

Market Creation in the European Union: The Case of the Public Procurement Directives

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The Candidate confirms that the work submitted is his own and that appropriate credit has been given where reference has been made to the work of others.

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Abstract

The thesis tackles two major components of modern statehood; the creation of markets, and public procurement. The context is the European Union's efforts to create an integrated market for public procurement as an effort to bind the notion of what it means to realise the state into a single concept within the European project. The thesis in particular studies the Tenders Electronic Daily (TED) that has been a major component of the modern version of the procurement market and constitutes a major effort to control the discursive construction of the act of procurement. The thesis concludes that through market structures there exists the opportunity for perpetuation of ideational hegemony. This may have a significant impact on the conceptualisation of statehood in modern Europe.

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Glossary of Terms

ARHS	'Advanced and Reliable Information Systems' – Main Information Technology Contractor used by the European Commission's Publications Office
CIPS	Chartered Institute of Purchase and Supply
CJEU	Court of Justice of the European Union
ECB	European Central Bank
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EEC	European Economic Community
EIB	European Investment Bank
EPPD	European Public Procurement Directives
EU	European Union
EURATOM	European Atomic Community
GPA	Government Procurement Agreement
IDA	Interoperability of Data Administration
ISA	Interoperability Solutions for Administration – programme for IT infrastructure improvements in EU public sector
IBM	Industrial Business Machines Limited – American computer manufacturer.
MEP	Member of the European Parliament
NPM	New Public Management
ODP	Open Data Portal
OECD	The Organisation for Economic Co-operation and Development
OJEC	Official Journal of the European Communities
OJEU	Official Journal of the European Union
OJEU-S	Official Journal of the European Union Supplementary Series
PWC	Price Waterhouse Coopers
TED	Tenders Electronic Daily
WTO	World Trade Organisation

Chapter One: Introduction

Outline, rationale, and methodology of the Thesis

1.1 Introduction

“We have received the contract, and now we await the first order. We are very proud to be the first foreign company to supply medals to the English market” (Jean-Charles Rocher, Arthus Bertrand, Paris)

“My argument is rather emotive but I think that a medal awarded to a UK citizen should be made in the UK – personally I am very glad that my DSO was made in Britain” (Colonel Stewart, Ex-British Army)

Both quotations from ‘The Times’, Tuesday 1 March 2016 (O'Neill, 2016)

This thesis is about two aspects of the modern political economy; Public Procurement, and the use of markets in policy implementation. Both are contentious issues that speak to the heart of the process of government, and nationhood in modern Europe. As marketization spreads through the public sector, so more factors of public service provision are subject to testing for ‘value for money’ through competitive tendering to private suppliers. For member states of the European Union, any contracts valued over €207,000 EUR for goods and services, or €5,186,000 EUR for (Construction) Works must be advertised EU wide through the Official Journal of the European Union (financial values here pertaining to 2016). Thus, a contract for the minting of medals for the British military may be awarded to a French company, as in the quotations above; as contentious an issue as may be found which speaks to the heart of what defines ‘The State’ in modernity.

The European Union's Public Procurement Directives are a well-established aspect of the development of the Single European Market. Their 'stated' aim is the liberalization of government purchasing to include suppliers from across the European (Community and) Union. It is also one of the emblematic European Integration exercises, and is absolutely central to the development of the Internal Market (De Gucht, 2014; London Economics and PWC, 2013; Smith, 2010; European Commission, 2010c). In each of the principal approaches to the study of the European Public Procurement (EUPP) market, there are certain ideological assumptions made regarding the meaning and purpose of this market. These assumptions revolve around the positive aspects of the marketization of public policy implementation (Bovis, 2008 p11) and the economic benefit of increased market integration leading to economies of scale (Owen, 1983) in the integrated European space. It is the political benefits that are the core of the intention behind the market, namely the increasingly close working of the European Economies for the furtherance of these countries when 'racing' against opposing international economic and political actors (Grin, 2003). Following these core 'classical' concerns, the discourse supported by the EU has moved into ancillary benefits of integration. For example, the 'Governance' approaches the impact of the development of the EUPP regime as advancing and impacting upon the core concerns of 'better' governance of policy (Altes and Tasan-Kok, 2010). Governance in this context is often conflated with 'Transparency' and the need for increasingly comprehensive information porosity of the technocratic and opaque EU.

The Public Procurement Market in the EU, despite its size and longevity, is an often referenced, but under-theorised aspect of the European Economy. This thesis contends that the integration of Procurement is unique. This integrative effort advances a hegemonic vision of 'statehood' into the EU member states through the manner by which policy is implemented. This is by creating a 'perfect' market mechanism (Callon, 1998b; Callon et al., 2007; Fligstein, 1996; Fligstein and Mara-Drita, 1996; Howarth and Sadeh, 2010) to further European Integration.

While other studies have told the 'story' of the development of the procurement directives (Winter, 1991, Sohrab, 1990 Bovis, 2012; Trepte, 2007), the thematic and discursive development of the *idea* of procurement market has not been explored previously. Markets are increasingly used throughout the public sphere, and play an important part in 'post-austerity' states as the size of direct government influence is reduced (Mirowski, 2014). While they are supposed by their adherents to be 'ideologically neutral', the situation of public services within any exogenously imposed mechanism of exchange will change the nature of the actions within. This is due to the nature of markets not as mechanistic, rational fora, but complex social constructions that serve as the premier model of economic and social organization in modern society. As a result, the ideational basis of the social construction of markets is of paramount importance in the realization of the policy goals associated with said market.

A range of cogent issues is also explored in this thesis that go some way to explaining the need for ideational dominance in the making of the procurement market. Diversity of implementation, changing situations, and the wish to advance changing policy agendas means that the directives needed to change in order to address the practice effectively. The manner, in which the procurement market is realised, is in the advertisement processes and the communication of specific information between parties. The single mandated process for advertising procurement projects in the OJEU is essential for the stability and cross applicability of market opportunities. It is this process that is investigated in the Chapter 5 of this thesis. So in order to generate coherence within the market, develop the overarching aim of political integration, and service the specific policy agendas of the day, the EU has used the contested concept of procurement in an ideationally performative manner.

This thesis argues that the creation of the Public Procurement market is not an exercise in economic efficiency, governance, or other 'benefit', but the use of performative projection of a hegemonic idea of procurement. While other studies

have explored the importance of 'market making' in the creation of Europe (Smith, 2006), the processes researched herein lead to the projection of a particular *idea* of statehood within the European sphere. The European project is therefore not just about the integration of the political institutions of Governments, but the ideational reframing of the notion of 'The State' for the member countries of the Union. The mechanisms used to do this are discursive in nature, both the framing of the market through the use of hegemonic integrationist themes, and the direct control of the language of public procurement.

What may this tell us about the EU as a whole? That there are a series of discourses that are apparent in the lexicon of European Integration, and the approach to Public Procurement presents an emblematic narrative of economic integration with a defining characteristic of European Integration being the adherence to the market paradigm over and above the other narratives that may be apparent. Rather than the existing literature on the subject, the approach used herein frames the debate as one that is deeper than the institutions of government and seeks to influence the ideational creation of the state boundary to embrace the 'European'.

Originality

This thesis makes two claims to originality. Firstly, the approach is in the use of the analytical framework developed in Chapter 2 to understand how Public Procurement is a formative aspect of the European *political* project as opposed to the manner in which it is most commonly viewed; a transparent and technocratic mode of policy implementation. This is a deviation from more traditional perspectives on Public Procurement from Economic, Legal, 'Governance', or 'Public Management / Policy' modes. The thesis outlines in sections 2.3 what these perspectives are. The use of social constructivism to understand how the market for procurement is created is novel in that it links recent developments in the understanding of the European Union (from Rosamond, 1999; Hay and Rosamond,

2002 onwards) to Socio-Economic scholarship (Callon, 1998b; Miller, 2005; Callon et al., 2007 etal) to derive a fresh angle on the issue.

This thesis argues that the proactive creation of a market in this aspect of government operations reshapes the manner in which the State is realised. The European Union through the shaping of Procurement practices discursively shifts the understanding of the State for the citizenry. This is distinct to the aforementioned approaches to Procurement that operate predominantly within a 'realist' perspective on market imperatives without questioning the construction of the paradigm from which they operate.

This thesis does not attempt to empirically test the claims made. Instead what is offered is a framework for analysis of the manner in which the EU has created the procurement market, the mechanisms used to operate and mould the market, and the potential consequent implications of doing so. Empirical evidence on the process of the construction of the market is offered to support this analysis. This takes the form of two studies: the first being the changing discourse of the 'Procurement Market' as a way of showing that discourse is the main way in which 'markets as social constructions' are formed. They are brought into being through 'performative speech acts' (Searle et al., 1980; Searle, 1995) and then directed through the same mechanism. Therefore, the discourse of the market is a 'market instrument'. 'Market Instruments' in other studies have been identified as being synonymous with the concept of economic or legal instruments (for example those studied by Donald MacKenzie (MacKenzie and Millo, 2001; Beunza et al., 2006; MacKenzie, 2006; MacKenzie et al., 2007b; MacKenzie, 2008)). The identification of the discourse in this context as being an instrument of political policy, is a novel approach.

The second main innovative claim made for the thesis is in the contribution to knowledge regarding the Tenders Electronic Daily (TED). This is the main market operation mechanism through which communication by market participants is

intended to operate. It forms the nexus of information transparency and control between the participants in the market. The structure of the data within the website effectively frames the discourse associated with the procurement being undertaken by the Contracting Authority. This framing serves to reinforce certain hegemonic principles determined by the market's creators. Chapter 4 outlines the processes associated with the development and use of the TED from the 1990s to 2015 which demonstrates how the market's structures and functions fulfil the perpetuation of the ideational foundation of the integrated European political space.

There are elements of the story of the development of the public procurement market that have been covered extensively in previous works that are referenced throughout the work, but the context within which they are placed, that of the ideational creation of the European Union means that in this context, they are emblematic of the construction of the EU as a whole. From this viewpoint, the study of public procurement becomes an investigation into the construction of the State; as it is through the act of public procurement that the State is realised.

Chapters 5 and 6 offers a broader context in which the thesis may be generalizable for broader contribution to the study of political economy. It is hoped that this contribution to knowledge may represent a further, original, understanding of the modern State.

1.2 What is Public Procurement?

By way of introduction to the topic of Public Procurement, it is worth reflecting at this point what the 'popular' notion of procurement is. Public Procurement is commonly defined as the purchase of goods or services by a government agency for the completion of public policy goals. Traditionally, the scope of purchasing activities was restricted to those tasks or production capabilities that the State was incapable of undertaking (Ascher, 1987 p8). Or the 'Ricardian' economic theory that

organizations are most effective when they specialize in those elements that they excel at, of course derived from the classic 'Pin Factory' study (Smith, 1977 p110). From the 1980s onwards, there was a dramatic increase in the contracting out of services in every modern liberal democratic state. This has been variably attributed to a range of forces; from the anti-Union movement within the British Conservative party (Ascher, 1987 p47, Burton, 1987), ever increasing globalization and the lobbying power of multinational corporations, or the broader embedding of neoliberalism within policy implementation (Schmidt et al., 2013). Consistently, governments have adopted practices that were common in the Private sector, and in this case 'Outsourcing' or 'Contracting Out' have gained ground as an accepted practice (Ascher, 1987 p8).

The European Public Procurement Directives apply to those organizations for which more than 50% is subject to public funding. What may be described as being within *private* ownership is largely set at a similar 50% threshold (Swann, 1988 p3) for privatized industries. As a result of this relatively high level of cross ownership (49% in either the public or private direction), the degree to which the market's regulations cross from one sphere of influence to another is marked. The public procurement directives may therefore spread out to influence a greater proportion of the total EU political economy than even the Commission's high assumptions of 17% of EU GDP assume (European Commission, 2011e; PWC et al., 2011; Publications Office of the European Union, 2014b).

The shift towards outsourcing has developed alongside the concept of 'proving' 'value for money' in the provision of services by the State. This concept is highly context dependent, and as a result, is contested across many spheres. At the core, it may be seen as relating to improving efficiency in operational effectiveness and deriving the maximum output return per unit of input for government expenditure. The way in which this is achieved is nebulous, for instance, the process of simply defining the tasks considered for outsourcing may in itself lead to the identification of institutionalized processes that otherwise undermine efficacy (Ferris and Graddy,

1989). Indeed an element of the increase in efficacy of operations may be due to the increase in competition felt by the employees of the business / state, or other aspects of scrutiny and managerial attention; referred to by Leibenstein as constituting 'X-Efficiency'.

“Although a major element of 'X-Efficiency' is motivation, it is not the only element, and hence the terms 'motivation efficiency' or 'incentive efficiency' have not been employed.” (Liebenstein, 1966 p392)

The inclusion of this form of micro economic efficiency is distinct to the allocative efficiency that may be found through the engagement with alternative forms of service provision operated by states. The efficiency model proposed herein relates to the internal organization of institutions, firms etc. within the economy and the hierarchies that govern them (Williamson, 1976). Omitted is the impact of several factors including 'transaction costs' in the formulation of this approach (De Alessi, 1983 p64 / p69), allocative welfare 'loss' (Crew and Rowley, 1971) or 'production efficiency' (Byrnes et al., 1986) which when included, create a more rounded alternative to the neoclassical economic models. Once included, these approaches begin to allow for a greater understanding of the microeconomics of social interaction. This depth allows for improved reliability of the economic model to social reality (Simon, 1997). On the other hand, due to the context sensitive nature of the efficiency debate, it is questionable whether X-Efficiency may be extrapolated to the level of society (Burawoy and Lukacs, 1985 p724) as any particular efficiencies will be determined as both relative to other productive options in society, societies as a whole, or indeed models of capitalism (Hancké et al., 2008)

The process of Public Procurement is most commonly done through the use of 'competitive tendering'. This requires that government agencies gather quotes from a series of companies against a specification. Utley and Harper (in Clarke and Pitelis, 1993 p147-149) identify four rationales for the use of competitive tendering. Firstly,

the 'cost savings and efficiency' as a result of the process of competition and the provision by the private sector of an objective measure of what may be achieved by alternative organizations providing a similar service. This perspective links directly with the X-Efficiency assumptions. They go further to suggest secondly, cost savings as a result of the alignment of the provision of services with the customers rather than the producers of said services. This creation of a more responsive alignment of the policy output with the citizen assumes a degree of rational acting on behalf of the individual that may not always be present (Jones, 1999; Jones, 2003). Thirdly, improved management oversight of the service provision leading to improved efficiency. The assumption being that managers of public services are insulated from direct consequences of mismanagement or that they may be less motivated to act in an innovative manner (Kelman, 1990). Fourthly, the evaluation by councils of levels of service, for example the reduction of frequency of refuse collection (Vidal, 2007).

1.2.1 State Aid

Discussion of Public Procurement is often linked with 'State Aid' and the use of procurement to target specific burgeoning industries and suppliers. State Aid is a tightly regulated area of economic activity within the European Union. State Aid controls are a well-developed series of regulations, directives, case law, and 'soft law' (Cini, 2001) that exist within the EU in order to

“...protect the integrity of the Single Market and prevent subsidy races developing across the member states.” (Cini and McGowan, 2009 p162)

In terms of scope it is an

“...inclusive term, encompassing tax and interest relief, state guarantees and government holdings in companies, and the provision of goods and services

by the state on referential terms, as well as straightforward financial assistance (grants).” (Cini and McGowan, 2009 p165).

What is not included under this banner is public contracting by government agencies; public procurement. It is tacitly recognized that the nature of the modern state leads to the requirement for governments to purchase from third parties. Governments may achieve policy goals for economic stimulus through the use of procurement, and by engaging with suppliers in a manner that is compliant with the Procurement Directives; Governments may assuage themselves from possible challenges under State Aid rules (including unfair support of national economic actors). The act of seeking competition from suppliers across the Union negates this likelihood.

State aid rules, and Public Procurement regimes seek to control the supply side of economic intervention. They are monitoring the effect of *Monopsony* in the economy. Competition rules are different in that they seek to proactively promote a diverse market.

“There is ... little support in pure economic theory for the imposition of any price or service-level controls at all in a purely capitalist society where an open market exists and where consumers truly have a free choice of competing suppliers operating in a genuinely competitive market place.”
(Smith, 1999a p82)

This does not necessarily mean that in reality, public policy outcomes of capitalist economies do not benefit from the imposition of such controls. Consumers’ benefit from the protection afforded to them from even such basic intervention as the enforcement of contract law as a basic function of the state.

As a result of the fundamental realization of the importance of some form of competition control to prevent monopoly distortions, Competition Policy is another well developed sector of European public policy that;

“From the competition policy perspective, aid control concentrates on market unification requirements and proceeds on the basis of concern to limit distortions of competition perceived to be contrary to such requirements. Thus some distortions may be permitted, because market unification is not jeopardized” (Evans, 1997 p463).

Therefore the disparities in contracting to a larger proportion of national economic actors are ignored from the competition policy perspective. The distortions to some degree expected in order to retain the coherence of economic stimulus by central government (this aspect will be discussed further in Chapter 2 under the debate on ‘Home Bias’).

In the area of Construction Works, there is evidence to support the claim that the scope of the EU procurement directives has been limited due to contractor strategies relating to market access. While there are mandated access requirements for the contractors under competitive tendering in the market, and treatment of subcontractors, the additional restrictions have meant that contractors have instead sought to access other national markets through acquisition and merger with existing businesses (Clarke and Pitelis, 1993 p160).

“They have strategically combined company acquisitions, joint ventures, and the establishment of subsidiaries to provide a contracting and operational base within the UK. These have been intended to overcome the operational, technical and legal difficulties contractors have found in trying to compete for contracts from bases on mainland Europe.” (Paddon in Clarke and Pitelis, 1993 p181).

The studies undertaken by the Commission in 2011 confirm that this is still the case (Kommerskollegium, 2011; Sylvest et al., 2011). The structure of construction in particular leading to a diversified supply chain that allows for the fig leaf of trans-national competition to mask domestic supply chains. Therefore additional policy agendas are born to capture the treatment of these suppliers and ensure their treatment and capacity is leveraged to the degree required. SME policy in particular has an important role in this regard (Leach, 2011, Wymenga et al., 2011)

1.2.2 Privatization

A step further than direct government contracting is the privatization of public industries. By some accounts, there are 16 main models of 'privatization', joint financing, and other private / public arrangements possible (Smith, 1999a p64-76), although of course as each procurement project leads to a unique contractual arrangement, so the form of contract agreed will be specific to each case unless where a 'standard form of contract' has been utilized (Latham, 1994 p39). The overall trend towards private provision of public services has been a consistent factor in Western European politics since the 1980s (Burton, 1987) and naturally a backbone of the transition from Communism for the Central and Eastern European Countries (CEECs) (Friis, 1999; Boros, 2012a; Boros, 2012b; Myant and Drahokoupil, 2010; Visegrády, 1992). Privatization in the transitioning economies of Eastern Europe after 1989 required a fundamental shift in the operation and perception of the state. Specific efforts to 'make markets' are to be found in these contexts in particular, and the liberal attitude that they emerged from the ether may be found wanting (Frydman and Rapaczynski in Targetti, 1992 p87). There was a need for the concept of public and private ownership to be developed, but also corporate governance structures that would facilitate the operation of public services on behalf of the state. The effect was a realignment of the concept of the state itself (Frydman and Rapaczynski in Targetti, 1992 p75-77).

The transference of the privatized industry from the public sector solves inefficiencies due to over supply of resources – essentially transferring risk from the public to the private sphere. This transference represents the co-option of an external actor as governance player in the monitoring and focusing of the act of government and management of the economy. It locks policy preference regarding efficiency, form of provision, and level of provision into a ‘specification’ facilitated by the provider. This is of course heavily normatively laden with the assumption that government *should be efficient at all*.

A policy to increase the use of private capital assumes that efficiency is a primary goal, and it represents a solution to inefficiency by politically motivated government actors in that

“...public enterprises are inefficient because they address the objectives of politicians rather than maximize efficiency.” (Boycko et al., 1996 p309).

This position establishes a dichotomous relationship between public and policy goals. Indeed, there is a continual debate regarding the likely impact on public policy outcomes where there is the use of private capital, most notable recently within the provision of healthcare in the UK (Beach and Lee, 2008 p26 and p60). So the move to increase efficiency (private) is assumed to be at direct odds to potential public goals, including the basic utilization of labour to increase employment (Boycko et al., 1996 p310).

Procurement therefore can be seen to be at the nexus of several debates regarding the operation through marketization of the state. The inclusion of private capital in the process of delivering public policy blurs the line between private and public spheres. As a result, methods of exercising power through the framing of ideological power (Lukes, 1974) and ideational hegemony (Laclau and Mouffe, 1985). The above descriptions of procurement stop short of that to be encompassed by this thesis. Instead of being a description purely of the mechanistic

transaction between public / private or state / society, it is a more holistic vision that is offered. Public procurement herein, is the realization of the state through socially engaged economic exchange; An act that constitutes the state in a material sense, and serves to align the ideational construction of the state with social purposes. Where the EU public procurement market interfaces with the realisation of the state is in the modulation of the ideational construction of the state. The market's discursive construction reshapes the ideational notion of the 'State' to engender 'ever closer Union between the peoples of Europe'.

1.3 Research Questions

Chapter two reviews the main literature relating to the understanding of Public Procurement in the European Union. This review develops an argument based around the 'social constructivist' nature of markets, and the potential power structures that exist within discourse. Approaching Public Procurement in this way leads to a fresh view of the role of the activity, and of the use of markets in the European Union. In order to address these issues, a simple core research question will be used:

Q1. What is the Impact of the European Union Public Procurement Directives?

It is necessary to define what is meant by 'Impact' at this point. While other studies of procurement have focused on the 'economic' impact (PWC et al., 2011), or the 'governance' impact (Arrowsmith, 2012), this study looks at the impact of the procurement market ideationally. The construction of meaning associated with the activity of procurement is of key importance here. It is this search for the meaning of 'impact' that is a pivotal difference to the other studies of the market, and leads us to greater understanding of the politics of procurement.

The 'impact' to be discussed in this thesis, is the conceptual impact on the ideational construction of the state. This is within the context of the European

Union's support for a model of the state that is ideationally aligned with a 'Europeanised' vision. The model of this vision is rooted within a series of projected discourses that parse across contemporaneous debates on the nature of statehood in a globalizing world. This thesis posits the conclusion that while these discourses evolve to meet challenges over time, the root hegemonic position is an elite based vision of an integrated European political and social sphere.

To expand on the research question from a theoretical perspective further, it concerns whether the projection of a discourse by an exogenous political project (the EU's institutions) has the capacity to 'perform' the market in a manner that redefines the member states of the EU. Therefore, the EU's efforts at making markets can be seen as efforts to create 'Europe' in the political / social spheres. Can this performative vision cross the socio-state divide, and have a 'real' impact in society. The relationship that the actors have with the procurement market and the dense technical language used to create it, may lead to an insulating process that disassociates the market participants from broader societal interaction. Therefore the policy implementation modes through which procurement is enacted, and enacts other policy agendas, are of crucial importance; it is through these elements that the high level, supranational discourse 'touches the society'.

This process of facilitating society's capacity to interact with, or 'touch the market' is dependent on several factors, but 'Transparency' of government and governance is a prime element. Transparency is a key topic in debates associated with Procurement as the operation of relationships between the private and public spheres are open to corruption, nepotism, or incompetence. As a result, there has been an increasing focus on the improvement of 'transparency' in the policy area (OECD, 2012). Transparency 'tools' leading to the facilitation of the effective governance of public life and effective operation of government (Arrowsmith and Anderson, 2011) are critical in improving confidence where private interests are involved in policy implementation. These tools include the open and transparent exchange of public registers of interest for politicians, and advertisement tools in

the eProcurement field. The actors involved in ensuring the effective operation of governance once we have implemented these transparency tools increases exponentially. In procurement, the majority of complaints about poor practice are the result of disadvantaged private actors raising the issue with the national courts, or the European Commission. This participation of a broader range of civil society serves to broaden the democratic engagement of the European Union in a classic Multi-Level mode (Bache and Flinders, 2004; Pierre and Peters, 2004). While these issues around transparency are of interest in the context of the study of political actors (corruption etc.), the construction of transparency as part of the ideational creation of the 'State' has broader under-theorised implications.

In order to engage in the constituent components of the first research question, a second has been formulated:

Q2. From the perspective that markets are social constructions, what are the mechanisms that support this construction and 'make the market'?

This allows me to look more closely at these instruments that create the impact. One aspect of the research hypotheses drawn from the literature review, is that if the discourse is performative, then discourse is itself a market making 'tool'; it is a mechanism through which the market is created, and itself a policy instrument. As discourse is inherently not politically agnostic, then de facto, public policy instruments in this context are not politically agnostic. There is a consistent attempt however to present them as such. Non-Europe as a discursive trope for example (Albert and Ball, 1984) explicitly engages with an attempt to take a course of action that is politically neutral; but in doing so engages directly with laissez faire economic principles and assists in engendering a reliance upon consumptive capitalism and neoliberal approaches to governance. In this thesis, the issue surrounding market instruments will be exposed as not only 'politically' biased, it more accurately exposes the ideational underpinning of the market which is expressed as being 'political' in this context.

On a more practical level, this second research question affords the opportunity to look within the construction of the market at those processes that are little explored. In this case, the Tenders Electronic Daily (TED) website, that is purported to play such a pivotal role in the creation of the political economy of public procurement in the European Union. There is a relative paucity of research into some of the workings of these policy instruments, while the policy creation is given more attention. In light of the potential role that the implementation of policy through these mechanisms has, looking more closely at them in detail may garner an insight that has previously been lacking in European Integration scholarship.

1.4 Research Project Methodology and Consideration of Method

The study of the European Union is a broad church that encompasses ‘hard’ empirical studies (such as Hix and Hoyland, 2011) alongside ‘softer’ perspectives on the ‘meaning’ of Europe (Diez, 2005). This reflects the diversity of post-modernist perspectives in political science as much as the study of the EU itself. A consistent theme is that the Union is a *sui generis* (Hix and Høyland, 1999) instance of an international regime, but maybe examined comparatively through case study approaches that are critical enough to allow for later universalizability into a theoretical position. The research in this thesis is presented in a similar manner, that a case study into the process of constructing the European Union Public Procurement Market unveils a range of consequent perceptions regarding the EU’s construction as a whole and the manner in which it uses markets to create the Union.

The above statement betrays the overarching methodological approach to be used for this thesis; that of Social Constructivism (which is discussed at length in Chapter 2). For clarity, it is worth defining at this point that Methodology is the general approach, or fundamental understanding through which the researcher’s ontological position is derived. The Methods used to reach that position being the

epistemological tools utilized to investigate and understand the case (Devine and Heath, 1999; Berg, 2001; McQueen and Knussen, 2002). Research Methods, as tools, are *independent* of the overall research methodology to be employed. They are variable in utility however depending on what is to be studied. For example, fieldwork may not be necessary in the context of a documentary analysis (although it may facilitate access to documentation that is otherwise lacking). Therefore the specification of the data to be collected for the methodology determines to a degree the most appropriate method to be then utilized in collecting that data. Making an accurate distinction between the two is important to defining the phases of the research process. Moreover, how you collect the data (Method) is secondary to the design of the research that you intend to undertake (Methodology). When viewing the project as a whole then, method used is subsidiary to the evidence that is required to support or analyse the thesis in hand (De Vaus, 2001 p9).

The construction of reality through discourse and social context is particularly suited to understanding the relative perceptions of actors, agents, and indeed the constitution of structures. That is;

"...human behaviour is both willed and caused: there is a double edged character to human social behaviour. People construct their social world and there are creative aspects to human action but this freedom and agency will always be constrained by the structures within which people live." (De Vaus, 2001 p5).

Such an approach implies the residence of power within multiple strata (Giddens, 1984) and the mutual constitution of the social context by the participants and the structural constraints (real or imagined). There is a good record of utilizing such an approach in EU research (Checkel, 1999c; Koslowski, 1999) and it is fruitful when looking at structural and social forces in Europe (Bieler and Morton, 2001; Bieler, 2004).

This thesis uses an approach built on the overarching position that society is built by forces that reside within, and are expressed as discourse. To examine the act of public procurement through an analytical framework that includes these socially embedded forces allows for a richer picture of the implications of the activity to be unveiled. Focusing on a narrower actor based analysis would miss the importance of the structural forces at work within society expressed through the procurement process. Similarly, the political forces that seek to influence society through hegemonic ideational control would be left aside in an examination of the actor-based politics. Therefore the use of a social constructivist methodology allows for a holistic theoretical model of the political economy of public procurement.

1.4.1 Research Design

Designing a project around a social constructivist understanding of public procurement required a series of aspects to be considered. The process of designing any project is one of asking critical questions to identify the

“...propositions, and units of analysis [that] will lead your research design into identifying the data that are to be collected... [along with]... defining the logic linking the data to the propositions and the criteria for interpreting the findings” (Yin, 2009 p36-37).

These ‘project design’ considerations are a crucial step in any piece of research. There are a series of dominant paradigms through which public procurement is viewed. Therefore making a positive contribution to the study of PP requires a recognition but also a challenge of these paradigms. They are valid in themselves, but not the sole manner through which one may view the topic. There may indeed be the potential for several different theories to be considered at the same time. It is a question of whether one is seeking to test these theories for validity, or seeking to question the entire paradigm within which they reside (Marshall, 1997 p24). Additionally, approaching the research design tacitly envelops the issue of whether

a particular design format will contribute to the scholarly approaches to the subject in hand.

This thesis is not shy in establishing that the subject matter in hand is a 'case study'. The choice of a case study approach allows for a more detailed look into the minutiae of a situation (Yin, 2009) and allows for the researcher to unearth details that may be overlooked through other methods (Burnham et al., p55). A criticism is that there are difficulties in rendering conclusions from such studies generalizable. Therefore the causalities and processural context of the study in hand should be considered (George and Bennett, 2005 p13) in order to expose the mechanisms in the case.

There are generalizable features of market construction to be discussed in this thesis, which unearth entrenched politicized positions relating to policy implementation throughout the European Union as a social entity. Were one to use a second case study for comparison, EU Competition policy would certainly seem appropriate (From, 2002). Competition policy has the same direct recourse to the Commission, and direct application of the directives in some instances (complaints may be made to the commission directly). However, there are significant dissimilarities. Competition policy seeks to regulate an existing market function, ameliorating the 'market failure' of monopoly. As such it is the transference of an existing state level market management to the supranational tier of governance. Procurement deals with the governance of the State's operations, and by extension, the State itself. Further, the management of the demand rather than supply side of the market is a focus and is quite unique. The study of the creation of the procurement market is, particularly at this time, without precedent and it would be reductive to seek a deeper comparison with the more limited Competition Policy. With this in mind, the position of Public Procurement in the realization of the state, leads me to conclude that while there are generalities perceivable, there are unique positions to the context of the debate that make the discussion of procurement essential. Further discussion of these topics and a deeper debate of the theoretical

basis through which this thesis approaches the Public Procurement Market is contained in Chapter 2, the literature review.

