3,760	100	30	6.2
	1994	52,763	14,966	3,036	100	28.3	5.7

¹ West and East Germany.

Source: FIEC, December, 1995.

Concentration of supply

The lead-up to completion of the single European market in respect of the freedom of movement of persons, goods, capital and services, the use of European standards and the implementation of the Public Procurement Directives encouraged major European contractors to pursue large civil engineering projects in other Member States.

Although there are examples of important civil engineering projects having been awarded to contractors from other Member States, the in-depth interview programme indicated that in all Member States other than Germany and, to an extent, Spain, the concentration of supply was

⁵² International European Construction Federation (FIEC).

extremely high and that this had not changed since 1987. Germany and Spain had a number of large regional contractors that tended to win major projects, making their concentration of supply less pronounced than in, say, France.

This view is supported by:

- (a) the results of the demand-side survey, where purchasing entities claimed not to have experienced any change in supply following implementation of the public procurement directives;
- (b) the estimate of intra-EU import penetration in civil engineering (7.4–10.6%) – the second lowest of all the tradable sectors investigated – which was largely indirect imports and reflected (specialist) subcontracting.

The in-depth interview programme indicates that:

- (a) in 1994 the national markets were still being supplied predominantly by national contractors;
- (b) in certain Member States, some contracts have been awarded to contractors from other Member States.

22.2.3. Supply side (1987–94)

Supplier concentration

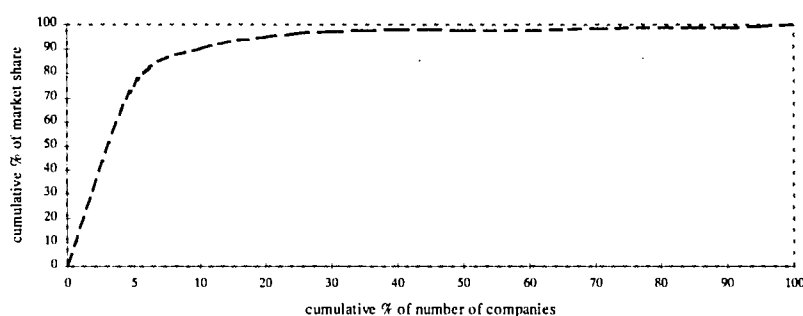
As in 1987, a small number of large national contractors dominate the civil engineering sector, although the level of concentration has increased due to recession, forcing further rationalization through closures, mergers and acquisitions. Out of the top 19 companies in Europe, France dominates with eight (four of which are in the top seven), followed by the UK and Germany both with four, and Sweden, Spain and the Netherlands with one each (Table 22.2).

Table 22.2. Top construction firms, 1993

Company	Country of origin	Turnover (million ECU)	Share of exports in turnover (%)	Number of employees
Bouygues	France	9,223	30.0	90,100
SGE (Générale des Eaux)	France	6,523	42.6	64,000
Pilipp Holzmann	Germany	6,437	34.4	43,800
BICC	United Kingdom	5,023	31.0	39,200
Eiffage	France	5,003	16.4	47,800
Trafalgar House	United Kingdom	4,973	60.0	35,900
GTM-Entrepose (Lyonnaise des Eaux)	France	4,338	38.6	46,100
Hochtief	Germany	4,136	26.2	31,800
Bilfinger & Berger	Germany	3,475	40.6	45,800
Tarmac	United Kingdom	3,422	17.0	24,800
Svanska	Sweden	3,171	23.0	27,400
AMEC	United Kingdom	2,800	20.0	25,700
Spie Batignolles (Schneider)	France	2,751	31.4	29,800
Strabag	Germany	2,598	15.7	21,300
Colas (Bouygues)	France	2,492	27.3	28,300
FCC	Spain	2,471	5.0	30,600
CEGELEC (Alcatel Alsthom)	France	2,413	41.7	26,200
HBG	Netherlands	2,404	41.0	18,400
Dumez	France	2,342	45.9	25,900

Source: Special Mille Entreprises, *Le Moniteur*, November 1994.

In France, civil engineering forms the major component of total turnover of the top five construction companies (Bouygues, SGE, Eiffage, GTM and Spie). A Pareto analysis based on value indicates the concentrated nature of the industry (see Figure 22.1), with the first three players enjoying a 25–35% share of the civil engineering market and some 80% of major domestic projects.

Figure 22.1. Estimated Pareto curve in France – civil engineering market

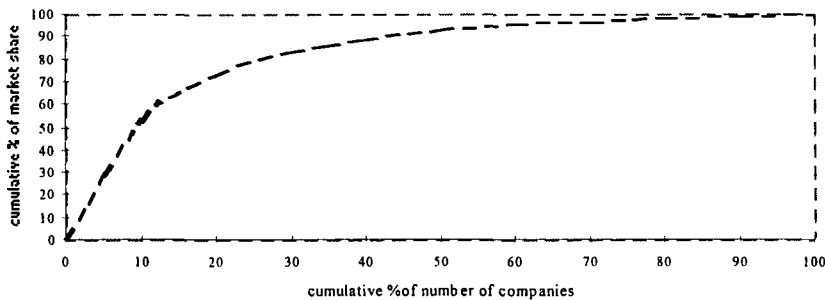
Source: Interviews, EuroStrategy Consultants estimate.

In Germany, the seven largest companies (Holzmann, Hochtief, Bilfinger & Berger, Strabag, Dyckerhoff & Widman, Zublin and Walter Bau) account for approximately 7% of sector output. The three largest companies are the major players within the civil engineering sector,

dominating the majority of large projects in the domestic market and pursuing business in other European countries through acquisitions and strategic alliances.

In terms of a Pareto analysis, the German civil engineering sector appears very close to Pareto's 80/20 rule (see Figure 22.2).

Figure 22.2. Estimated Pareto curve in Germany – civil engineering market

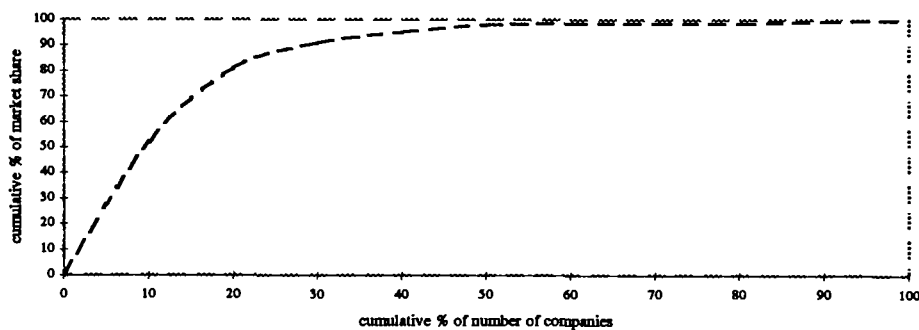


Source: Interviews, EuroStrategy Consultants estimate.

In the UK, 25% of total construction output by value is accounted for by the top eight companies (BICC, Trafalgar House, Tarmac, AMEC, P&O Construction, George Wimpey, John Laing and John Mowlem & Co). Despite this, supplier concentration in the civil engineering subsector is less than in France (where 30% of output is accounted for by the top three companies) due to a smaller share of company output realized in the civil engineering sector.

