

Public procurement – contributing to better value for money?

**Helga Berger,
Member of the Court**



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Overview

- ECA – who we are
- ECA – what are our responsibilities and tasks
- ECA and procurement issues
- ECA Special report *“Public procurement in the EU: Less competition for contracts awarded for works, goods and services in the 10 years up to 2021”* (SR 28/2023)
- Insights in ECA dashboard





**The European Court of Auditors –
who we are**

European Court of Auditors

- ECA is **one of the seven** European institutions, the **EU's financial watchdog**
- **as the independent external auditor** of the European Union, the ECA shall *carry out the audit of the Union's accounts (Article 285 TFEU)*
- **our mission is guarding the EU's finances**
- we have to monitor the proper implementation of the EU budget and ensure sound financial management
- set up under Brussels Treaty in 1975, started in 1977
- Headquarter – Luxembourg

- **Members**
 - ECA is led by the collegial body of the 27 members seconded by the MS
 - perform their duties in full independence, in the general interest of the Union
 - should have experience in SAIs
 - appointed for 6 years, reappointment possible – successive renewal process



President and Members



Chamber I Sustainable use of natural resources	Chamber II Investment for cohesion, growth and inclusion	Chamber III External action, security and justice	Chamber IV Regulation of markets and competitive economy	Chamber V Financing and administering the Union	Member for Audit Quality Control
 (Dean) Joëlle ELVINGER	 (Dean) Annemie TURTELBOOM	 (Dean) Bettina JAKOBSEN	 (Dean) Mihails KOZLOVS	 (Dean) Jan GREGOR	 Baudilio TOMÉ MUGURUZA
 Pietro RUSSO	 Eva LINDSTRÖM	 Baudilio TOMÉ MUGURUZA	 Ildikó GÁLL-PELCZ	 Ladislav BALKO	
 Nikolaos MILONIS	 Helga BERGER	 Hannu TAKKULA	 Ivana MALETIĆ	 Jorg Kristijan PETROVIC	
 Klaus-Heiner LEHNE	 Stephanus BLOK	 Viorel ȘTEFAN	 François-Roger CAZALA	 Lefteris CHRISTOFOROU	
 Keit PENTUS- ROSIMANNUS	 George Marius HYZLER	 Marek OPIOŁA		 Laima Liucija ANDRIKIENĖ	

Note: As at February 2023.



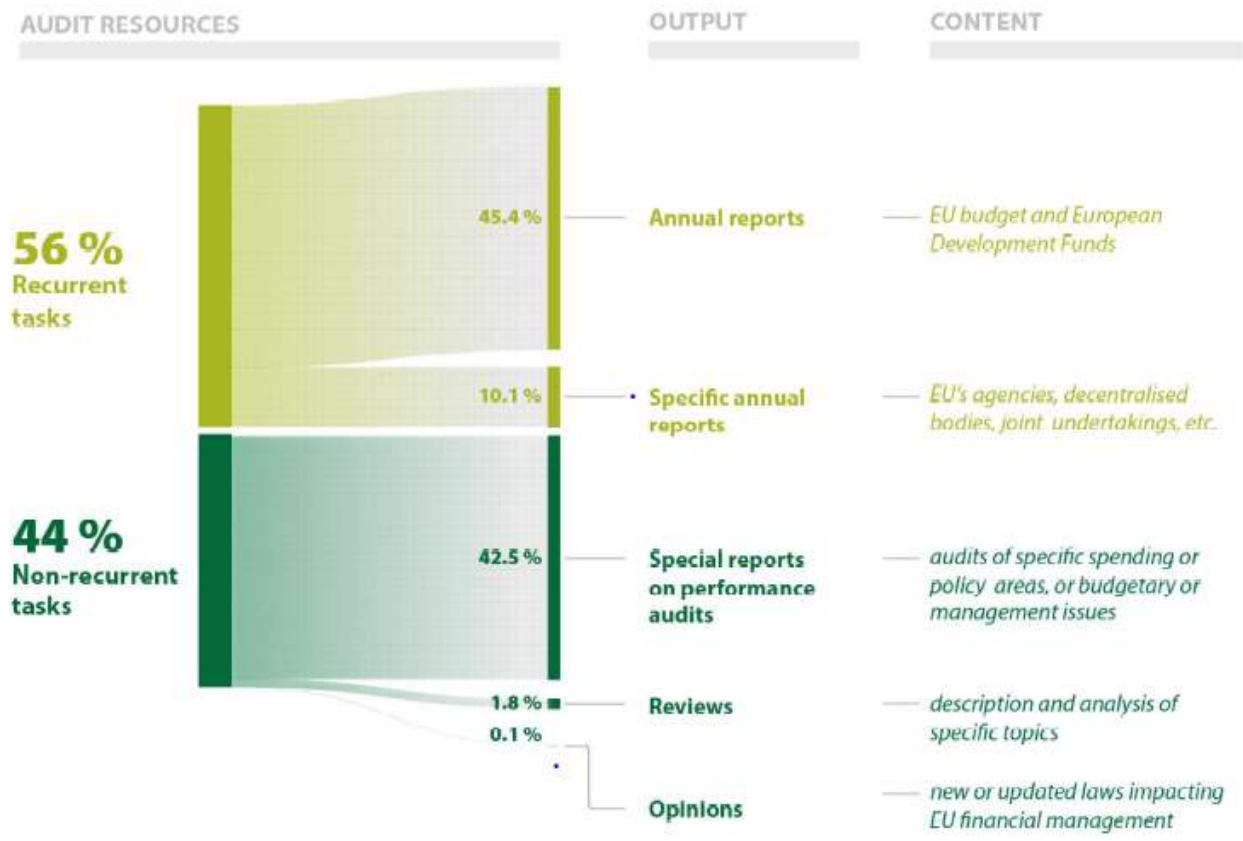
The European Court of auditors – what are the roles and responsibilities