It is worth mentioning the modernization of the procurement directives that has taken place during the time frame of this thesis. The overall time frame of a research project is important, and in this case, the systemic issues under examination are bounded within the establishment of the EU's procurement market from 1964 to 2015. To discuss issues outside of this position would be difficult for practical purposes, but also as the factors analysed within the market are so defined by their interaction with the regime. The comparison of market regime types and states from post and pre World War 2 situations may lead to unfair comparisons regarding the scope of the public sector in the political economy in these vastly different situations. Therefore, the analysis has been conducted in two stages.

Firstly, there is a broader story of the development of the within the establishment of the first public procurement directives in the early 1960s, through to 2010 to be told. This story will demonstrate both the important role that the procurement market has within the EU economically, but also the synergy with the overall integration of the EU. In particular is original research conducted into the discourse presented within the 2010 to late 2014 period described by the Commission as the 'modernisation' of public procurement.

This chapter specifically contextualizes the modern public procurement directives as an exercise in information and discourse control within the social construction of the market. Highlighted are the discursive elements that arose during the most recent modernization process. While there are discussions and discourses within the EU institutional framework (between the Council, the Commission, and the Court) the net result of these internal discussion is a series of documents that outwardly present an overarching market based paradigm towards the market participants. The meta-narrative presented is of socially constitutive forces seeking to impose the market implementation of public policy throughout the member

states in the service of a series of European Integration ideals. Secondly, the story of the development of the TED presents the actual mechanism that is utilized to further the social construction of the market.

In this last section in particular, the European Commission's propensity to propose technical solutions to policy problems is exposed. This is particularly attractive a hypothesis in the context of this market, as the technocratic 'technical standardization' appears to have resulted in this powerful market instrument without political consultation (outside of budgetary oversight). There was little of the necessary consideration of the ideational construction of the market debated explicitly within or without the EU institutions. There is a path dependency apparent based on the choices made regarding similar past policies (Armstrong and Bulmer, 1998) which it may be argued are the overarching mode of procurement market expansion. This may be the case in terms of policy solution framing at a political (and administrative level), but omits the framing of choice by the ideational and discursive forces in the market. Hegemony in the discursive construction will be shown to better tackle the development of these policy preferences.

1.4.2 Research Methods

I have worked for over 12 years in the field of large public procurements for the University sector that has included construction projects for individual universities, collaborations between bodies, and strategic work on the engagement of the University sector with the broader construction market. As a result, the skill set that I brought to the understanding of this topic area is very different to that of a more typical PhD candidate, and equally my perception of what is important within the field being studied is more developed. While I have not engaged in a formal process of auto-reflexivity (Roseneil, 1995) regarding my experiences, it is important to note that I am a self aware and critical researcher. I therefore recognised early on in the study that my understanding of what information is important to the social

construction participants, and the manner in which this may be accessed may be leveraged to good effect in answering the thesis research question.

Interviews

The dense discursive construction of the public procurement market in the EU is littered with acronyms and technical terms that are, in themselves, alienating to the more casual observer. As a result of my 'insider' knowledge of the use of the directives and the language of the market, the professional discourse (Gunnarsson, 2009) is one that I as a researcher am familiar with. The interviews that were undertaken for this research were done in a professional manner as conversations between peers involved with the application of public policy rather than a more unbalanced relationship. This gives the thesis both a greater level of detail, but also an authority associated with the personal professional expertise of a practitioner within the field.

Two of the interviews conducted for this thesis are reproduced verbatim in Appendix 1. This is due to their particular relevance directly to the argument in this thesis. They represent the opinions of an individual working within the European Commission on the implementation of the Public Procurement Directives legal regime, and a senior manager in the Publications Office. These two interviews are directly quoted in Chapter 3, 4, and 5 and therefore it was felt that their inclusion in full in an appendix would allow for reference to the context in which these discussions occurred. The subject of interviews is returned to in section 1.4.3 below.

Discourses

The key method used for this thesis fits with the overall study of 'performative discourses'. A 'Discourse' is recognized as being more than just the process of speech or writing of a text. It may additionally extend to other signifiers.

“I use the term Discourse with a capital ‘D’ for ways of combining and integrating language, actions, interactions, ways of thinking, believing, valuing, and using various symbols, tools, and objects to enact a particular sort of socially recognizable identity.” (Gee, 2011 p29).

Discourses are therefore

“...always embedded in a medley of social institutions and often involve various ‘props’...” (Gee, 2011 p35).

Therefore there are ranges of socially institutionalized interactions that may be described as ‘discourses’. There is a case to be made, that the diversity of communication used in the Procurement market represents a specific communication style. This ‘social language’ (Gee, 2011 p47) is the summation of a range of discourses that constitute a Discourse of professional behaviour (Gunnarsson et al., 1997); an institutionalized common understanding for the participants. The treatment of each *form* of discourse may however be quite different. For clarity, the *forms* of discourse to be used in this thesis are the different sources, and modes of communication of discourse into the social construction. The manner in which the market is realised in the context of public procurement resides within the realm of discourses that are created between participants. The information transmitted from the public buyer to the market is, in my experience as a buyer, the pivotal point at which the market interaction resides rather than the more abstract vision of the market as being represented by the OJEU process. It is therefore through discourses that we may expose and examine the relationships, power, and hegemonic structures resident within the social construction.

The two empirical chapters in this thesis each focus on the market discourse, but from different perspectives. In Chapter 3, there is an overall discussion of the emergent themes within the discourse of the market. Chapter 4 however

investigates the construction and usage of the Tenders Electronic Daily (TED) website that serves as a forum for the communication of social construct participants (the market).

Each of the chapters utilizes a mixture of three methods; documentary analysis, textual analysis (discourse analysis), and interviews. An analytical frame developed in the literature review parses across each of the chapters to contextualize the research and utilize it in the overall argument. Therefore while they are separate methods of dealing with the information at hand, they are under a single umbrella of an analysis of discourse and the power of using discourse in particular contexts. The three methods are therefore qualitative in nature, avoiding potential issues with the mixing of qualitative and quantitative approaches that in this context particularly include variegated audiences (Bryman, 2007 p12).

In terms of origin, these sources are a mixture of primary documents (OJEU advertisements and documents between participants) and secondary sources (documents that are about the market but resident within the market's participants), post hoc and ad hoc representations of the case. The use of multiple types of information in a sympathetic manner, lends the Case Study approach a richness that other approaches fail to engender. Having a close focus on a particular case allows for access to a greater range of sources than might otherwise be available to a broader research format (such as longitudinal research).

Turning first to the use of documentary analysis, it is important to highlight that there are a number of potential approaches to their use. This is sometimes undertaken with a rigorous coding analysis employed for example. This suggests that the use of coding be undertaken systematically for example looking for search terms in Rogets' Thesaurus (Jehn and Jonsen, 2010 P325). The origin of the sources used for analysis is important in this thesis. While there are discussions and intra-institutional papers within the EU (between the Council, the Commission, and the Court) the net result is a series of documents that present an overarching market

based paradigm towards the market participants. The hegemonic discourse is one of seeking to impose marketization on the implementation of public policy throughout the member states in the service of a series of European Integration ideals.

'Coding' is a method for organizing thematic elements that arise from a discourse analysis in which;

“...segments of data are identified as relating to, or being an example of, a more general idea, instance, theme or category.” (Lewins and Silver, 2007 p158)

The process can be the result of a 'grounded' approach working deductively (Strauss and Corbin, 1994; Heath and Cowley, 2004) or a more normatively driven process, inductively from existing academic literature. There is a mixture of these two approaches used herein. Firstly, the grounded approach is used to examine the discourses that are apparent from the sources studied as they emerge. This is not a random capture of commonly used terms, but;

“... the generation of emergent conceptualizations into integrated patterns, which are denoted by categories and their properties.” (Glaser, 2002 p23)

The second, 'normative' element comes where the patterns of concepts emergent within each document are not seen as accidental or random. They are part of an overarching hegemonic positioning of the European project towards a particular form of marketised policy implementation.

The documents used for the analysis draw upon a wide range of sources that are not consistent in their format. Instead they consistent in their presentation to the social construction on which they wish to have an impact. Coding therefore has been undertaken in a loose context where the relevant documentary themes, and

presentation of the document's purpose, have been integrated into the analysis more loosely than strictly according to a coding scheme. The commonality is that the documents are public documents that are facing the market as a social construction and seeking to leverage impact. They provide a rationale, formative framing of debate for implementation, and logical process that shape the manner in which the market operates. Where, as shown in the table below, there are 'internally facing' opinion documents, these are still part of the political 'argumentation' (Fairclough and Fairclough, 2013) made in public by the parties working to construct the market. As such, the forum for said argumentation is within broader society rather than a single institution (for example within a national parliamentary debate such as Dannreuther and Perren, 2015).

Figure 1 below outlines the categories of information that were used as sources to develop the understanding of the market that is encompassed by this thesis. With the exception of the 'Opinion Papers' issued by the Committees, they are explicitly *external* facing rather than 'intra-institutional'. They are intended for an audience wider than between institutions of the EU, and as such participate in the projection of the externally facing discourse. The committee papers have been utilized in this context as they represent a point in time of the discourse that is being more broadly debated within the procurement community, the national governments, and the institutions.

A vast number of documents discuss the public procurement directives during each period of the development of the market, and particularly the process of modernization between 2010 and 2014. All of these sources, be they academic, or journalistic, contribute to the overall social construction of the market. What is of concern to this thesis however is the projection of a particular discourse from the EU institutions outwards to the market. As stated above, this is the point at which political argumentation relating to the construction of the market occurs. The manner in which this argumentation is utilized changes over time. As the European Community, then Union, developed, the manner in which policy is debated

changes. This is from an informal ‘summit’ agenda, towards a focus on the ‘formal’ policy making process of issuing Green / White papers, and consequent cross-institutional debates.

Type	Issued by	Purpose
Directives	EU Institutions	‘Black Letter’ legal documents that constitute the market.
Green Papers	Commission	Consultation on a new directive. Includes rationale for particular elements of the eventual market.
White Papers / Proposals for a directive	Commission	Draft directives that summarize consultation process with committees, stakeholder groups etc.
Reports	Commission / Outsourced groups	Policy debate and framing.
Opinion Papers	Committees	Consultation processes with particular groups offered to the Commission’s policy analysis processes.

Table 1: Types of Market constructing information sources

The sources chosen represent the key framing documents of the market. They are predominantly issued by the European Commission, although included are certain key documents that were publicly available during consultation processes from particular committees. The primary sources all have ‘traction’ within the discourse of the market and are referenced multiple times in a range of secondary and tertiary analytical sources.

There are four broad categories of social actor that are engaged by the market making documents:

Political and Governmental

While 'all' of the resources are related to the body politic, it is worth noting here that there are a range of sources that are specifically aimed at political actors, and those in the policy sphere. For example, the 'working paper' series is a set of documents issued by the Commission's own staff that assemble various sources in the service of policy oversight and information. Their intent is as both internal reference documents

'Open'

This is a broader category of audience that I have used to describe 'civil society'. In the creation of the Treaties, signals are sent at the broadest possible level to the societies that are integrating in order to enact the process of integrating the peoples of Europe.

Academic

While academics will have an interest in every source as presented depending on their specialism, there are certain overviews and reports that issued, present themselves as taking a more theoretically rigorous approach to certain issues rather than the more 'practical' or 'pragmatic' of the core reports and issues from the Commission.

Contracting Authorities

The public organizations that undertake the procurement of goods and services are the target of a large proportion of the sources. This community is treated to a wide range of information that purports to explain and offer context for the rationale behind the public procurement directives.

There is a fifth format of document that has been considered for this research; the information given to direct Suppliers to the Commission. Predominantly, this class of document relates to the Invitation to Tender (ITT), and specifications generated

by the Publications Office and the Commission for the outsourced services they use. These documents serve to outline the intentions of the service as provided by the Commission. They concern not only the technical intentions of the systems in question, the manner of access to these services, how the services should be provided to the broader market, but also seek to co-opt the supplier into the creation of a joint interest in providing the services to the broader public. In doing so they buy the supplier into the construction of the market at an ideational level. The 'perfect match' for the supply of such services therefore not only encompasses a good match of service output capability, but also an ideational congruence with the contracting party. Reciprocally, the engagement with the market model itself constitutes a process of framing of the Commission's own service provision and therefore modulates the manner in which the Commission's services are realized.

Statements from interviewees in the Publications Office (PO), and in their contractor 'ARHS Group'¹ suggest that they view the provision of services by a supplier as a neutral exchange of information but this thesis argues that this is not the case. There are two specific instances highlighted in Chapter 4 regarding this lack of neutrality. Firstly, it is assumed that the company undertaking the communication on behalf of the PO does not 'filter' it in any way. The company in this case being a specialist IT company called 'ARHS Ltd'. This perspective is in contradiction to the stated intention within the design specification issued by the PO for the provision of the TED. This specification requested innovation in service provision to be led by the contractor. When undertaking procurements, a Contracting Authority (CA) is permitted by the public procurement directives to elicit suggestions regarding the specification of the service to allow for 'innovation', and indeed encouraged to do so. This capacity for innovation speaks to the acceptance of the contractor in designing the end solution.

¹ ARHS stands for "Advanced and Reliable Information Systems". They are a group of Information Technology specialists that have won a series of contracts for the Luxembourg and Belgium governments.

Secondly, a procurement technique known as a 'framework agreement' was agreed between the PO and 'ARHS Ltd'. This agreement allowed for ARHS to be contracted by the PO against a variable quantity of service. As there is no fixed amount of work to be supplied, and work is 'called off' from the contractor, thus the nature of contracting between the public institution and the private supplier is generated in an on-going basis. As a result, the specification is essentially never fixed or concluded. As the specification is formed in conjunction with the supplier, it can be inferred that the delivery of this market instrument through this commercial arrangement may have an effect on the outcome, and is anything but the neutral policy realization as suggested by both the PO officers, public policy literature (reviewed in Chapter 2) and the European Commission.

There were stakeholder meetings, consultations, and other reporting and evidence submitted to the Commission following the Green Paper process for each directive. The three groups considered were:

- EO2679 Commission Government Experts Group on Public Procurement (EXPP)
- EO2807 Commission Stakeholder Expert Group on Public Procurement (PEPP)
- EO3142 Multi-Stakeholders Expert Group on eProcurement (EXEP)

The papers published by these groups were rejected for two reasons. Firstly, these positions were argued *into* the EU as a forum rather than *outwards* to the market place. They are publicly available records of events, that are held in an esoteric cul de sac of the EU's website. They therefore do not seek to create the market performatively, and, by their own recognition aim to instead be reflective of market participants' positions. They are not documents that seek to argue the market into being and instead reflect the process of civic actors expressing their opinion into the EU institutions.

Secondly, the opinions contained within the stakeholder groups will have been debated within the European Institutions and then considered during the negotiation of the directives. This leads to a potential for criticism of their validity. Could the opinions not be changed during their integration into the new directives? The answer is of course 'Yes'. I would argue therefore that it is unlikely to be of benefit to consider them to an even greater degree as if they *are* changed and moderated by the Commission following their submission, this is indicative of their lack of power to frame the debate. Instead the framing capacity rests still with the Commission and the EU institutions and one is again at the point of considering the EU over the stakeholder positions that came before them.

An important source for chapter 4 was the Publications Office's annual reports (see Publications Office, 1977). These reviews were published annually from the date of creation of the Office and gave an executive summary of the activities of the office for the previous year. The reports are rich in both data and dialogue about the nature of activities in the Office, but they are not critical. Their purpose is to provide an audit trail for the business rather than provide a rigorous academic or cross-comparable source of data. As such, each year's documents reports slightly differently on the activities of the Official Journal; the tables use a range of calculations, include different indicators etc. It is therefore exceptionally difficult to create a cross comparison between all the reports for a rigorous picture throughout the life of the OJEU. The best attempt has been made therefore to include instead some commentary on the changes that were made in the data sets.

Most importantly however, the Annual Reports provided an opportunity to access an institutional memory that was otherwise lacking in the Publications Office. The interviews held with the officials in the Publications Office for this thesis contributed to the understanding of the work of the office, but were limited. Specifically, the rotation of Commission officers periodically between posts every 5 years (under the Commission Staff Regulations Commission, 2017), and the outsourcing of certain aspects of the office, has led to a position where there are

few individuals with knowledge of past events. The officers within the Publications Office were asked if there were any records, or other reports (business cases etc.) available for me to view that may shed light on the development of SIMAP and the OJEU; the answer each time was that the Annual Reports were the sole repository of knowledge on the subject (conversations with Commission officials and Interviewee 10).

In addition, the annual reports posed a practical challenge. They were available only sporadically across the official EU library sources and online. Some of the most detailed elements were missing from key years' reports (for example 1995 is missing a total number of OJEU advertisements printed, while 1993 onwards moves away from 'total number of pages printed per language' to a 'total number of pages printed in all languages' – the two are quite different in both meaning from a political perspective, and practically in terms of comparing the documents). Further, the reports that were available in PDF were as an image format rather than a text format. The data therefore had to be copied manually into Excel for manipulation. This applied of course as well to the printed hard copies that were consulted. As a result, the reports were considered critically and every best endeavour made to source them from a variety of locations and accurately, but it is recognized that there are some deficiencies in them as a source. Therefore the triangulation of the reports as a data source in validating, and being validated, by other sources was important.

1.4.3 Additional Research

To augment certain aspects of the research, and validate the discourse analysis, interviews were utilized. Interviews are a direct conversation, or questioning of individuals in order to gain primary data. As such, they are a cornerstone of the qualitative researcher's method; however;

“...overall the interview should only be employed if individual insights and rich depth are required.” (Lilleker, 2003 p208)

This is due to various reasons; the potential for obfuscation of ‘objective truth’, power relationship imbalance, or simple dishonesty (Morris, 2009 p210) are all of importance in ‘elite’ interviews. More pragmatically, the sheer logistical difficulty of mass interviewing precludes this technique across large *N* studies where techniques such as surveys may be more appropriate (Berrens et al., 2003). Therefore the choice to interview should be made with due consideration of the purpose that the activity would serve in the overall epistemological approach considered by the researcher (Furlong and Marsh p186 in Marsh and Stoker, 2010).

Interviews were used for two purposes. Firstly, there are certain individuals with whom direct contact and conversation yield insights that are essential to furthering the analysis of the subject. The thesis as a whole argues that the State, and the EU is facilitated through the use of Procurement as a public policy implementation mode, thus a vast number of individuals may have contact with, and opinion of, the Public Procurement market. These individuals do not however hold a macro perspective on the development of, rationale behind, or impact of the market. Subjects were chosen that, were not ‘elite’ (Morris, 2009), but were senior enough individuals to have an overview of the implementation of the market due to their particular expertise (Burnham et al., 2008b p240). They had contact with both the ‘practitioner’ and ‘political’ strata and could speak to both perspectives.

Secondly, due to the paucity of research into the detail of the Procurement Market, and in particular the Tenders Electronic Daily (TED) website, direct contact with individuals within the organization were essential. Basic history of the development of the TED, along with more detailed information, was not easily accessible to the public.

In order to provide for a 'safe' opportunity for the interviewees to speak on the subject, anonymity was granted for all participants regardless of the relative necessity. Some of the interviewees were high-level EU civil servants, so while their activities at a factual level would not be contentious, their opinion and insight into the operation of the market would not necessarily match that of their parent organization, and may cause them some embarrassment should it be made public. Appendix 1 contains details of the 'level' and role of each of the interview subjects, along with a transcription of the 'full' interviews where an audio recording was permitted / possible.

The interviewees were particularly useful in that they demonstrated that there was a difference in opinion regarding the perception of the Public Procurement market. The officers in the Commission Directorate DG Markt (which at the time of the interviews held responsibility for the market) were of the opinion that policy implementation through the Official Journal of the European Union and the Tenders Electronic Daily (TED) would be politically neutral. This is a sentiment that resonates throughout the documentation reviewed for this thesis. The officers in the Publications Office hold a different view (as shown in the disparity of opinion highlighted in the opening paragraph of Chapter 5). They are more realistic about the potential for the market instruments to directly reach the citizenry. The statements regarding the unknown users of the TED from Interviewee 10 are particularly instructive in this regard. This thesis does not present an argument regarding the manner in which policy is generated within the European Institutions, but the lack of awareness regarding the implications of policy implementation modes to shape policy outcomes is of great importance. Therefore highlighting the differences between the policy makers and policy implementers within the EU is important.

Further interviews were sought with policy makers and other officials in the EU that are concerned with the public procurement market with over a year spent identifying groups of individuals that might be approached. These individuals

however responded in one of two ways. Firstly, that they had already expressed their opinions formally through the (then) recent 2011 consultation process, and the passing of the new directives through the European Council and Parliament. This was particularly the case for the political actors that were approached for the research (MEPs and the higher echelons of the Commission). It may have been the case that the nature of the research questions to be asked were simply too esoteric. This again speaks to the lack of self-criticality displayed within the policy generation matrix in the EU, the lack of consideration of the role of policy implementation as being of pivotal importance. This lack of criticality additionally speaks to the argument of this thesis, that it is hegemonic ideas that are driving the creation and direction of markets in the EU.

Secondly, there was a sense that while everyone dealt to some degree with the procurement market (it is a long standing aspect of European Integration) it is a technocratic and essentially dull aspect. There were at the time of the research, more interesting topics moving around the EU including the Eurozone crisis. Individuals were therefore difficult to identify specifically with enough expertise around the construction of the market. That an interview with an officer in the Commission was achieved, and was so wide-ranging and candid, was exceptional.

1.4.4 Alternative Approaches

Several other approaches to the subject were considered in the design of this research project. One key advantage in coming to the study of the Procurement Market was my professional knowledge of the subject and the opportunity to integrate participant reflection (Cunliffe, 2003). An approach based on reflexivity and the use of previous participant knowledge could have been developed along an ethnographic mode (Gold, 1958), or with a more deliberate recollection of a personal experience. This is not without precedent as Roseneil's reflections on the political structures of Greenham Common protest camps used such an approach to

great success (Roseneil, 1995). Such an approach may have allowed for the unveiling of the

“...complex, interactional, and emergent nature of our personal experience”
(Cunliffe, 2003 p984).

In doing so, the potential for revisionism, or projection of personal bias on the study should be recognized. The lack of objectivity would require a ‘critical’ perspective that recognizes the inherent inability of one’s disconnection from the social context that they are studying. Unfortunately while the insights gained from such a study could be rich in detail and personal authority, it is unlikely that the structural aspects of the Market as a continent spanning social construction could be adequately perceived. This approach was therefore recognized as having potential, but ultimately would not as a method allow for the depth of analysis that the subject matter requires.

The most commonly applied method to this topic was that of an ‘economic model’ or ‘econometric modelling’ approach. This is the subject of part of the Literature Review (Chapter 2) but worth mentioning at this juncture from perspective of the approach as a potential method. The economic rationale takes the position that a coarse ‘rational choice’ approach (McLean, 1991) may be appropriate in discussing the market. This approach is therefore acting within the paradigm that this thesis critiques and as such is infected by the same assumptions and critical failures.

Econometrics in particular was considered in some depth. Econometrics as an approach looks to present a quantitative model as representative of interactions within a market;

“...that to understand a particular aspect of economic behaviour, such as the price of food or aggregate personal consumption, one wanted a system of equations capable of describing it.” (Christ, 1994 p33).

The assumption made here is that a quantitative approach is appropriate at every level of the analysis; that decisions made are 'rational' (Hay, 2002, p37-40). Unfortunately relying upon correlation is a core presumption to be made herein (Bound et al., 1995) which may not prove 'causality' no matter how statistically robust the relationships (Learner, 1983; Hendry, 1980). Finally, while the market is created by the quantitative approach, it is uncertain as to whether or not the participants have the self-awareness, and understanding, to be able to integrate quants into their world view (Ansolabehere et al., 2010).

The core unit of analysis in this form of work would have been the data drawn from the Tenders Electronic Daily (TED) website. This contains several million contract advertisements from 1993 to the present day. The logistical effort behind analysing this type of large data set is beyond the capacity of a single researcher in political science, even using an automated method such as 'Wordscores' (Lowe, 2008; Klemmensen et al., 2007) that seeks single word terms. Qualitative Data Analysis tools such as QDA Miner offer a greater level of granularity (Lewins and Silver, 2007 p315). However the dataset here is so great that no single computer accessible by this researcher had the capacity to handle the information. Thus while the empirical approach to discourse would have been useful in augmenting the thesis, it was not unfortunately possible from a practical perspective.

Importantly, this method has been utilized in several different formats, most notably the Price Waterhouse Coopers' reports in 2011 for the European Commission on the Costs and Effectiveness of the Procurement Market (Commission., 2011). The report is good in terms of the thoroughness of approach to the subject and use of empirical data, but the conclusions are weak in their engagement with the broader impact on the political economy of the Member States. This is due to their reliance on an analysis that is within the paradigm critiqued by this thesis as ideationally loaded by a hegemonic discourse which precludes critical perspectives.

1.5 Outline of the Thesis

The thesis is presented over 6 chapters. The first of which, this introduction, serves to contextualize the discussion for the rest of the thesis and present the research questions, and research method for the project.

Chapter two is a literature review that provides an overview of the main arguments in existing scholarship pertaining to this thesis. Initially, the term of 'Public Procurement' is defined, and contextualized within arguments relating to the realization of the modern 'State'. Having recognized the importance of Public Procurement, the main strands of scholarship relating to the topic are outlined. Each area of scholarly work presents a potential hypothesis for understanding Procurement in the European Union that is unfortunately deficient in presenting the structural forces within the market. 'Home Bias and Protectionism' relate to a core reasoning behind why contracts are allocated to national suppliers rather than awarded internationally. The core of this strand is an economic rationale where the reciprocity between government spending and taxation is paramount. 'Legal' relates to studies of the legislative framework, or 'regime', which create the procurement market. Of particular note from this work are the studies by Arrowsmith (2012) and Bovis (2007, 2008). Their 'legal' approach to the Procurement regime is fascinating in that it expounds on the meaning and implications of an integrated European Procurement Market for the political economy of the State. 'Public Administration' scholarship relates to the effective operation of government and the cognizance afforded to individual civil servants. Missing from these works in particular is a sense of how bias is transmitted among the actors involved in the market. Each actor is alone in a field of opportunity with no defined sense of structural force constraining their choices. The final strand of scholarship discussed in this section is 'Governance'. This relates to the overall benefits to the operation of transparent structures at both national and international levels.

Having debated the prevailing work on Public Procurement, the theoretical model used for this thesis is outlined. Specifically 'Social Constructivism' as defined through reference to three forms; Firstly, personal and interpersonal interactions (networks) and secondly, a meso-theoretical perspective impacting broader social structures. This form includes reference to perspectives derived from neo-Marxist and Gramscian that see 'Hegemonic' discourses situated below the level of conscious, wielding powerful forces in society. The last form relates to 'Europeanisation' and the specific expansion of 'Europe' within society. Chapter two finishes with discussion of the mechanism through which the market is created from a 'social constructivist' perspective, but through expounding a politically laden discourse. This 'performative' discourse seeks to create the market *ideationally* (Fligstein, 2002, Parker and Sedgwick, 2013). From this position, discursive hegemony leads to the 'performative' imposition of ideationally loaded principles that frame the understanding of both how the market should operate, and why it exists (Callon, 1998c; Miller, 2005 and Fligstein and Mara-Drita, 1996). This is distinct from the corporate power approach (Hathaway, 2015 Herman, 1981) and in direct opposition to the objective, rational model espoused by neo-classical economics (Grin, 2003) .

Chapter 3 is the first of two empirical chapters in this thesis. The Public Procurement market has been a long-standing aspect of economic integration in the EU. To demonstrate this pivotal role, the development of the market from the late 1950s up to the start of the most recent major revision in 2014 is discussed. This latter phase includes the time frame for the most recent revision of the market leading from the publication of the Europe 2020 agenda COM(2010)546 on 6 October 2010 (Commission, 2010a) to the agreement and subsequent publication of 2014/24/EU 'Directive on Public Procurement'. The focus throughout this chapter is on the discourses promoted by the European Institutions as to the reasoning behind the Public Procurement Market's integration. The changing emphasis of the market is highlighted that demonstrates the use of alternatively framing the market

for the particular political purpose of the day. Evidence is provided that shows the political purpose of the market has moved from economic integration, through deregulation for growth, to more socially concerned emphasis post 2000. In doing so, the European Union has projected a vision of the purpose of the market onto the participants. The sources used for this chapter are the directives, formal communications, press releases, official documents, speeches, reviews, and interviews with some key participants. The approach is a 'political discourse analysis' model (Fairclough and Fairclough, 2013) that looks at the public argumentation of the idea of procurement, and the role this has in the construction of the market as a social entity.

It is stated in the previous chapter that it is through discourse and communication that the market comes into existence. Therefore Chapter 4 looks at the process of communication, and information signalling within the market. In the public procurement market, this is the public advertisement of contracts, and the later public acknowledgement of contract award. The route through which this market communication takes place is the Official Journal of the European Union (OJEU) Supplementary (S) Series, and the Tenders Electronic Daily (TED) website. The TED in particular is intended to act as a near real-time nexus of information exchange between private suppliers and public buyers, and allows for signalling of opportunity, and market knowledge between participants. It is therefore a prime 'market making instrument' (Callon et al., 2007). This instrument is utilized to coordinate a consistent message of the market, *and make that market ideationally*. The impact of this instrument is focused on the capacity to performatively project the dominant hegemonic discourse of the market, and by extension, the European project that bore it.

The TED is also utilized to understand the operation of the market, and the process of public procurement by the Commission, and other policy makers in the EU (PWC et al., 2011). That this instrument, which is projecting a reality of procurement, is also seen as 'reflecting' a reality of 'procurement' shows a dissonance between the

objective and the subjective reality of the political economy. According to the existing theories highlighted in the Literature review (chapter 2) if the 'governance regime' (Rhodes, 1997; Scharpf, 1999) and 'regulatory state' (Majone, 1996; Majone, 1994 and Sala, 1997) are correct as a hypothesis, then the OJEU process should be effective at signalling procurement activity. Much of the EU's operation is based on this being the case, and future revisions of the procurement market still accept this paradigm. In each case, the role of the TED *creating a discursive reality of procurement* through ideational means is omitted, and I will argue, is one of the primary impacts of the market's creation.

Following the case studies highlighted above, Chapter 5 discusses the development of the market and in the European Union in the context of the analytical framework described in Chapter 2. The extent to which this market may be said to create or *perform* the economic and political integration project of the European Union is discussed. Through creating the market, the EU seeks to impose an exogenously imposed, ideationally associated project on the social construction of the 'State' within the European sphere. Further context and implications of the market's development for the 'State' are also discussed for it is argued that through this mechanism, the European Union's model of Political Economy is created.

To complete the Thesis, Chapter 6 contextualizes the conclusions within broader contemporary debates, and outlines a deeper understanding of the political economy of public procurement not only as an ancillary activity of government, but as a pivotal realization of the state. In particular, the recent move for Britain to leave the European Union has thrown into sharp relief the need for market creation processes to be understood as they may be pressed into action in new ways. The creation of the principle of 'procurement' outside of the framework of the EU with which it is most closely associated in an ideational and constructivist sense will be a key challenge in the realization of the British state post-'Brexit'.

Chapter 2: Literature Review

A theoretical framework for understanding the construction of a Public Procurement market in the European Union.