As with the German market, the UK civil engineering sector appears very close to Pareto's 80/20 rule (see Figure 22.3).

Figure 22.3. Estimated Pareto curve in the UK – civil engineering market

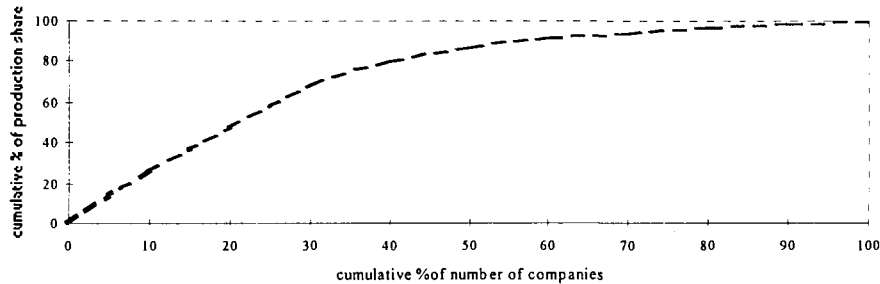


Source: Interviews, EuroStrategy Consultants estimate.

In Italy, supplier concentration is the lowest of the major markets (Figure 22.4), with the largest Italian companies being smaller than their German, French or UK counterparts. The top

50 companies cover approximately 6% of the total domestic construction output and 40% of the civil engineering market. This industry structure is largely the result of a relatively fragmented demand policy implemented over an extended period.

Figure 22.4. Estimated Pareto curve in Italy – civil engineering market



Source: Interviews, EuroStrategy Consultants estimate.

Competitiveness

Since 1987, competition within the construction industry has increased sharply due to a heavy contraction of demand caused by greatly reduced public expenditure. Consequently, the industry has been pushed towards a rationalization process through mergers and acquisitions.

In Italy, the three major companies – Cogefar, Fiat Impresit and Lodigiani – recently joined forces through a collaborative agreement, while in Germany, Holzmann acquired Nord France and Bilfinger acquired Razel. In France, Générale des Eaux acquired a range of companies in Germany and GTM and Dumez merged.

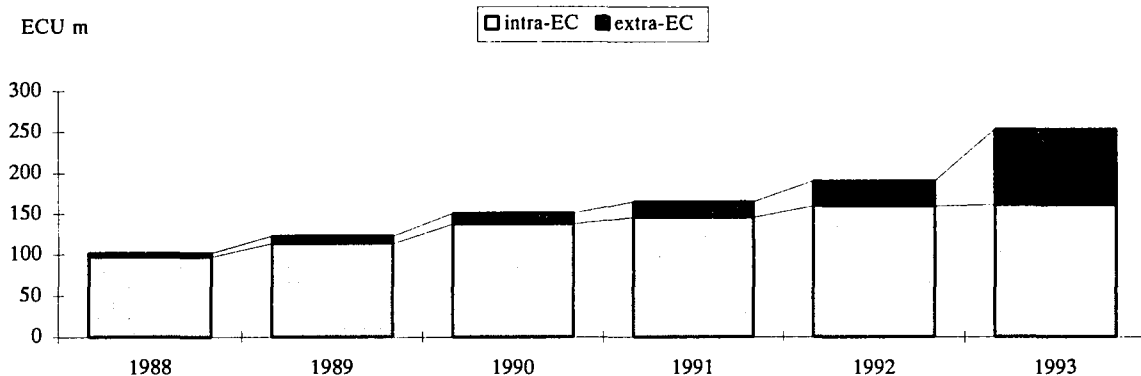
According to the leading contractors interviewed, during the recession project prices were squeezed by the public sector in most Member States, to the extent that in 1994 they were 20–30% below 1990 levels. Although this view is not supported by the demand-side survey results, where respondents reported no such savings, it is consistent with the statistical data provided by FIEC and with what has happened in previous recessions.

Since implementation of the directives, a small number of projects have been placed with non-national suppliers to encourage competitive pricing from existing contractors. However, in general, few contracts have been won by ‘new’ suppliers and there is no evidence of significant loss of market share in the larger Member States.

Trade flow analysis

As Figure 22.5 indicates, there has been an increase in the trade of building and civil engineering components within Europe. This has been driven largely by technical progress and facilitated by growing harmonization of standards, which has led to increased prefabrication of subsystems and assembly of major structural components on site.

Figure 22.5. Imports into the EUR-12 of structural components for building or civil engineering, prefabricated, or cement or artificial stone



Source: Comext database, Eurostat, 1995.

Between 1988 and 1993, total intra-EUR-12 imports increased by 65% in nominal terms from approximately ECU 97 million to ECU 161 million in 1993. Over the same period, extra-EUR-12 imports grew much faster, with import penetration rising from approximately ECU 4.5 million to ECU 93 million. This increase sent the trade balance from ECU 58 million in 1988 to a negative value of ECU 20 million in 1993.

Overall, however, the value of trade is still relatively low compared to the total value of the construction market in Europe. This is supported by EuroStrategy Consultants' estimates of public-sector import penetration, which suggest that direct imports from within the EU are approximately 3%, while direct imports outwith the EU are insignificant. Taking into account indirect imports, overall import penetration is between 7% and 10%.

The greatest proportion of intra-EU imports, however, is understood to be in the area of specialist subcontracting, rather than the direct activities of principal contractors attempting to gain access to new markets (where there has been little change).

22.3. Impact of the single European market

22.3.1. History

In general, the impact of the public procurement legislation on the construction industry has been marginal, with the majority of identified savings due to the recession rather than competitive pressures. Although the requirement to advertise in the OJ has increased information on market opportunities and the number of tenders published, there is little evidence to suggest the public sector has, in general, availed itself of these new opportunities.

The legislation has, however, resulted in a small number of contracts being won on price by new, non-national players. In such cases, the legislation has been used more as a convenient technique to drive down the prices of traditional suppliers.