Legal framework

- **Legal application**
 - Status as an **EU institution enshrined** in the Treaty on the Functioning of the European Union (**TFEU**)
 - **Financial Regulation** applicable to the general budget of the EU
 - **Legal framework**
 - **main task** - carrying out the Union's **audits** with the aim to:
 - to improve financial management; and
 - to report to European citizens on how public funds are used
- **2 pillars of tasks under the Treaty (Art. 287 TFEU)**



Our products





The European Court of auditors and procurement issues

Annual Report



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Annual report - Statement of assurance

- **Financial and compliance audit**
 - Art 287 (1) of the Treaty on the Functioning of the European Union (TFEU) provides for the **ECA's legal obligation to audit** the revenue and expenditure of the **EU, its agencies and decentralized bodies (SoAs) each year** and to examine whether
 - the financial statements are reliable and
 - the revenue and expenditure transactions comply with the relevant legislation at EU and Member State level.



Annual report - Statement of assurance

Main errors identified in public procurement

- **Discriminatory** selection **criteria** or **biased**, restrictive **technical specifications** in the tendering process
- **Artificial splitting of contracts**
- Selection of **bidder non-complying** with selection criteria
- **incorrect evaluation** of tenders
- **Conflict** of interest not **identified**

Improvement in last years **due to an action plan** to improve member states' administrative capacity and compliance of public procurement procedures in cohesion policy, there are **fewer procurement errors**

only 1% of SoA errors in 2020 in Cohesion are due to public procurement



Performance Reports



Special Report N°28/2023:

Public procurement in the EU:

Less competition for contracts awarded for works, goods and services in the 10 years up to 2021



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Why did we do this audit?

Key element
of the
single market

- **€2 trillion spent** each year on public procurement, worth approximately **14% of EU-27 GDP**
- competition **prerequisite** for obtaining **best value for money** in PP
- audit aimed at ..
 - **providing an insight into the state of play** five years after the deadline for transposing 2014 directives
 - **raising awareness for PP as a driver of**
 - value for money
 - economic growth
 - employment and
 - internal market

Audit scope and approach

We audited the
level of
competition

We assessed ...

- **how competition** in PP in the EU's internal market **evolved** between 2011 and 2021
- **whether** objectives of the **reform 2014** have been **met**
- **whether** COMs **monitoring** is **effective**
- whether the COM and member states used available data to identify root causes for weak competition and took **action to reverse** the trend

We explored ...

- publicly available **data recorded in TED** and
- developed an **interactive dashboard** for data analysis

Main conclusions



Less competition over the past 10 years

- Significant increase in **single bidding**:
 - in 42% of all procedures, only one company submitted a bid
 - share almost doubled compared to 2011 (23.5%)
 - average **number of bidders** per procedure almost halved from around six to three per procedure
- High number **of direct awards**:
 - no call for bids procedures rate around 16% of all on average, 23 of 27 member states above 10% red flag
- **Direct cross-border contract awards** have remained **low**
- **significant differences** between member states, regions and economic sectors
 - indicates different approaches of contracting authorities

Key objectives of the 2014 reform not yet met

- **Simplification** - Public procurement has not yet become easier to manage:
 - both bidders and contracting authorities still perceive the process cumbersome and the administrative burden high
 - decision making period increased by half (from 62.5 to 96.4 days)
 - the **impact** of digitalisation initiatives (European Single Procurement Document (ESPD) and e-forms) has **yet to be seen**
- The share of contracts awarded to **SMEs has not increased overall**
- **Strategic procurement** is implemented to a very limited extent:
 - Contracts awarded in favour of the **lowest bid still** account for the **bulk of awards**
- **Transparency** is still a challenge: unsatisfactory **publication rates**, no improvement over time

Shortcomings in COM's and national monitoring tools

- **National monitoring reports lack information on competitive situation**
- **TED data is not yet sufficiently complete and accurate**
 - Missing values are still a problem
 - Collected data is not always correct
 - Agreement on unique identifier still pending
- **Scoreboard does not** provide a **comprehensive and robust view** of the state of play
 - Relevant indicators are missing
 - Reporting functions are not state of the art
 - Methodological changes are frequent and not disclosed

Limited actions to address obstacles

- Both, Commission and member states have **done too little to identify and tackle the root causes** of the decrease of competition
 - **main focus** was on the **timely** transposition into national law and the **correct application** of the regulations
 - **performance and competition** in public procurement were **not at the centre** of attention
 - available **data not systematically analysed** and used for identifying root-causes
 - **few mitigating actions** were launched
 - these actions often remained fragmented and unsystematic