2.1 Introduction

This chapter offers a review of the principal literature pertaining to the development of the Public Procurement market in the context of the European Union. The chapter begins by asking of the existing academic literature, what public procurement *is*, why it occurs, and why it matters. Following this section, the chapter moves to outline the primary manner in which this thesis intends to approach procurement; that is, a political economic understanding of the act of procurement as a process of interchange between the state and society through the creation of an ideationally laden market. In order to do so, a discussion of relevant theories of the 'State' is offered before then turning to the role, and importance, of procurement within the state. In doing so, procurement is highlighted as an important, but under-theorized aspect of the modern state, which this thesis aims to address.

2.2 Situating Public Procurement

Simply stated, Public Procurement is the process of Governments' purchasing goods and services from private sector suppliers. Behind this definition, there are incredibly powerful economic and political forces at work Procurement constitutes a staggering proportion of the global economy; OECD governments spend on average of 12.8% of their national economies (OECD, 2013 p6) while in Europe, the Commission estimates over 1 trillion euros annually is spent through this market (Bovis, 2012 p7) constituting between 15% and 20% of member state GDP

(European Commission, 2011a) with a consequently large economic impact in the macro economy. From an operational and administrative perspective, the way modern government is operated is defined through interaction with this process and Procurement is a major policy implementation process (Fischer et al., 2006). As a result, 'procurement' reaches every aspect of modern civic life in both government policy and the public sphere. This perspective is particularly cogent when recognized that the functions of the state are not necessarily undertaken by a unitary government, but may be enacted or governed by alternative agencies in the name of the state (Jessop 1998 p340). Questions of liberal marketization may be seen as intrinsically linked to this perspective, indeed the continual flow of monies between the state and private spheres is functionally essential for the operation of capitalism (Overbeek, 1986 p17).

Much has been written on the subject of procurement, from a variety of perspectives. In researching for this literature review, a vast number of articles and books on the topic of public procurement were identified. Indeed, the EU-Asia/Europeaid bibliography suggests several thousand relevant sources on the subject of public procurement (Asia Link, 2014). This chapter therefore is not an exhaustive review of every approach to procurement, but instead focuses on the core facets of procurement within the context of the European Union. Each approach to Public Procurement defines it in a different manner, and indeed the capacity for contestation of this principle is one of the key features. To draw upon an argument about the broader political legitimacy of the European project

“The problem of political legitimacy never can be resolved permanently... Political authority had to be re-legitimated continuously and legitimacy claims and continuously re-contested and have to be adapted.” (Sternberg, 2013 p225).

The contestation of political legitimacy of the EU in that context is a source of political power wielded by the European Institutions. In a similar manner, the

continual reassertion of the principles and concepts behind public procurement create a legitimacy for the increasing integration of the market, the advancement of technical solutions associated with the market's operation (the TED website), and the nature of public policy's implementation through procurement.

The issue of procurement is often assumed to be synonymous with debates around privatization (for instance concerning the debates in Healthcare reform to be found in Aldred, 2008; Pollock, 2005). But all modern capitalist states and governments, regardless of ideological alignment, require the purchase of goods and services from third parties. A definition of 'public procurement' is the activity involves the purchase of goods and services by a Government from private suppliers. Items purchased are wide ranging, from 'paper clips to war planes' (Gelderman et al., 2010). The buying agencies (called in EU parlance Contracting Authorities (CA) are any organization which is predominantly funded through government funds, and can include both national level 'centralized' services, and devolved local agencies. The degree of variety of procurement source is largely due to the variety of institutional structures that support the activity within the state (OCED, 2007; Chene, 2009, OCED, 2000; OECD, 2015b). So in some territories this can be local councils, central government departments, or smaller institutions such as a university or hospitals. While in others the degree of diversification of budgetary control is much lower and subsequently centralized systems are utilized. Suppliers are similarly diverse in nature and institutional origin. While there is much made of the capacity for procurement competition to open the risk of multinational corporations gaining control over supply chains, the largest proportion of direct supplies to European Contracting Authorities are from Small to Medium Enterprises (over 85% according to Sylvest et al., 2011). That is not to say however, that the goods supplied are not from international supply chains (indirect supply). Procurement therefore plays an important role in the conceptual understanding of the modern capitalist state. In terms of the dichotomy presented by the Varieties of Capitalism (Hall et al., 2001, Bruff, 2008; Bruff, 2011; Coates, 2005; Dibben and Williams, 2012; Hall and Thelen, 2009; Hancké, 2009; Hancké et al., 2008; Hay and

Wincott, 2012; Lane and Myant, 2007; Nölke and Vliegenthart, 2009, Shonfield and Reisman, 1994) both ends of the spectrum are dependent on public procurement.

The countries in Europe do not share a dominant ideology regarding the management of their states. While there is a diversity of European economic model (Hancké, 2009; Hancké et al., 2008; Hay and Wincott, 2012; Lane and Myant, 2007; Nölke and Vliegenthart, 2009) two dominant competing visions of effective political economy could be said to be present in the European sphere; Neoliberalism (free market) and the more closely controlled, alternatively called Ordoliberal, or Command Market Economies (CME). Neoliberalism is yet another contested concept (for a variety of understandings, see Bohle and Greskovits, 2007; Jessop, 2002; Schmidt et al., 2013) as it has developed to describe a particular series of policies and modes of governance in particularly Anglophone states. This perspective has spread to encompass a wide variety of countries and informed changes in many formerly totalitarian and communist societies through the development of epistemic policy communities in the transition period post-cold war (Nölke and Vliegenthart, 2009). Indeed, the overarching model is said to be embedded within the EU's entire model of operation (Lapavitsas, 2012, Van Aarle et al., 2004) At its core, it is a return to classic liberal economic principles. The market is self-regulating according to the 'invisible hand' (Smith, 1977), and this emphasis leads to a maximized output. People are 'rational actors' that evaluate the world around them, and make self-maximizing decisions (Bell, 2002; Hampsher-Monk and Hindmoor, 2010; Jones, 1999; Jones, 2003). Neoliberalism extends this principle to include public service provision as well as economic concerns through "buccaneering deregulation" (Bonefield, 2012 p635). This has been one of the principal rationales behind the decision to privatize many of the previously state owned industries in Western Economies since the 1970s (Thatcher, 1998) . Increased outsourcing has been a function of this project born of the belief that the most stable and best value method of provision for public goods is the free market (Jessop, 2002 p454) offering the maximum effective return for the participants. Where the government persists, "market proxies" (Jessop, 2002) should be used.

This is due to the assertion that there is an inherent instability in the provision of services directly from government. Politicization of the means of production undermines the pure operation of the market to respond to the wishes of the participants (and in this way actually undermines a meritocratic society). Privatization from this perspective not only improves reliability of public provision, it also increases economic growth through the generation of new markets. There may not be an overall increase in the level of productive output, but this will be undertaken by the private sector, and therefore monies generated will be kept with the citizenry and may be used to fuel further economic growth.

The removal of the government from the business of enacting the state is crucial to the ideology underlying Neoliberalism. It has motivated the removal of the state from assistance with accessing the harder end of economic activity (Schuster, 2013), provided a rationale for the aforementioned Regulatory State model. The post war Western democracy of Germany generated the Ordoliberal approach principle of planned economic intervention by the government. Ordoliberalism offers a challenge to the logic of the liberal democratic model as it allows for the government to set the parameters of social value that are to be determined through the market, rather than a free market left to choose its own priorities.

“The designated purpose of Ordoliberal social policy is to ingrain entrepreneurship, private property and the free price mechanism in to the fabric of society to prevent the proletarianisation of social structure.”
(Bonefield, 2012 p634).

This position highlights the danger of splitting the fabric of the society through a disproportionate skewing of the economy. However the manner in which this is done is left to the market and the meritocratic opportunities open to all participants, similar to the neoliberal approach. There is then an unfortunate oversight in omitting the concentration of capital within an increasingly removed elite highlighted by authors such as Polanyi (Polanyi, 1957). Ordoliberalism then is

concerned (in its primary conceptualization) with ensuring harmony within society. A concern at the very forefront of the mid 20th Century German scholars from whence it came. Within these models, the act of procurement is common in providing a key process of socio-economic interchange between the state and society as the

“State, markets, [and] society are not distinct entities. Indeed, regulatory capitalism rests on an understanding... [that] the state is embedded in the economic and social order; any change in the state is expected to be reflected in the economy and vice versa” (Levi-Faur, 2005 p14).

Therefore by leveraging the perception of how the state is viewed (or a market operating within the EU) one affects the triumvirate of ‘State, markets and society’. The contested nature of capitalist democracy allows for structural change through a paradigmatic shift in discourses of the state, and the realization of the state. The term ‘The State’ is contested in understanding and academic literature. It is applied to abstract concepts, and concrete organizations. It is

“...not therefore a concept with the sort of definite boundaries that would enable a complete description” (Dyson, 1980 p 2)

Neither is it open to the

“...sort of rigorous definition desired by advocates of the natural science paradigm and systems builders” (Dyson, 1980 p8).

Nevertheless, the unit of the state is the primary manner in which international politics is understood, and the principal acting body globally and it is through comparison of States, that we may expose the workings of societies and economies (Morgan et al., 2011 p2).

Traditional understandings of the concept of the 'State' differs across Europe and have contemporary resonance. Roman and Greek concepts of the state linked directly to the power of a monarch or ruler rather than a broader body of people and concepts (Dyson, 1980 p26) . For much of history, the state was defined in this manner through reference to a people related to a single authoritative individual and their control over a particular geographical space. Political power in this context was the result of lines of patronage which linked directly back to the unitary ruler.

Post French and American Revolutionary changes defined the parameters of the modern state as moving from the 'kingdom' of a ruler, to

“...a human community which (successfully) claims the monopoly of the legitimate use of physical force within a given territory” (Jessop 1998 p343).

From this point in history onwards, the particular facets of the modern state included; Monopoly of the control of the means of violence; Territoriality; Sovereignty; Constitutionality; Impersonal power; Organizational bureaucracy; Authority/legitimacy through some form of representation; Citizenship; and Taxation (Pierson, 1996 p8). The concept of the State therefore adopting a more holistic approach through a 'processural' model. Included was not only coercive force to create and defend the state, but the processes assigned to the state once the territory has been established. Implicit in this perspective is that the human community has an impact on the definition of the state as an entity through participation in its realization. This leads to a redefinition of the macro level unit of State into;

“A distinct ensemble of institutions and organizations whose socially accepted function is to define and enforce collectively binding decisions on the members of a society in the name of their common interest or general will” (Jessop 1998 p341).

As institutions are included, along with a range of social constructions, therefore normative approaches, regulation, and ideational factors are embedded beyond merely the raw power perspectives. The use of formalized processes involving established organizational structure, legitimacy, and legal basis (Dyson, 1980 p101) leads to a perspective on the State being

“...the notion of an impersonal and privileged legal or constitutional order with the capability of administering and controlling a given territory” (Held, 2006 p73).

It would be tempting at this stage to look towards the ‘institutionalist’ schools for our analysis of procurement given the role they have in defining the State. The state, in some readings, places the institutions and organizations associated with it outside of the realm of broader society. This allows for a more effective and bounded assessment of the State as an organization. The state in these terms is a functional one constructed from institutions that allow for comparison in terms of the manner in which they operate. Ideational factors are still important and relevant (Djelic in Morgan et al., 2011 p26) but refining investigation to a smaller set of factors allows for greater focus. There is a risk that an analysis of this type may lead to a blinkered perspective on the forces that would otherwise contribute to the formation and propagation of policies and ideas. Indeed, this is one of the primary criticisms of the ‘old institutionalist’ school of political analysis (Hall and Taylor, 2006 p937). Importantly in this definition the state does not formally concern itself with the private sphere beyond the point at which citizen behaviour leads to social disbenefits. The degree to which the private sphere is determined by society is of course an area of contention. Although the power of the state to define the legal and legitimacy of the public sphere then leaves the space for the private sphere to be defined against it.

In the latter half of the 20th Century a series of ‘poststructuralist’ positions relating to the state were posited. They refute a stable structure and power relationship and

embrace relativist or 'antifundamentalist' positions (Hay et al., 2006 p249). The state (or any power structure) is dependent upon the context within which it is understood. The people, geography, and the remit of the state, are not concrete. This applies as much to 'State-like' structures of modern political governance as the States themselves. So just as the 'State' is seen as a point of contention the process and logic of the internal market is contested in much the same manner as the state;

"The problem is less to do with different attitudes towards Europe, but with the concept of 'Europe' itself. It has to be stressed that neither the 'Common Market' nor the '*Gemeinschaft*' conception was 'correct' or 'false'. Rather, they were possible readings of the system of Western European governance. In other words, 'Europe' is not a neutral reality but a 'contested concept', the meaning of which is not (yet) fixed." (Diez, 1999, p602).

The concept of citizenship and boundaries of power are therefore redefined in an increasingly integrated world. To take this to the extreme, Doty asserts

"...there is no such thing as the state..." (Doty, 2003 p3).

Instead the construct of the state is constituted by the desire to construct it (Dunn, 2010 p88). It is, therefore an illocutionary 'Speech Act' (Searle et al., 1980 p221) that has reality through the perception of the individuals that construct it. In this context it exists only in the subjective rather than objective. This is particularly applicable when discussing the *functions* of the state, which may not necessarily be undertaken by the state apparatus itself, but maybe governed by alternative agencies on behalf of the formal organization (Jessop 1998 p340). Both formal and non-formal government or governance solutions are possible. There are no closed solutions, thus leaving open an on-going dialogue regarding the implementation of the state functions. Thus the definition of the 'private' and 'public' both become politicized and the distinctions between 'state' and 'society' blurred. Just as the actions of interchange between the two become an action of definition of the two

strata. Procurement in this context forms the spheres in the process of alienation (drawn from Callon, 1998bp33) of a commodity for exchange from one (the private) to the other (public) for political purposes.

Turning to the construction of the state, “The definition of ‘the state’ from the society

“...must be taken not as the boundary between two discrete entities, but as a line drawn internally within the network of institutional mechanisms through which a social and political order is maintained.” (Mitchell, 1991 p75).

In forcing a distinction between the state and society at an analytical level, one risks removing one from the environment in which it operates (Easton 1957 in Mitchell, 1991 p80). Skocpol is particularly strident in the assertion that the two remain entwined as ‘Statist Societies’ (Skocpol, 1979). The reintroduction of ‘institutions’ (March and Olsen, 1984) instead atomizes the structures of the state into the institutions that constitute it and masks an understanding of the whole. This neoclassical-institutionalist turn speaks increasingly to the conceptualization of the state as being quite distinct to narrower territorial definitions that are classically understood in the writing of authors such as Weber.

Persistent throughout is a perspective that the State can be seen as a realization of *what it means*, just as much as by *what it does*. The State’s influence can be felt outside of the traditional geographical boundaries through the use of ‘soft power’ (Diez, 2005; Diez, 2013; Laffan, 2001; Parker and Rosamond, 2013) as much as through the sheer scale and power of economic or security policies. In relation to the market, the State has power through both legal (coercive) modes, but also through framing the actions of citizens, by promoting that which is possible in a market place (Fligstein, 1996; Fligstein, 2002).

The perspective that states should be organized around economic activity, and specifically capitalism, is the heart of the Liberal Democratic model (Macpherson and MacPherson, 1977). Prior to the twentieth century, politics of the ruling elite held predominance in international political affairs, after 'the great transformation' trade and international finance instead became dominating forces (Polanyi, 1957 p17). In this new paradigm

“...nobody could fail to experience daily the shrinking or expanding of the financial yardstick;... men and women everywhere appeared to regard stable money as the supreme need of human society.” (Polanyi, 1957 p26)

The Countries of Europe, and particularly the European Union, describe themselves as conforming to the Liberal Democratic model. This is despite specific differences in the application of this form, in no small part due to historical factors. The Supranational Union has some of the features of this form of government but is described most commonly as being *sui generis* – it is unique in and of its self (Hix and Høyland, 1999). The extent to which this form can be described as fitting within the lexicon of Liberal Democratic (LD) state forms is limited as many of the functional aspects (the *how* of the state) do not apply. Instead the EU member states share some of the competencies of the LD state form through a porous supranational level. Some sections of the EU could be said to be following different speeds and styles of integration so that a debate over any applicability of state structures or theory to the whole would be difficult (Howarth and Sadeh, 2010). Certainly the Weberian definitions of the state *functions* would appear not to apply. Coercion, for example is not the preserve of the EU (despite moves to integrate foreign and security policies), although a consistent approach across the states that are members is in place.

Importantly, the Union itself was not imposed on the participating states;

“...but was the creation of the European Nation-States themselves for their own purposes, an act of national will. This is not surprising, because in the long run of history there has surely never been a period when national government in Europe has exercised more effective power and more extensive control over its citizens than that since the second world war, nor one in which its ambitions expanded so rapidly.” (Milward, 1992 p18).

This view retains the state as principal agent in global affairs with control over ‘globalizing’ forces and is as hotly contested as it is supported. The pooling of the market space in the Common Market however presented an opportunity for the nation state to control the manner in which global economic forces interacted within their sphere of influence (Milward, 1992 p123). This perspective locates the forces determining the actions of the state *within the state itself*. This view is one espoused by ‘Liberal Intergovernmentalists’ who argue that the forces within a state are represented in the state’s actions and take predominance when analysing international relations. This is opposed to an institutionalist, or ‘realist’ perspective (Moravcsik, 1997) which instead locate the dominant power structures within institutionalized (structural) forms, or the harsh (tautology) of Realism. Where procurement sits within this debate is apparent. It is within a highly politicized realm where decisions are motivated by the relationship by, to, and from the State. Spending by government equates to the realization of the State, and in this sense, government itself is indistinguishable from the State it supports. Protectionist attitudes towards foreign contracting in this context make absolute sense where the relationship with overseas companies becomes a ‘zero-sum’ game for the national economy.

To synthesize this position then, by engaging with the procurement market, it is through this framing of purchases as being ‘public’ that the State is brought into being. In addition, the process of framing the State in a particular policy implementation mode recognizes that the State cannot exist outside of this framework. In terms of the Procurement Market, the process of advertisement

undertaken in the light of the public reinforces the need and justification for the market to exist. The extent to which this is a reality, or a performed fiction is irrelevant in this context, as it is performed in such a manner and therefore it is (illocutionarily spoken). Whether the market is really *used* by the actors within it is of less concern than the extent to which the all concerned believe it to be important and are bought into the *idea* of the market. Similarly conceiving of 'impact' as a numerical figure is less important. It is the perception of there *being* an impact and a relevance that matters.

2.3 Alternative Perspectives

The following section outlines the viewpoint of four major perspectives regarding Public Procurement in the European Union: 'Home Bias and Protectionism' (which are two of the main economic arguments), 'Legal', 'Public Administration', and 'Governance' approaches through which one may view the activity of procurement and market creation. Of particular importance is that these frames are apparent within the discourse of the market. They are the adopted manner in which the Commission discusses and also projects reflections on the market. There are several major assumptions that underpin the analysis in these contexts. They, on the whole, look within the market as a fixed paradigm working with the institutionalized classical economic model. The theoretical framework later discussed attempts to break out of this paradigm to investigate the role and impact of procurement at a more holistic level.

Throughout the development of the single market, and the procurement directives, there are of course a large number of economic based arguments relating to procurement. Over time, the basis of these arguments in favour of an integrated procurement market shift and change. In order to best contextualize them; I will present this material in Chapter 3 as a history of the development of the public procurement directives. This section instead looks at some recent critical work on the topic Procurement within the European Union. The consolidation of

procurement into one market, is based on the leverage to be gained from the 'demand side', namely from the state (Edler and Georghiou, 2007). Further, increasing integration therefore will drive more economies of scale (Owen, 1976; Owen, 1983) and a shift to a 'mass production' economy (drawing from the lessons of the USA). One of the core complaints therefore pertains to the degree of reciprocity that may be gained from local / nationally bounded procurement practices, known as 'Home Bias' or 'Protectionism' which work against the potential benefits of greater procurement market integration (Dunne, 2014; European, 1988; London Economics and PWC, 2013). Government Purchasing managers are said to display a form of 'Home Bias' in their choice of national suppliers as opposed to making cross border purchases. This preference then feeds into a 'classic' multiplier effect for the national economy; an argument that is particularly attractive for political appointees in government and is a commonly claimed benefit of 'buy local' schemes. In this sense, the economic benefits are rationalized not as a form of 'neocorporatist' state support (Bohle and Greskovits, 2007 Amable, 2003 p17,31), but as a rational transaction model between actors (Amable, 2011, Jones, 1999).

While the EU's regime is the most developed in tackling 'Home Bias' and Protectionism, there have been long standing attempts to tackle the issue internationally. Negative impact on the porosity of trade opportunities were the main driving force behind the development of the World Trade Organisation's Government Procurement Agreement (GPA). The UK government's perspective is particularly hawkish regarding the wish to reduce the effects of Home Bias and open the national market to competition (Press Association, 2015). As a result, the creation of the market instruments and legislative structures outside of the national sphere is required if one is to create a market for procurement. Without this enforced delinkage from the politicized state, any benefits that may be accrued from more liberal markets is reduced.

'Home Bias' was debated extensively by Branco (Branco, 1994; Branco, 2002) in their studies of the economic effects of procurement. The models indicate a

multiplier effect is present, and positive. Therefore it is rational, and economically sensible for public purchasers to buy from national suppliers. Job creation is one direct implication (particularly in the labour heavy construction sector), but other positive externalities are gained. Industrial policy and counter cyclical economic stimulus can be facilitated through purchase from the private market. Effectively pumping money into key industries (construction and infrastructure are the classic examples). The 'Buy European' initiatives (and their many complementary national variants) are a recent example of explicit economic Home Bias (or Protectionism) (Dawar in Evenett, 2012 p89/90).

An alternative perspective on the 'Home Bias' is that of Gelderman (Gelderman et al., 2006; Gelderman et al., 2010.) Their studies assert a form of economic institutionalism. Central government purchasers make decisions to purchase from those groups they feel 'most comfortable' purchasing from, as this leads to reciprocity of economic benefit for all participants. In these works, the actors display a form of institutionalized 'appropriateness' (March and Olsen, 1989) which leads to a choice bias. This may be particularly relevant in instances where complex negotiations and specifications need to be developed with the supplier. The effect of 'Home Bias' is, as a result, not explicit, and may instead be implicit within the process of procurement;

“...when it is institutionalized, the home bias is not directly observable for it is usually the result of tacit discriminatory behaviour not codified in written rules. Further, even when it is explicit, its impact on the procurement market cannot be found simply by reading the regulations.” (Trionfetti, 2000).

Certainly studies on the level of cross-border trade (Sylvest et al., 2011 and Trionfetti, 2000 p64, Evenett and Hoekman, 2004 p) support the 'Home Bias' perspective, but do not directly engage with a particular rationale behind the perceived effect outside of a perceived institutionalized preference. A deficiency in

both cases is a broader structural effect behind the bias. The political effect of directed procurement and government spending is attractive as a theory and is intrinsically linked with critiques of protectionism and the governance structures that battle it (Wolf, 2004). The manner in which Home Bias operates will be determined to a degree by the constituency served. National or regional suppliers will be chosen depending on the size and centralization of the agency undertaking the purchase. The degree of centralization of the activity is variable according to the model of state utilized in each member state of the EU (OCED, 2000; OECD, 2015b) and there are a number of practical considerations that need to be made in the design of a procurement system by governments (Albano and Sparro, 2010). Under both centralized and De-centralised state procurement systems, the Home Bias thesis' requirement is for self-knowledge of the purchasers, the realization that they possess this constituency, and have an affinity towards it. The degree of this affinity in turn affects the decisions relating to the contracting form used by the authorities and their attitude towards the market. At every level, collaboration in the European market is encouraged between contracting agencies (Walker et al., 2013, Schotanus et al., 2011) through cross border collaboration, and informal sharing of best practice (for example the

'Home Bias' as a principle makes a great deal of sense when from the perspective that the State and Society are mutually constitutive and intrinsically joined. To engage in state led economic activity that does not service society is not therefore coherent (Lapavitsas, 2013). Looking back into the 20th and 19th centuries, many States sought to leverage industrialization in order to compete internationally more effectively than the liberal economic model would allow when this model favoured dominant imperial powers;

“Protectionism, as the means of building economic power comparable to Britain's, was for these new industrial countries more convincing than the liberal theory of competitive advantage” (Cox, 1981 p142).

The combat against 'Home Bias' and protectionism therefore inherently involves a change in the definition of a State's socio-economic model. The question therefore to be asked of 'Home Bias' is, where does society stop? At a geographical border? Or at the extended geographical space of Europe? In constructing the 'common / internal / single' market, the latter extended space of Europe is the intended boundary of the 'Home'. Developing the idea of procurement as being one situated within the European space therefore works exceptionally well in favour of this perspective. But the emotive, embedded relationship that is felt between state spending and the domestic political economy stubbornly refuses to be dissolved.

There are two strategies therefore employed to counter Home Bias by the EU. This is in spite of the rationalized benefits of such an effect; firstly a regulatory system is required to encourage, coerce, or pre-emptively frame the choices of purchasing managers and motivate their engagement with a broader transnational market. However, studies on the increasing use of transparency tools have shown there to be little effect on 'Protectionism' (Evenett and Hoekman, 2004). Secondly, institutionalized proclivities and 'appropriateness' lead to the consolidation of supply chains as close to the individual purchaser as possible, therefore normative strategies are employed to engender 'best practice' approaches. This can take the form of increasing institutionalization of international norms (Goldstein et al., 2007) or, as this thesis will argue, the European Union's approach to ideational intervention.

The second major approach is found in the 'Legal' academic literature. The scholarship on this subject is very well developed (Asia Link, 2014). In terms of overall approach the directives are treated descriptively, the regime analysed, and then the implications critically evaluated. To appropriate an archetype,

"The typical legal article describes key rulings, analyses the legal logic behind them, and discusses how doctrine is altered or updated through subsequent legal decisions... such an analysis is frustrating for political scientists as it

does not address the issues they find most important – why these legal outcomes now, and how has practice actually changed as a result of the legal outcomes?” (Alter et al., 2002 p111).

It is understandable therefore that the ‘legal’ scholarship on procurement is lacking in deeper engagement with the *meaning* of the regime. Key works regarding procurement in the EU, have however raised particular points regarding the structural implications of certain elements. Winter, for example, highlights procurement within the framework of an ever deeper economic integration (Winter, 1991). Bovis, on the other hand looks to the smallest actors in the market (SMEs) and discusses their renewed vigour and capacity within the macro environment (Bovis, 1997 p7) concerns the expansion of remedy capacity and complaint procedures to sub-national procurements as well as transnational companies). This approach struggles however with the meaning, construction, and political forces present in the activity of public procurement. Their definition of Public Procurement in that sense is the ‘Black Letter’ and the legal processes that interpret it (Burley and Mattli, 1993). This body of work makes few critical arguments directly regarding the paradigm within which the procurement is understood.

Atypical of this approach is the more holistic viewpoint provided by Susan Arrowsmith (Arrowsmith, 2000; Arrowsmith, 2010; Arrowsmith, 2012; Gordon et al., 1998b; Arrowsmith, 2012). Her ‘legal studies’ in Procurement group based in Nottingham University is the premier unit for the study of the market’s regulations in the UK. When discussion of the *purpose* of the directives is made she contrasts with ‘economic’ rationales in that

“...it is not the objective of the directives to ensure value for money” (Arrowsmith, 2012 p2).

Then through reference to the single principle of *Transparency*, the *regime* is analysed across several publications (Arrowsmith, 2000; Arrowsmith, 2010; Arrowsmith, 2012; Arrowsmith and Anderson, 2011). The principle of *Transparency* is substantiated through reference to four aspects;

”These aspects are (i) ensuring adequate publicity for contract opportunities; (ii) ensuring public availability and knowledge of the rules governing award procedures; (iii) providing the basis for a rules-based procurement system, by limiting the discretionary power of procurement authorities; and (iv) providing opportunities for interested parties to verify that the rules have been followed and to enforce them.” (Arrowsmith and Anderson, 2011 p16).

Similar to the ‘Regulatory State’ (Majone, 1996; Lodge, 2008; Majone, 1994; Majone, 1999; Moran, 2001; Schelkle, 2009), the ‘Legal Regime’ approach situates discussion of procurement *within* rather than *about* the paradigm by debating the relative merits of facets of the regime, using the language of that regime.

The impact of the system therefore in this lexicon is the development of a transparent governance system. The legal framework has a particular purpose. This is the imposition of an effective mechanism for the operation of public administration and governance. The Procurement Market then in this context is itself a tool for ‘better’ governance in the European Union. There are some significant caveats to this perspective. The EU legal framework supporting the Procurement Market is diverse and convoluted in some areas particularly due to the transposition and institutional support within the member states. As a result, there is such a diversity of practices that while contracting may be done equitably, there are significant risks to the coherence of the market and the reliability with which economic operators may function within it (Caranta, 2015).

The third perspective to be considered is the 'Public Administration' argument. The extension of business and public management scholarship into the process of public affairs has generated some excellent insight into the effect of particular modes of operation, actor perception, and consequent analysis. The heavy empirical focuses on practice and policy implementation are important in order to deal with the practical application of the principles of state led markets. Unfortunately this perspective is *descriptive* of actions within the logic of the market. Underpinning this approach is the recognition that individuals act in a manner that is personally risk averse, and they are accepting of a 'logic of appropriateness' (March and Olsen, 1984; March and Olsen, 1989). Unfortunately, a further critical leap is not taken to looking at broader issues of the construction of these social norms, their change and development, and the manner in which they may be utilized in a broader social context (de-centralised setting) rather than within a particular organizational framework.

Kelman's work on the discretion afforded to public administrators makes for an interesting contribution to looking at the governance of a procurement regime (Kelman, 1990). His thesis is that discretion needs to be afforded to public officers in order to make contracting viable, as they are closer to the purchase. Much of this approach meshes with the New Public Management (NPM) Literature (Hood, 1991; Hood, 1995; Hood et al., 1999; Hood et al., 2001) and work on Risk Regimes (Hood et al., 2001). This is similar to the assertion of Fukuyama that public servants require personal cognizance to achieve positive goals rather than work by rote (Fukuyama, 2014 p458). However, affording them this discretion then allows potential for strategic confusion regarding of each purchase (indeed de-centralized procurement systems may additionally suffer from this problem). Each agency would use different criteria in understanding their requirements and procurement strategy. A consequent risk to production by government would be a stifling of private sector innovation. For example when comparing the purchase of a third party provider computer system, or the development of a bespoke one by, and for, government (Kelman, 1990 ch1). Having private companies provide this sort of

solution pays for further research and development by the company that they can then use for other commercial sales. Providing the system 'in-house' for the government may prevent this spin off from occurring. The range of goods and services that are purchased by the Government sometimes need huge sunk costs in infrastructure, research, and development in order to facilitate their production. Many of these items will be universally desired (for example paper clips!) and therefore the government being a producer would not make economic sense unless the area of production is one that the private sector has no means of undertaking itself due to financial, regulatory, or practical reasons (for example nuclear power stations). Regarding the aforementioned 'NPM' approach and the institutionalization of risk, an example would be buying IBM Computers (see Kelman, 1990 Chapter 3 for a case study on purchases from IBM) as they are seen as a de facto 'safe bet' for public officers engaging in IT purchases. In the case of complex purchases, there may be additional benefits to purchasing domestically due to the nature of 'incomplete' contracts. The cognisance then afforded to two actors operating within an agreed domestic legal regime may then lead to the completion of the contracting process informally (Breton and Salmon, 1996). This would allow for the Contracting Authority to exercise maximum latitude in the undertaking of a public service, and possibly improve outcomes.