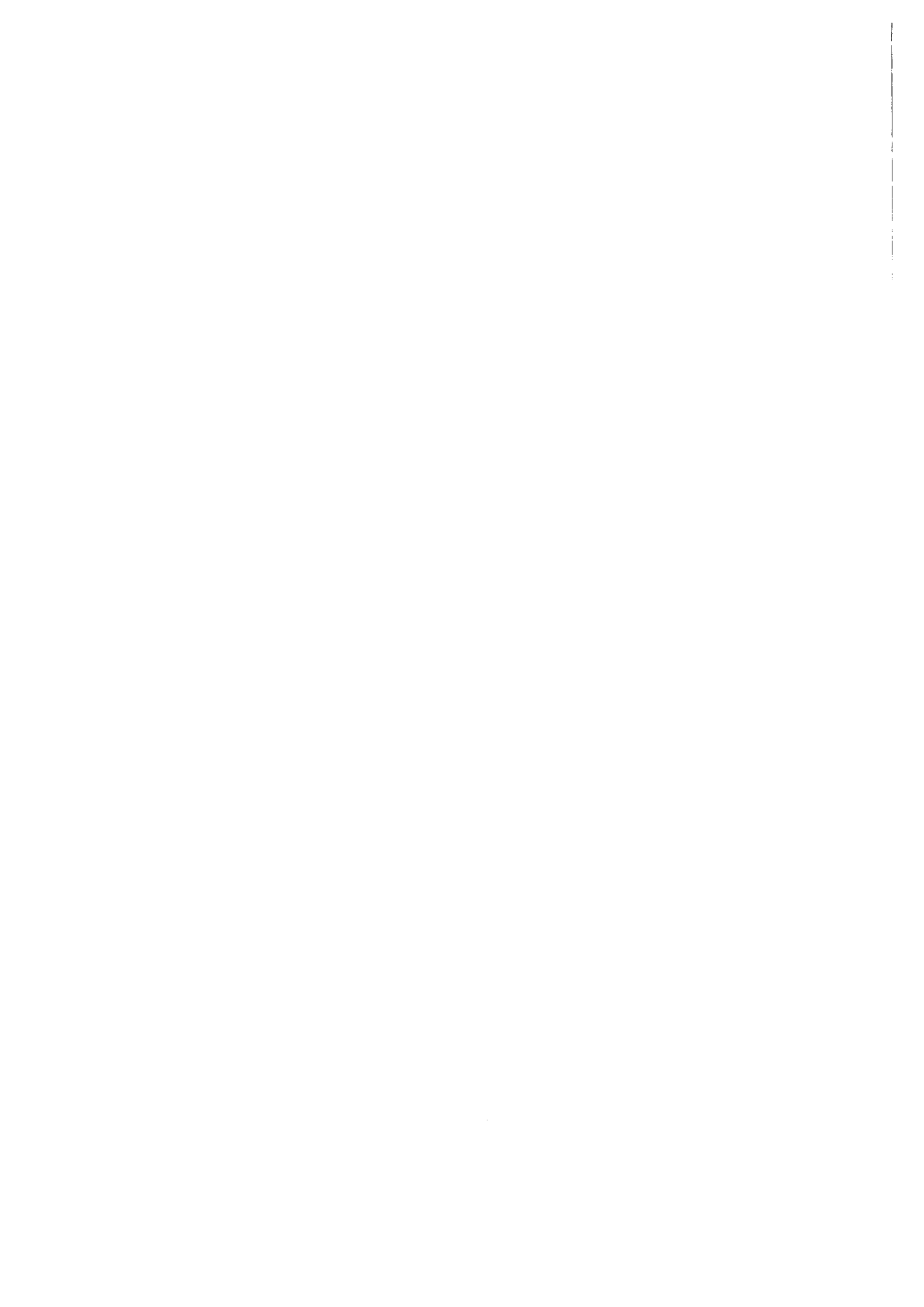
The structure of the industry has remained essentially unchanged since 1987, with national markets continuing to be dominated by a small number of large domestic contractors.

22.3.2. Future

The existing structure of the construction industry is not expected to remain static indefinitely, particularly as competitive pressures increase, and external drivers such as the harmonization of technical standards, mutual recognition of qualification procedures, and the move to economic and monetary union take effect.

The most likely competitive response will be an upsurge in mergers and acquisitions, particularly among the leading French and German players, as they seek to restructure and rationalize their operations, eliminate competition and penetrate non-national markets through cross-border ownership. Medium-sized companies will tend to disappear as they find themselves unable to reach the critical mass necessary to compete effectively.

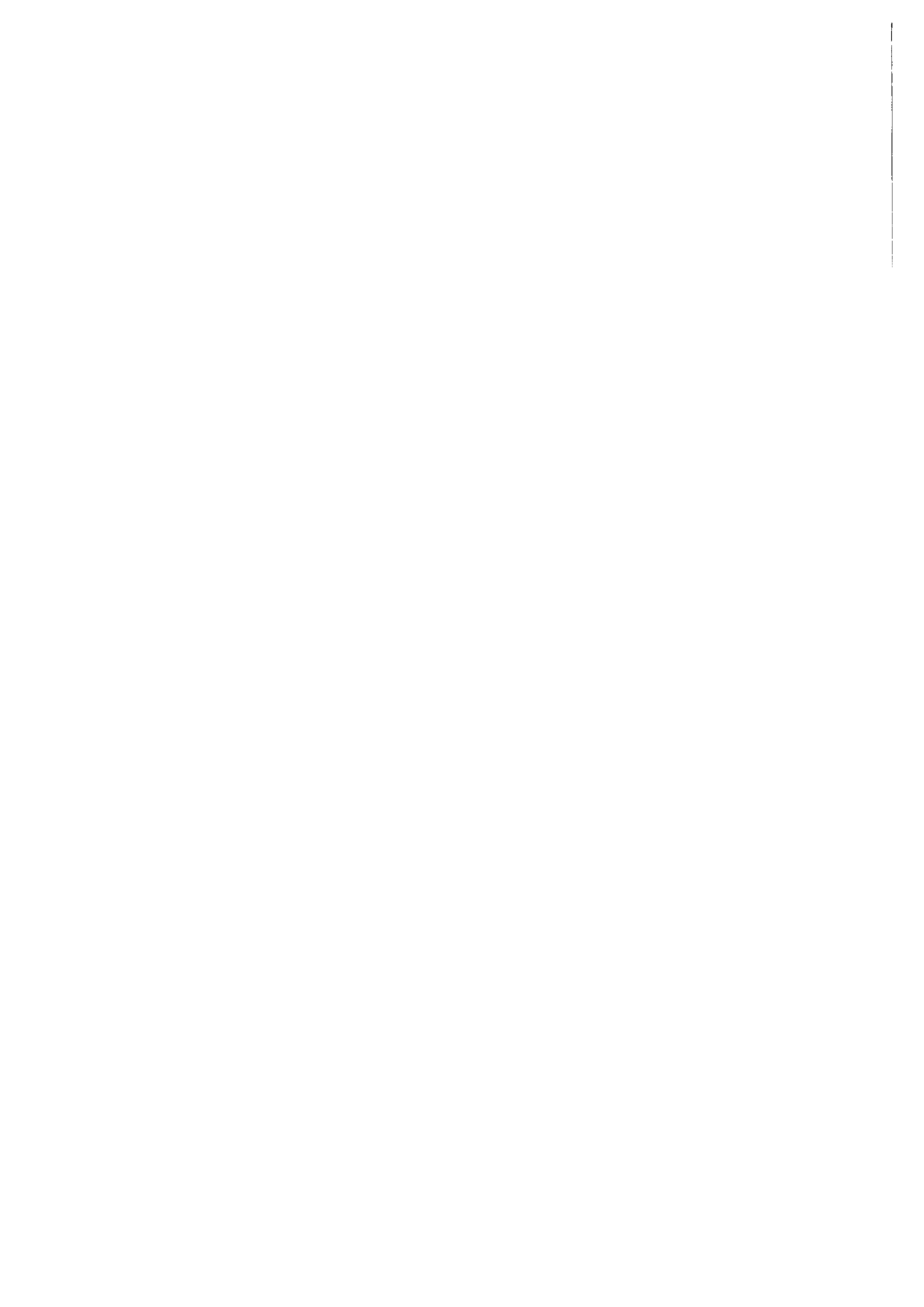
At the level of the EU, the concentration of supply and suppliers will increase, with all markets for major civil engineering projects being shared by the leading European contractors. However, within Member States, the concentration of supply is likely to decrease.