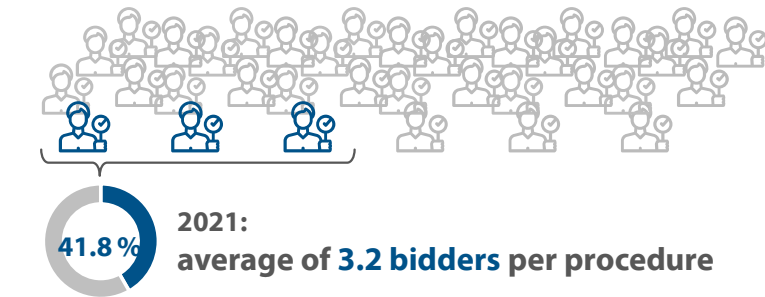
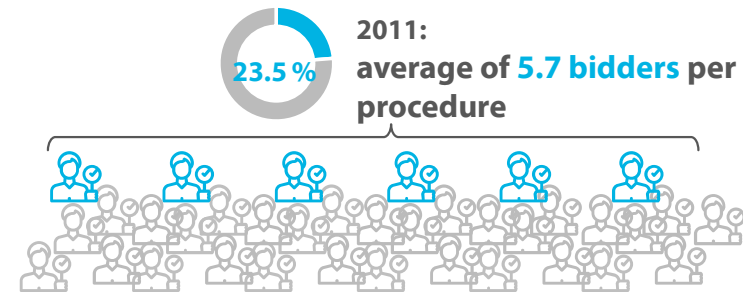
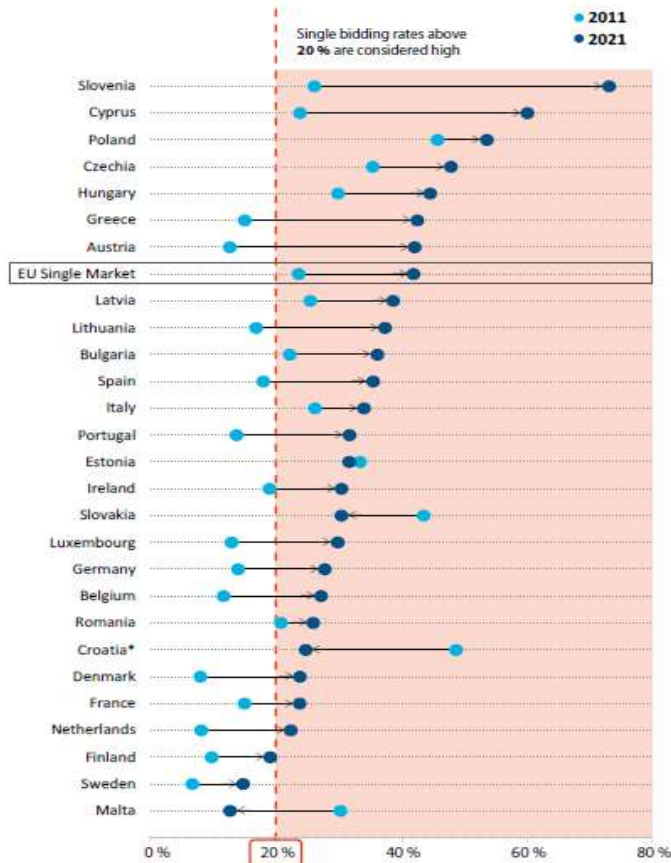
Some specific results



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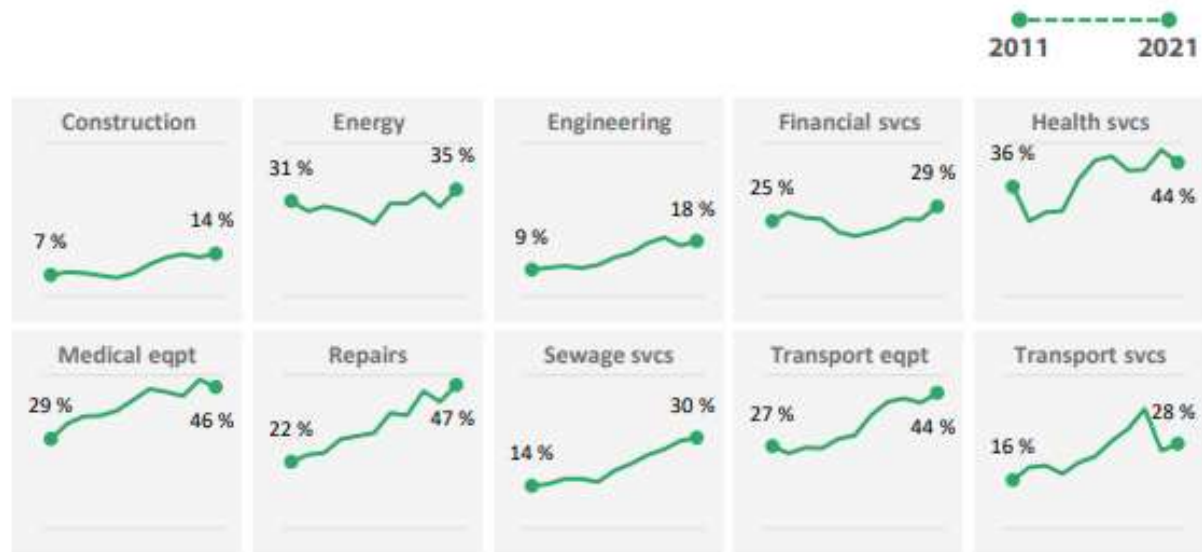
Single bidding