A fourth major approach to be considered is that of 'Governance'. 'Governance' as a concept covers a wide variety of phenomena and is a notoriously contested concept that;

“...encompasses our thoughts on decision making institutions, operational modes and even the ethos of governance; and let us not forget, questions of democratic accountability” (Delors, 2013 P169).

As such it is an intensively debated, criticized (Eberlein and Kerwer, 2004) and studied area, there are however key elements of this mercurial concept that can be identified and a typology of these elements that have been derived for an analysis

of public procurement. While other approaches to procurement take particular views on the effect, rationale, and causes of procurement choices, the governance approach sees the purpose of the procurement regime as serving the improvement of Government and the public sphere, through improved policy delivery, and the transparent operation of the state and state actors.

The core of 'governance' is said to be;

“its focus on governing mechanisms which do not rest on recourse to the authority and sanctions of government” (Stoker, 1998 p17).

While this proposal places governance regimes outside of the auspices of direct control of government, the outputs of governance may be the same, but the manner in which they are undertaken differs. Additional factors are also included from the interest of private and non-governmental actors. In this sense, there is a shift from a governmental land grab over policy space, to an acceptance that diffused practices allow for an improvement in policy design and acceptance. In accepting this definition as a starting point, we can see that it fits with a conception of the state as having hegemony over a range of factors in the public sphere (Laclau and Mouffe, 1985) but relinquishing others (Carmel and Harlock, 2008, Chaney and Wincott, 2014). Retained facilities include Weberian concepts of the State's definition (Pierson, 1996 p8) but the porosity of 'governance' allows for redefinition of the macro level unit of State into

“A distinct ensemble of institutions and organizations whose socially accepted function is to define and enforce collectively binding decisions on the members of a society in the name of their common interest or general will” (Jessop 1998 p341).

The difficulty arises in assessing this quotation's use of 'distinct'. Under 'governance', the processes may become so diffuse as to be opaque. Public

'common interest' may be a focus of the state, but not always the focus of delegated actors, although some conceptualizations rely upon this fact (Bonefield, 2012 Amable and Palombarini, 2009). Not included in this definition are approaches that include social and informal institutions.

Regarding the mandate for the move from government to governance processes, the opacity of the latter leads to "confusion and uncertainty created by a system that is now so far divorced from our formal constitutional understanding.... ..that the emerging system in which responsibilities are shared between local authorities and a range of other public and private providers lacks strong normative underpinning in public opinion [in the UK at least]" (Stoker, 1998 p 19). In this case, the lack of transparency, despite any protestations of efficacy, may lead to a lack of recourse to representation and undermine democratic principles. Alternatively Studies such as (Banducci et al., 2009) see support for transference to alternative methods of governing through proxy indicators outside of political representation. Economic self-interest and rationalism on the part of the citizenry outweigh the representative democratic losses incurred by the move.

Having accepted these limitations, Governance is a useful principle and range of concepts in that it allows, through the diversity of its definition, for easy synthesis and integration into other literatures on European integration (Kohler-Koch & Larat 2009 Ch2). Authors such as Dyson argued similar points outlined above in the discussion of 'The State'. When looking at the origins of the concept of the state, the perspective of the participant's view coloured their understanding of the state (Dyson, 1980 p2). The extent of state, governance, government and the boundaries between these factors are defined and perceived then is a factor of the cultural and national baggage of the perceiver. Their conception of the state is *framed* by their social context.

Stoker (Stoker, 1998) identified five key elements that relate to features found in governance regimes. This deductive approach saw private and public actors,

blurring of boundaries between actors and governance strata, power dependency, some autonomous self-governing, and a capacity for new modes of governance available for governments outside of traditional hierarchy (Stoker, 1998 p18). These factors do not preclude or exclude each other in operation. Rhodes (Rhodes, 1997 ch3) arrived at an alternative perspective. This was based on the structural form that the organizations undertaking 'governance' use, as opposed to the aforementioned more traditional 'public/private' body conceptualization; the emphasis being on *how* governance related activities were undertaken rather than by *whom*. In each case, the typologies of governance involve a movement of responsibility for policy delivery between state and non-state actors. Hierarchies (Cerny, 2006), Markets (Blok, 2011) and Networks (Van Boetzelaer and Princen, 2012) are all used to implement or generate policy as appropriate. Of these options, the range of scope for government activity is not necessarily impacted by the movement from hierarchical to governance modes but may be enhanced. In his description of the 'minimal state' typology for example, government spending has remained at a consistent level despite shifting responsibility away from hierarchical methods. This is indicative of the fact that while governance removes some of the large and small 'P' from 'politics', the activity still retains an impact and responsibility essentially of government.

There are two main threads within the literature. A 'Macro' perspective, that takes into account large-scale interplay between top-level political actors, and a 'Regulatory' angle. This encompasses alternative methodologies of undertaking policy to an agreed agenda. Factors and features of each are integrated into the other – as previously stated, pinning down an exact typology is unlikely to be of use, but indicating a distinction shall be of analytical utility.

The first typology is macro institutional in nature. These studies focus on the manner in which the institutions of the EU organize in relation to agenda setting, policy, private interest groups and actors to provide a dynamic 'self organizing system'. The Open Method of Coordination is a direct example of this principle of

non-hierarchical governance (Borrás and Jacobsson, 2004). Similarly, the case of banking regulatory reform (Pagoulatos, 1999), was driven by an intergovernmental bargain that led to the establishment of a new regime.

Some forms of 'multi-level governance' in addition draw these functions down to agencies within national boundaries to additionally include agenda setting functions across national and supranational boundaries. In these cases

“Governance blurs the distinction between state and civil society. The state becomes a collection of interorganisational networks made up of governmental and societal actors with no sovereign actor able to steer or regulate them” (Rhodes, 1997 p57).

Stoker's description of the five propositions of governance (Stoker, 1998) previously mentioned, also has such an emphasis. Regarding the epistemology of this perspective, while structural factors are assumed within the capitalist economy that the institutions operate, the autonomy afforded to macro governance processes assumes an *actor* orientation rather than *structural* factors as having dominance.

Secondly, is 'governance as regulation'; that is 'governance within a policy area'. The network participants do not determine the agenda setting functions wholly, but the implementation of such may be left to their determination. An example of this form would be the establishment of New Public Management principal actors such as independent regulators for particular industries. These governance processes operate very much under the 'shadow of hierarchy' (Börzel, 2010) in that their policy options are necessarily limited by the formal governmental institutions that define the agenda and overarching policy principles. Targets and outputs are agreed through government, but the implementation is devolved.

As will be debated later in this document in section 2.2, the Governance approach unfortunately works within a set of assumptions. These are institutionalized

proclivities towards particular governance solutions, which result in a lack of questioning of the principles that underpin the governance regime present in the Procurement Directives. 'Governance' as an approach allows us to integrate third parties from outside the formal state organizations, but it fails to account for these assumed preferences. Similarly, it is explicitly institutional in that it tackles the role of actors and organizations within a loose structure. There is therefore a lack of sociological and ideational factors in an analysis that is based on this approach.

2.4 e-Procurement in the European Union

e-Procurement relates to the practice of purchasing goods and services through electronic means. This is either directly through internet portals, or via broader interaction of corporate financial systems, though due to the diversity of solutions a single definition is difficult to arrive at (Smart, 2010). There is a developing interest in the field of e-Procurement following the issue of specific Commission action plans relating to this practice (Europe 2020 contains several references to electronic communications), and the widespread uptake of electronic government internationally (OECD, 2014 p63). Much of the scholarship in this area is situated within particular paradigmatic approaches relating to economic benefit, legal consequences, regulation approaches, and the overarching governance of the public sector. As a result of this being a particularly quickly moving area, with rapidly developing theoretical consequences, and technical implementation, some of this scholarship risks being a review of the historical development of the field, rather than a critical analysis or contemporaneous commentary. The importance of e-Procurement as an area of study for this thesis is that it specifically engages with the technical dissemination of information within the market through the Internet and information technology tools. It is therefore worth looking at this area to understand some of the approaches used therein.

There are differences however. Firstly, the public procurement market, and the Tenders Electronic Daily (which is the main focus of this thesis) did not strictly require the utilization of ‘tendering’ (the making of an offer to supply) through electronic means during the period of study. It is from 2016 that e-Procurement will be mandatory for all public bodies in the EU (COM/2010/245). Secondly, the TED, and advertisement processes in general, take place at a point ahead of the actual issue and consideration of a supplier’s offer, therefore they have greater scope to ‘frame’ the procurement decisions and integrate alternative ideational emphases. Finally, the TED is a standardized approach to the communication of contracting demand and supply whereas the diversity of e-Procurement systems and practices means there is greater scope for a diffusion of ideational principles within the construct. Having recognized these three differences the area is still informative as a point of reference for our debate.

A recent example of the ‘governance’ approach to e-Procurement may be found in a JCMS article on the ‘Governance issues in the EU’s e-Procurement Framework’ (Khorana et al., 2015). This research looked at the e-Procurement framework supported by the EU through the European E-Procurement Action Plan (European e-Government Action Plan 2011-2015 (Commission., 2010b). In doing so the article critiques the governance model proposed in the plan and adds additional stages for improving efficacy in the operation (Khorana et al., 2015 p301). While the main emphasis is on the institutional and regulatory approaches needed for improved governance of eProcurement, what is missing is a critical appraisal of the principles of the market being governed. The addition of extra ‘Transparency, Accountability, Competition, and Equity’ (Khorana et al., 2015 p300) does not equate necessarily to a deeper embeddedness of the market’s paradigm within the social sphere.

2.5 Constructivism, Performativity and Markets:

A Theoretical Framework for the Understanding of Public Procurement in the European Union

In the previous sections of this chapter, Procurement has been situated within the debate around the 'State', and shown to have relevance in a number of scholarly fields. These fields do offer convincing hypotheses regarding Procurement but they are within a particular set of paradigms that associates Procurement as an ancillary activity, or one which functions within a classical Economic frame; that is to say, a rational actor model (McLean, 1991; Searing, 1991; Jones, 1999; Jones, 2003; Hampsher - Monk and Hindmoor, 2010). This section instead offers an alternative perspective derived from social constructivism, the 'performativity' of discourse, and the academic study of 'market creation'.

There are two primary elements to this section. Firstly, the ontological position adopted by this thesis; namely that of the social constructivism will be discussed. This will be applied in particular to the creation of markets as the mechanism utilized in this policy area. It is through this focus on the application of markets that one may see the universalizability of the thesis in hand.

The second half of this section then moves onto discuss the manner in which the social construction will be examined through the performativity of discourse. The theoretical framework resulting is a synthesis. It is through the power of discourse within an economic context, that the social construction is constituted, reciprocally and supported through the pervasive ideational capture of the participants.

2.5.1 Three Forms of Social Constructivism

Constructivism is an approach that generates mid-range theories regarding actor preference and policy changes. It should not, in that sense be confused with the 'grand theories' of European Integration (Christiansen et al., 1999 p530) but be approached with a more limited scope. Constructivism, even within the confines of the European Integration literature has a plurality of approaches and

understandings. It is as much a contested concept as the subjects that it is used to study. At the heart of the approach there are two main suppositions. Firstly that

“Constructivism concerns the issue of human consciousness” (Ruggie 1998 in Christiansen et al., 1999 p530)

and as a result has;

“...a *transformative* impact on the European State system and its constituent components ” (Christiansen et al., 1999 p529 emphasis added)

There is a distinction to be made here at the outset. There are those forms that place the actor aside from reality (Constructive Realism) and others that emphasize the actor’s understanding as constitutive of reality (Constructive Idealism) (Christiansen et al., 1999 p531). It is into this latter strand of constructivism that the principles of this thesis apply, that the ideas and control of information lead to the modulation of the internalized belief structure of the actor / participants in the market and lead to the embeddedness of the social construction as intended by the structural hegemon.

Social Constructivism as a project seeks to understand the structural relationships between actors, how their social context influences and determines the other actors, and the understanding of the power dynamics. As such it has been described as

“...more of an approach than a theory” (Smith, 1999b p683)

due to the flexibility with which it may be utilized. The context in which it is to be used in the study of EU politics, encapsulates two different approaches. One looks at the dispersal of sociological norms within a construction, and the second the broader perpetuation of ideas. The former is a more constrained vision of the

organizational construct, often applied within institutions and communities to explain the perpetuation of particular approaches and policy emphases. The latter represents the 'ideational turn' in that ideas have a greater propensity for dissemination. Both integrate with work on the perpetuation of particular 'European' social emphases that is captured by the 'Europeanization' literature. In each instance there is a consistent principle of the need to "Think the state" (Saurugger, 2009 p937) into existence. Therefore the degree to which that state becomes a function of the thoughts, beliefs and social makeup of the individuals doing the thinking is of importance. Therefore, although

"... material factors exist independently from the social world, they are given meaning only through ideas, beliefs and norms that are reproduced through social interaction" (Meyer and Strickmann, 2011 p64).

These two approaches at their core deal with the same ontology. That in approaching a case, the dynamics within a social context may be read, and are perpetually relative to each other. The degree to which this represents a distinctly different approach to the realist or postmodernist schools is contested as the essential assumptions retain a rationalist bent regardless of epistemological approach in some uses (Smith, 1999b p685). That the

"...social mechanisms addressed within social constructivist accounts are largely identical, or at least strikingly similar, to those posited by different organization perspectives." (Trondal, 2001 p2)

speaks to the nascent rationalism displayed within certain readings of the approach. Habermas described linguistic behaviour as a medium through which 'rationality' is realized. In Habermas' account, rationality is

"...an abstract goal of human coordination achieved through the exchange of utterances" (Chilton, 2003 p42).

Rationalism and rationality in this case differ. Rationality to Habermas was the process of human expression and logical linguistic processes. This differs to Rationalism in the context of the political philosophy which is an approach based on individual self-maximization. Rationality in the context of linguistics then, depends on the postulate that humans possess 'communicative competence' which involves making valid linguistic claims. Any utterer engaged in any use of language is implicitly making, by the very act of uttering at all as a human in a social setting, four validity claims. One of these claims is to 'rightness' that

“...means that the performing of speech acts are grounded in a political role, and to possess a particular authority. Some such rights are widely distributed... but a very large number ... of politically and socially significant speech acts have their rightness grounded by definition in the structure of legitimacy of the polity. Thus a speech act such as giving orders indifferent organizational structures, sentencing a criminal, declaring war, refusing... all such examples are possible in terms of rightness, though a more perspicuous term would be legitimacy” (Chilton, 2003 p42).

Leaving rationalism aside as an approach however is important as philosophically it fails to pass the test of 'falsifiability' (Caldwell, 1991). Rationalism further more is an internal process contextualized within a social environment. Social constructivism instead places the social sphere as the origin of the perception and analysis rather than the context within which it is played out.

As a result, the mechanism of social construction, the context of a message needs to be factored in to any analysis as much as the content of a message

“...the meaning of a text is not contained in the text itself. Sense is made by readers or hearers, who link their knowledge and expectations stored in

long and short term memory to the processing the language input.” (Chilton, 2003 p154).

So the framing of an exchangeable good or service requires a *framer*, and an individual for whom the item is *framed*. In addition, both are subjectively positioned. Hay and Rosamond build on this point to argue

“...it is the ideas that actors hold about the context in which they find themselves rather than the context itself which informs the way in which actors behave. This is no less true of policy makers and governments. Whether the globalization thesis is true or not may matter far less than whether it is deemed to be true... by those employing it” (Hay and Rosamond, 2002 p148).

This has the impact of making true that which the actors believe to be the case. Their subjective position leads to a particular perception of reality. Further,

“Policy makers acting on the basis of assumptions consistent with the hyper-globalization thesis may well serve, in so doing, to bring about outcomes consistent with that thesis, irrespective of its veracity and indeed irrespective of its perceived veracity” (Hay and Rosamond, 2002 p148).

Therefore, with the subjectivity of the framing parties within a context, both parties will bring their positions to the table in the constitution of the entire context. The actors and the structure therefore may be seen to mutually constitute each other (Giddens, 1984).

There are ‘levels’ of scope covered by the term of ‘social constructivism’. These range from very narrow direct social interactions, to broader dispersions of ideas within society. That there is such a diversity of application does speak to the

‘constructivism as an approach’ perspective. There are three forms that can be identified within European Integration studies.

The first relates to the ‘dispersion of social norms’ and is the most finite. This area looks primarily at tightly bound social groupings and communities. Many scholars have looked at the role of social norms in groups that lead to what some have referenced as ‘epistemic policy communities’ for whom discursive coherence is attained, regardless of external / broader social inclusivity with the vision (Streeck and Thelen, 2005; Thelen, 2004; Hall and Thelen, 2009; Hanf and Scharpf, 1978; Peterson, 1995). These studies have touched on the process of transforming socially bound agreements into an institutionalized format for further operationalization in a governance framework (Nee, 2010; Selznick, 1996). There is, within these groups, the development of a ‘socialized learning’ and agreement regarding certain terminologies and lexicography. These groups may be seen to reinforce their organization and clique through the use of dense rituals and language. As a result, they deflect external intervention that then leads to further reinforcement of their construction. This understanding between parties is similar to the development of ‘Professional Discourse’ among certain ‘goal orientated’ skilled ‘professional’ environments (Gunnarsson, 2009 p4) within which

“Social learning is more likely when a group is insulated from direct political pressure and exposure” (Checkel, 1999b p549)

The rise of such an elitist perspective towards discourse (broadly understood) is due to the fact that;

“... many organizations wish to be distinguished by a specific culture and social ideas, professional discourse is often sustained in a complex socio-cultural framework system, where national and local frameworks are intertwined and interdependent.” (Gunnarsson, 2009 p9).

Within these realms, there are certain discourses and practices that have particular significance. These are not always strictly 'speech' in nature;

"Of interest are not those documents, or functions of documents which merely certify that something is the case (e.g. results of a medical test as court evidence), or which simply identify a person such as an identity or membership card, but those which relate some change in status of the individual or individuals involved." (Gunnarsson et al., 1997 p13).

Therefore these constitutive rituals represented by documents and practices, have effect in performing an act in society through their creation, existence, and use. In order to use text, documents, or language in this manner, specific rituals are required. It is the content of the ritual, the language used, and the specific *contexts* (Giddens, 1984 p292) which constitute the performative 'speech act' and make 'reality. (Searle et al., 1980). While there are a range of speech acts that are associated with the procurement market that are not performative (such as directive, regulative, permissive etc. (Gunnarsson et al., 1997 p16) those found in the construction of the advertisement and communication process are 'internal' to the overall action. Therefore, the net effect of the advertisement process is one of the performative creations of a social action through the issue of the advertisement through the Official Journal of the European Union. A contract advertisement outside of that specific process would not only transgress the legal requirements of the market, but also fail to be recognized by those operating within the social construction of the market as having legitimacy as 'Procurement'.

We are lead to the second aspect of social constructivism, which in the European sphere would be the broader dispersal of social norms and their role in the policy process. This is a higher level, systemic approach where the construction of norms, ideas, and socially embedded practices is dispersed more broadly through society. This format of analysis has been used successfully in the area of European studies,

as the developing polity lends itself to viewing the construction of the concept of 'Statehood' in real-time.

What is sought in this context is an understanding of the dissemination of ideas, and the broader power structures that operationalize them in society. This may be due to the power of certain actors;

“...the dominant theories of the world are dominant not because they are true but because those who subscribe to the dominant view are more powerful than others.” (Saurugger, 2009 p937).

Alternatively, it may be due to the wider appeal of certain concepts. The liberal democratic state model is built on such contestable concepts (as mentioned above).

Hegemony is an important concept that needs to be defined at this stage. The term was brought into the contemporary political oeuvre by Antonio Gramsci having been drawn from Marxist protest movements at the turn of the 20th century (Anderson, 1976 p14). Hegemony as a concept outlined by Gramsci is debated furiously and it is ironic that in a thesis concerned with contestable concepts, one of the elements of the theoretical framework is itself highly contested. This debate is due to the lack of opacity of the outlining of the theory by the originator. As Gramsci's work was largely written while in prison in the 1930s in Fascist Italy. Therefore he uses allegory, discussion of Machiavelli, and historical stories to allude to his analysis of power structures in contemporary society. This has led to a variety of 'incompatible interpretations' (Anderson, 1976 p6).

At the root of Hegemony, is the principle that power structures exist below the conscious mind and frame discourses within social situations. This capacity to frame debate is of key importance and is;

“... the key concept in understanding the very unity existing in a concrete social formation.” (Laclau and Mouffe, 1985 p7)

However, Hegemony should not be confused with institutionalization. The latter is the conscious construction of organizational processes for the exercise of power, while the former is a

“power basis of the structure [that] tends to recede into the background of consciousness...” (Cox, 1981 p137)

The perpetuation of certain interests in society represents a structural preference relating to ideas. Change within a society is neutered by the strength of a dominant ideational position. This ‘hegemonic’ position is utilized by the ‘strong’ in society to avoid the requirement for direct conflict.

“Hegemony is conceived from the standpoint of the hegemon as a mechanism of mediated subordination... hegemony/consent is conceived as the opposite of direct domination / coercion.” (Thomas, 2009 p161)

As suggested by Thomas above, rather than a direct challenge to any position, the Hegemon co-opts the subordinate to their agenda. This is a requirement for the perpetuation of the structural relationships. To quote Althusser;

“...I shall say that the reproduction of labour power requires not only a reproduction of its skills, but also, at the same time, a reproduction of its submission to the rules of the established order, i.e. a reproduction of submission to the ruling ideology for the workers, and a reproduction of the ability to manipulate the ruling ideology correctly for the agents of exploitation and repression, so that they, too, will provide for the domination of the ruling class ‘in words’. “ (Althusser, 2001 p85)

Therefore accompanying this requirement for co-option, there is an additional need for the Hegemon to capture the ideational reality of the subordinate. This is done literally 'in words'.

As a result, an opposing position is incapable of gaining enough 'weight' in order to effectively mobilize, because it is incapable of gaining a position in the conscious minds of the subordinated parties. Through the 'soft' routes of power explicit dominance is not required as the social preconditions for privilege are stacked against a potential refutation.

"Hegemony is the form of political power exercised over those classes in close proximity to the leading group, while domination is exerted over those opposing it" (Thomas, 2009 p163)

In the case of public procurement, as the overarching paradigmatic framework of capitalist democracy is accepted within the professional contracting authority community, therefore it is 'in close proximity' and may be co-opted into the hegemonic strategy. Where this is not realized, the overarching regulatory (coercion) may be utilized. Importantly, whether or not the paradigm is realized in the actions of the Contracting Authorities, the ideational framing of their actions has taken place that creates a permissive environment for any refutation of the market's principles to be rejected. 'In Words' that are used to promote the market, create the market, communicate the principles of its use, and the process of communicating between participants, the structural preponderance of the hegemonic paradigm is perpetuated.

Rather than a battle of direct power and actor centric influence then, the forum is that of ideas. It is a battle of ideology, culture and society where;

"... a unison of economic and political aims, but also intellectual and moral unity, posing all questions over which the struggle rages not on a corporate

but a universal place. It thus creates the hegemony of a fundamental social group over a series of subordinate groups” (Anderson, 1976 p18).

There are four main criticisms that may be levelled against the use of such a perspective in this context. Firstly, that the perspective requires the acceptance of a social constructivist perspective in order to be operationalized. A more ‘positivist’ reading of politics would have difficulty integrating this perspective. This claim may be countered however by utilising the theory of ‘historical materialism’ to give weight to the accumulated realisation of the ideational and past of hegemonic positions (Jones, 2006 p125, and Bellamy, 2001)

Secondly, there are certain loaded neo-Marxist connotations which may be isolated within a discussion of Gramsci. The affinity of the study of Hegemony within the debate around class are pivotal to the understanding of hegemony within this context, and ingrained within capitalism. While the understanding of hegemony in this thesis is largely agnostic of a critique of capitalism, it is recognized that a particular ideational position relating to class and capital exists. This thesis therefore sees the exercise of power within the European project in that context, and the manner in which policy is implemented as facilitating dominant forces within capital economies. The previously discussed contestable nature of the European project as being both of an elite, and a forum for the support of social justice may lead to a much deeper discussion on the issue of ‘who benefits’. This thesis instead argues that the EU benefits, and those aligned with the ‘European Ideals’ are consequently facilitated in their goals.

This leads to the third point. At some levels, the perspective on Hegemony seeks to place the ‘economy’ outside that of civil society. This ‘disembedding’ of the process of transaction is an alienation of capital from whence it came. While there are solid theoretical foundations for delinking these concepts (Burawoy, 2003), the construction of a market is inherently a social phenomena. In addition, the realization of the state through such a contested process as the construction of a

market risks placing the state outside the purview of society – in which case, what relationship should we assume between the state and society in such a model.

Finally, there is a risk that the move to a more ‘structural’ reading of the power of discourse removes agency from the actors within the market. This potential risk should be balanced by the recognition that the motivations and actions of market participants are bound by the logic of the dominant social paradigm. Without which, the rules of the market, and indeed the market in an ideational sense would not exist (Fligstein, 2002).

We turn now to look at how the principle of Hegemony will be used in this analysis of the procurement market. The Hegemon in a social construct utilizes ideas as the capsules within which discursive power is embodied. They are representative of particular hegemonic memes that travel through the social space and;

“...shape the ways actors perceive their environment and their interests.”
(Beland, 2009 p712).

Importantly, ideas are not necessarily fixed, but may change and develop (Banchoff and Smith, 1999); Sternberg, 2013). This contestability is necessary for their perpetuation and continuation as the idea recognizes the interpretive roles of ‘framer’ and ‘reader’ in constructivist ontology. Consequently, the principles and ideas debated within the EU are appropriately tested as

“...What we regard as ‘the state’ is not an eternalized entity, but an on-going process” (Dunn, 2010 p79).

The ideas in question are not necessarily bounded within a traditional dichotomy related to party political ideologies but may be

“...economic and social assumptions that either legitimize or challenge existing institutions and policies” (Beland, 2009 p705)

that may

“...through framing processes, help to convince policy maker, interest groups, and the general population that change is necessary” (Schmidt 2002 in Schmidt, 2008 p705).

It is assumed in this instance that political power is represented by the capacity for one group of actors to exert change over another (Lukes, 1974).

In this context, institutions have a significant role. The process of institutional ideational engagement is defined by Dyson as involving

“...socialization effects and internalization of EU norms ... shaping domestic policy outcomes.” (Dyson, 2000b p913)

Without this ‘internalization’ the engagement by policy makers is at the transactional level, or in perceiving constraints within which the policy process must operate. This is not due to an inherent ‘conservatism’ within an institution, but a lack of ‘instrumental value’ due existing to powerful existing paradigms that countermand new ideational forces. In terms of policy implementation, the degree of porosity of a State leading to acceptance of exogenously generated legal structures and norms may be dependent on the strength of the concept of the structures already in existence within the State. The social model, concepts of the veracity of the state, and the effectiveness of the government lead to the success of the policy area (Berghlund et al., 2006); The hegemony of one position rejecting the advances of another. Therefore, ideational success can be seen to be as contingent upon the existing ideas, and the relative strength of those ideas within the overall

construct, as well as their applicability to the situation in direct relation to the actor concerned. As;

“Ideas only become a decisive causal factor under specific institutional and political conditions.” (Beland, 2009 p702).

We may see that the existing paradigms, their ‘force’, the institutional and political conditions, and the actor’s preponderance to acceptance and ‘internalization’ of a new ideational position all play a part. Consequently, one may easily see that it is more effective to subsume, or engage an existing legitimate ideational position for a new purpose than attempt to create a fresh one. Similarly, as political conditions are constantly shifting, the ‘reader’ of an idea or discourse, will shape that idea in the process of reading within the changing context. The result is unlikely to be the same over time, and may assist in explaining some of the complications regarding institutional change within historical perspectives (Pierson, 2004, Bulmer, 2009, Checkel, 1999a; De Boef and Keele, 2008).

The third aspect of social constructivism to be discussed in the context of the EU is that of ‘Europeanisation’. This is a more focused ideational engagement with the concept of ‘Europe’ and encompasses policy, political, and social spheres. As such, it is an approach that describes the social construction of the EU in a multitude of spheres, and can be seen to have particularly ‘fuzzy edges’ (Olsen, 2002). There are studies that look more broadly at ‘Europe’ but for the purposes of this discussion, the identifying context is that of the European Union as an institution. In operation, the concept of ‘Europeanisation’ can be seen to engage with both of the preceding forms of ‘constructivism’ that I have mentioned – namely direct social interactions or communities (therefore grounded in tighter empirical research for example Bulmer and Burch, 2009; Dyson, 2000a; Dyson, 2000b; Grossman, 2006), and broader societal changes and embeddedness (Checkel, 1999b; Checkel, 1999c; Checkel and Moravcsik, 2001; Bieler and Morton, 2001) Bache et al.,). One distinction between these uses of the approach is an intrinsic link with Moravcsik’s

assertion that modern constructivist approaches are difficult to test (in Meyer and Strickmann, 2011 p66). This is certainly true, but the same criticism applies to any reflective and qualitative approach to politics.

In terms of content, Olsen identifies five 'faces' to Europeanisation. The common denominator is the effort to bring a constructivist approach to the otherwise *sui generis* integration process which may be operationalized into a more comparable model of social integration (Olsen, 2002 p922) thus resolving some of Moravscik's criticisms. Of these five models, particular relevance to this thesis is the

“...degree to which Europe is becoming a more unified and stronger political entity...related both to territorial space, centre-building, domestic adaptation, and how European developments impact and are impacted by systems of governance and events outside the European continent.” (Olsen, 2002 p924).

Olsen's definition places the process of developing the EU as a response to globalizing external constraints and the generation of a particularly 'European' ideational response; The creation of Europeanization itself constructed by the external social impact of the globalization discourse.

There is reason to question the validity of the 'Europeanization' thesis in application to member state domestic politics. Instead the domestic and the European may be seen as mutually constitutive in terms of personal and ideational linkages;

“National institutions and those of the EU are not two distinct and independent systems, but linked together through personal relations in a very complex and interdependent way” (Saurugger, 2009 p940).

In some cases, transnational and supranational discourses do have a constraining impact rather than an ideationally empowering narrative. What is more important

however is the application of a general bent towards a distinctive social and political model that has become as ingrained an ideational institution as any other. As a result of the ingrained position of this idea, any other position that wishes to be endogenized must directly compete with the hegemonic existing position. So the process of market liberalization and reform of the EU requires a pernicious attempt at changing the paradigm, or a reformatting of existing paradigms in a new image.

The position of certain contested concepts, and the relative degree to which one gains traction over another is particularly instructive in the context of this thesis. The construction of the Procurement market defines the act of procurement through the directives and black letter law, but at the same time, the participants in the market define what this means for them (through both constructivist reading / understanding but also as the Contracting Authorities have cognizance for application of the directives, and the national level has responsibility for oversight). Additionally, the discourse of the market is carefully framed by the Commission's reports, discussions, papers, and speeches. Procurement then is as contested concept in the realization of the state as any other aspect of the state. Therefore the process of contestation of the act of procurement reinforces the reality of the creation of the State within the European sphere.