SECTION G

Impact assessment

This sections draws together the findings and results of all the previous sections to arrive at an assessment of the extent to which the *ex ante* hypotheses concerning the legislation have been realized in relation to both purchasers (the demand side) and their key supplying sectors (the supply side), and the reasons for their realization.



23. Impact assessment

23.1. *Ex ante* hypothesis

The *ex ante* hypothesis is considered under two headings:

- (a) direct impacts,
- (b) downstream impacts.

The legislation was put in place to regulate the demand side with the aim of creating an open and fair public procurement market. The extent to which this aim has been met has been termed the direct impact of the legislation. The downstream impacts examine the changes which have taken place on the demand and supply sides as a result.

23.1.1. Direct impacts

It is expected that every interested supplier should:

- (a) have equal opportunity to tender for contracts covered by the directives (openness – transparency);
- (b) be treated equally in the assessment of their bids (fairness).

23.1.2. Downstream impacts

It is expected that:

- (a) supplying industries should have adapted to meet the challenge of the new purchasing environment in terms of:
 - (i) responding to new public-sector opportunities created by the new transparent and fair procurement market,
 - (ii) restructuring (where necessary) to improve competitiveness and, generally, to take advantage of trade liberalization afforded by the SEM;
- (b) public-sector bodies and utilities should have experienced a reduction in purchasing costs.

23.2. Direct impacts

23.2.1. Measures of success

The direct impacts of the opening up of the EU public procurement market are measured in terms of:

- (a) openness:
 - (i) use of the Official Journal,
 - (ii) numbers of entities publishing in relation to the coverage of the directives,
 - (iii) extent of publication of notices in relation to the coverage of the directives,
 - (iv) use of procedures;
- (b) fairness:
 - (i) selection and award criteria and their application,
 - (ii) means of redress.

23.2.2. Openness

Use of the Official Journal

In general, the OJ has been a very valuable source of information, for those who read it. It is regarded as the single point of focus for business in the public sector, either domestically or in other Member States, in particular by those suppliers which are committed to entering new markets. This was illustrated by the supply-side survey, which found that:

- (a) an estimated 41% of suppliers to the public sector obtain information from the OJ, but SMEs have only a 30% readership, suggesting that larger companies are the main beneficiaries of this information;
- (b) an estimated 14–20% of all suppliers to the public sector had identified additional opportunities in their domestic markets, and an estimated 9–13% in other EU markets;
- (c) over two-thirds of OJ readers considered information provided in notices to be adequate for business purposes.

These findings were supported by results from the demand-side survey, where the majority of purchasers reported their only change in publication media to be the OJ. This implies that there has been an increase in access to opportunities within a Member State and in other EU Member States, since, previously, public-sector calls for competition were only published locally and nationally, not internationally, whilst utilities, in general, did not publish at all.

Therefore, if suppliers did not know about opportunities before legislation came into force, without the OJ, they would probably still be unaware of them today. In this respect, the directives have created, in the form of the OJ, greater openness and consistency in relation to public-sector opportunities.

However, there is a lack of knowledge among potential suppliers on the extent of information on public-sector opportunities available in the OJ due to:

- (a) limited promotion of the OJ at Member State level;
- (b) relatively high subscription fees for the OJ and the TED database, especially for SMEs.

It can also be inferred that, based on the results of the demand-side survey and the previous analysis, it is SMEs which have benefited the least from the legislation since:

- (a) smaller contracts are still let locally to broadly the same suppliers without publication in the OJ (as they are not being aggregated);
- (b) a lower proportion of SMEs use the OJ.

Numbers of entities publishing in relation to the coverage of the directives

As a result of the procurement legislation, there has been an increase in the number of entities publishing, reflecting:

- (a) implementation of the Utilities Directives,
- (b) as indicated by the demand-side survey, entities, particularly sub-central government bodies, only recently starting to fulfil the directives' publishing requirements.

However, the number of entities which are covered and should be publishing does not correspond with the actual number of entities publishing. This is illustrated by the significant differences between the number of entities in the EAP database (>100,000) and the number that had published in 1995 (>15,000).

Overall, an estimated 14% of the total number of entities covered by the legislation is actually publishing in the OJ.

Reasons for non-publication by entities reflect a varied understanding of the directives' requirements, for example:

- (a) a contract-based approach to purchasing, resulting from a misinterpretation of the aggregation rules;
- (b) different definitions for discrete operating units;
- (c) misunderstanding of coverage leading to non-compliance.

In addition, non-publication is exacerbated by:

- (a) the absence of active policing and enforcement of the directives' requirements at Member State level;
- (b) inefficient national legal systems of redress;
- (c) suppliers' reluctance to 'prosecute' potential customers;
- (d) lack of awareness of the legislation's requirements by suppliers, particularly SMEs.

Extent of publication of notices in relation to the coverage of the directives

The implementation of legislation has resulted in a significant increase in the total number of notices published in the OJ from around 12,000 in 1987 to over 95,000 in 1995, reflecting:

- (a) the entry into force of the Utilities and Services Directives on 1 January 1993;
- (b) the overall increase in awareness of the directives, as reported in the demand-side survey, resulting in both more entities publishing and more notices being published per entity.

The impact of the implementation of the Utilities and Services Directives is vividly illustrated by the step change in the number of:

- (a) notices published by the utilities, from 0% in 1992 to 14.7% of all notices published in 1995;
- (b) services notices published, from 11.3% of all notices published by central and sub-central government in 1993 to 28% of total number of notices in 1995.

However, there is still under-publication of tender notices as illustrated by:

- (a) entities not publishing, due to the varied understanding of the directives' requirements;
- (b) the continuing increase in number of supplies notices being published by public-sector entities despite legislation having been in force since 1989;
- (c) for every two tender notices only one CAN being published (itself an indicator of openness);

- (d) the reported differences in above-threshold procurement, with central government in some Member States claiming above-threshold procurement at a mere 16%. This is inconceivable in terms of the size of aggregated budgets on supplies and services, even taking into account the existence of discrete operating units.

These views are supported by a 1994 study for the European Commission on EC-US procurement, which showed that in one of the EU's largest Member States:

- (a) almost 10% of towns with more than 100,000 inhabitants did not report any procurement in 1993;
- (b) 28% of towns of 10,000–50,000 inhabitants, and over 30% of towns of 50,000–100,000 inhabitants reported no contracts.

It was concluded to be inconceivable that these entities did not have any purchases covered by the directives. Likewise, a Commission analysis highlighted considerable variation between notice publication by similar-sized (major) sub-central government bodies with similar responsibilities in other Member States.