Figure 6 – Single bidding – share by member state (2011 and 2021)



Single bidding

Figure 7 – Single-bidding – share by selected sectors (2011 to 2021)

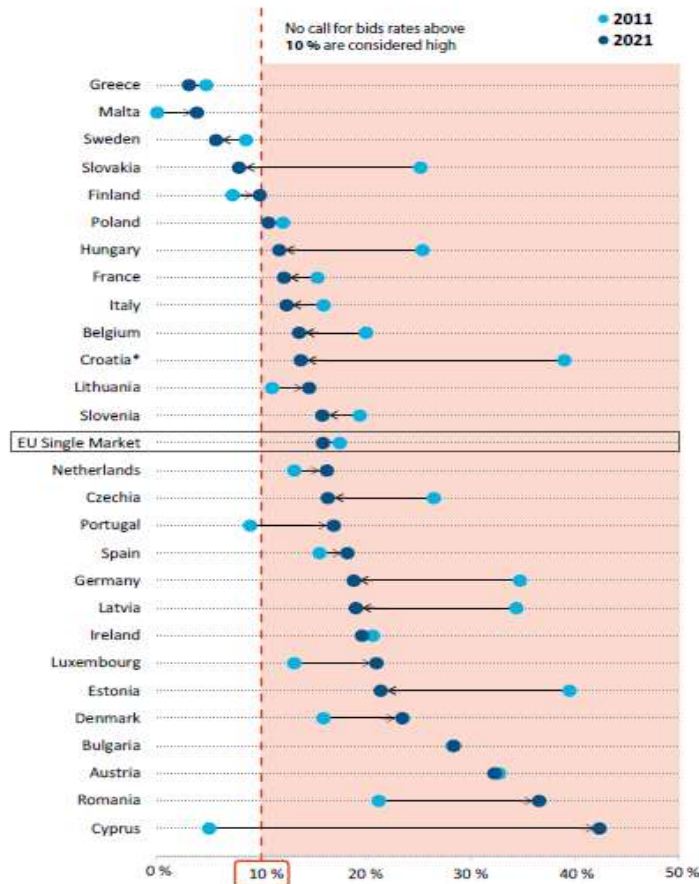


svcs - services
eqpt - equipment

Source: ECA Dashboard's "Competition indicators" tab.

No call for bids

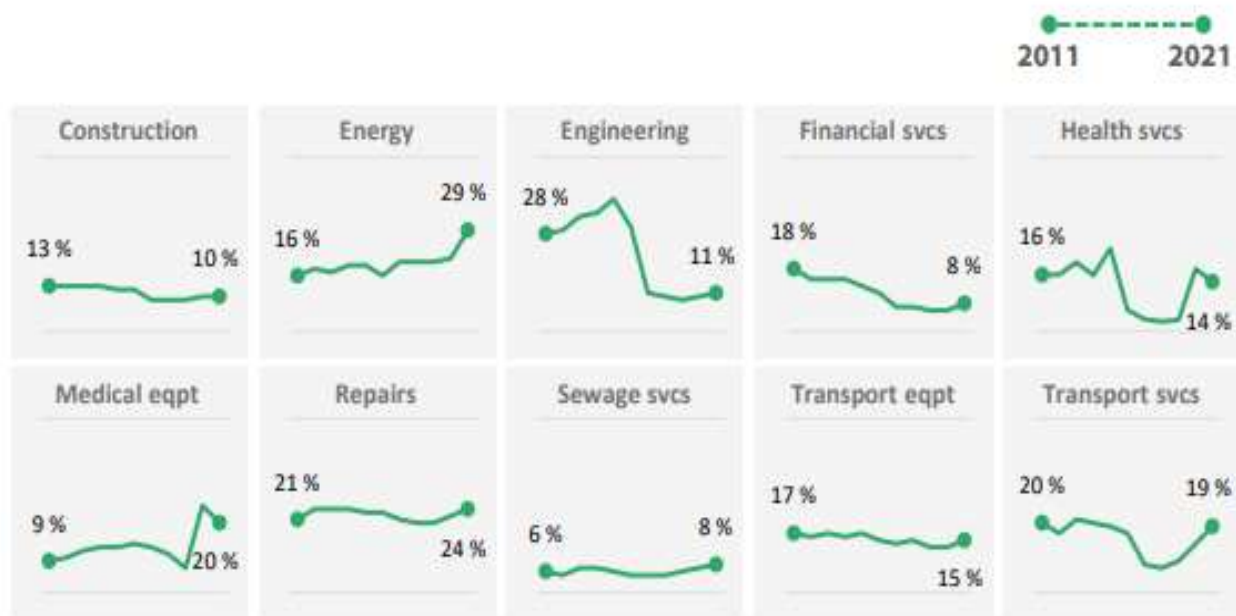
Figure 3 – No call for bids – share by member state (2011 and 2021)



* Data is available for Croatia as of the time of its accession in 2013.