2.6 Performativity within Social Constructivism

2.6.1 Performativity in Constructivism

In the preceding section, we established the potential for using Constructivism in the context of this thesis, both in terms of an overall ontological position, and a specific operationalization of the concept for policy control through the power of ideas. In this section we move to the specific mechanism through which ideational control is exercised within a social construction. This is through 'performative' acts within discourse.

Performativity was introduced into the modern academic lexicon by JL Austin. A “performative sentence or a performative utterance, or, for short, a ‘performative’ (Austin, 1962 p6) is a form of speech act that is not purely descriptive of reality but can be in itself, active. For example;

“I name this ship the *Mary Rose*”

is an act in itself of naming a vessel. It is present tense and creates something at the point of utterance.

“The utterance is not setting out to describe a situation, an even, or an action: it *is* an event or an action” (Austin 1975 cited by Loxley, 2006 p8).

This notion places discourse then as a potentially active component of social construction, rather than a passive signifier of the content of a construction. Rather than the ‘representation’ that is encapsulated by *illocutionary* views of discourse, here language is a ‘*perlocutionary*’ act that actively brings something into being (Chambers and Carver, 2008 p38).

The potential for this notion has been seen in a variety of fields, most notably Judith Butler who has written extensively on the ‘performance’ of gender. In the process of adopting a gendered role, one ‘performs’ it and brings it into being; The individual is an active participant in the realization of their own gender (Butler, 2002). Her writing spoke to the

“...most ubiquitous phenomena in human social history: the production of power through naturalizing discourses that tell us what we are and therefore who” (Chambers and Carver, 2008 p34).

In terms of lexicon, ‘Performativity’ is distinct from ‘Performance’. ‘Performance’ presents the trope as being distinct from the actor in question. There is a socially recognized ‘unnaturalness’ to the act being performed as to ‘perform’ is to be

aware of there being a state of 'non-performance'. 'Performativity' however is the naturalisation of the trope in question and the embeddedness of the meme within the actor's identity;

"Power thus operates at the conjunction between human activity and meaning, and it produces in language what the language 'claims merely to represent' (Chambers and Carver, 2008 p36).

In doing so, Performativity constrains the 'real world' actions and perceptions of the participants and conceals the power structures that begat that social construction behind the;

"...assumption of necessity and the consequent language of constraint and legitimacy" (Chambers and Carver, 2008 p49).

Important at this point is the recognition that the constituent components of a discourse can be a range of signifiers and memes. Communication and discourse occurs across a range of modes, and in this vein, the performativity of discourses cross all modes of communication. Therefore one may integrate a greater range of analysis than the original linguistic origins of the study covered by Austin, Foucault, or Derrida (Diez, 1999).

A major component of the discourse in the European Procurement Market (and the case study used in this thesis) relies upon the power of statistics as objectively legitimate. The source of the data is however as subjectively located as any other discourse as not only are they the result of social activity, but they are additionally socially constructed (Schield, 2007 p1). Further the reliance on these sources as legitimate reinforces their authority (MacKenzie, 2006). Seeing that there is a bias inherent in both the linguistic and numerical manner in which a market is constituted allows for the recognition of a broader range of information sources in establishing an analysis than might be traditionally utilized. Discourses may be used

to call into being institutions, and perpetuate ideas through a variety of tropes outside of the traditional 'political argumentation (Chilton, 2003).

“I conceive of ‘the state’ as a discursively produced structural/structuring effect that relies on constant acts of performativity to call it into being. Perhaps the most important aspect of my conception understands that what we regard as ‘the state’ is not an eternalized entity, but an on-going process. Thus, instead of ‘the state’ I prefer to think about *state-making practices*. “ (Dunn, 2010 p80).

Once this paradigm shift has been made, practices such as military marches, or the singing of the national anthem (Davies, 2015) are essential social actions in the creation and perpetuation of the nation state as a coherent idea. In this thesis, one of the primary performative functions is undertaken by the advertisement of a contract (affording legitimacy) through a recognized website. This practice makes the activity a legitimate 'procurement', and in doing so represents a 'state making' practice like any other of the more 'symbolic' actions (McNamara, 1998).

2.6.2 Performativity in Markets

Performativity has been identified as having a role within the creation and perpetuation of markets in several important studies. This is primarily dealt with in terms of the 'Performativity of Economics'. It is worth outlining this school of thought at this point.

Callon outlines 'Economic Performativity' in 'The Laws of Markets' (Callon, 1998b) There are three factors identified. Firstly, the '*framing*' of agents, acts, and constituent components;

“Framing is an operation used to define agents...objects, good, and merchandise, which are perfectly identifiable” (Callon, 1998b p17/18).

It is through this process of externalizing and definition that actors are able to identify and then exchange goods. Without a 'framing' taking place, transaction would be impossible as

"To construct a market transaction, that is to say, to transform something into a commodity, and two agents into a seller and a consumer, it is necessary to cut the ties between the thing and the other objects or human beings one by one. It must be decontextualized, dissociated and detached. If the thing remains entangled, the one who receives it is never quit and cannot escape from the web of relations. The framing is never over. The debt cannot be settled." (Callon, 1998b p19 discussing Thomas 1991).

This practice of defining, externalizing, then passing the commodity from one to another is a precondition of market exchange. The process of externalizing the capital produced by an individual is an intrinsic part of any aspect of the market in this sense (Marx, 1887 p28). Furthermore, the act of framing in order to externalize a commodity by one party is not independent, but is reciprocally dependent on the framing of the commodity by other parties. This issue is at the heart of company strategy, and indeed company behaviour is seen by some as being a function of other companies in the market (Fligstein, 1993; Fligstein, 2002; Fligstein and Mara-Drita, 1996; Fligstein, 1996). Therefore a cultural artefact is relative to the position of the perceiver (the reader in the lexicon of discourse as highlighted previously in terms of political context, and the mutual constitution of a social reality) and the identity of any item is subject to the construction of that item culturally (Derrida, 1984).

Secondly, the principle of *calculativeness* is used to describe the thought process that occurs prior to an action. But in order to think about a problem, or be calculative, one must first have the tools with which to calculate (Callon, 1998b p23). So in order to be calculative in an economic sense, one must first have

economics. Thus the structure and in built presumptions within economics will impact on the act of calculation. These factors may stand at odds to overarching cultural sensitivities, and cause tension between those undertaking 'economic' activity and the role of that activity in society (Roscoe, 2013). In terms of the performativity of markets then, once the economics that underpin the market has been established, the participating actors for their own calculations use such principles. This is a 'structural' view of how economics defines the logic, and actions, of the participants. Relating to the 'State' or the EU in the context of this thesis, one must first have a political vocabulary in order to analyse and understand what is being calculated. Therefore, the setting of the 'tools' through which one understands the social construction is of vital importance.

The relationship between economics and the 'real economy' is questioned by the use of calculation:

"If mathematical economics can be realistic under certain conditions, it is not because human behaviour is naturally 'mathemisable'; it is because the calculative agencies are there to introduce interrelated calculations in decision and in the formation of actions" (Callon, 1998b p50).

In this sense, economics directly affects the perception of reality of the adherents to the perspective. Callon is however quiet on the factors that may contribute to the uptake of a particular economic paradigm although he recognizes the role of 'cultural frames' (Callon, 1998b p5). This offers a suggestion that the depth of social framing may allow for a refutation of the market logic. So the imposition of exogenously produced ideational paradigms may be resisted as a result of context, recipient location in relation to the idea, and the 'stickiness' of the existing ideologies.

The third principle is that of *entanglement*. Callon sees Marx's perspective on money as instructive in this regard. Money led to an abstraction of the

“...reality of relationships between the people that lay behind the relationships between things” (Callon, 1998b p33).

It hides the consequences (externalities) between actions through its facilitation of the alienation of an actor from the commodity. In this sense, the *framing* of the principles for transaction abstracts the value of the relationships that construct the commodity to be exchanged. But in money there exists a

“...trail, a wake, a visible, materialisable, traceable trajectory” (Callon, 1998b p35)

that ties the exchange ultimately back to the legal framework that supported the market for that exchange. In doing so, all exchanges are tied to the state at the heart of the economy. All exchanges are therefore *entangled* to a certain degree. This is very different to the ‘classical’ view of the market where the identities of the participants are irrelevant to the transaction (Williamson, 1979 p236). It recognizes however the power of Historical Materialism in the generation of present economic and political choices (Checkel, 1998; Bieler and Morton, 2001; Gramsci, 1971). This perspective identifies the role of past capital accumulation and weight behind present positions (Bieler, 2004 p10). Importantly, the recognition that institutionalization of ideas and positions was not always thus, and that the preconditions for the acceptance of said ideas could be found within the historical context from whence the society and state arose (Cox, 1981).

An opposing opinion regarding economic embeddedness may be found within ‘Virtualism’ (Carrier and Miller, 1998). Virtualism engages with the concept of abstraction in economic life termed ‘dis-embedding’;

“...‘dis-embedding’: that is, the removal of economic activities from the social and other relationships in which they had occurred, and carrying them

out in a context in which the only important relationships are those defined by the economic activity itself. In essence “economic activity becomes abstracted from social relationships” (Carrier and Miller, 1998 p2).

Defining social interactions through economics is a key defining thread of ‘Marxist’ political thought (broadly), but this is engaged fully within a ‘substantive economy’ approach that is totally socially engaged. Callon’s perspective (Callon, 1998b) on the other hand is locked within the boundaries of a limited social context: that of the specific market participants. So while Carrier and Miller see the social context as having dominance, Callon instead looks at the dominance of technocratic economic mechanisms on the perception of social construct participants. This is essentially a ‘positivist’ versus a ‘critical’ clash. Carrier and Miller representing a ‘realist / positivist’ perspective (Cox, 1981) while Callon is more reflective of a critical view that situates reality within the purview of the perceiver (Bieler, 2004).

To go one step further in this process, Carrier and Miller additionally place the emphasis on the primary mechanism as being within society rather than structurally, through looking at consumption by society as a whole;

“...only consumption as a process provides the flexibility and creativity that allow societies, small groups and even individuals to return to that act of self construction of the species being that is the definition of human culture within dialectical theory. In a word, this century has shown that it is in consumption and not as Marx had argued, in production that commodities can be returned to the world as the embodiment of human potentiality” (Carrier and Miller, 1998 p193).

The use of consumption is instructive in this thesis as a discreet point of reference. It is through consumption (i.e. demand side processes) that the State is realized, and this formalizes the relationship between the State and society through that

very transaction. Thus the State's demand becomes an act of dis-abstraction of 'human potentiality' through which the economic is made real.

Both of these models are based specifically on economic social constructions. They do not encompass the totality of the debate by any means, but they serve to offer a framework within which to discuss the role of 'performative' within the sphere of economic life. In each model, suppliers and buyers within a market are engaged in the act of creating an exchangeable item together. So decisions in a market (for instance) are reciprocally dependent on the framing of other parties' and their perceptions. Effective information exchange to support the transparency of the operation of the market is required (Stigler, 1961; Stigler, 1967) for this purpose, if only to provide for 'accurate pricing' (Stigler, 1961 p214). The required transparency for a market also affords an adequate assessment of transaction costs (Bajari and Tadelis, 2001), without which classical economic models fail due to the opacity of pricing (Williamson, 1979).

Importantly in the models of economic life discussed herein, the social is placed at the forefront, rather than the 'rational' or 'economic' models (Fligstein, 1996; Fligstein, 2002). White argues exactly this; that rather than being neutral, actor's activities are defined by what other actors do;

"Markets are not defined by a set of buyers, as some of our habits of speech suggest, nor are the producers obsessed with speculations on amorphous demand. I insist that what a firm does in a market is to watch the competition in terms of observables" (White, 1981 p518).

The participants in a market are cognisant of the actions and propensities as displayed by others. The determinant factor affecting the markets then is the observable action of others in a market. Without it, framing is not possible. The level of transparency and information available about that market and the

participants determines the market's efficacy. From this perspective, the suggestion that supply and demand rule market behaviour is thrown aside in favour of

“...tangible cliques of producers observing each other” (White, 1981 p543)

to determine their next move. In terms of public supply markets then, lack of transparency regarding contracts, or sharing of contract details across the buyer base, would lead to market failure. This is quite different to an open ‘consumer market’ where trades are done in a manner that allows for scrutiny by all market participants, for better or worse (see Trent, 2013 and Garcia-Parpet in MacKenzie, et al., 2007 p20-53). The logic herein is reflective of a ‘bounded rationality’ in that;

“...people wish to make rational choices but they cannot always do so...”
(Jones, 1999 p298)

Due to external constraints, perception issues and a ‘willingness to cooperate’ with other actors to achieve mutual positive sum gains. Politics of the ‘social’ taking an important role in ‘negotiating’ the efficiency and purpose of the economic decisions available to them (Cochoy et al., 2010 p145).

Relating this review back to Public Procurement, we may use elements from both ‘Virtualism’ and ‘Economic Sociological’ approaches to view the market in hand. It is simultaneously an economic model built in an abstract form and an idealized realization of a vision of how markets may be operated. As result, the mode in which economic sociology engages with the abstract model of the market is instructive. However, the disengagement with broader social forms robs the significance of the social context within which the market operates. Without allowing for context and social forces to be integrated into the model, the specific capacity for embeddedness of ideas is lost. Importantly, the models both relate to what is effectively the action of specific market ‘instruments’ within a social construction. The instruments to be discussed in this thesis deal primarily with the

understanding of the discourses of the market by the participants. Therefore have a constitutive role in the creation of the market from an ideational perspective rather than constituting action as a result of changing perceptions of other actors (MacKenzie, 2006).

2.6.3 Performativity and Discourse

The process of studying a social construction is through examining the discourse of that construction. In most cases this entails the study of the process and content of language. Greek and Roman studies of the impact of language on politics are recorded (Chilton, 2003 p1) demonstrating the universality of the importance of this approach. This was due to the root acknowledgement that politics is realized through the action of language.

“...what is clear is that political activity does not exist without the use of language... the *doing* of politics is predominantly constituted in language.” (Chilton, 2003 p6 emphasis added).

As highlighted by the ‘Performativity’ literature, the actions and roles one takes within society have a distinct role in creating society, whether this be roles (Gunnarsson et al., 1997) or gender (Butler, 2002; Chambers and Carver, 2008). The production of a ‘text’ is broader than just the written or spoken word to include all ‘representations’ of a discourse. The predominance in some societies of different types of representation are themselves the subject of study and critique (Wodak and Meyer, 2009 p8). Recognising this, it is clear that language is not the sole method of interaction or organization of a social context but

...it is the most distinctive and most developed.” (Chilton, 2003 p30).

These ‘representations’, no matter their form, are seen as ‘Texts’ which may be communicated, read, and analysed. They are created, and broken according to the

relative perspective of the reader. The process of representation through texts being as much about the reading of the text as the expression that text makes of the construct (Giddens, 1984 p300). Therefore, in order to create a discourse, there has to be both an expression (a text), and an understanding at the point in which the text is read (a reader) (Freshwater, 2007 p136). The 'reader' brings to the discourse the sum of their contextual understanding. Therefore pre-existing knowledge is inherited by the discursive exchange

“The meaning of a text is not contained in the text itself. Sense is made by readers or hearers, who link their knowledge and expectations stored in long and short term memory to the processing the language input” (Chilton, 2003 p154)

This places discourse within an explicitly subjective position. Therefore 'control' of a discourse is lost at the point in which the point of expression

“Authors have intentions when they write but they cannot control or fix the meaning of a text once it is written” (Freshwater, 2007 p137).

The context then needs to be factored in to an analysis as much as the message. Without a receiver on the other end of a call, then a message is merely a shout into the void. The approach to be taken in using the discourse analysis method is therefore one that integrates the context, or the *social* as much as the individual actor. This is the core contention of Critical Discourse Analysis (CDA) which treats language as not solely as a

“...mental phenomenon, but as a social phenomenon” (Chilton, 2003 p10).

Furthermore, social contextualization

“...endeavours to make explicit power relationships which are frequently hidden, and thereby to derive results which are of practical relevance” (Wodak and Meyer, 2009 p15).

In a more isolated or agent focused analysis, the power relationships would be lost as external to the analytical focus (Preuss and Walker, 2011). The essence of ‘critical’ in this context then is cognition of the researcher in relation to the study and their recognition of the need to situate data within the social setting from whence it came (Chilton, 2003 p9). While language and behaviour are cognitive processes, Laclau and Mouffe explicitly situate the role of discourse within society, as it is through society that language (in what ever form) is created

“A discursive structure is not merely a ‘cognitive’ or ‘contemplative’ entity; it is an articulatory practice which constitutes and organizes social relations” (Laclau and Mouffe, 1985 p96).

The process of articulation of a discourse is important. It is at this point that the discourse is externalized by the individual, communicated, and may be seen and analysed. Political Discourse Analysis (PDA) offers an operationalization of this principle by looking at the process of ‘argumentation’ that is an on-going ‘performative’ process. From this perspective, politics is the study of a process of realization of discourse through action. Therefore expressing and understanding the process of that realization through ‘argumentation’ gives greater scope for analysis of politics than merely that of ‘representation’.

“We would suggest rather that getting people to accept a particular narrative of the crisis, to see it a certain way, is generally a political concern precisely because it gives people a reason for favouring or accepting certain lines of action and policies rather than others.” (Fairclough and Fairclough, 2013 p5).

This approach is

“...grounded in a view of politics where questions about decision and action are the fundamental questions, will see ways of representing reality as subordinated to the question about what to do, to action” (Chilton, 2003 p20).

The focus on agency in the PDA context may however lead to a lack of engagement with systemic issues. The ‘representation’ route of CDA instead allows for the expression of systemic preference to be tracked rather than relying upon ‘action’ to be taken in order to reveal a construct. Both approaches make in roads towards the realization of ideology within constructions, and the perpetuation of the same. But the lack of recognition of ideational hegemony leaves the structure within the purview of the actors to solely define. This is not the case in asymmetrical power relationships where ‘sticky’ hegemonic concepts hold sway.

A criticism that this author can level at the processes and insights contained in the aforementioned discourse methods is that positivism, and logical rationalism are given dominance. The rules of language are themselves said to be logical and engender a particularly rationalized perspective on behaviour and representation of reality. Causality is attributed to the processes identified in discourse. Outside of this perspective action and implementation of policy may be delinkaged as a result of a lack of embeddedness of the discourse within the actions of the individuals. So while the representation itself is constituted through language and discourse, the ‘actual’ reality may be quite different. The internal decision making of the individuals may not be ‘rational’ in this case. Therefore other ‘rational’ perspectives and imposed motivations, (such as the ‘performativity’ of economics Callon et al., 2007; Callon, 1998c) lose traction.

Looking back at the overall discussion here regarding social constructivism and discourse, we may draw three key points. These are to be used for the analysis of the Public Procurement Market in the later chapters of this thesis.

Firstly, language is important. Politics is created through language, and the process of using that language. Therefore studying how certain terms, and representations are made through language is key in understanding how a social construction in this context may be studied.

Secondly, there are linkages in the study of discourse to both 'active' (illocutionary) and 'passive' (locutionary) speech acts. But the 'speech acts' in this context are not those contained within a discreet 'linguistics' context (of a sentence) but within broader signifiers and social processes (to include rituals, certain policy processes etc). The representation of an idea, ideology, or paradigm may be multifaceted in 'language' and in 'statistical' market data – there are both 'texts' to be understood. Additionally, they are not just a solitary expression, but are 'texts' as a result of their reading by actors aside from the originators.

Thirdly, the process of discourse is a socially bound one as it involves both the projection, and acceptance of a 'speech act'. Therefore to remove oneself from a socially bound frame of analysis (into a solely cognitive one for instance Preuss and Walker, 2011) would remove 'half' of the story. For it is in the rejection of dichotomy that discourse is created.

2.7 Summary

The previous sections have outlined the ontological perspective that has been used in the writing of this thesis; that the social matters, the perpetuation of ideas matter, and their impact can be located within an economic sphere as markets are social constructions like any other. According to this thesis, Procurement is being

established through the discourse of a market with certain hegemonic principles attached as to what the market represents. This is particularly important as

“Although the market has been an ancillary institution in human societies ever since production outstripped subsistence needs, it is only within capitalism that market trade becomes the beginning point and destination of all economic activity” (Polanyi 1944 p43 in Heino, 2015 p461)

As a result of reliance on capitalist market paradigms to realize public policy branded as ‘Procurement’ a specific ideational framing is placed on the realization of the public sphere. Procurement then is not a ‘technocratic’ or neutral policy implementation mode (as suggested by certain studies Boros, 2012a; Chien and Shih, 2007; Commission., 2012; Trybus, 2006) but inherently ‘political’. The process of commission reporting and debate creates the ideational basis in the public sphere of the understanding of what Procurement is in the public sphere. This is being ‘met’ or contextualized through the market participant understanding; an insight that fits with the perspective that the European Union is as much a project of ideational or normative construction as a legislative or regulatory project:

“The various attempts to capture the Union’s nature are not mere descriptions of an unknown polity, but take part in the construction of the polity itself. To that extent they are not politically innocent, and may themselves become the subject of analysis, along with articulations from other actors.” (Diez, 1999 p599).

It is therefore appropriate to look at the mechanisms through which Procurement is acted within the European Union. It is through understanding the dynamics of discourse creation, perpetuation, and projection, that we may have a greater insight into the underlying power dynamics of the market, and by extension the State’s relationship with society.

The question to be asked of the thesis under Research Question 1, is whether the projection of a discourse by an external political project (the EU's institutions) has the capacity to 'perform' the market in a manner that crosses the socio-state divide, and has a 'real' impact in society. This is the definition of 'Impact' to be used in this work. The relationship that the actors have with the procurement market and the dense technical language used to create it, may lead to an insulating process that dis-integrates the market participants from broader societal interaction.

Further, a silo approach to data dissemination may demonstrate how participants, when operating in a formalized market, become conditioned to engage in particular activities. Research Question 2 looks to investigate the primary mode of operation of this market through the Tenders Electronic Daily (TED) market instrument. This shall indicate how actors are engaged by the hegemonic discourse of procurement promoted by the European project. In engaging with this discourse, they become Europeanised agents of State change. Whether this is realized in the 'real world' or practical implementation of the projects and procurements they are undertaking is beside the point – there is a potential for this to be the case theoretically that has not been considered in the drive towards the imposition of a private market model (that may be considered 'neoliberal') in the realisation of the State. Actors touching the market 'perform' an act that represents the process of Europeanised 'procurement' as an additional layer of reality aside from the 'real' exchange being undertaken.

The perspective that 'there is no reality outside that created by the social' is tested through this study in particular. The social act of procurement may occur separately from the objective reality of purchasing, but in public policy implementation senses, there is always a 'concrete' or real world actualization of policy that has impact on the material conditions of the public. Roads, buildings, electrical infrastructure all still come into being. This is quite different therefore to other more normative studies of policy implementation (Checkel, 1999b; Laffan, 2001; Diez, 2005; Parker and Rosamond, 2013) in that the main outcome focus has a *physical* outcome.

The following chapters will investigate the development of the procurement market, and the discourses representing and creating it. These will be shown to have developed over time, just as the regulatory regime constituting them have done. In particular, the inclusion of social and environmental issues have been integrated in the 2000s, along with further extension of the scope of the practice. The discourse's change shows the fluid manner in which the core principles of the internal market may be reinterpreted extended over time to include further considerations. In many ways this echoes the principle of the extension of the European Union in defining the practice of procurement – the manner in which the emphasis of this aspect of the European Variety of Capitalism (Van Apeldoorn, 2002) takes root, defines, and gains traction within the confines of the member states. It also signifies the definition of the market and markets, as being viewed in a manner that needs to be more socially embedded in the post fiscal crisis environment (Becker and Jäger, 2012).

Chapter 3: The Creation of the EU Public Procurement Market

The History and Discourses of The Social Construction of the Public Procurement Market from 1957 to 2010

3.1 Introduction

This chapter analyses the development of the Public Procurement market from inception in the early 1960s, to the start of the ‘modernisation’ programme in 2010. In doing so, the chapter shows the development of certain core themes that will be returned to in a subsequent chapter. These themes relate to the creation and use of the discursive construction of Public Procurement as a policy instrument for the advancement of European Integration. The market for Procurement was important in promoting a political agenda in the early stages of the Common Market, and has remained a core concern throughout. The political integration programme is understood here as being represented by the preamble of the Treaty of Rome, specifically that the Community is;

“DETERMINED to lay the foundations of an ever-closer union between the peoples of Europe” (European Community, 1957)

The ‘Peoples of Europe’ in this context represent an aim to develop closer societal and social linkages through the integration of political institutions. This agenda became subordinate in the popular presentation of Europe to alternative discourses of Integration revolving around Economic rationales. The development of the Market in this manner is emblematic of the growth and development of the European Union as a whole.

The content of this chapter shows the discursive representation of the market changing over time, steered by the Commission and the European Institutions, for

the realisation of the time's particular political purpose. This is a 'performative' process of creating discursive hegemony within the social construct. This process sits alongside the legislative construction of the market's instruments and institutions. I argue in that the process of information framing and control has a consequent performative impact itself on the perception of the market participants. The capacity for the EU to shift the discursive emphasis of the market is itself a policy instrument in the ideational creation, legitimisation, transmission and embedding of the market paradigm. The aspirations for the market examined at each stage effectively leading to modulation of the nature of the State within the European sphere. The source of these aims eventually becomes implicit within the ideational focus of modern capitalism as expressed through the development of European Integration. As a result, hegemony drives forward the political process of 'ever closer Union'. The discourse therefore becomes 'performative' in creating the conditions for market operation, and the emphasis of how that market operates as described in the analytical framework developed in Chapter 2.

The materials used to assemble this chapter are detailed in table 2 and encompass a range of primary and secondary sources. It is not the intention of this work to present an exhaustive historical recounting of European economic integration; such accounts are already available (Howarth and Sadeh, 2010, Moravcsik, 1991, Smith, 2001) and the range of such a discussion would obscure the core concerns of this work. Similarly, exhaustive accounting of the development of the market in the early stages, exist and were written at contemporaneous points allowing for a rich engagement with the source and context (Sohrab, 1990 and Winter, 1991 in particular). This chapter instead considers the argumentation of the core discourses of the Public Procurement market by the European Institutions (primarily the Commission). These discourses are presented in the 'market facing' literature that includes the directives, guidelines, speeches, and clarifications concerning the purpose and likely impact of the market. At certain points, the key reports and reviews have been referenced specifically the 'Cost of Non-Europe' (Albert and Ball, 1984). These were included for consideration as they were pivotal publicly available

documents that concerned the future of the European economy and shaped the manner in which debate occurred.

The documents referenced were chosen against two main criteria; Firstly, their origin as being from the European Institutions, the Commission, Council, and Parliament. Legal rulings are mentioned where they have specific effect on the subsequent discursive construction of the market. What is not included is the effect of judicial activism (Stone-Sweet, 2010) and 'Integration through Law' (Scharpf, 2009). This phenomenon is primarily addressed through the periodic integration of legal precedent into the EU directives. Secondly, the sources were chosen for their likely effect within the social construction of the market with due consideration for the issue of 'post-positivist' vs 'critical' engagement with the source texts (Creswell, 2009 p24). So while there are elements that are 'positivist' accounting of the 'value' of the market and the use of economic arguments within the market, these are included for their likely impact on the actors within the confines of that paradigm.

Table 2 also highlights the status of each of the instruments referenced during chapter 3. Included are three main forms; regulations, directives, and laws. Each is referenced in the manner that the European Union institutions usually apply them. So for clarity, a 'Regulation' is "a binding legislative act" (Commission, 2016) that has direct effect across the EU at the point of being agreed. A 'Directive' is an act or goal that the member states of the European Union agree should be reached by whichever agencies, or organisations are the target of the Directive. In the case of the Public Procurement Directives, the Commission issues a Directive to the member states to change their national legislation to accommodate the agreed position of the European Union. The member states then must 'transpose' the Directive into national 'Law' within a particular time frame. Also included in the below table are the White Papers, Reports, and other major documents that 'create' the market. These documents were all publicly available, outward facing documents (or discussion papers publicly issued for intra-institutional debate)

rather than ‘intra-institutional’ documentation. As such, they assisted in the creation of the discourse of the market for the participants.

Each of the documents is referenced by a number and when mention of this document is given throughout this text, the number shall be used alongside the usual referencing system to aid the reader.

Table 2: Discourse Sources that ‘Created’ the Market 1964 to 2010.