The overall conclusion is that significant under-publication in the OJ exists as a result of:

- (a) varied interpretations of:
 - (i) a contract,
 - (ii) a discrete operating unit,
 - (iii) the definition of 'products/services with similar characteristics' under the aggregation rules;
- (b) in some cases, non-compliance.

In addition, from a demand-side perspective, there is a perceived lack of incentive to publish due to:

- (a) difficulties in understanding some key elements of the directives (and, consequently, national transpositions);
- (b) little supplier response when tender notices are published;
- (c) no active policing or enforcement.

This is creating a 'self-fulfilling prophecy', reflecting attitudes and actions of not only the demand side but also of the supply side, as will be shown in the downstream impact assessment (Section 23.3).

Use of procedures

A direct impact of the legislation has been that when entities are publishing a call for competition, they are, in general, complying in terms of the type of procedure used, with:

- (a) central and sub-central government primarily using the open and restricted procedures;
- (b) utilities primarily using the negotiated and restricted procedures.

The scope of openness is only limited in relation to the use of qualification systems and negotiated procedures, since:

- (a) opportunities are not required to be made public. Even when the supplier is on an approved list, there is no obligation to notify every supplier of the opportunity;
- (b) the level of information required to be accepted on a qualification list can be used to deter new suppliers (albeit unintentionally).

Similarly, although compliant, the publication of indicative notices or notices of existence of qualification systems on an annual basis means suppliers which either miss the announcement or do not obtain information from the OJ/TED will not respond or be aware.

In general, there is a preference by purchasers to use restricted procedures to avoid the higher costs associated with the administrative implications of using the open procedure.

23.2.3. Fairness

Selection of award criteria and their application

Regarding the application of award criteria, a distinction has to be made between the tendering procedure chosen, with:

- (a) for the open procedure, only contract award criteria being applied;
- (b) for the restricted and negotiated procedures, three types of criteria being applied:
 - (i) pre-qualification,
 - (ii) short-listing,
 - (iii) award.

In general, the pre-qualification stage can cut out competition by setting criteria which prevent potential suppliers from submitting tenders. In addition, assuming the awarding authority sets objective pre-qualification criteria, there appears to be no objective basis for selecting a subset of pre-qualified suppliers to tender. The absence of any permissible criteria for short-listing increases the scope for misuse and the favouring of traditional suppliers.

The vast majority of awarding authorities claim to award contracts on the basis of the 'most economically advantageous tender', which requires the purchaser to select the overall best tender according to a combination of objective award criteria. Under normal circumstances the award criteria should be prioritized, implying the existence of a weighting system.

In practice, purchasers:

- (a) find it difficult to measure some of their stated award criteria, such as quality;
- (b) often create a short-list of tenders based on all criteria other than price, then choose the cheapest;
- (c) invariably, select on price.

As a result, suppliers often submit tenders on one basis, and are evaluated on another.

Both the surveys and the in-depth interviews confirmed that:

- (a) price is often the sole decision criterion (without weighting being applied);
- (b) purchasing authorities often introduce competition and award an occasional contract to a new supplier to force traditional players to reduce prices, even though they would have won under the strict application of 'most economically advantageous'.

Redress

In all regulated environments there is always a degree of unfairness. This can be minimized by having:

- (a) clear and unambiguous rules,
- (b) effective policing,
- (c) efficient enforcement.

Regarding clarity, important areas of the directives have been identified as unclear, notably:

- (a) boundaries between works and supply contracts;
- (b) application of the 'aggregation rules', both regarding the level at which products or services should be aggregated and the treatment of discrete operating units within the same entity;
- (c) use of 'framework agreements' in the public sector;
- (d) permissible criteria for shortlisting in the public sector;
- (e) the extent to which renewals, extensions or amendment to existing contractual agreements constitute new contracts;
- (f) the extent to which alterations to bids are permitted in open and restricted procedures;
- (g) rules on criteria and evidence for assessing qualification in the utilities sector applying to qualification systems in some circumstance but not in others, without any apparent justification.

In general, there is no active policing of compliance at Member State level.

Regarding enforcement, there is no provision for Member States to enforce compliance. Enforcement is restricted to suppliers instituting an action against a purchasing authority under the legal remedies legislation in a particular case. However, with the exception of Denmark and Sweden, the efficiency and effectiveness of national arrangements in relation to remedies are considered to be inadequate, due to:

- (a) an inability to obtain remedies with sufficient rapidity,
- (b) a lack of clarity in the manner in which damages are calculated and obtained.

23.3. Downstream impacts

23.3.1. Measures of success

Downstream impacts on both the demand and supply sides have been measured by:

- (a) the extent of competition for public contracts:
 - (i) supplier response to new opportunities,
 - (ii) price convergence,
 - (iii) import penetration,
 - (iv) rationalization and restructuring;
- (b) public-sector costs and benefits.

23.3.2. Competition

Supplier response

Based on the supply-side survey results, an estimated:

- (a) 14–20% of all suppliers to the public sector have identified additional opportunities in their domestic markets from notices published in the OJ, with 9–13% of all suppliers to the public sector winning new business as a result;
- (b) 9–13% of all suppliers to the public sector had identified additional opportunities in other EU Member States from notices published in the OJ, with 3–4% winning additional business as a result.

In both cases, this level of success is directly attributable to the directives' requirement to publish notices in the OJ, and their impact on the purchasing procedures and attitudes of public-sector entities.

Although firms of all sizes have been successful in winning additional business using the OJ, the weighting has been in favour of large companies, particularly for non-domestic business, reflecting their:

- (a) higher readership of the OJ: 69% of all large companies compared to 53% for medium-sized companies and 34% for SMEs;
- (b) greater presence in non-domestic markets.

These changes on the supply side are corroborated by the views of purchasers that there had been:

- (a) some increase in non-domestic suppliers tendering for opportunities;
- (b) some change in the mix of their supplier bases, predominantly large and multinational companies, particularly among utilities and subcentral government.

Public-sector import penetration

Public-sector purchases of non-domestic origin moved from an estimated 6% in 1987 to 10% of total public-sector purchases in 1994, of which:

- (a) direct imports increased from 1.4% to 3%;
- (b) indirect imports increased from 4.5% to 7%.

This was consistent with the estimated increase in the number of suppliers to the public sector winning new additional business in other EU Member States.

In general, the demand side did not perceive any change in nationality of their supplier base, which reflects:

- (a) the small and uneven nature of the increase in direct public-sector import penetration;
- (b) the majority of the increase in public-sector import penetration being purchased from a 'domestic' supplier (including subsidiaries of foreign companies) which imported the procurement.

When considering public-sector purchases in terms of 'commodity' products, which are low-tech standard purchases (office furniture, paper, stationery, etc.), and of high-cost strategic products, it is in the area of 'commodity' purchases where there has been a general significant increase in intra-EU trade. This was reflected in the rise in public-sector indirect import penetration.