No call for bids

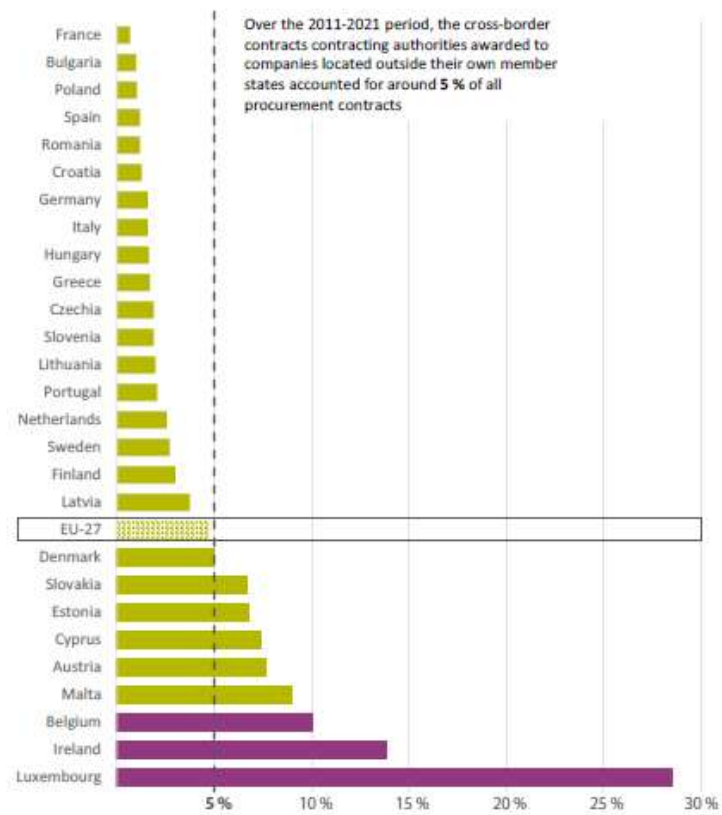
Figure 4 – No call for bids – share by selected sector (2011 to 2021)



svcs - services
eqpt - equipment

Source: ECA Dashboard's "Tendering Practices" tab.

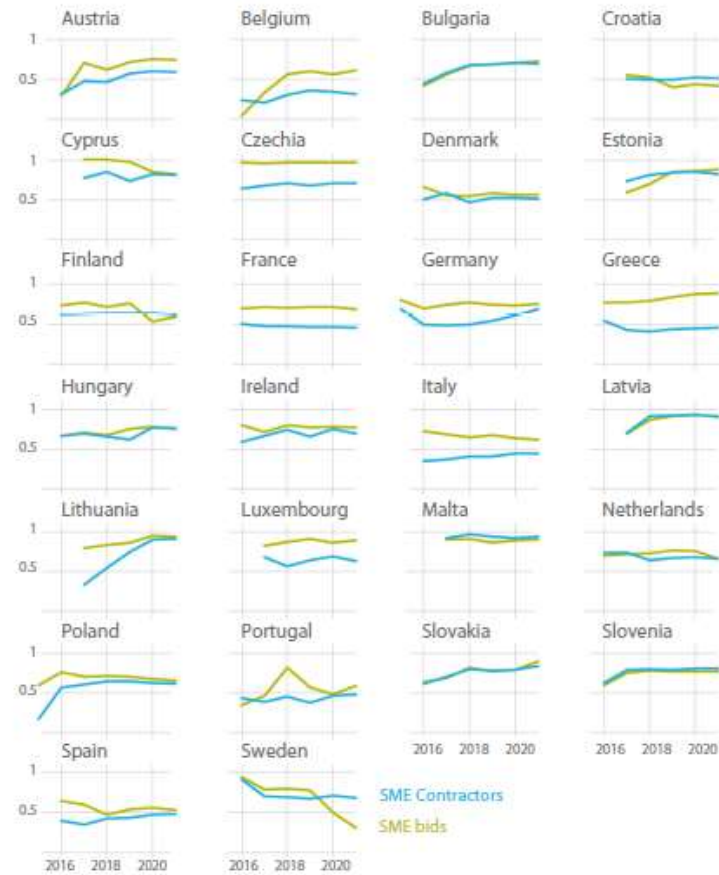
Direct cross border exchange



Source: ECA.