Text	Date	Originating Body	Reference	Title	Category of Document
1	01-Jul-64	Official Spokesman of the Commission	P-48/64	Information Memo, Award of Public Works Contracts	Commission Communication
2	28-Jul-64	Executive Secretariat of the European Economic Community	No. 9/10 - 1964	Supplement to Bulletin of the European Economic Community: Proposal for a first directive of the Council on the coordination of procedures for the conclusion of public works contracts	Commission White Paper
3	01-Jun-65	Official Spokesman of the Commission	P-45/65	Information Memo, Public Works Contracts	Commission Communication
4	01-Sep-70	European Commission	No. 138	European Community	Annual Report
5	01-Jan-71	European Commission	No. 141	European Community	Annual Report
6	01-Mar-71	Official Spokesman of the Commission		Information Memo. Proposal for a directive coordinating procedures for concluding public supply contracts	Commission Communication
7	26-Jul-71	European Commission	71/304/EEC	Concerning the abolition of restrictions on freedom to provide services in respect of public works contracts and on the award of public works contract to contractors acting through agencies or branches.	Directive
8	26-Jul-71	Council of the European Communities	71/305/EEC	Council Directive concerning the Co-Ordination of procedures for the award of public works contracts	Council Directive
9	16-Aug-71	Council of the European Communities	71/306/EEC	Council Decision of 26 July 1971 setting up an Advisory Committee for Public Works Contracts	Council Decision
10	16-Oct-71	Council of the European Communities	C82/13	Declaration by the Representatives of the Governments of the Member States meeting in the Council concerning procedures to be followed in the field of public works concessions	Council Declaration
11	26-Jul-72	Council of the European Communities	72/277/EEC	Council Directive concerning the details of publication of notices of public works contracts and concessions in the Official Journal of the European Communities.	Council Directive
12	21-Dec-76	Council of the European Communities	77/62/EEC	Council Directive of 21 December 1976 coordinating procedures for the award of public supply contracts	Council Directive

13	21-Dec-76	Council of the European Communities	C11/1	Council Resolution of 21 December 1976 concerning access to Community public supply contracts for products originating in non-member countries	Council Resolution
14	21-Dec-76	Council of the European Communities	C11/3	Council Resolution of 21 December 1976 concerning the review of Directive 77/62/EEC coordinating procedures for the award of public supply contracts	Council Resolution
15	29-Jul-77	European Commission	No C/181/4	Public Works Contracts: Publication of Notices of public works contracts and licences in conformity with Council Directive 71/305/EEC of 26 July 1971 supplemented by Council Directive 72/277/EEC of 26 July 1972. Model Notices of Contracts.	Commission Directive
16	21-Feb-78	Council of the European Communities	78/669/EEC	Council Directive of 2 August 1978 amending Directive 71/305/EEC concerning the coordination of procedures for the award of public contracts	Council Directive
17	21-Feb-78	Council of the European Communities	78/166/EEC	Council Directive of 13 February 1978 concerning coordinated statistics on the business cycle in building and civil engineering	Council Directive
18	16-Aug-78	Council of the European Communities	78/669/EEC	Council Directive of 2 August 1978 amending directive 71/305/EEC concerning the coordination of procedures for the award of public works contracts	Council Directive
19	17-Mar-80	Council of the European Communities	80/271/EEC	Council Decision of 10 December 1979 concerning the conclusion of the Multilateral agreements resulting from the 1973 to 1979 trade negotiations	Council Decision
20	18-Aug-80	Council of the European Communities	80/767/EEC	Council Directive of 22 July 1980 adapting and supplementing in respect of certain contracting authorities Directive 77/62/EEC coordinating procedures for the award of public supply contracts	Council Directive
21	26-Nov-83	European Commission	No C 320/2	Equivalents of ECU applicable as from 1 January 1984 for: Public works contracts cited in Council Directive 71/305/EEC of 26 July 1971 as amended by Council Directive 78/669/EEC of 2 August 1978 AND Public supplies contracts cited in Council Directive 77/62/EEC of 21 December 1976 as amended by Council Directive 80/767/EEC of 22 July 1980.	Commission Directive
22	18-Dec-84	European Commission	84/C 338/07	Value of public supply contracts covered by Council Directive 80/767/EEC of 22 July 1980 and by the Agreement on government procurement concluded within the framework of the GATT and approved by Council Decision 80/271/EEC of 10 December 1979	Commission Directive
23	14-Jun-85	European Commission	COM(85) 310 final	Completing the Internal Market	Commission White Paper
24	25-Nov-86	European Commission	86/C 300/02	Value of public supply contracts covered by Council Directive 80/767/EEC of 22 July 1980 and by the agreement on government procurement concluded within the framework of the GATT and approved by Council Decision	Commission Directive

				80/271/EEC of 10 December 1979	
25	09-Dec-87	Council of the European Communities	87/565/EEC	Council Decision of 16 November 1987 concerning the conclusion of the Protocol amending the GATT agreement on Government Procurement	Council Decision
26	09-Dec-87	European Commission	87/C 330/04	Value of Public Supply Contracts covered by Council Directive 80/767/EEC of 22 July 1980 and by the Agreement on government procurement concluded within the framework of the GATT and approved by Council Decision 80/271/EEC of 10 December 1979	Commission Directive
27	09-Dec-87	European Commission	87/C 330/05	Equivalents of ECU applicable as from 1 January 1988 for: Public works contracts cited in Council Directive 71/305/EEC of 26 July 1971 as amended by Council Directive 78/669/EEC of 2 August 1978 AND: Public Supplies contracts cited in Council Directive 77/62/EEC of 21 December 1976 as amended by Council Directive 80/767/EEC of 22 July 1980	Commission Directive
28	30-Jan-88	European Commission	88/C 25/03	Commission communication regarding the entry into force of the Protocol amending the GATT agreement on Government Procurement	Commission Communication
29	22-Mar-88	European Commission	88/295/EEC	Directive relating to the coordination of procedures on the award of public supply contracts.	Commission Directive
30	13-Apr-88	European Commission	SEC (88) 524 final	Europe 1992 The Overall Challenge (Cecchini Report)	Commission White Paper
31	18-Jul-89	Council of the European Communities	89/440/EEC	Directive concerning coordination of procedures for the award of public works contracts.	Council Directive
32	24-Jul-89	European Commission	COM(89) 400 final	Public Procurement Regional and Social Aspects	Commission Communication
33	21-Dec-89	Council of the European Communities	89/665/EEC	Directive on the coordination of the laws regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.	Council Directive
34	21-Dec-89	Council of the European Communities	89/665/EEC	Council Directive of 21 December 1989 on the Coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts	Council Directive
35	30-Dec-89	Council of the European Communities	89/665/EEC	Council Directive of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts	Council Directive
36	17-Sep-90	Council of the European Communities	90/531/EEC	Directives on the procurement procedures of entities operating the water, energy, transport, and telecommunications sectors.	Council Directive

37	04-Apr-91	European Commission	CCO/91/20 rev1	Compendium of the Principle Legal Texts for Public Procurement to March 1991	Commission and Council Directives
38	25-Feb-92	Council of the European Communities	92/13/EEC	Council Directive of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.	Council Directive
39	18-Jun-92	European Commission	92/50/EEC	Directive coordinating procedures for the award of public supply contracts.	Commission Directive
40	01-Jan-93	European Commission	111/B/4	The Opening-up of Public Procurement	Commission Report
41	16-Apr-93	European Commission	COM(93) 69 final	Proposal for a Council decision adopting a multiannual Community programme to support the implementation of trans-European networks for the interchange of data between administrations (IDA)	Commission White Paper
42	14-Jun-93	Council of the European Economic Communities	93/37/EC	Directive concerning the coordination of procedures for the award of public contracts.	Council Directive
43	14-Jun-93	Council of the European Economic Communities	93/38/EC	Directive coordinating procurement procedures of entities operating in water, energy, transport and telecommunications sectors.	Council Directive
44	14-Jun-93	Council of the European Economic Communities	93/36/EC	Directive coordinating procedures for the award of public supply contracts.	Council Directive
45	22-Dec-93	European Commission	COM(93) 632 final	Making the Most of the Internal Market Strategic Programme	Commission Report
46	14-Mar-94	European Commission	COM(94) 55 final	The Community Internal Market. 1993 Report	Commission Report
47	15-Jun-95	European Commission	COM(95) 238 final	The Single Market in 1994	Commission Report
48	27-Sep-95	European Commission	COM(95) 436 final	Amended proposal for a Council Decision adopting a multiannual Community programme to support the implementation of trans-European networks for the interchange of data between administrations (IDA)	Commission White Paper
49	06-Nov-95	Council of the European Economic Communities	95/468/EC	Council Decision of 6 November 1995 on a Community Contribution for telematic interchange of data between administrations in the Community (IDA)	Council Decision
50	20-Feb-96	European Commission	COM(96) 51 final	The Single Market in 1995	Commission Report
51	10-Jun-96	European Commission	COM(96) 329 final	Integrated Programme for Small and Medium sized enterprises (SMEs) and the Craft Sector	Commission Communication
52	03-Sep-96	European Commission	96/527/EC	Commission Recommendation of 30 July 1996 on the Use of Common Procurement Vocabulary (CPV) for describing the subject matter of public contracts	Commission Recommendation
53	27-Nov-96	European Commission	COM(96) 583 final	Green Paper Public Procurement in the European Union: Exploring the Way Forward	Commission Green Paper
54	06-Dec-96	European	COM(96)	Trans-European Networks 1996 Annual	Commission

		Commission	645 final	Report	Communication
55	01-Jan-97	Eurostrategy	C1-69-96-002-EN-C	The Single Market Review. Subseries III: Dismantling of Barriers. Volume 2: Public Procurement	Commission Report
56	11-Aug-97	Committee of the Regions	97/C 244/06	Opinion of the Committee of the Regions on the 'Green Paper on "Public procurement in the European Union: Exploring the way forward"	Committee of the Regions Opinion
57	22-Sep-97	Economic and Social Committee	97/C 287/20	Opinion of the Economic and Social Committee on the Green Paper entitled Public Procurement in the European Union: Exploring the way forward	ECSC Published Opinion
58	01-Jan-98	European Commission	NA	The European Court of Auditors 1977 to 1997	Commission Press Release
59	16-Feb-98	European Union	1998/4/EC	Directive on coordinating the procurement procedures of entities in the water, energy, transport and telecommunications sectors.	Council Directive
60	11-Mar-98	European Commission	COM(98) 143 final	Public Procurement in the European Union	Commission Communication
61	23-Apr-98	European Commission	COM(98) 203 final	Report from the Commission concerning negotiations regarding access to third country public procurement markets in the fields covered by Directive 93/38 (The Utilities Directive).	Commission Report
62	01-Jul-98	European Commission	CB-PP-88-002-EN-C	Public Procurement and Construction. Towards and Integrated Market	Commission Communication
63	10-Jul-98	Economic and Social Committee	98/C 214/09	Opinion of the Economic and Social Committee on: The Proposal for a European Parliament and Council Decision on a series of guidelines, including the identification of projects of common interest, for trans-European networks for the electronic interchange of Data between administrations (IDA) and; The Proposal for a Council Decision adopting a series of actions and measures in order to ensure interoperability of and access to trans-European networks for the electronic Interchange of Data between Administrations (IDA)	ECSC Published Opinion
64	16-Sep-98	Committee of the Regions	CoR 108/98 final	Opinion on the Communication from the Commission on public procurement in the European Union from the European Union Committee of the Regions on COM(98) 143 final	Committee of the Regions Opinion
65	02-Dec-98	Committee of the Regions Opinion	98/C 373/02	Opinion of the Committee of the Regions on the 'Communication from the Commission: Public Procurement in the European Union'	Committee of the Regions Opinion
66	28-Apr-99	European Commission	COM 99/027	White Paper on Modernisation of the Rules Implementing Articles 85 and 86 of the EC Treaty	Commission White Paper
67	29-Apr-00	European Commission	2000/C 121/02	Commission interpretative communication on concessions under community law	Commission Communication
68	01-Mar-01	European Commission	COM(01) 98 final	Creating an Entrepreneurial Europe The Activities of the European Union for Small and Medium Sized Enterprises	Commission Report

				(SMEs)	
69	03-Aug-01	European Commission	2002/C 25 E/01	Proposal for a regulation of the European Parliament and of the council on the Common Procurement Vocabulary (CPV).	Commission White Paper
70	13-Sep-01	European Commission	2001/78/EC	Amending directive on the use of standard forms in the publication of public contract notices.	Commission Directive
71	13-Sep-01	European Commission	2007/78/EC	Commission Directive 2001/78/EC of 13 September 2001 amending Annex IV to Council Directive 93/36/EEC, Annexes IV, V and VI to Council Directive 93/37/EEC, Annexes III and IV to Council Directive 92/50/EEC as amended by Directive 97/52/EC, and Annexes XII to XV, XVII and XVIII to Council Directive 93/38/EEC as amended by Directive 98/4/EC (Directive on the use of standard forms in the publication of public contract notices).	Commission Directive
72	21-Jul-03	European Union	EC 1059/2003	Regulation EC No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the Establishment of a Common Classification of territorial units for statistics (NUTS)	Regulation
73	01-Jan-04	European Commission	NA	Buying Green! A handbook on environmental public procurement	Commission Report
74	03-Feb-04	European Commission	NA	A report on the functioning of public procurement markets in the EU: benefits from the application of EU directives and challenges for the future	Commission Report
75	31-Mar-04	European Commission	2004/18/EC	Directive on the coordination of procedures for the award of public works contracts, public supply contracts, and public service contracts.	Commission Directive
76	31-Mar-04	European Commission	2004/17/EC	Directive on the coordination of procurement procedures of entities operating in the water, energy, transport and postal services.	Commission Directive
77	31-Mar-04	European Union	2004/18/EC	Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.	Council and Parliamentary Directive
78	01-Aug-04	European Commission	No 209	European Economy, European Commission (DG for Economic and Financial Affairs) Economic Papers: No. 209 The Link Between Product Market Reform and macro-economic performance.	Commission Report
79	01-Jan-05	European Dynamics	NA	Functional Requirements for Conducting Electronic Public Procurement Under the EU Framework Volume 1	Commission Report

80	01-Jul-05	OMC-PTP project. Bodewes, H., Hargeskog, S.E., Müller, L., Ottolander, M., Thevissen, P., Veys, C., Widmark, N. and Rolfstam, M.,	NA	Exploring Public Procurement as a Strategic Innovation Policy Mix Instrument.	OMC-PTP EU Funded Project.
81	07-Sep-05	European Commission	2005/51/EC	Amending Annex XX of directive 2004/17/EC	Commission Directive
82	11-Oct-05	European Commission		Public Procurement: Commission promotes online advertising of public contracts EU-wide	Commission Communication
83	16-Nov-05	European Commission	2005/75/EC	Correcting Directive on the coordination of procedures for the award of public works contracts, public supply contracts, and public service contracts.	Commission Directive
84	01-May-06	DG Internal Policies of the Union. Policy Department: Economic and Scientific Policy	IP/A/IMCO/OF/2006-071	The Public Procurement directives: Transposition in EU member states - Briefing Note	EU Parliament Report
85	23-May-07	European Commission	2007/24/EC	Directive 2007/24/EC of the European Parliament and of the Council of 23 May 2007 repealing Council Directive 71/304/EEC concerning the abolition of restrictions on freedom to provide services in respect of public works contracts and on the award of public works contracts to contractors acting through agencies or branches	Commission Directive
86	31-May-07	European Commission	SEC(2007) 280	Guide on dealing with innovative solutions in public procurement: 10 elements of good practice	Commission Report
87	11-Dec-07	European Commission	2007/66/EC	Directive with regard to improving the effectiveness of review procedures concerning the award of public contracts.	Commission Directive
88	11-Dec-07	European Union	2007/66/EC	Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts.	Council and Parliamentary Directive
89	01-Jan-08	European Commission	COM(2007) 799 final	Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions. Pre-Commercial Procurement: Driving Innovation to Ensure High Quality Public Services in Europe	Commission Communication
90	09-Jun-08	European Commission	C 115/203	Protocols: on the Role of National Parliaments in the European Union	EU Operational Protocols
91	09-Jun-08	European Union	C 115/331	Annexes for the Treaty on the Functioning of the European Union - Annex 1 List referred to in Article 38 of the Treaty on the Functioning of the European Union	EU Treaty Document

92	24-Jun-08	European Commission	COM(2008) 387 final	Communication from the Commission to the Council and the European Parliament. Public Finances in EMU - 2008. The Role of Quality of Public Finances in the EU Governance Framework	Commission Communication
93	25-Jun-08	European Commission	SEC(2008) 2193	European code of best practices facilitating access by SMEs to public procurement contracts	Commission Report
94	25-Jun-08	European Commission	SEC(2008) 2193	Commission Staff Working Document: European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts	Commission Report
95	21-Aug-08	European Economic Area	53/2008	Decision of the EEA Joint Committee No 53/2008 of 25 April 2008 amending Annex XVI (Procurement) to the EEA Agreement	EEA
96	18-Nov-08	European Commission	SEC(2008) 2854	Commission Staff Working Document accompanying the 25th Annual Report on Monitoring the Application of Community Law (2007) Situation in the Different Sectors	Commission Report
97	29-Nov-08	European Central Bank	ECB/2008/17	Decision of the European Central Bank of 17 November 2008 laying down the framework for joint Euro system procurement	ECB Decision
98	13-Jul-09	European Commission	2009/81/EC	Directive on coordination of procedures for the award of certain works contract, supply contracts and service contracts by contracting authorities in the fields of Defence and Security.	Commission Directive
99	09-Jan-10	European Commission	2010/12/EU	Exempting certain financial services in the postal sector in Italy from the application of directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.	Commission Decision
100	01-Mar-10	European Commission	EUR 24708 EN - 2010	European Commission, Joint Research Centre, Institute for Environment and Sustainability: International Reference Life Cycle Data System (ILCD) handbook; General Guide for Life Cycle Assessment - Detailed Guidance.	Commission Report

3.1.1 Outline of the Market

The Treaty of Rome on 25 March 1957 allowed for not only the removal of barriers to trade between the member states of the EU (including distortionary governmental interventions), but also the erection of external barriers to trade. The community was seeking a structural coherence that would both consolidate post war reconstruction, and bring the states closer together. The manner in which

Government procurement was discussed at this time was predominantly its use in the implementation of industrial policy, anti-cyclical economic stimulus, and national redistributive spending policies (Winter, 1991 p742). The specific development efficacy of these practices is questionable, but by pooling the opportunities for government contracts amongst the member states, it was thought that the states could share equally in their position of global advantage as a block, and move forward towards ever closer union and stability (Nugent, 2003 p44). Initial innovations focused on the harnessing of particular supply side developments that were under the auspices of the State; namely, the European Coal and Steel Community (ECSC), and nuclear fissile materials (through the European Atomic Energy Community) (Barnes, 2008). Later projects, such as the Common Agricultural Policy (CAP), and Fisheries policy both fit into the logic of supply side aggregation and market control.

At the very outset, a Public Procurement regime was envisaged (European Community Information Service, 1962) that would serve to 'pump prime' increased integration of the member state economies, and specifically their polity. As the largest single source of demand in the European economies, the State would have traditionally sourced materials for industries under their control from national suppliers; the so-called 'Home Bias'. The proposed European wide Public Procurement market would instead open competition for these contracts to suppliers from other member states. It was argued that, the eschewing of traditional favouring of national suppliers would serve to both reinforce mutual benefits of membership, and to normalize cross border trade between states; hopefully leading to further scale gains for the participating economies (Owen, 1976, Owen, 1983). Cross border trade was posited as a major aim for the deepening integration of the European economies, as seen in the European Coal and Steel Community (Bebr, 1953). Despite many changes to the supporting institutional structures, the level of intervention in the economy, and the methods of communication, the fundamental approach has been the

“...elimination of all obstacles to intra-community trade in order to merge the national markets in to a single market bringing about conditions as close as possible for a genuine internal market...” (Winter, 1991 p741).

Procurement however has not solely relied upon removal of obstacles or barriers to supply across borders through standardization (Wettig, 2002). It has also used the ‘positive integration’ approach (Scharpf, 1996,). That is to say that new legislation was generated to drive forward integration through the creation of a new economic space, as opposed to the removal of the State from the equation and allowing the market to operate in an unimpeded manner. The technical problems with this approach are legion in the context of the reality of state support for the operation of national markets in an integrating market space (Balassa, 1963 p166; Grin, 1983 p4). The ‘positive’ approach has been seen particularly in ‘State Aid’ (Blauberger, 2008, Blauberger, 2009b; Blauberger, 2009a, Evans, 1997) ‘Competition Policy’ (Börzel, 2010, Cini and McGowan, 2009) and the pro-active management of agriculture and fisheries (Kay, 2003). While the ‘Free Market’ is an oft cited meme and referred to as a process of ‘de-regulation’, the development of much of the Single European Market has been through the EU operating in a ‘positive integrationist’ manner (Smith, 2010).

To create the market, directives were agreed that required the Contracting Authorities (any public body forming a contract) to adhere to certain standards and processes when tendering. These requirements began modestly with relatively high value contracts included. The value threshold at which the market’s regulations apply have, by the time of writing, fallen to £172,514 when buying goods and services, and £4.3M for Construction works for the majority of organisations (Commission Communication 2015/C 418/01). Importantly, the format in which contracts may be advertised has been strictly controlled to allow for translatability across languages, policy tracking, and market participant analysis.

3.1.2 Process of the Changing Discursive Basis of the Market

The embodied discourses had a role in both reflecting the intention of the framers of the market, and in performing the market itself. In the 1960s, the concept of the market followed a 'pump priming' logic of increasing political integration through economic integration in as higher spend area as possible. The market was refined in the 1970s under a banner of 'coordinating' the governance processes and improving the governability of the EU states. A later burst of expansion was brought in the 1980s by the Single European Market (SEM) agenda. The SEM shifted the procurement market into further areas and brought a specifically economic intention with it, eschewing the earlier 'political integration' aspirations. The 1990s saw the development of the 'Community' into the 'Union', and with it, revision of the programmes established in the 1980s. Most importantly at this point was a move towards integrating the new Information Technologies to further expand the market's remit. More contemporaneously between 2001 and 2004, the procurement directives underwent a significant modernisation. During this period case law from the European Court of Justice was integrated, and new imperatives in both contracting and globalizing supply chains recognised. All of these innovations were to be captured and utilised to improve government efficiency and value for money. Thus developments in the eProcurement field were noted and provisions made for increasingly complex modern contracting relationships.

Between 2004 and 2010 there were some significant extensions to the market when Defence was included in a specific Procurement Directive 2009/81/EC (European Commission, 2009). As this is a highly complex, and relatively recent addition to the market, a detailed discussion of the 2009 Defence Procurement directives has been excluded (although they are briefly mentioned later in this chapter as a development of the market in 2009 for context). This is for three reasons; firstly, where discussions of sectoral change are included, the consistency afforded through relying on the 'classical' 'Goods, Services, and Construction' sectors allows for a perspective stretching back over 40 years. As mentioned in the

introduction to this thesis, emphasis has been placed on these directives rather than the wider implementation in the Utilities sector. Secondly, the supplier and contracting authority base is quite distinct. There are fewer non-governmental and disaggregated procurements in the same manner that the 'Classical' directives extend beyond traditional public/private organisations. Thirdly, the additional complexity would risk diluting the focus in the next Chapter on the development of the 2014 directives. Turning to these directives, from 2010 to 2014 (during the writing of this thesis) another modernisation of the market was agreed. This represented a further shift in the emphasis of the market; explicitly forming linkages with a range of social aims.

By way of organisation, this chapter has been structured around the major directive changes that constitute the market. The reviews and other published documents that contribute to this analysis are, on the whole, in service of a particular revision of the market that is then expressed at each stage as a new directive. Therefore organising the chapter in this manner reflects the phases of reappraisal and repositioning of the market, and the consequent changes to the market instruments that facilitate it.

Table 3 highlights the key elements that have been identified in the discourse of the market. This table is offered in order to aid navigation of the rest of the chapter. While there are some elements that underpin the entire construction of the market, there is a shift over time from the initial establishment of the market to the end of this chapter's period of concern. One can see developing in the discourse of the market a slow shift in the emphasis of which mirrors the overall development of the European Union because the policy area is one of the emblematic developments of the European project. Appendix 2 at the end of this thesis has a full record of the documentary sources used for this thematic identification.

3.2 Early Development of The Common Market 1962 To 1970

3.2.1 Proposed Directives 1962 to 1964

The European procurement market was discussed as early as April 1962, only four years after the formal establishment of the Community, with a Commission working group established to draft proposals for an integrated regime involving the 6 member states. According to contemporary Commission press releases, the intention was to remove

“... all restrictions on the right of establishment in member countries... and all services in the Six be freed of national restrictions. Within this framework, discrimination on grounds of nationality would be abolished in the award of public works contracts let by national or local governments.” (European Community Information Service, 1962).

We can see that the language here focuses on the economy in member States being ‘freed of national restrictions’. This emphasis plays into a perspective of establishing the EEC as a facilitator of the aim from the Treaty of Rome

“...to establish the foundation of an ever closer union among the European Peoples.” (European Community, 1957, Preamble)

The requirements of the proposed directives were intended to be in place

“... before the end of the Common Market’s transition period (probably January 1, 1968)” and include “...standards for selection and award to all public contracts in excess of \$600,000.” (European Community Information Service, 1962).

There was no direct basis for the establishment of the directives in the Treaties, but Articles 7, 30, 52, 53, 59, 60 and 90 relate to the completion of the 'Common Market' and the principles of non discrimination for economic participants across the Community (Valentine, 1958). The distinct legal foundation for the Commission to take action in developing the Common Market was clarified in two European Court of Justice judgements. The first was the Judgment of the Court of 5 February 1963 in the case of 'NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration' (Case 26-62 / 61962J 0026). The effect of this ruling is best expressed by two points in the 'Summary' of the judgement by the Court:

“3. The European Economic Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only the member states but also their nationals.” (Justice, 1963)

And

“5. According to the spirit, the general scheme and the wording of the EEC treaty, article 12 must be interpreted as producing direct effects and creating individual rights which the courts must protect” (Justice, 1963)

The above two points mentioned in the ruling lead to the clarification of the principle of 'direct effect' of the Treaty, and the consequent porosity of the member states with regards the governance of policy areas that relate to areas of competency transferred to the European Sphere.

The second was 'Judgement of the Court of 15 July 1964 of Flaminio Costa vs E.N.E.L (E.N.E.L being the Italian state-owned electricity company) (Case 6/64, 61964J

0006). The ruling clarified the hierarchy of legal institutions, and the dominance of the European Court. Specifically:

“By creating a community of unlimited duration, having its’ own institutions, its’ own personality, its’ own legal capacity and capacity of representation on the international plane and more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights and have thus created a body of law which binds both their nationals and themselves” (Court of Justice, 1964 Summary Point 3)

And

“7. A Member State’s obligation under the EEC treaty... is legally complete and consequently capable of producing direct effects on the relations between Member States and individuals. Such an obligation becomes an integral part of the legal system of the Member States, and thus forms part of their own law, and directly concerns their nationals in whose favour it has created individual rights which national courts must protect.” (Court of Justice, 1964)

This ruling asserted the ‘direct effect’ of Community law, and has proved influential as the basis for the creation and operation of governance systems that extend through the national boundary (Borchardt and Communities, 1994 p31). These principles were to be integrated into the Public Procurement market in such a way that it could move deeply into the public sphere in the interests of the citizenry. Thus fostering greater degree of freedom of movement of capital and people between the Members.

The Commission submitted proposals to the Council on 16 March 1964 with discussion held on the 28 July 1964. The stated objective at this point was to:

“...coordinate procedures for the award of public works contracts ... [and] liberalize public works contracts.”. There were two directives proposed at this point. One to remove national restrictions on transnational companies bidding for public contracts, and a second to harmonize calls for tender, and ensure equitable standards are used as appropriate. Initially the scope of the directives would cover works over \$1,000,000 falling to \$300,000² by 1968 (Text 1; Commission, 1964).

This would mean that a significant proportion of the largest public contracts awarded in the Community would fall under the regime by the end of the introductory period.

The proposals were detailed in certain areas, and were careful to define the terminology of ‘procurement’. For example;

“Public Works contracts are written contracts between the contractor, on the one hand, and on the other, the bodies awarding the contract as defined in sub paragraph b) below [that lists the state authorities] for the construction, maintenance or demolition of a building work...” (Text 2; article 1a p12 European Commission, 1964).

This article defines The Contractor and the Contracting Authorities, along with the activity (here ‘construction’). The directive leaves aside the details of the legal contract and instead refers to there *being* a contract. The directives affirm the dominance of the national legislative frameworks in this regard in that;

² The post Second World War Bretton Woods system of fixed exchange rates remained in force until the early 1970s. The currencies of the western European economies were fixed to the US dollar, which in turn was fixed to the price of gold. The Commission used the unit of account, which was exactly the same as the US dollar. So the US Dollar was the most frequently utilized currency in the Commission’s papers at this time.

“...national procedures, subject to the provisions of the present directive”
(Text 2; European Commission, 1964 p13)

may be used. There is an implicit suggestion that contract provisions between the contracting authority and the supplier encompasses the totality of the relationship between the parties as opposed to the broader linkages to the policy purposes for the agency making the purchase.

The directives set out the general principles of the operation of the macro level market, but not the specifics of how it should be implemented. The relationship between the Contractor and the Contractee is the important aspect to be regulated in this context; However, the directives do not limit that the degree to which the two parties may be seen as ‘entangled’ (Callon, 1998b p33) within the transaction. This is to say that there is an entwinement between the supplier, the buyer, and the service provided at the point of contracting that is missed by the Procurement Directives. The specification, process, and choice of contractors remains within the framework of ‘Procurement’ and is in discourse, external to the Member States. We can see therefore the limits of where Procurement (Europe) is situated, and what is left with the Member States (the funding of the policy enacted through ‘Procurement’). The core of the choice of the relationship (market choice) between the parties is the focus, and the mechanisms for making that choice captured by the process of European integration.

The directive engages with the technical implications of establishing a contract across borders. Chapters 1 and 2 of the Directive are significant, relating to the contract award process specifically. Due cognizance is given to the need for practical application of the advertisement process with respect to the communications technology at that point available and practical advertisement periods proposed. The ‘Official Gazette’, that was the precursor to the Official Journal of the European Union was to be utilised, and contract advertisements to be made in

“...the official languages of the Community, the text in the original language being the only authentic one.” (Text 2; European Commission, 1964 article 9).

Mention of language recognises the need for cross border linguistic communication as key in the development of the market, but also keeps the responsibility for effective communication between the Contracting Authority and the Supplier. Again, ‘Europe’ was engaged in establishing the links between the two parties to a contract, rather than the contractual basis later agreed.

The 1964 proposed directives importantly recognised the need for accurate measurement and reporting of contracts. The Member States were required to monitor this information and report to the Commission

“before the end of March...” of each year (Text 2; European Commission, 1964 Article 5i).

The specification and format of the data relating to contracts awarded according to the directives was not specified at this point. It is of interest that this requirement for data reporting was to be handled by the Member States rather than rely upon voluntary posting in the ‘Official Gazette’ (OG) records which is different to the eventual format of the market and the data collection via the Official Journal of the European Union (OJEU). In leaving data collection to the member states, the limitations of the capacity for the OG to accurately represent the market was recognised. The desire for empirical measurement of the market indicated the important position of economic rationales in a policy that was otherwise intended to have *political* outcomes.

3.2.2 The First European Public Procurement Directives 1964 to 1971

The 1964 draft of the Procurement Directives was rejected by the Council. Further consultation between the Commission and the Economic and Social Committee and the European Parliament was requested, and a second version was drafted. This fresh revision was submitted to the Council in June 1965. Included were a simplification of the quota systems during the transitional periods, and technical alignment with other freedoms and principles of the Community (Text 3; Official Spokesman of the Commission, 1965). At this stage in European Community's development, there was no regular timetable for meetings of the Council and meetings were sporadic. The period between 1963 and 1967 was particularly fraught with the 'empty chair' crisis having a profound effect on further progress before the 'Luxembourg Agreement' in January 1966. The revision of the procurement directives was, finally discussed at a limited Council summit in March 1966.

Commentary on procurement at the time focused on some of the classical reciprocity through classic public purchasing activities such as investment in Research and Development (Di Palliano, 1970 p3). This spoke to a perspective that procurement assisted in redistribution (Paddon p159 in Clarke and Pitelis, 1993). There was recognition that procurement has a function as a direct injection into a national economy in a classic 'Keynesian' mode of operation as opposed to later perceptions of EU Procurement Policy as situated within a Neoliberal agenda (Macartney, 2011). A degree of this perceived role was based on the high level of nationalized industries within the Member States (Ramanadham, 1993).

Despite the requirements to report procurement information to the Commission (mentioned above) it is difficult at this point to estimate the size of impact of public procurement market, and therefore the inroads made to creating this single market. Most countries did not publish official statistics regarding the value of public contracts. For example;

“In France, the only Common Market country keeping records of contract awards, companies from other Community countries received only 0.51% of the total in 1968” (Norton-Taylor, 1971 p12)

The fundamental structure of the states in question also affected the remit of the market. Those states with higher levels of nationalized industries would by extension have a larger public procurement market. Therefore were statistics to be available, the value of these statistics in creating a cross comparison to modern implementation would be fraught with difficulty.

By September 1970, the preparations were being made for a more comprehensive market implementation. The Commission issued a draft directive aimed at augmenting the public works requirements with amendments to the

“legal, administrative, and technical restrictions which protect nationals against competition from companies and individuals in other countries” (Norton-Taylor, 1971 p12).

The proposals would adjust the structural factors that may otherwise undermine the structural facilitation of the market. These proposals would become the Public Supply Contracts directives. The overall emphasis and mechanisms encompassed by the 1971 directive remained consistent with those in the 1964 /65 proposals. Prime facie emphasis was however placed on removal of arbitrary decisions, and support for

“...economic factors alone” (Text 5; Commission, 1971b).

In doing so, the ‘economic’ was portrayed as apart from the political process, making it ‘politically neutral’ in much the same manner that the 1984 report by Albert and Ball would seek to frame their proposals for an expansion of the market

as politically agnostic (Text 23; Albert and Ball, 1984). This framing of the purpose of the market as ideologically neutral avoids the capacity for any discursive construction of a policy instrument to adhere to constructivist hegemony. The use of this discursive shift to economic capacity may be seen as a sleight of hand designed to place the societal integration of the European project in the shade.