For example, in paper there has been a significant increase in intra-EU trade, which is consistent with a high level (18%) of indirect public-sector imports. This is supported by the reported lack of success in winning new direct business in other Member States by paper suppliers to the public sector (see Table 23.1).

Table 23.1. Supplier response and public-sector import penetration

Sector/product	NACE	OJ readership ¹ (%)	Winners of new domestic business ² (%)	Winners of new other-EU business ³ (%)	Public-sector import penetration (%) ⁴ , 1994	
					Direct	Indirect
<i>Low-tech products</i>						
Office furniture	316	34	9	2	5	8
Uniforms	453	47	12	4	3	13
Printing and paper	471/2	26	6	0	<1	17-19
<i>High-tech products with common tech. specs.</i>						
Office machinery	33	45	17	3	4	22-29
Motor vehicles	351	41	12	3	3-4	16-19
Medical equipment	37	26	10	2	5-6	19-21
<i>High-tech products with different tech. specs.</i>						
Boilers	315	31	12	4	4	9-10
Power generating equip.	341/2	42	10	4	6-7	11-14
Telecommunications equipment	344	42	13	7	6-8	18-22
Railway rolling stock	362	49	12	10	10-11	19-21
<i>Works</i>						
Construction/civil eng.	502	44	11	4	3	4-7
<i>Services</i>						
Consulting engineering	83	52	22	4	1	5-6
EU average		41	9-13	3-4	2-4	5-9

Sources: ¹ Percentage of suppliers to the public sector using the OJ and TED (Figure 13.2).

² Percentage of suppliers to the public sector winning additional domestic business (Figure 13.12).

³ Percentage of suppliers to the public sector winning additional business in other EU Member States (Figure 13.23).

⁴ Table I.1.31 in the unpublished Annex to this report.

Since both public and private sectors procure these commodity products from the same intermediate local suppliers, by inference, public-sector import penetration equals private-sector import penetration.

With respect to purchases of strategic products, in general this area of procurement has experienced increases in intra-EU and extra-EU trade, albeit at a somewhat lower level than

the corresponding changes in trade for 'commodity' purchases. However, their level of direct purchases from non-domestic suppliers is, today, more important than that for 'commodity' purchases. This is supported by the supply-side survey where suppliers of strategic products, such as railway rolling stock and telecommunications equipment, reported the highest levels of new additional business in other Member States.

In the areas of works and services, public-sector import penetration is, in broad terms far lower, with any public-sector trade, in the main, being related to a small number of large international construction projects and their closely related services, such as architecture and engineering consultancy. The case studies indicated a perceived continued existence of barriers to trade in these areas, which, in essence, the public procurement legislation could not be expected to overcome.

Price convergence

Within a national market a company's competitiveness is determined by the efficiency of the use of labour and capital. The domestic price of a product is a function of the productivity and cost of labour, and the cost of bought-in goods and services, of which raw materials are generally the most important component.

Although a depreciating currency can make the export price competitive for the country concerned, this price advantage is usually eroded by higher inflation and lower productivity. The situation is further complicated when dealing with technologically complex products, where a price advantage may result from innovative design, such that competitors' products are technologically different, though, possibly, functionally similar.

When considering price convergence, the following key factors should be taken into account:

- (a) degree of imperfect competition – the demand- and supply-side surveys indicate that a minority of purchasers and suppliers are aware of the opportunities in the marketplace;
- (b) technical incompatibility – purchasing entities are restricted to existing, national suppliers or, when feasible, other EU suppliers incur additional costs to satisfy national technical requirements;
- (c) technical/functional specifications – the use of technical rather than functional specifications mitigates against the use of innovative (often lower cost) solutions;
- (d) supply chain structure – the nature of national supply chain structures often restricts price savings to intermediaries rather than end-purchasers;
- (e) exchange rates – exchange rate movements create artificial price advantages of a temporary or permanent nature and result in a climate of commercial uncertainty.

Within the EU the above factors, particularly imperfect competition throughout the EU, have individually and collectively contributed to a situation in which there has been no observable price convergence.

Regarding commodity products, the dominant factor has been the supply-chain structure where these products are almost exclusively purchased locally from national (private sector) suppliers. These suppliers are normally intermediaries, which source their purchases internationally on (ex-factory) price – as illustrated by the increases in trade since 1987 – and sell at national price levels. This also reflects the completion of the single market programme.

In general, these observations are consistent with the high levels of indirect import penetration for commodity products, as illustrated by filing cabinets being 36% more expensive in the UK than the cheapest Member State, and yet the UK being the largest exporter of filing cabinets to the rest of Europe in 1994, reflecting the change in the terms of trade due to exchange rate movements.

In addition, there is little competition in these products with minimal tendering resulting from misinterpretation of the aggregation rules, whereby the focus is on contracts rather than aggregated annual expenditure. This might also explain the lack of price convergence and the high levels of price disparities in these areas.

Regarding strategic products, they are considered to fall into two categories:

- (a) those with common technical specifications, such as medical equipment, vehicles and office machinery;
- (b) those with significantly different technical requirements due to incompatibility of systems between Member States, as illustrated by differences in national railway, and power distribution systems.

Although there have been recession-induced price reductions for strategic purchases, no real price convergence has occurred, with the exception of cardiac monitors, buses and office machinery, which can be explained by:

- (a) their relatively more transparent markets with few European players;
- (b) the products requiring little to no adaptation for different EU markets.

The fact that there has been no price convergence for the other strategic products reflects:

- (a) their being 'bespoke' in nature and manufactured to satisfy widely differing national technical standards;
- (b) supplier strategies of having a local presence (as generally preferred by the purchasers), resulting in a national cost base and pricing to national markets.

This is supported by the fact that for these strategic purchases, direct public-sector import penetration is low compared to indirect imports.

Rationalization and restructuring

In all procurement-sensitive sectors there has been significant supply-side rationalization, reflected in reduced employment and productivity improvements.

In the 'commodity' areas, despite significant recession-induced price reductions in national markets, any change cannot be attributed to the procurement legislation since:

- (a) there has been no price convergence, reflecting the supply-chain structure (purchasing from national wholesalers) and the bulk of the public-sector imports being indirect;
- (b) there has been significant non-publication both in terms of number of entities publishing (an estimated 14% of the potential published) and the underpublication of above-threshold procurement (as illustrated by the example of the typical sub-central

government entity which published an estimated 25–30% of their purchasing of works and supplies).

Table 23.2. Economic indicators

Sector/product	Public-sector import penetration (%) ¹ 1994		Price convergence 1987-93 ²	Trade change 1988-92 ³	Production % change 1988-92 ⁴	Employment change 1988-92 ⁵
	direct	indirect				
<i>Low-tech products</i>						
Office furniture	5	8	N	++	+2.3	+1
Uniforms	3	13	n/a	++	+1.2	-17
Printing and paper	<1	17-19	N	+	+3.5	-3
<i>High-tech products: common tech. specs.</i>						
Motor vehicles	3-4	16-19	N/S*	++	+0.1	-18
Office machinery	4	22-29	S	++	+6.5	-13
Medical equipment	5-6	19-21	N/S**	++	n/a	n/a
<i>High-tech products: different tech. specs.</i>						
Telecommunications equipment***	6-8	18-22	N	+	-1.5	-18
Power generating equip.***	6-7	11-14	N	++	+2.7	-19
Power distribution equipment***	6-7	11-14	N	++	+2.7	-19
Railway rolling stock***	10-11	19-21	N/S	++	+6.6	-5
Boilers	4	9-10	N	-		-9
<i>Works</i>						
Construction/civil eng.	3	4-7	n/a	+	+1.2	+7
<i>Services</i>						
Engineering consultancy	1	5-6	n/a	+	-	n/a

Notes: N = none, S = some, n/a = not available, ++ = strong increase, + = increase, - = decrease.