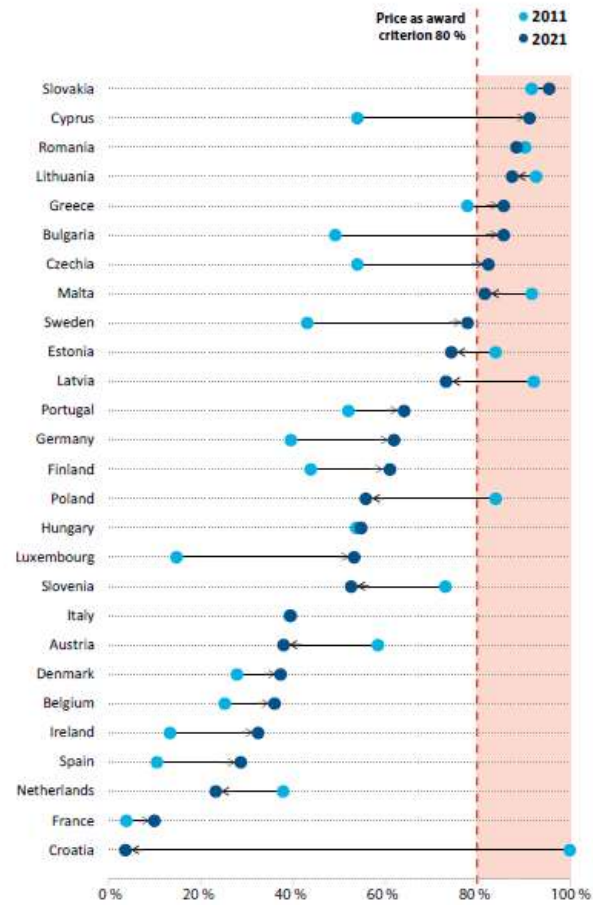
SME participation

Figure 10 – SME participation – share of contractors and bids (2016 to 2021)



Strategic procurement

Figure 11 – Share of contract awards based on lowest bid (2011 and 2021)

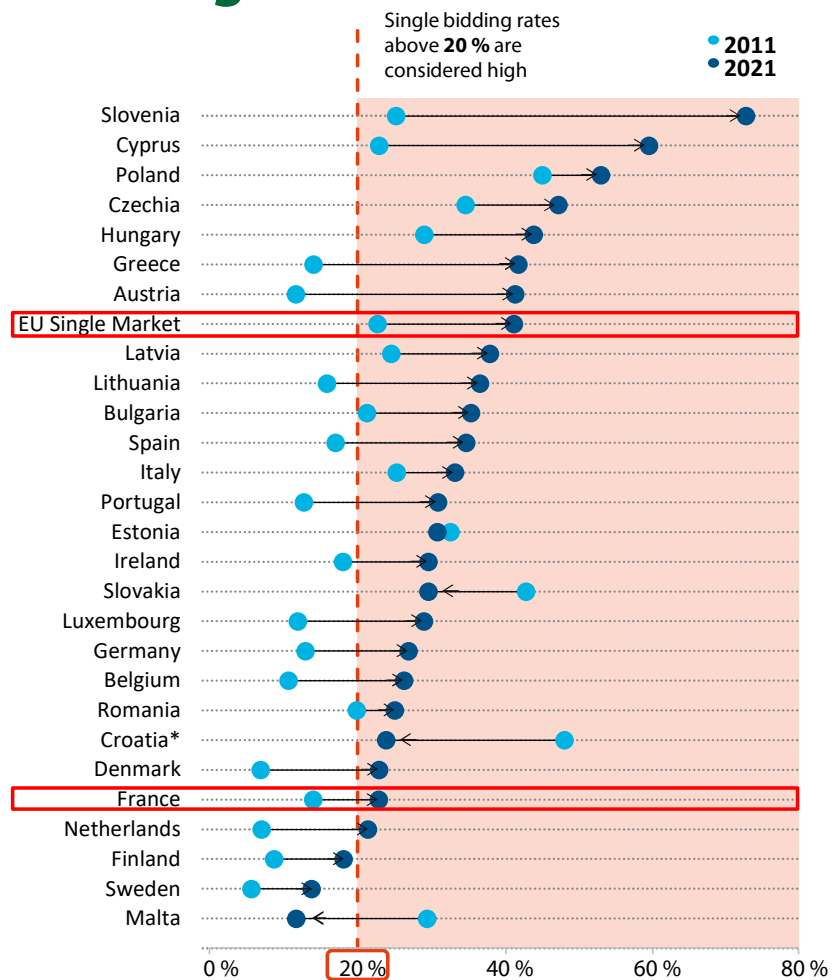


France



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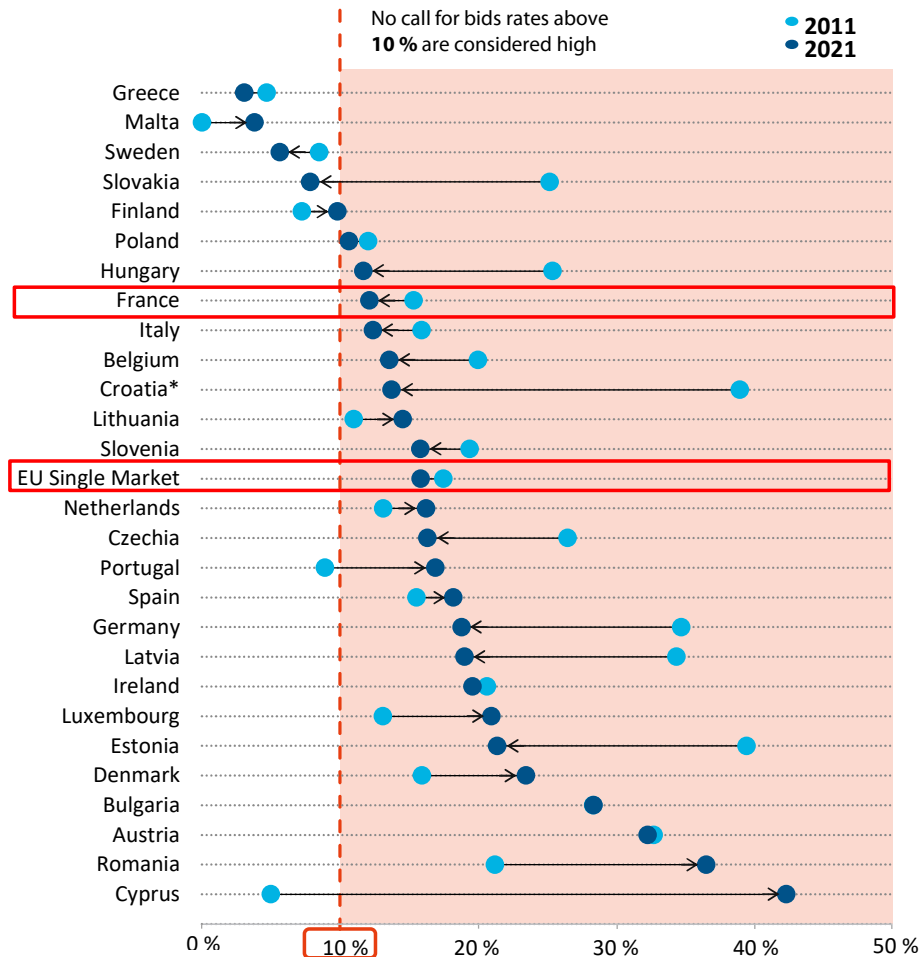
Single bidding