The market afforded transparency of *opportunity* to any interested economic actors. Different thresholds applied to Construction activities due to the higher overall cost of the activity. Explicitly excluded were Atomic installations and construction, and mining industries, both of which fell under the auspices of their own respective Community treaties (Text 7; Commission, 1971a article 2).

Established alongside transparency, were the abolition of technical and specification barriers to entry to national markets. Previously many contracting authorities had used national technical standards as a reason for excluding bids from other EC members; For example, the stipulation of a British Standard, or the requirement of a technical accreditation that would only be allowed to a domestic supplier. Secondly, the decision making criteria used to judge all bids had to be transparent, applied fairly to all participants, and objectively judged (Bovis, 1996 p6).

3.3 Meeting Global Challenges 1971 to 1982

The market failed to integrate at the speed desired in the period following the development of the market in 1971. As a result there were a number of changes of the market during this period. They served to incrementally adjust the manner in which the market operated. Most significant of these adjustments was the reduction in the threshold for advertisement in the OJEU.

On 1st January 1975, the Convention relating to the publication of the Official Journal of the European Union came into force. This mandated that contracts be

advertised through the office of publications as opposed to the previous voluntary regime of advertisement through the 'Official Gazette'. National authorities could publicise contracts in their own manner, but the reliance on the OJEU was not seen as sufficient. Additionally, on a periodic basis, the standard template contracts were updated to reflect the practical application of the directives. These serve as the initial framing of the process which would later culminate in the Tenders Electronic Daily (TED) model of publication (Text 12; European Commission, 1976).

Figure 1 shows an example advertisement form published as 72/277/EEC. In this format the technical and specification minimum standards, and award criteria (decision rationale) of the contract are mentioned, but the legal form of the final contracting relationship of the two parties is left aside; the intention being again to establish the link in the first stage of procurement from which the later 'legal' relationship will follow. Thus the issue of diversity of legal frameworks in the European space is sidestepped but the overarching creation of the relationship between the contracting and contractor is developed.

77/62/EEC concerned the award of contracts and the procedures relating to them. Similarly however, it related to the transparency of the contracting process and the assurance that the relationship between the advertisement and contract was established. In particular, this harmonising directive established basic standards of process to be undertaken by the Contracting Authorities. The notice in the Official Journal having dominance over other national journals;

"The notice shall not be published in the official journals or in the press of the country of the contracting authorities before the date of its dispatch, and it shall mention this date. It shall not contain information other than that published in the Official Journal of the European Communities."

(Text 12: Council of the European Communities, 1976p6).

Here the dominance of what is specified in the European journal is asserted as actually defining the act of procurement in relation to the contract advertisement. Thus, the advertisement process is used to assert what is, and what is not defined as an act of procurement.

The General Agreement on Tariffs and Trade (GATT) was signed in 1979 by the members of the Organisation for Economic Cooperation and Development (OECD). This agreement came into effect in 1981. Its significant impact was only on the procurement of goods by central government agencies for the provision of 'goods' (OECD, 1979) rather than some of the broader framing of the issue by the EEC. The primary aims of this agreement were to

“...establish an agreed international framework of rights and obligations regarding government procurement with a view to achieving greater liberalization and expansion of world trade” (OECD, 1979 p27)

for the purposes of securing

“...additional benefits for the international trade of developing countries... where this is feasible and appropriate” (OECD, 1979 p27).

The WTO successor to the GATT GPA would become a major constraining factor in the reformation of the market and the manner in which the EU could frame the parameters of operation to best suit the European economy.

3.4 The Single European Market Agenda 1983 to 1993; The Emergence of 'Non-Europe'

New impetus was given to the procurement market in the early 1980s. Long term economic stagnation had been endemic in the European sphere. The EEC chose to tackle this issue head on through leveraging further growth from deeper economic

integration. Professors Albert and Ball presented 'Towards European Economic Recovery in the 1980s' (Albert and Ball, 1984) to the European Parliament on 31 August 1983. This was to establish the basis of a possible economic development programme for the Community. This document attempted throughout to be politically agnostic

“...our proposals...the important factor in our view, is that they are practicable” (Text 23; Albert and Ball, 1984 p8).

In this paper they introduce the concept of 'Non-Europe' described as being the areas of competency that may have been taken into the EEC's sphere of influence, but are “lacking popular legitimacy”. These are aspects of integration that need further development to complete the process of updating the economy of the union. But rather than the

“...political will of governments... “ it is the “economic intelligence of public opinion” (Text 23; Albert and Ball, 1984 p9)

in accepting the need for change and increasing interdependence, which will make the difference. This speaks to an effort, later epitomised by the creation of European Citizenship, to embed the logic of the European Project within a social frame. The introduction of elections to the European Parliament (in 1979) was emblematic of this process (and just about to be held for the second time at the point of the paper's publication in 1984). The result would be a common interest among the public and private spheres around a joint progressive agenda. The wish for a joint agenda being inspired by the accusation levelled at the EEC members that employment had been sacrificed for competitiveness in the late 70s and early 1980s. This had the effect of macro economic growth increasing while stifling long term wealth distribution (Albert and Ball, 1984 p13).

Furthermore, 'Non-Europe' is described as the element of society most likely to lose out in an unreformed 1980s EEC (Text 23; Albert and Ball, 1984 p31). Only through further extension of Europe was reconditioning of the economy likely and leveraging further competitive advantage through pooling resources was the path to reinstate global economic position.

"The word 'Europe' can only be used in this context in an ironical sense. In this respect there is no such thing as Europe, there is only a non-Europe. As a result, the same expenditure which in Japan is channelled into productive and job creating investment is squandered in our countries on efforts which only destroy jobs" (Albert and Ball, 1984 p32).

In short

"...it is not Europe which is declining on the downward path of relative underdevelopment and non-growth. It is non-Europe" (Albert and Ball, 1984 p32).

The reason for this decline in non-Europeanised economic aspects was the threat of cross-competition. Economic growth (expansion through reflation of the economy) in one state, due to the economic interdependence of the community, leads to disproportionate growth in another trading state. For example France and Germany in 1981 / 82.

"Thanks to the economic revival of Germany in 1979, the sales of French cars in Germany beat all records... in essence this means that in the EEC... those who take the initiative – and the risks – of an economic revival are working for the others..." (Albert and Ball, 1984 p38).

Implication being here that only by coordinating the porosity of the internal market can we move forward in recovery together.

“In other words, in the EEC it is no longer possible for a national economic policy to diverge above the average of the others without in due course prejudicing the national interest of that country. Any government which opted for such a course, moreover, would be playing into the hands of its opposition” (Albert and Ball, 1984 p38).

To situate ‘Non-Europe’ discursively, it represents a dichotomous ‘other’ (Derrida, 1984; Diez, 2005) that, in contrast to the integrated Europe, represents a negative position. The rationale was explicitly economic, and appealed to broader society for legitimacy. To not accept the logic of this report is to position oneself against not only pervading globalizing forces, but also the aspiration towards improved societal relation to the economy created through the social legitimation of the economic ideology. The argument taken from this position into the discourse of the Procurement Market is that where Europe (the procurement directives) are not engaged with, then the action is illegitimate; there is not only a lost return or potential opportunity missed (which has social impact as a result of the economic interaction) but only actions undertaken through the procurement market contribute to ‘Europe’ and therefore society. Thus the call for integration is pitched to transcend a ‘left-right’ political dichotomy and become instead a facet of positive social engagement.

Albert and Ball included the following data from Table 3, graphically represented in Figure 2, below to demonstrate the impact of government spending, and by extension the capacity that the public purse may have in the regeneration of the European economies. The role of the state in this regard was not highlighted as being ideologically laden to any degree outside of there being a recognition that the state was a potentially significant actor. The percentage of this proportion that constituted potential procurement activity was changing rapidly over time as the structure of modern liberal democracies changed (see Chapter 1 section 1.2.2) with the relative value of public procurement being placed between 1/3 and a half of the public spending around this point in time (European, 1988; WS Atkins Consulting,

1988). Therefore while in 1960, the level of government spending in the EEC as an average would constitute around 10% of GDP, by 1982, this rose to 16/17%. Factors associated with poor economic performance would have impacted on the relative proportion that government spending constituted in the economy, but regardless, this represents a huge relative potential impact to be leveraged directly by effective public policy measures.

Impetus was given to the development of this new agenda at the Copenhagen European Council (Commission 1985 p7). Negotiations at this meeting were framed in 1985 White paper 'Completing the Internal Market' (Text 23). This document outlined the development of the Single European Market agenda through the liberalisation of inter member trade to be in place by 1992 (Sohrab, 1990 p522). A major conceptual shift was in the Commission's emphasis from the

“...harmonisation of policies based on common rules of behaviour, and delegation to community institutions” (Von Hagen and Mundschenk, 2003 p288),

to 'mutual recognition and equivalence'. This move led to a revision in the focus of the procurement market and extended its scope. At this time, there was a recognition that the existing Directives were, at best, marginal in their efficacy (Sohrab, 1990 p524 and Text 23; Commission 1985). The number of advertisements through the OJEU route was at this point low (less than 3% of the potential contracts according to contemporary reports (Sohrab, 1990 p524). The Commission's perception was that Contracting Authorities were actively seeking to avoid the monetary value at which contract advertisement through the Official Journal was required by splitting contracts into several lower value packages. Keeping individual values per contract below the 200,000 ECU thresholds for goods and services meant the transparency requirements of the market, and further competition, could be avoided (Eurostrategy 1997 p2). Furthermore, the 'negotiated' and 'restricted' procedures were being utilised in a manner that would

exclude transnational competition wherever possible. This was through the systematic limitation of contractors which did not meet requirements only practicably available to local / national suppliers.

A further expansion of the 'Non-Europe' principles were used in the 'Cecchini Report' on the Costs of Non-Europe (European, 1988). This study further expanded the relative gains that could be made through deeper economic integration. This would lead to a positive gain of 2.2% of GDP overall (European, 1988 p2). At each stage, further expansion of the Union into the competencies of the members is framed as an economic imperative. To not accept these principles was to deny the economic logic of their technocratic argument.

Non-Europe has been returned to periodically ever since as a method of 'proving' the relative value of including competencies in the EU's frame of reference, particularly in the Economic sphere (London Economics and PWC, 2013; WS Atkins Consulting, 1988). It is repeatedly phrased as a lost opportunity for those states unwilling to make the step towards further integration.

3.5 'An Ever Closer Union' 1994 to 2003

The first of the major redevelopments of the market in the 1990s came about with the transformation of the 'Community' into the 'Union'. Many of the rights subsequently bestowed upon the citizenry were the result of this shift. The major legislative changes to the public procurement market that occurred were largely technical ones aimed at modernizing the regime into a more effective tool to service the Single Market. This meant embracing the quickly developing computer communications technologies and the consequent democratization of market information in this context.

Transparency became a key goal during this period. Elements in the 1971 directives related to the fundamental principles for a transnational market's operation with

reference to the freedoms established in the founding Treaty; namely non-discrimination towards transnational suppliers in relation to national suppliers, and the importance of transparency of opportunity (Bovis, 1996 p6). Key to the improvement of transparent operation was increasing the awareness of the citizen of the opportunities in the Internal Market. In the procurement market transparency of opportunity was equated with a desired increase in the number of contract advertisements and responses from suppliers. Interpretative guides on the communication and development of the internal market were published to

“...assist with consistent enforcement. Echoes the need to reinforce the message of the market’s principles over and above the technical reinforcement of the market” (Text 40; Communities, 1993a p23).

This quotation demonstrates the awareness of the Commission to present a coherent singular message. The potential power of discourse in directing the market is recognised as significant. The ‘technical’ aspects herein are ambiguous but in the context of the document, refer to the legislative processes of the market. They precede the later developments in the internet based OJEU advertisement process.

The method of measurement used to evaluate the relative success of the procurement market in the 1990s was the advertisement rate that was equated to ‘Transparency of Opportunity’. Transparency directly relates to the effective operation of any market through effective and open information (Callon, 1998a) and has been a major component of the governance agendas of the market (Arrowsmith, 2012; Bovis, 2012). As a result, significant investment was made into improving the information technology that supported the Official Journal (Publications, 1998 p84). This investment was perceived to have been a success as between 1991 and 2004 there was effectively a doubling of the ‘transparency rate’ of procurements in the union (Text 74; European Commission, 2004c p3 - 5) as measured by the number of advertisements placed in the Official Journal. Therefore

whereas the Commission saw the 'discursive' elements of the market as having predominance over the 'technical reinforcement' (above) we may see that technical reform gained credence during the 1994 to 2003 period. The use of these Internet based tools from the 1990s onwards empowered actors in a manner that the hardcopy publication of the OJEU could never facilitate and many more potential suppliers could be reached. A more detailed look at this technical reform is included in Chapter 5 regarding the development of the online OJEU system; Tenders Electronic Daily.

The EU moved forward with proposals towards more effective utilization of data as a source of leverage within the market. Provision of transparency tools through data sharing became of great importance. The Common Procurement Vocabulary (CPV) coding system was a major development in this realm, which was introduced by regulation 2195/2002 of the European Parliament (part of a separate stream of economic policy development). This system had three intentions. Firstly to clarify the terminology used in the OJEU advertisements so that every applicable supplier may more effectively locate a supply contract opportunity. Standardization in this manner will have the benefits of 'boosting transparency in public procurement, make it possible to set up an electronic information exchange for public procurement (SIMAP), reduce translation errors, simplify the process of preparing notices, and simplify statistics in line with the GPA' (Attstrom et al., 2012 section 8). Secondly, the CPV integrates with the global systems of market monitoring for policy purposes. This is through retention of the 'sectoral structure' of the NACE categorisations (Nomenclature of Economic Sectors) that were derived from OECD and World Bank systems. Finally, Suppliers were recommended to use the CPV to describe how their goods are categorised. This is an acceptance that there may be a shaping of the supply side market through the way that demand for products is framed by the regulations.

Transposition of many economic reform directives was a concern in the 1990s. Deadlines for transposition of the Public Procurement directives were

“...rarely met, and there have been several cases of incorrect transposal. Measures are regularly notified several months later or more. There are currently 15 instances of directives not yet having been transposed despite the deadline having past.” (Text 50; Commission of the European Union, 1996b p11).

Furthermore, regarding the incorrect transposal

“Some of these are so fundamental as to call into question the openness of public contracts already awarded in the member states concerned (Text 50; Commission of the European Union, 1996b p11).

By this point, there had only been 51% of the internal market directives transposed with particular concern relating to the public procurement directives (Text 47; Commission of the European Communities, 1995 p19).

In response to these issues with transposition, the Commission was seen to make more of the role of direct intervention of the directives. On one hand this was through a more ‘hands on’ approach to the governance of certain areas of public procurement to which they had direct responsibility. Specifically Commission structural funded projects are subject to direct oversight;

“For all operations exceeding ECU 25 million, the Commission decisions granting Community finance require the receipts to send it automatically information on the essential features of the contracts concerned: smaller operations are monitored by means of random checks.” (Text 47; Commission of the European Communities, 1995 P79).

Secondly, action was taken through professional body engagement. Committees were to be established with PP is seen as one requiring policy input. This body would act as a

“Channel of information between national enforcement authorities, and between them and the Commission” (Text 47; Commission of the European Communities, 1995 p23).

Furthermore Engagement with ‘grassroots’ organisations on issues with a view to developing legislative solutions that are

“...bottom up rather than top down”(Text 47; Commission of the European Communities, 1995 p27).

This was a move towards contextualizing the use of the OJEC/OJEU process as one of industry ‘Best Practice’ rather than an imposed paradigm. Thus, the discourses creating the market would be moved within the market and attributed to the actions of the market participants. These consultation structures were not however firmly established in the market’s governance until 3 September 2011 with the issue of Commission Decision 2011/C 291/02 relating to a formal advisory committee.

3.6 Modernisation and Change: The 2004 to 2009 Directives

The market underwent a third major revision from 2004 to 2009. This period begins with the issue of two directives on 31 March 2004; 2004/18/EC (Text 77) concerning the ‘Coordination of procedures for the award of public works contracts, public supply contracts, and public service contracts’ that would cover the majority of the public sector in the EU, and 2004/17/EC (Text 76) concerning ‘the Procurement procedures of entities operating in the water, energy, transport and postal services sectors’. Both of these directives were based on

“...Court of Justice case-law, in particular case-law on award criteria, which clarified the possibilities for the contracting authorities to meet the needs of the public concerned, including in the environmental and/or social area...”
(European Parliament and Council of the European Union, 2004 Article 1)

The need to include recent case-law into the new directives was fundamental to a process of modernization that simplified, increased relevancy, and relatability. This was done in two ways. Firstly, through technical clarity and a more streamlined regime with fewer overlapping directives. 2004/18/EC combined several of the 1990s directives (EC93/36, EC93/37, EC92/50) into one combined directive covering public supply, works, and services. Directive 93/38 was replaced with 2004/17/EEC to cover the utilities, transport, and postal services sectors (European Commission, 2014a). Following the implementation period for 2004/18 and 2004/17, 2007/24/EC then repealed the 1971 directive. The result was a slicker and clearer legislative basis to the market.

Secondly, the embrace of the concept of ‘modernisation’ is distinctive discursive trope to capture the zeitgeist of policy. The term allows for the continual reassertion of the dominance of the ‘new’. Much as ‘Globalization’ has been employed in the discursive construction for the need to adopt ever increasing levels of integration (Hay and Rosamond, 2002), so here we may see the use of ‘Modernisation’ as a similar meme. To form a position against the ‘modern’ is devalued as politically deluded and not an engagement with the material reality of present day politics. The ‘anti-modern’ is a ‘King Canute’ position against the tides that threaten the validity of the market. A similarly exclusive position may be found in the adoption of ‘Non-Europe’ as the de facto ‘modernist’ position. This reliance on a single economic based meme to carry an argument betrays the ‘positivist’ nature of both politics in the EU and economics more broadly. That where there is an argument to be made, it is made in an absolute frame, rather than a relative one.

Importantly here it is worth noting that the economic environment within which these directives are being implemented was to change throughout the 2000s with deregulation and privatization of the principal markets affected by 2004/17/EC. That the privatization of these sectors was of variable success (wik-Consult, 2005 p102) there was nevertheless a vision of a private market in all these areas being actively pursued by DG Internal Market. Of note is that while the Utilities directives specifically concern the former nationalised monopolies, the actual level of ownership of these industries by the state is variable. There may be instances where the level of government ownership of the organisations encompassed by 2004/17/EC Utilities directives falls below that required by the 'Classical' 2004/18/EC directive, but yet different value thresholds for the advertisement of contracts may be applicable, and monopolies may still apply (for instance in healthcare or transportation). The degree of integration across different sectors of economic activity is not consistently applied despite state intervention being consistent.

In 2004, there were a number of procedural modernizations and simplifications. It was hoped that the simplification of the directives would assist in their broader understanding, and increase compliance (Text 77; European Commission, 2004b article 1, p114). These included the use of 'Framework Agreements'. Framework Agreements are 'agreements to agree' in the future. They provide a shell for the operation of particular contracts under an agreed schedule of conditions. For example, the provision of Audio Visual equipment to the University sector may be advertised under a 'Framework Agreement'. A series of suppliers would be chosen to provide said services over a period of time, but the specific purchases would be made by the Universities themselves. This is due to the ever-changing nature of the

specifications required, and the variability of demand. Figure 3 shows a Contract Notice published in 2015 for just such a service³.

The use of these framework agreements provided a way for the CAs to restrict the number of suppliers that they had to consider periodically. They had been in informal usage for some time, but the inclusion of their use as an accepted contracting technique recognised in the directives, that the continual open competition to the market resulted in a greater administrative burden. It is unfortunate that this technique therefore became one of the dominant modes of contracting in the EU with growth in the use of the practice an average of 18% per annum from 2006 onwards (PWC et al., 2011 p5).

The increasing acceptance of quality criteria as opposed to purely cost criteria allowed for the opening up of the manner in which public procurements could be undertaken. This is phrased in the terminology of the Procurement Market as the 'Most Economically Advantageous Tender' criteria (or MEAT). Under this heading a range of provisions could be made for the supplier to justify a higher price for a good or service. This may include favourable consideration for better environmental performance of the goods or services (Text 73; European Commission, 2004a p32). Social Criteria that were in line with the EU's SME policies became accepted in the discourse of the market, but the degree to which they were included in the actual implementation of contracting is in doubt. Indeed, while it is possible to see in the EU records, and the TED database the inclusion of MEAT, it is not possible to understand the degree to which any particular criteria was applied on a project by project basis during this period.

³ While this is a 2015 notice, the *principles* of Framework Agreements established in the 2004 to 2009 period apply. This advertisement was chosen as a contemporaneous example by a public body to which this researcher gained access and could verify that the use of said documents was appropriate due to direct access to the Contracting Authority.

Regarding criteria, there is no account made in the 2004 directives, the green paper that led to the directives, or subsequent Commission analysis, for the potential differences in the implementation of the directives in each member state. It therefore becomes difficult to understand the degree of 'success' or 'failure' of this area of modernisation, or indeed under what criteria they may be judged.

3.6.1 Institutional Arrangements post 2004/18/EC

There were a variety of institutions supporting public procurement practices in member states prior to this point. In 2004/18/EC (Text 77) there was a specific requirement for each member state to formally establish or allocate a central agency with responsibility for the application and implementation of the market. These organizations range from strong centralized agencies (such as the Hungarian *Public Procurement Council* (Boros, 2012b) to weaker, decentralized systems such as Finland (Hansel Ltd, which is a private agency working for the national government). These agencies may operate with a variable level of cognizance as appropriate to the overall institutional structure of the member state in question. There are options for complaints to be made directly to the Contracting Authorities, the National procurement agencies, the Commission, or through civil and European courts. This has led to some inconsistencies in the process for complaint (particularly under the Remedies Directive) For example

“In Portugal, a prior complaint is not a requirement but nevertheless is a frequent way of settling disputes in public procurement cases, and most complaints do not go any further” (OCED, 2007 p15).

This has led to the OECD describing the participant states as having either 'single or dual' systems of public procurement review (OCED, 2007 p16). Table 4, shows the post-2004 institutional structure of the member states, their implementation, and their review systems. It can be seen that there are 8 types of system represented; for example Bulgaria has a Centralized procurement system, with a single review

system that uses a specialized body for that purpose. Gaps in the table are due to a lack of information in the OECD reports or non-participation in their studies. Despite one EU wide market, there are in fact 8 institutional systems in place. It should be further noted that these categorizations are very wide. 'Centralized' procurement system may refer to a single procurement body purchasing for the public sector, or many a series of sectoral bodies. Greater levels of centralization may indicate elements of 'command and control' hierarchical relationships within the governance structure in these states.

The structure of the central agencies also vary between independent arbiters of process and administration, to more involved 'Central Purchasing' bodies that seek to leverage greater demand from the public sector. In 2014, only Denmark, Greece, Ireland, Spain and the United Kingdom had a central agency that proactively intervened in the policies of Contracting Authorities (OECD, 2015a), the remaining states had a more 'advisory' central agency.

The institutional structure of Procurement within the states is of specific interest. The large diversity of structures, lends a particular character to the governance implementation of the market in each state. Where these diversities fail in assisting with the effective transmission of the purpose of the market, mechanisms need to be employed that both reach beyond the gatekeeper of the central government, and co-opt agencies within the member states into operating as proxies for the EU in the dissemination of the discursive regime. By 2004 the 'technical' operation of the market had been moved into the European sphere (the advertisement process through the OJEU), but communication and embedding of the market as an idea needed to be bolstered. So methods to foster communication directly with actors inside the European member states may be found here in these central procurement agencies and explicit governance relationships. We can see from the above table, that in the case of public procurement there is a large diversity of implementations of the policy area institutionally. Each member state has a wide range of Contracting Authorities, and the institutional / legal structure that supports

each is diverse. Therefore assuming that a 'one size fits all' approach and analysis of institutional governance will be applicable is not borne out within this market and alternative mechanisms for bolstering the market as a social construction rather than as a purely legal, or administrative entity are required.

Returning to the principles of the market, the coordination of diverse institutional structures are not the primary concern, but represent a post-hoc implication for the market's creation. Primary approaches to market creation seek to develop common understanding of the contractual relationships that will occur consequently to the agreement to create a relationship. The creation of a market through an advertisement process stops short of the complete legislative basis of a market's full realisation. In a classical market model, such bases would be covered, including property rights.

3.6.2 Ancillary Directives from 2004 to 2009

Following the 2004 modernisation process, there were three significant developments in the overall EU Procurement market. Firstly was the issue of a new directive on 13 July 2009 concerning the 'Coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities in the fields of Defence and Security' as directive 2009/81/EC (Text 98). This was a major extension of the remit of the overall procurement market into areas that had, until that point, not been discussed by the member states as being appropriate for integration. Like many other procurement directives, it appears that transposition was not an urgent national legislative requirement (Trybus, 2006) with some states taking the full length of time possible before transposition.

The second major development was the clarification of the principle of 'remedies' following the 'Alcatel' case. Remedies in this context are the legal rectification of an infraction of the requirements of the Procurement Directives. Under the processes outlined by the Directives, a contract award may be made and supply of goods or

services completed before any aggrieved party has opportunity to complain regarding wrongdoing. The European Court of Justice case (C81/98) concerned a situation where there had been insufficient notice given to parties that failed to win a tender arising from a OJEU advertisement. The aggrieved suppliers requested that the contract be set aside, and the Bundesvergabeamt (Belgian central procurement office) refused. The ECJ ruling (ECLI:EU:C:1999:534) agreed and recommended that in future, sufficient notice be given to suppliers to challenge decisions made by a contracting authority ahead of the commencement of contract.

A further reinforcement of these principles was based on the ECJ ruling regarding *Alcatel v Austria* (1998), was made as an amendment to directives 89/665/EEC (Text 33) and 92/13/EEC (Text 38) concerning the 'coordination of laws, regulations and administrative provisions relating to the application of review procedures' and issued as directive 2007/66/EC (Text 87). This directive established a mandatory standstill period and principle of full disclosure of scoring information to all tendering participants to allow for adequately informed challenges to contracting authority decisions. This should have allowed tenderers to become more involved in the enforcement of the regime as a result of the increased transparency.

This new 'remedies directive' integrated the decisions and recommendations of the 'Alcatel' case, and was a major shift in the empowerment of suppliers in the contracting relationship (Brown, 2010) and particularly again empowering subnational suppliers in the same manner as transnational ones (Bovis, 2012 p18). The inclusion of this standstill period, and the issue of contract award decision to all interested parties was a significant step towards increasing transparency in the operation of the market. Importantly, it recognised that communications methodologies were advanced to the point where now it was possible to effectively communicate, evaluate, and then make a complaint regarding a Contracting Authority's actions within a reasonable timeframe prior to commencement of contract initiation. If all notices were still required to be placed in a hard copy publication as the OJEU was prior to the 1990s, then this would be significantly

more difficult and onerous on the effective operation of the Contracting Authorities.

3.7 Development of the market between 2010 and 2014

The list of sources included in this section was substantial due to the contemporaneous nature of the research. Therefore they have been detailed in Appendix A2.1 with a full accounting of their status, source, date, and purpose.

3.7.1 Europe 2020 Agenda

The Public Procurement (PP) market's most recent major revision occurred between 2010 and 2014 during the period of research for this thesis. It was initiated by the 'Europe 2020 agenda', specifically the perspective that leveraging the 'massive procurement budgets' (European Commission, 2010a p3) was desirable to

“...spur innovation using procurement” (European Commission, 2010a p16)

This focus on 'innovation' was the proactive response by the EU to improving demand side intervention in the economy following the financial crash in 2008. The emphasis relating to procurement of the Europe 2020 strategy was twofold. Firstly, it was to drive innovation through a focus on improving procurement award criteria rather than using a lowest price tenderer approach.

“Tenders are based on output-based performance specifications and contracts are awarded on the basis of qualitative criteria which favours innovative solutions such as life-cycle analysis, rather than lowest price only.” (European Commission, 2010a p35)

Secondly, effective use of third party supplied innovative solutions would give support for innovative research and development of technology at a 'pre-commercial' (PCP) stage (European Commission, 2010a p15,16, 17,23, 40).

Contracting Authorities are encouraged to engage in procurement early in the development cycle of a product, in new products or services, that may be at a stage ahead of a commercially viable product release. By engaging in PCP, governments may assist the development of new industries without the risk of transgressing the requirements of the State Aid regulations as competition is sought across the Single Market. Through this focus on innovation and the demand side of the economy (Edler and Georghiou, 2007) procurement could intervene to create economic growth, and encourage social cohesion effectively (Edquist and Zabala-Iturriagoitia, 2012), despite 'austerity' politics reducing the total available budgetary expenditure.

The Commission began consultation on a revision to the procurement directives in January 2011 (European Commission, 2011b) with the aim of 'modernising' the market to support 'growth and job creation'. Here, modernity is deployed as an aspiration to accessibility and broader comprehension of the market, fitting within the 'transparency' framework established by earlier procurement regime revisions. Commissioner for DG Markt Michael Barnier, at the time described the motivation for the revision of the procurement directives in this manner;

"The current directives have proven their worth. But directives must move with the times. I would like to make sure that the public procurement Directives become simpler and more effective and that they make life easier for those whose daily work involves public procurement". (Commission, 2011 p1).

This simplification desire was to be aimed at both the implementation of the rules, following anecdotal pressure in the procurement market regarding the complexity of the directives (Leach, 2011). The above statement goes further in the invocation of both modernity as an inevitable development ("move with the times"), and the relation to PP as a regular component of civic life ("daily work").

While the technical elements of the implementation of the market were for review, the parameters of the conceptual scope of the market was not:

“Public purchasing has to be underpinned by particular safeguards. These prevent any preferential treatment that could favour specific economic operators and guarantee sound competition between economic operators, so as to ensure that contracting authorities get the best value for European Taxpayers money” (European Commission, 2011a p1).

This statement can be unpacked to reveal four aspects. Firstly, that an equal playing field needs to be maintained for economic operators bidding across Europe without preference. There is no mention here of ensuring competition and protection for national suppliers, but the existence of the regime implicitly supports them (Bovis, 1996 p12). Secondly, that competition is maintained across the EU, both for the first reason, but also with a view that the *market* is of importance as the main way in which public policy is implemented. As a public policy mechanism, the dominance of the market paradigm is to be maintained. Thirdly, that value for money will be derived from the first two principles and that public bodies can derive best benefit from this process and value for money principles predicated on the first two points. Tacitly, ‘value for money’ then is defined as being the most effective return on ‘taxpayer’s money’ for services rendered and framed as ‘economic’ return effectively equating to ‘social good’. Finally, that taxpayer’s money is of importance and their interests are paramount. In many senses, the taxpayer is being protected from the potential abuses of the irresponsible spending of their money (it remains theirs) by their own governments. The EU is therefore positing itself as an independent arbiter of ‘good governance’ outside of the Member States.