* Buses.

** Cardiac monitors.

*** Single market (public sector) induced restructured industries.

Sources: ¹ Table I.1.31.

² Tables 15.5 and 15.6.

³ Tables 14.1-14.20.

⁴ Tables 16.1-16.10. and 22.1.

⁵ Tables 16.1-16.10.

In the strategic areas, there has not only been a recession-induced reduction in employment, but also a (public-sector) market-induced restructuring, which has resulted in:

- (a) the creation of a small number of global players in telecommunications, power generation equipment and railway rolling stock;
- (b) significantly increased intra and extra-EU trade, the bulk of which has been in indirect imports reflecting the strategies of these global players to have local manufacturing (assembly) capabilities in key European markets;
- (c) no apparent price convergence, largely reflecting the additional costs associated with:
 - (i) complying with national technical standards,
 - (ii) the use of local production facilities,

- (iii) the general resistance of public bodies in certain Member States to innovative technology. For example, in one of the large Member States with in excess of ten purchasing entities in a sector, only one had purchased a high-cost strategic product based on a new and proven technology from another large Member State at a third of the national price level.

Despite the lack of price convergence, since 1990 suppliers in high-cost strategic product areas have been forced by public purchasers to reduce their prices by 20–40%, reflecting the recession and squeeze on public spending. According to interviews with market leaders, the public sector has used the procurement legislation to bring down national price levels in national markets by threatening traditional suppliers that they would award contracts to new, lower priced competitors. In practice, there have been occasional contracts awarded to non-domestic players, resulting in lower prices but no appreciable change in market shares.

23.3.3. Public-sector cost-benefit analysis

For strategic products with common technical specifications, the identified price convergence between 1987 and 1994, implies the achievement of savings in the less competitive Member States. Particularly in the telecommunications area, the in-depth interviews showed that the public sector has enjoyed significant technology-related savings, reflecting the liberalization of the European telecommunications market.

Elsewhere in the strategic areas, the absence of price convergence implies that any national price savings can only be attributed to the recession.

The introduction of the public procurement legislation has caused some purchasers to put more calls for competition in the OJ, particularly in the area of ‘commodity’ products. This has resulted in 9–13% of all suppliers to the public sector winning at least one new contract, which would not have been identified otherwise. Since both demand and supply side confirmed that contracts in these areas are in the main awarded on the basis of price, this implies that the public sector has experienced some price savings due to application of the legislation.

This conclusion is consistent with the demand-side survey results where a minority of the central and sub-central government claimed some degree of price savings due to opening their procurement markets.

There are two principal sources of price savings in terms of increased direct competition from:

- (a) domestic suppliers,
- (b) other EU suppliers.

Although there were a number of central and sub-central government bodies reporting price savings resulting from the implementation of the public procurement legislation, this was the exception rather than the rule.

In terms of direct competition from other EU suppliers, estimated total intra-EU direct import penetration rose from 1.4% in 1987 to 3% in 1994 – an increase of 1.6% – which, due to its low weighting in total public-sector purchasing, could not have resulted in significant price savings.

Similarly, there is a consensus of opinion of those surveyed in the demand-side survey that the application of the legislation has created additional administration costs.

As the Utilities Directive has only been in force for the majority of Member States since January 1993 (for supplies and works) and the Services Directive for the public sector since July 1993 and for utilities since July 1994 (in most Member States), it could be argued that, realistically, the timescales are too short to expect the legislation to have fully achieved its objectives. Since the public-sector Supplies and Works Directives have been in force since January 1989 and July 1990 respectively in the majority of Member States – a period of some 6–7 years – it would be reasonable to expect a high degree of compliance with the legislation, a necessary condition for achieving the downstream gains. However, a combination of related demand-side (Chapter 12), supply-side (Chapters 13 and 17–22) and legal factors (Chapters 5–9) have hampered the achievement of these gains.

Overall, it is important to note that, as a consequence of the implementation of the public procurement legislation:

- (a) there have been instances where purchasing entities have achieved considerable savings on individual procurements, which, coupled with the continued existence of substantial intra-EU price differences, support the hypothesis that there is potential for significant public-sector savings;
- (b) when new suppliers responded positively to public-sector opportunities, a high proportion was successful, implying that the purchasing entity had benefited from a more 'economically advantageous' offer.

APPENDIX A

Table A.1. Supply-side sectors

NACE	Sector
315	Boilers, vessels
316	Metal office furniture
33	Office machinery
341/2	Cables and wires; power generation equipment
344	Telecommunications equipment
351	Motor vehicles
362	Railway rolling stock
37	Medical equipment
453	Textiles and clothing
471/472	Paper and printing
83	Business services
502	Construction/civil engineering

APPENDIX B

Community legislation, etc.**B.1. Treaties, bilateral agreements, etc.**

Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community, the European Coal and Steel Community, of the one part, and the Republic of Estonia, of the other part (OJ L 373, 31.12.1994, p. 1).

Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community, the European Coal and Steel Community, of the one part, and the Republic of Latvia, of the other part — Agreement between the European Economic Community and the Republic of Latvia on trade in textile products — Final act (OJ L 374, 31.12.1994, p. 2).

Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community, the European Coal and Steel Community, of the one part, and the Republic of Lithuania, of the other part — Agreement between the European Economic Community and the Republic of Lithuania on trade in textile products — Final act (OJ L 375, 31.12.1994, p. 2).

B.2. Regulations

1461/93: Council Regulation (EEC) of 8 June 1993 concerning access to public contracts for tenderers from the United States of America (OJ L 146, 17.6.1993, p. 1).

B.3. Directives

89/665/EEC: Council Directive of 21 December 1989 on the co-ordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, p. 33).

90/531/EEC: Council Directive of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications (OJ L 297, 29.10.1990, p. 1), as amended by Directive 94/22/EC (OJ L 164, 30.6.1994, p. 3).

92/13/EEC: Council Directive of 25 February 1992 co-ordinating the laws, regulations and administrative procedures relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.3.1992, p. 14).

92/50/EEC: Council Directive of 18 June 1992 relating to the co-ordination of procedures for the award of public service contracts (OJ L 209, 24.7.1992, p. 1).

93/36/EEC: Council Directive of 14 June 1993 co-ordinating procedures for the award of public supply contracts (OJ L 199, 9.8.1993, p. 1).