* Data is available for Croatia as of the time of its accession in 2013.

- **In France single bidding more than doubled** from 14.9% in 2011 to 23.7% in 2021
- **Still the 5th-best score** of the EU 27 in 2021 + still very close to the COM red-flag of 20% + far below the 41.8% EU average
- **Average number of bidders** from 5.3 (2011) to 3.5 (2021) = **in line with EU 27 trend**

No calls for bids

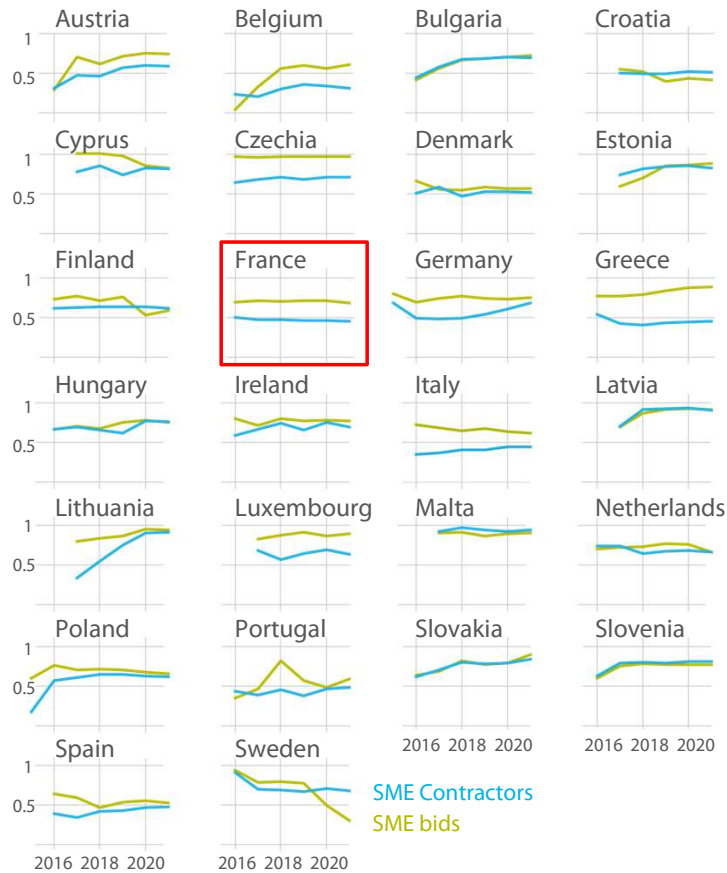


- **France 8th best** within the EU for the no call for bids indicator
- **Proportion of no call for bids decreased** from 15.3% (2011) to 12.1% (2021)
- **Better than EU 27 average** (15.9%), still slightly above COM 10% red flag

* Data is available for Croatia as of the time of its accession in 2013.