93/37/EEC: Council Directive of 14 June 1993 concerning the co-ordination of procedures for the award of public works contracts (OJ L 199, 9.8.1993, p. 54).

93/38/EEC: Council Directive of 14 June 1993 co-ordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 199, 9.8.1993, p. 84).

94/22/EC: European Parliament and Council Directive of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons (OJ L 164, 30.6.1994, p. 3).

B.4. Case law

Case 29/84 *Commission v Germany* [1985] ECR 1661.

Case 239/85 *Commission v Belgium* [1986] ECR 3645.

- Case 263/85 *Commission v Italy* [1991] ECR I-2457.
Case 3/88 *Commission v Italy* [1989] ECR 4035.
Case 21/88 *Du Pont de Nemours Italiana SpA v USL di Carrara* [1990] ECR I-889.
Case 351/88 *Laboratori Bruneau Srl v USL RM/24 di Monterotondo* [1991] ECR I-3641.
Case C-59/89 *Commission v Germany* [1991] ECR I-2607.
Case C-243/89 *Commission v Denmark* [1993] ECR I-3353.
Case C-272/91 *Commission v Italy* [1994] ECR I-1409, [1995] 2 CMLR 504.
Case C-433/93 *Commission v Germany* [1995] ECR I-2303.

B.5. Other

- Council Decision 80/271/EEC of 10 December 1979 concerning the conclusion of the Multilateral Agreements resulting from the 1973 to 1979 negotiations (OJ L 71, 17.3.1980, p. 1).
- Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications (OJ L 36, 7.2.1987, p. 31).
- Council Decision 87/565/EEC of 16 November 1987 concerning the conclusion of the Protocol amending the GATT Agreement on Government Procurement (OJ L 345, 9.12.1987, p. 24).
- Public procurement: regional and social aspects (COM(89) 400 final) (OJ C 311, 12.12.1989, p. 7).
- Council Decision 93/323/EEC of 10 May 1993 concerning the conclusion of an Agreement in the form of a Memorandum of Understanding between the European Economic Community and the United States of America on government procurement (OJ L 125, 20.5.1993, p. 1).
- Council and Commission Decision 93/742/Euratom, ECSC, EC of 13 December 1993 on the conclusion of the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part (OJ L 347, 31.12.1993, p. 1).
- Council and Commission Decision 93/743/Euratom, ECSC, EC of 13 December 1993 on the conclusion of the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part (OJ L 348, 31.12.1993, p. 1).
- Council and Commission Decision 94/1/EEC of 13 December 1993 on the conclusion of the Agreement on the European Economic Area between the European Communities, their Member States and the Republic of Austria, the Republic of Finland, the Principality of Liechtenstein, the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation (OJ L 1, 3.1.1994, p. 1).
- Decision of the EEA Joint Committee No 7/94 of 21 March 1994 amending Protocol 47 and certain Annexes to the EEA Agreement (OJ L 160, 28.6.1994, p. 1).
- Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p. 1).
- Council and Commission Decision 94/907/Euratom, ECSC, EC of 19 December 1994 on the conclusion of the Europe Agreement between the European Communities and their Member States, of the one part, and Romania, of the other part (OJ L 357, 31.12.1994, p. 1).
- Council and Commission Decision 94/908/Euratom, ECSC, EC of 19 December 1994 on the conclusion of the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part (OJ L 358, 31.12.1994, p. 1).
- Council and Commission Decision 94/909/Euratom, ECSC, EC of 19 December 1994 on the conclusion of the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Slovak Republic, of the other part (OJ L 359, 31.12.1994, p. 1).
- Council and Commission Decision 94/910/Euratom, ECSC, EC of 19 December 1994 on the conclusion of the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Czech Republic, of the other part (OJ L 360, 31.12.1994, p. 1).
- Proposal for a European Parliament and Council Directive amending Directive 92/50/EEC relating to the co-ordination of procedures for the award of public service contracts, Directive 93/36/EEC co-ordinating procedures for the award of public supply contracts, and Directive 93/37/EEC; Proposal for a European Parliament and Council Directive amending Directive 93/38/ co-ordinating the

procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (COM(95) 107 final).

Decision of the EEA Council No 1/95 of 10 March 1995 on the entry into force of the Agreement on the European Economic Area for the Principality of Liechtenstein (OJ L 86, 20.4.1995, p. 58).



Bibliography

Economist Intelligence Unit, *The new car market in Europe*, London, 1992/93.

Elsevier Advanced Technology, *Profile of the world-wide telecommunications industry*, Oxford, 1995.

European Commission, *Completing the internal market*, COM(85) 310 final, Luxembourg, Office for Official Publications of the European Communities, 1985.

European Commission, *The cost of non-Europe in public sector procurement*, in *Research on the 'cost of non-Europe': Basic findings*, Vol. 5, Luxembourg, Office for Official Publications of the European Communities, 1988.

European Commission, *Basic statistics of the Community*, Luxembourg, Office for Official Publications of the European Communities, 1989, 1993, 1995.

European Commission, *SMEs' participation in public procurement*, Luxembourg, Office for Official Publications of the European Communities, 1990a.

European Commission, *Opening up public procurement in the excluded sectors*, Luxembourg, Office for Official Publications of the European Communities, 1992.

European Commission, *EC-US procurement*, Luxembourg, Office for Official Publications of the European Communities, 1994a.

European Commission, *The cost of non-Europe in defence procurement*, Luxembourg, Office for Official Publications of the European Communities, 1994b.

European Commission, *Enterprises in Europe*, Third Report, Luxembourg, Office for Official Publications of the European Communities, 1994c.

European Commission, *Evaluation of the use of the negotiated procedure as a means of reducing economic cost to the purchaser or as an element of non-tariff protection*, (unpublished) 1994.

European Commission, *An assessment of the impact of the Utilities Directive on the procurement practices of utilities and their relations with supplier*, (unpublished) 1994.

European Commission, *General government receipts, expenditure and gross debt*, Luxembourg, Office for Official Publications of the European Communities, 1995a.

European Commission, 'Proposal for a European Parliament and Council Directive amending Directive 92/50/EEC relating to the co-ordination of procedures for the award of public service contracts, Directive 93/36/EEC co-ordinating procedures for the award of public supply contracts, and Directive 93/37/EEC; Proposal for a European Parliament and Council Directive amending Directive 93/38/ co-ordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors', COM(95) 107 final, Luxembourg, Office for Official Publications of the European Communities, 1995b.

European Commission, *Panorama of EU industry 1995/96*, Luxembourg, Office for Official Publications of the European Communities, 1996.

European Commission, *Single Market Review*, Subseries V: Vol. 1, 'Price competition and price convergence', Luxembourg, Office for Official Publications of the European Communities and London, Kogan Page, 1997.

European Federation of Engineering Consulting Associations (EFCA), *In-house engineering consultancy within the public sector*, Brussels, White Book, 1995.

International European Construction Federation (FIEC), Sector Publication, No 37, 1995.

OECD, *National accounts*, Paris, 1995.

UK Department of the Environment, *The state of the construction industry*, London, 1996.

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