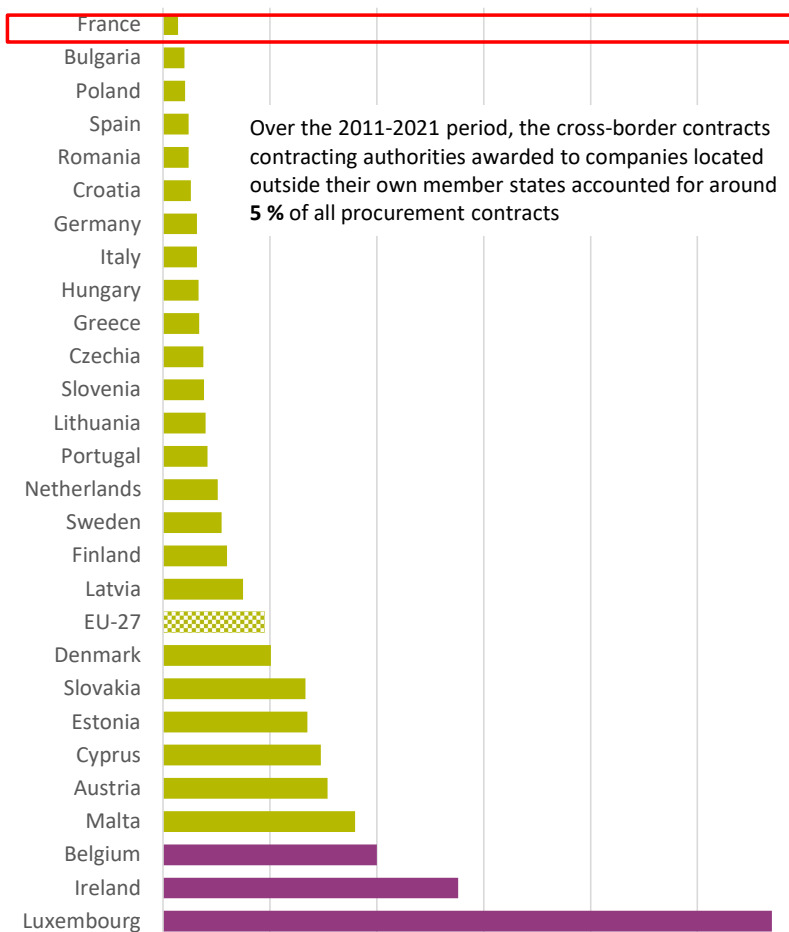
SME participation



SME-participation indicators show for France that

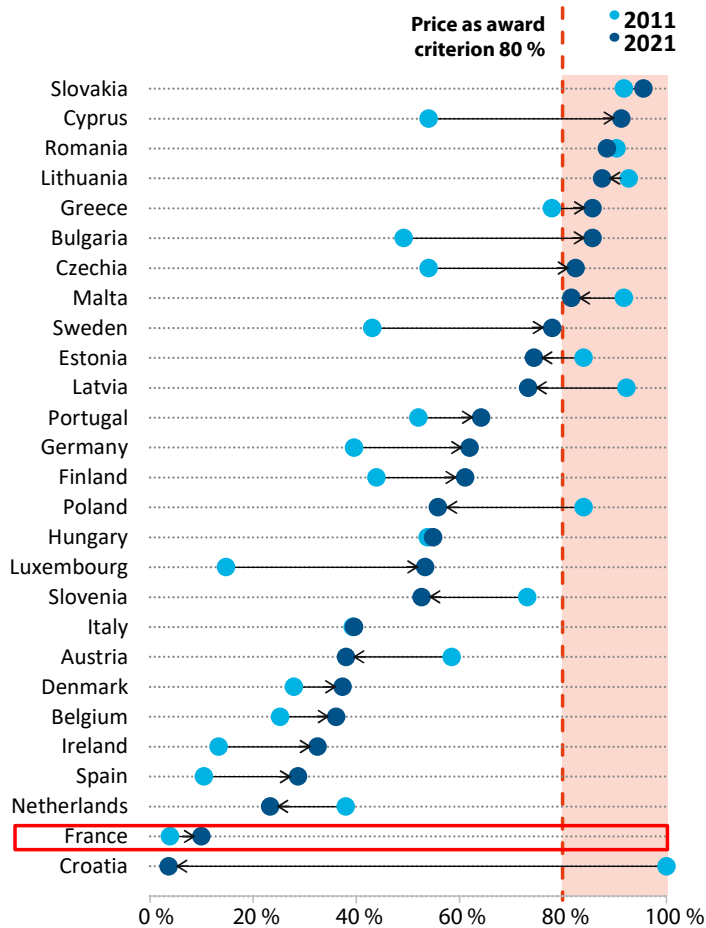
- **SME contractors decreased slightly** from 47.3% (2016) to 42.7% (2020)
- **SME bids slight increase** from 67.4% (2016) to 69.5% (2020)

Direct cross border exchange



- With **1% direct cross border awards** France ranks lowest in EU 27 and below the EU 27 5% average!

Strategic procurement



- Strategic procurement - **no specific TED data and indicator**
- But share of **contracts awarded to the lowest bid** (price as only criteria) can be seen as an indication
- this share accounts in France for around **10% in 2021** (4% in 2011)
- despite the increase still the **second-best performer** and far below COM red flag (80%)
- MEAT criteria beat price only criterion

Recommendations



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What do we recommend?

We issue four
recommendations

- **Clarify** and prioritise public procurement **objectives**
- **Address shortcomings of** public procurement **data**
- **Update** the Commission **tools to monitor** competition
- **Deepen the root cause analysis and put forward measures** to overcome key obstacles to competition and promote best practice (EU-wide action plan)

COM fully accepted all recommendations.

Conclusions



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Conclusions

- making PP more attractive for companies is the best way to increase value for public money
- common goal for public buyers **and** bidders
- Audit report was a **wake-up call** at EU-level
- Impact already visible - EU-Commission started already several initiatives to follow-up the report
 - procurement dialogues with MS (“tour de capitale”)
 - Analysis of legislative framework together with MS
 - exchange of best practice
 - New version for e-Forms
 - Platform PPDS
 - Buyers' platforms to help MS
- first steps to boost competition, outcome to be seen

Thank you for your attention!

Kontakt

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