3.7.2 Green Paper ‘on the modernisation of EU public procurement policy’

The Green Paper COM/2011/0015 was issued on the 27th January 2011 and began a four-month consultation period. This document represents a process ahead of the

main presentation of the market's discourse to the participants when the directives are viewed as the principle 'market making' instrument. It is useful to consider the Green Paper's consultation process at this stage as it provides an overview of the state of where the market was seen to be at the time, the proposed route 'forward' for the market, and how this would fit with the Europe 2020 agenda. Moreover, in presenting the consultation documents to the broader market participants and asking for their feedback on the potential future revision of the market, the Commission defines the market in an ideational capacity much as any other discursive construction process. The EU is seeking a direct relationship with the citizenry in a classic 'Multi Level Governance' mode of operation (Pierre and Peters, 2004).

In COM/2011/0015, the notional purpose of public procurement was defined as tightly as possible. While the technical elements of the implementation of the market were for review, the parameters of what was to be the conceptual scope of the market was not:

"Public purchasing has to be underpinned by particular safeguards. These prevent any preferential treatment that could favour specific economic operators and guarantee sound competition between economic operators, so as to ensure that contracting authorities get the best value for European Taxpayer's money" (European Commission, 2011a p1).

It may be seen that the Commission was establishing 'good' research questions for their consultation process; although in doing so, they put a net around the activity of public procurement to include the above, and relate directly to the three primary Europe 2020 (E2020) goals relating to leveraging demand side policy, support environmental policy aims, and

"...improve the business environment, especially for SMEs" (European Commission, 2011c p2)

These aims were pivotal to the consultation. The aspirations to achieve the 2020 goals were expressed through the following 5 consultation questions that highlighted some potentially innovative changes to the market (Commission of the European Union, 2011a):

1. Increasing public sector efficiency through streamlined processes, which should in turn encourage more procurements through the OJEU route and allowing for a greater level of 'cross border' trade.
2. Allow for "procurers to make better use of public procurement in support of common societal goals" (European Commission, 2011c p5).
3. Assorted 'good governance' issues including "preventing and fighting corruption and favouritism" (European Commission, 2011c p5).
4. Review of the legal concepts and basis of the directives to ensure certainty across a broader range of participants.
5. Coherence with State aid rules and increase convergence of the forms of regulation across multiple policy areas.

Success for the market herein is defined under question 1; that of achieving cross border trade. This is of course a long-standing aim of the market, but that it was reiterated and reconceptualised as having additional benefits for the post fiscal crisis environment is of note.

Of particular interest discursively is Question 4; 'the review of the legal concepts' in particular speaks to recognition of the diversity of political economy in the market, and the institutions supporting them harking back to the issues highlighted in 3.6.2 relating to the institutional diversity of the market's supporting legal framework

within the member states. Furthermore, the need for a single set of commonly understood concepts to be agreed in order to promulgate an integrated social construction is of great importance for the construction of a commonly accepted ideational conception of 'procurement'. Through the establishment of a common certainty relating to the practice of procurement, discursive hegemony could be achieved and the cementation of the idea of procurement established. Thus through this cementation, further ideational and normative tropes of public action could be associatively promulgated.

During the consultation period 623 replies were submitted. Of these, 22 national governments gave a national response. A third of responses were given by businesses, and another third from sub-national public authorities⁴ (European Commission, 2011d p3). The largest proportion were from the

“...United Kingdom, Germany, France and, to a lesser degree, Belgium, Italy, the Netherlands, Austria, Sweden, Spain and Denmark” (European Commission, 2011d p4).

The modernization initiative was said to be 'well received' in all states (European Commission, 2011d p1). There was however, a difference in opinion amongst the respondents. While the 'simplification' of the directives was seen as a net positive among all groups responding in particular with relation to “an effective way to improve access for SMEs and bidders from other member states” (European Commission, 2011d p6), the aspirations towards using the directives for Europe 2020 goals were less favourably received. This was notable among

“...businesses [which] show general reluctance to the idea of using public procurement in support of other policy objectives” (European Commission, 2011d p7).

⁴ Sub-National government authorities in this context includes Health authorities, Universities, Schools, Utility Providers, local councils, and a multitude of other agencies across the Union.

The Europe 2020 agenda sought to leverage the capacity of government procurement for the support of SMEs, and economic growth in general. The opinion of ‘business’ was generally in favour of ‘simplification’ and promoting ‘innovation’ in the market, but against support for ‘social’, or sustainability requirements (European Commission, 2011d p7). In stating such aims, the sophistication of SMEs was underplayed, and their likely capacity to be forced to accept rather than define market processes highlighted.

3.7.3 Contention behind the development of the modernization agenda

Behind the development of the Green Paper on modernization of the procurement market, were a series of global regulatory constraints. The manner in which the WTO’s Government Procurement Agreement (GPA) has integrated, been inspired by, and then fed back into the operation of the directives and the market has fundamentally changed the manner in which the current directives have been formulated (van Asselt et al., 2006; Goldstein et al., 2007; Arrowsmith and Anderson, 2011; Anderson, 2012). The result has been a legal and political constraint on the formulation of the policy. This particular concern was a continual thread of discussion with interview subjects. The result is that under this heading is the discourse of ‘Globalization’. The broader market impacting not only on the process of formulating policy in a practical constraining manner, but also the framing of the market. Similar to the ‘Non Europe’ argument, the need to react coherently to globalization as a block motivates the development of the market and reinforces its need.

Thus the market both reacts to both facilitate and hinder globalization. Regionalisation has been the aim with the barriers to the access of the procurement contracts placed around the market by the agreements and the EU. This again feeds back to the discussion and logic of the subnational economic actor empowerment (Bovis, 1996; Trepte, 2007; Bovis, 2012). Reciprocity is paramount – there is a

reasonable level of integration and reciprocal contracting, but the economic benefits are to be shared through the common access and competition in the procurement contract allocation. The difficulty here is that the porosity of the state structure then becomes further unbound from the geographical or citizenry society, and further bound within the state as an economic support shell for the operation of economic actors within it.

The process of engagement with the GPA may be seen as being an example of 'uploading' of EU regulation to an international forum, an oft cited theme regarding multilevel governance and the shift to international governance systems (for example Jordan, 2001; Kohler-Koch, 2003).

“The EU seeks to internationalise its public procurement regime both through expanding membership in the GPA and increasing transparency of procurement practices” (Howarth and Sadeh, 2011 p28).

In this instance, this is as a manner of resolving the deficits that may be caused from opening opportunities within the EU's direct sphere (Howarth and Sadeh, 2011 p 27-28). By doing so, the remit of the reciprocity of political economic exchange is extended, and the definition of statehood as a geographic vessel of economic activity is eroded. Nationally based companies that lose to the increased competition within a state are, in principle, granted a greater level of access to compete in other states.

The issue of coherency with the WTO regime was raised in COM/2011/0015, namely that

“Legislative changes will have to be consistent with EU international commitments or may require the opening of appropriate negotiations with all partners concerned on possible requests for compensation” (European Commission, 2011c p5).

Reciprocity of regulatory process is one of the trade-offs with the global markets for access and consideration. Without which the potential for dilution of fiscal policy inputs into the economy and Keynesian gains are high.

Of particular debate during the formulation of the modernisation agenda that has particular relevance to the WTO regime were the procurement advertisement requirement thresholds. These are the financial values above that an advertisement in the Official Journal of the European Union apply. The value of the thresholds was mentioned in the original Green Paper European Commission, 2011c p9) as an area that the Commission desired opinion despite being an area that was constrained in the possible solutions. The Government Procurement Agreement (GPA) signed in 1979, mentions the thresholds of the level for advertisement for the participating countries. Article 1 states;

“...any procurement contract of a value of SDR 150,000 or more. No procurement requirement shall be divided with the intent of reducing the value of the resulting contracts below SDR 150,000.” (OECD, 1979 p28).

These thresholds have not changed over time, and have therefore reduced in applicable ‘real’ value due to inflation, bringing the coverage wider over time. This was raised as an area of concern by the member states

“...in the green paper consultations there were about 12 member states who said we should raise the thresholds. The UK was very for this and there is at least a symbolic obligation in the directives for the commission to monitor this and to check whether in the future it would be possible to do something on the GPA level” (Interviewee_7, 2014 p14).

Changing the levels in the GPA would have required significant multilateral renegotiation. This was a significant concern for the Commission officers working

on both the Procurement Directives, and the GPA negotiations in 2011 onwards. A Commission official described the situation:

“I must admit I was very tempted about thinking about thresholds. In the end we did not touch the thresholds ... impossible to do because of the bad timing with the GPA it would not have been possible for us to say ‘now we have thought about this after 10 years that you must lower your thresholds, oh but now we want to raise them’.”

Also

“It was really frustrating at the beginning of exercise because of the GPA because of all kinds of bilateral agreements there are so many things which are fixed now for all kinds of interesting ideas... the colleagues who are working on the GPA would say ‘no, no, you can’t touch this.’” (Interviewee_7, 2014 p14).

The subject of thresholds was at the forefront of the 2011 Commission ‘Efficiency and Effectiveness’ report, (Price Waterhouse Coopers et al., 2011) and the report on ‘Cross border trade in Public Procurement’ (Sylvest et al., 2011). They were mentioned in the surveys used by both reports of being significant concerns to respondents as being too low (Price Waterhouse Coopers et al., 2011 p70). The results of the accompanying econometric study highlighted a ‘bell curve’ effect in the value of contracts advertised. The aggregate value of those contracts above €500,000 equals the value below that point. Discussions following the issue of these reports in the Commission examined the phenomena:

“...in the light of these figures it would probably be more sensible to go at least to €500,000 instead of [the present threshold of] €200,000 they would have the whole Mountain of small contracts out and concentrate on the big contracts...€200,000 was relatively arbitrary I mean now we have a closer

look is not really the point to cut but probably now it's too late.”
(Interviewee_7, 2014).

These statements expose both the constraints to political process, and also the bounded ideological position of the market's principles. Furthermore, they express the focus of the directives in their formulation. The concerns in the Europe 2020 agenda of increasing economic performance, SME access etc. are instead pushed aside by the policy officer's wishes to accede to Contracting Authority efficiency and value for money. One may hypothesise that an element of this concern is due to the respondents of the various consultations. In addition it may be suggested that work by the buying community on the relative added value of the procurement sector that promoted the adoption of simplified systems to reduce transaction costs (such as the IDA Communities, 1993b; Commission of the European Union, 2000; Commission of the European Union, 2001a) served as a formal 'priced' driver to change.

3.7.4 The 2014 Directives

Directives 2014/23/EU, 2014/24/EU and 2014/25/EU were eventually agreed by parliament on 26 February 2014, concerning 'concessions', the 'classical' procurement activity, and the 'utilities' sectors respectively. These were closely followed 2014/55/EU in April 2014 regarding the implementation of electronic invoicing in public procurement. Together, this package of directives represented the culmination of the post 2010 consultations and review processes. They each tackled an important aspect.

2014/23/EU concerned the award of 'Concessionary Contracts'. These are contracts and agreements for the provision of opportunities to supply to the public. The directives themselves describe them as

“...contracts for pecuniary interest by means of which one or more contracting authorities or contracting entities entrusts the execution of works, or the provision and the management of services, to one or more economic operators. ... the consideration of which consists in the right to exploit the works or services or in that right together with payment.” (Article 11 Commission, 2014)

This directive reasserts the importance of procurement to the broader political economy and importantly emphasises the need to engage with SMEs and leveraging the act of procurement for those purposes outside of ‘value for money’. In doing so, the directive paves the way for a shift in the ‘main’ procurement directives’ purpose, and consequent impact.

2014/24/EU was the directive making the most significant change to the operation of the procurement market and concerned the ‘classical’ directives. The preamble to 2014/24/EU is significant in justifying the context for the changes to the market, and the overall market itself. In the main part, it explains the purpose of various elements of the directive. The main themes are again those highlighted by the Europe 2020 agenda but following the significant negotiations during the trialogue process, the more radical were purged. These elements were, along with the main text of the directive, passed by the Council and Parliament, and are therefore representative of the prevailing understanding and purpose of the triumvirate.

The main themes are linked to the overarching discourse of ‘Modernisation’. The innovation to be led by private rather than public actors, SME involvement, governance improvements, and social elements all speak to a capture of the notion of ‘modernity’ as a particular ideational position; they are not normatively agnostic perspectives.

Throughout the preamble the underlying rationale for the directives is made clear, that purchasing decisions should be made on an economic and financial decision making where possible;

“To identify the most economically advantageous tender, the contract award decision should not be based on non- cost criteria only. Qualitative criteria should therefore be accompanied by a cost criterion that could, at the choice of the contracting authority, be either the price or a cost-effectiveness approach such as life-cycle costing. However, the award criteria should not affect the application of national provisions determining the remuneration of certain services or setting out fixed prices for certain supplies” (European Council and European Parliament, 2014 article 92).

While the newer social and sustainability elements etc. are of importance, the financial cost of activities should not be disregarded. Cost may however be contextualised as being a life cycle or whole life cost rather than purely a ‘lowest price tendered’ (article 97). Therefore an aspect of ‘modern’ procurement is a State model that is as lean as possible in the implementation of public policy aims.

Conceptually, the directive sought to clarify the concept of Public Procurement;

“The increasingly diverse forms of public action have made it necessary to define more clearly the notion of procurement itself; ... The Union rules on public procurement are not intended to cover all forms of disbursement of public funds, but only those aimed at the acquisition of works, supplies or services for consideration by means of a public contract. It should be clarified that such acquisitions of works, supplies or services should be subject to this Directive whether they are implemented through purchase, leasing or other contractual forms.... The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works, supplies or services in question, not necessarily requiring a transfer of

ownership to the contracting authorities” (European Council and European Parliament, 2014 p2).

The definition of such therefore seeks to more tightly define the range of notional inclusions which the directives may be applied, and hopefully therefore reduce the debate in the European Court of Justice. That such a significant amount of revision to the directives was required post 2004 as a result of ECJ / CJEU rulings speaks to the need for a clarification in a black letter sense such as this (Caranta, 2015 p409-10)

A significant innovation was the explicit strategic approach to using Procurement for additional benefits in line with the Europe 2020 agenda.

“Public procurement is a key part of the Europe 2020 strategy for smart, sustainable and inclusive growth. It is one of the *market based instruments* to be used to achieve the Europe 2020 objectives by improving the conditions for business to innovate and by encouraging the wider use of green procurement supporting the shift towards a resource efficient and low carbon economy. At the same time, the Europe 2020 strategy stresses that public procurement policy must ensure the most efficient use of public funds and that procurement markets must be kept open Union-wide (all the more in times of financial crisis)” (European Commission, 2011a p1).

Articles 47 and 123 directly engage with these aims namely research and innovation, sustainability, growth, environmental and social agendas. Specifically, the view that procurement may be a ‘strategic’ tool that may work across a range of policy orientated purchasing decisions with an alternative, more coherent, paradigm. In the case of environmental sustainability, significant change had already been made in 2004 to include award criteria and evaluation procedures that are ‘Green’. This resulted in some states even achieving 100% Green Public Procurement (GPP) by 2010 (European Commission, 2010c pIII). The 2014 directives

go further in emphasising the importance of these additional market elements, despite the earlier negative Business response (during the consultation period) to using the market for additional purposes (European Commission, 2011b; European Commission, 2011d). The integration of these strategies is different from iterations of the procurement regime. It seeks to utilise the market for political policy goals and activities that are outside of the scope of economic activity usually the purview of procurement. Thus through the recognition implicitly that to operate within a State as a modern agent, one is inherently an economic actor.

Even when these elements approximate an alternative social emphasis to the market construction, they may also be seen as attempting to make reparations for the failure of the market to encompass a socially bounded agenda previously and present restitution for negative economic externalities. Their contribution is to broaden the discursive base, but in effect, they rely on the commonly accepted economic growth paradigm and 'non-Europe' memes that were well established (see 3.4). Loss is still incurred where the expansion of European competencies is challenged.

Respect was given in the directives towards the specific cultural and legal frames of the member states running congruently with the institutional diversities that the market is constituted from. Examples of this can be found in article 23, which offers respect for the unique nature of 'state supported broadcasters'; article 36 which offers particular consideration for

“...disabled and disadvantaged persons, such as the unemployed, members of disadvantaged minorities or otherwise socially marginalised groups.”;

and article 37 which insists a respect be given for the social and legal obligations of the state in which services or goods may be provided under a cross border contract.

SMEs (Small to Medium Enterprises) had a deal of attention in this text in three ways. Firstly, SMEs were highlighted as needing to be protected from efforts to engender large-scale contractual aggregation by buyers. Article 59 particularly mentions the need to

“...avoid excessive concentration of purchasing power and collusion”

during aggregation. The solution suggested in articles 66 and 78 is to use ‘lots’ or dynamic systems of purchasing which allow for groups of smaller companies to compete equitably with larger suppliers (European Council and European Parliament, 2014 p14). Secondly, in the preamble to the directives, it is suggested that buyers seek ways to engage with subcontractors through direct payments, or requiring certain accreditations from the main contractors (article 105). This is an effort to effectively engender closer ties with those elements of the supply chain that are agreed to be more transnational than the first tier suppliers. The workability of said suggestion is for debate however, and there may be little in the way of appetite for this sort of engagement where project plan or financial risk is concerned. Finally, there is a specific requirement to monitor the participation of SMEs in the supply chain mentioned in article 124. It is regrettable that the mechanism for such monitoring is not detailed and therefore the benchmarking, target setting, and other actions that may make use of said information not integrated effectively into the regulatory regime.

3.8 Discursive Construction of the Market

The purpose of this chapter is to highlight the discursive representation of the market, steered by the Commission and the European Institutions, for the realisation of the overarching political project of European integration from an ideational perspective. To do so, the chapter outlined the development of the EU Procurement Market temporally and thematically. While much has been written in other scholarly works (see chapter 2) about the development of the Single Market

(Grin, 2003, Cox, 1993) there has been less attention to the discursive construction of the Single Market, and the consequent impact of this process. The thematic elements identified the way that the market was structured ideationally. These themes were then embedded in the market making instruments, and in turn seek to perform a vision of an integrated socio-economic construction across the European Union. Wherever possible, primary sources were consulted. In terms of this thesis, the primary sources that create the market are those documents that directly address the market participants. Primary documents therefore include not only those traditionally identified as such, but a wider range of documents that serve to frame the debate. The potential list of documents that could serve this purpose are exceptionally large, therefore as wide a range has been identified and utilized. It is the main documents that have led to the creation of the market controlling and framing instruments that have been of primary importance. Moreover, these are external documents that face the public / market participants and assist in legitimizing a single vision of the purpose and utility of the market in public procurement.

The structure of the change in the market is fluid. The impetus for innovation in the market, and a development of the market through an advance in the regulatory and discursive basis, arrives periodically like ripples on a pool of water. A stone is cast, a call for the advancement of the union to bring more prosperity to the participants, and the subsequent ripples are regulations and modulations to the framework that facilitate this realignment of the market.

The creation of the market is a 'performative' process of creating discursive hegemony within the social construct. The process sits alongside the legislative construction of the market's instruments, hence this chapter dealt with the thematic development, legal black letter law, and the historical context of the directives as sources which constitute the overall picture of the market's constitution.

The performativity of the market paradigm is crucial to the use of economic discourse in the public sphere. In particular the perception created by the use of markets and economic dialogue in discussions of political and social impact. Such debates regarding the performativity of discourses are not abstract. At the time of writing this thesis, the political upheaval of British Exit from the European Union is being debated and the effect of pre-referendum discourse on post-referendum outcomes sharply contested (Telegraph, 2016).

In the case of the crucial instruments that create public procurement practices, they have an impact that seeks to reshape the nature of how citizens and governments interact with the concept of the state. Elements of the realization of the state being subject to an exogenously imposed discourse, the state itself is therefore altered. It is through this mechanism that European Integration is advanced ideationally by modifying the critical reality of statehood.

3.8.1 Modernisation

In the early 2000s three factors are highlighted as being important in the need to change the market regime; Firstly, a significant increase in the number of countries to which the Procurement market impacts. By 2007, the

“...sphere of countries with direct or indirect interest in EU public procurement... numbers almost 40 countries (EU member states, EFTA, EU Candidates, Western Balkan Countries” (OCED, 2007 p4).

The increase in the scope of the Union post enlargement brought a range of governance issues to the fore. A significant benefit to be derived at this time for the buying agencies would be the supply of cheaper goods from the lower cost per unit CEECs to the Western European states. The need to have greater transparency for political reasons within member states is therefore easily understandable.

The second driver for change is that, in its inception, the procurement directives were created to drive economic and political integration through the demand side. But a later shift in the emphasis of the EU towards leveraging economic growth from liberalisation, led to a different emphasis. This was based on perceived market failure.

“In general any time government can reduce private transaction costs or its own costs of provision, it should do so regardless of whether or not an externality exists. It need not wait for the appearance of an externality to effect a justification” (McCurdy, 1999 p565).

The externality perceived here however are not only economic (the ‘cost of non-Europe’) but *a social and political one*. Again, we may see the ‘modernisation’ agenda of the 2014 directives as a process of restitution for past omissions from the market and consequent negative externalities.

The third aspect is practical, verging on functionalism. Rulings by the European Court of Justice regarding procurement infractions build up a significant body of applicable case law. There are significant transaction costs associated with an unwieldy series of rulings constituting a market. Therefore drawing them together under a simplified directives, or by further fundamental treaty change makes eminent sense. This was a key factor identified in the run up to the 2011/14 directives as highlighted previously. Arestis and Sawyer (Philip Arestis, 2006) reference the ECJ as having a key impact on the Single European Market’s formation. The ECJ is important in this context as it refines and provides ‘real world’ feedback detail to the policy process in the most transparent and visible manner.

A particular example of this process can be found in the ‘Remedies’ directive. The need for remedies other than setting aside a contract was long required. The first directive relating to the setting aside of contracts was Council Directive 89/665/EEC relating to review procedures of public supply and public works contracts. This

directive set the minimum procedures for complaints that were required to be available to economic actors in the member states (applicable to both national and transnational suppliers).

The need for member states to have in place 'adequate procedures' was later expanded by directives 92/13/EEC and finally 2007/66/EC. This last directive introduced a standstill period

“...during which the conclusion of the contract in question is suspended”
(article 2 European Council, 2007).

The standstill period requires any awarding CA to notify all interested parties of their contract award decision. From that day, the notified parties then have 10 calendar days to express any concerns over the tendering process with award being possible on the day following the conclusion of the period. During this 11-day period, no contract may be formed between the CA and the proposed successful contractor.

Under the 1989 and 1992 directives, there had to be recourse available for disgruntled contractors, but frequently a contract would have been formed and delivery of the services, goods, or works may have begun. Contracts may of course be set aside, and damages awarded, but this would obviously incur further costs for the public authority. The remedies directives allowed for any possible issues to be resolved prior to the creation of a contract.

A major addition to the regime as part of this process was the availability on the OJEU forms for a complaints procedure. This is not however a mandatory section for completion by CA's and therefore regularly left blank. This is true, even in the case of the modern electronic TED forms.⁵

⁵ I could find little evidence of the complaints procedure elements being completed in the available OJEU and TED forms. There is also no way to track them independently through the database. This is

Consequent to the redesign of the Procurement Directives, the European Commission was also reformed under Jean-Claude Juncker's presidency into a radically new form focusing on projects led by relevant politicians with

“a past and a future” (Dinan, 2016p4)

rather than fixed silos of competency led by faceless civil servants. The discourse from the Commission is that they are actively looking to Procurement as an area of competency within its purview which may be used for growth in the future' following very much in the Europe 2020 agenda frame. Commissioner Elzbieta Bienkowska (DG GRO) focused on the importance of procurement in this role at the outset of her tenure:

“A key challenge I want to address is to **open markets in public procurement**. This means first a real Single Market with less localism in public purchases and more transparency. Non-national operators must be treated equally with national ones. Compared to the business markets, the public procurement market is by far less integrated at the European level: cross-border public procurement is 2.5 times smaller than import penetration in the private sector. This needs to change. I will engage member states to remove practices leading to lack of transparency and unfair treatment of non-national businesses. Successful Public procurement policy will lead to budgetary savings, will support companies and will create a more business and people friendly public administration.” (Bienkowska, 2014 emphasis added).

also difficult to detect in the TED CSV files from the Publications Office servers. Therefore while there is an opportunity present on the forms, without specific tools to track their usage, one must hypothesize that their application is relatively scant. Instead, best practice anecdotally appears to be to outline the complaints procedures at the point of 'standstill notice' issue.

There are of course a number of contestable elements (for example the cross-border trade for private compared to public enterprises) which further the dynamic of both needing to engage with the 'more Europe' / 'non-Europe' ideology, and the neoliberal expansionist paradigm. Overall however, the intention is clear that the Commission perceives the control of the procurement market, the modernisation and relevancy of that market, and the direct access that market has to policy implementation within the member states, as pivotal to the future economic prosperity and relevancy of the EU as a whole.

3.9 Conclusions

This chapter has discussed the development of the market from the inception at the earliest stage of the Common Market, to the period just prior to the most recent revision of the Procurement Directives. There have been a series of 'discourses' of the market promoted by the European Institutions. These are summarised at the very beginning of this chapter in Figure 1. It is important to note that the high level discursive basis of the rationale for the market, and likely impact perceived, changes over time. The discourses react and shift to gain better traction on the market participants, shape the agenda, and respond to external pressures. The utility of this approach is recognised by the Commission and applied accordingly.

Underpinning all of these shifting discourses is however a particular ideational position that informs the overall emphasis of the market. This hegemonic ideal controls the fundamental basis of the operation of the market despite the discursive presentation. The hegemonic position is one of reframing the operation of public procurement to further the European agenda despite the chameleon like use of contestable market presentations.

Elements of the principles of market construction discussed in the literature review (chapter 2) may be found in both the legislative, and discursive elements of the

market. For example, let us look at that of 'transparency'. The principle of transparency of opportunity, and of operation (from a governance perspective), is facilitated through the legislative basis of the market. Making contract advertisements mandatory, creating thresholds for advertisement, and having a complaints procedure (and remedies procedure) for when operation of a procurement project is not undertaken effectively. Alongside these 'concrete' elements, the rationale behind supporting transparent operation of the market is woven into the discursive structure of the market. Thus the ideational basis of a core market creating principle is reinforced.

The discourses are however subordinate to an underlying hegemonic agenda that may be described as 'Societal Integration'. This position is captured in the wish for the European Communities to create 'ever closer union between the people of Europe' in the Treaties. The public procurement market engaging, as it does, with the activity of public procurement inherently engages with the process of realising the state. As the directives change in discursive basis, the bias to be found within the discourses of the market therefore become embedded in the process of realising the 'state' within the Member States. Therefore we may view the discourses of 'Transparency', and 'Modernisation' as encapsulating aspects of the hegemonic idea of the state that is supported. It is through recognition of the principle of discursive hegemony, and the role of the Procurement Market, that we may see what the European Union itself represents; a model of societal integration beyond the institution of government, and operating instead within the idea of modern Statehood.

The following Chapter is a closer examination of the market making instruments used by the EU in the facilitation of the social interactions that make the market. This investigation of the structure and role of the Tenders Electronic Daily (TED) is the present route through which market transactions are made. As a result, it is the route through which societal interactions are made with the processes of European Integration. The closer examination of this market instrument unveils the manner in

which hegemonic ideas are projected into a social creation of the market through the capture of how public procurement is realised as a practice.

Chapter Four: ‘Touching the Market’? The Tenders Electronic Daily (TED)

4.1 Introduction

How should we view the Public Procurement Market’s advertisement process? The following offers the perspective of a Commission policy official:

“This is a complete social system which is also free of charge. I find this interesting because ... there is [usually] a least a layer of administration between Directors and Citizen. But here, what we’re doing here, is directly used by the citizen. By the national operators.” (Interviewee_7, 2014)

“...this is really the part where the system is the closest to the citizen, to the practitioner.” (Interviewee_7, 2014)

They express the formal policy emphasis of the procurement market’s instruments; that they are there to communicate supply opportunities to potential suppliers.

The Publications Office in Luxembourg is the branch of the Commission undertaking the implementation of the Official Journal of the European Union (OJEU) process for advertising public procurement contracts. Their perspective on the user base of the Tenders Electronic Daily (TED) website is quite different.

“We assume, but it is assumptions, we don’t really know who are the ones using the TED directly ... In terms of concrete human beings going behind their screen and looking for stuff, I have really no clue whether this is actually what is happening.” (Interviewee_10, 2015)

There is a schism between the intention of the Policy officials designing the procurement market's instruments, and the policy implementation staff making this a reality. This schism is at the heart of confusion between how policy is intended, and how it is implemented in reality and is emblematic of the argument made by this thesis. That implementation may have a significant impact on the realisation of policy, and the ideational content of the policy implementation modes may have an impact on the outcomes.

One may question whether it is surprising that an official in the central policy network of an governmental organisation has a different perspective to those staff at the 'sharp end'; however were beliefs regarding policy generation to be correct (Woodside, 1986; McDonnell and Elmore, 1987; Leibfried and Pierson, 1995; Cram, 1997; Rhodes, 1997) then there should be a process of re-evaluation and re-integration of the effect of 'implementation modes' of each policy. It is apparent that even following a large-scale consultation process, the Commission still has not recognised the impact that implementation modes may have on their own policy implementation. Instead, hegemonic ideas regarding the role of economic integration are allowed to spread within the policy practices of the EU's model of capitalism.

The Tenders Electronic Daily (TED) website is a market instrument designed to allow buyers and sellers to communicate in an open and transparent manner. All applicable procurements to be made EU public bodies are advertised on this site. Prior to this point, said applicable contracts were advertised in the hardcopy Official Journal of the European Union Supplementary Series (OJ-S) until 1998. National governments, Commission officials, Eurostat, and policy makers may therefore trace the operation of the market through the metrics that are produced from the system. As such, the website forms the pivotal support for the operation of the market in both a communication, and informational sense. But if we view the statements from two actors working within the Procurement Market's supporting

institutions, we can see neatly expressed a conflicting understanding of what the TED represents on a practical level, and a disconnect with the practical implications.

This chapter discusses the role of the TED as the primary instrument devoted to the operation of the market, and its ostensible 'control' of the discursive framing of the act of public procurement. The research for this chapter uncovered little in the way of political debate regarding the meaning and operation of the market through this form of instrument. The TED was instead debated consistently as a technical undertaking by the Commission rather than a crucial discursive tool. It has therefore been seen in much the same manner as public procurement has been previously debated; as a normatively transparent policy tool.

The previous chapter outlined the development of the market from the early 1960s to 2009 / 10. This chapter continues the story by offering a congruent history of the development of the principle instrument used in the Public Procurement market. The chapter begins by outlining the key principles that the TED / OJEU-S advertisement process *should* facilitate. This is organized in terms of the stated intentions ('Principles of the TED'), the TED as a 'Policy and Market Instrument', 'Advertisement', and the 'Role of TED in the Public Procurement Market'.

Secondly, a history of the development of the TED from the Interoperability of System for Administration (ISA) and SIMAP projects is presented. These programs moved publication from being a printed (hard) copy form, to a simple database, and then developed into the multi-linguistic website that is now used. The basic operation of the advertisement process was set during this period and it is important to understand how some of the technical paradigms that persist until the present system operation were agreed at this time. The TED is therefore described as being the result of projects that sought to implement the 1990s advances in information technology for the benefit of EU business and administration.

The third section looks more closely at the period from 2004 to 2015. During this time, the TED was outsourced to a third party private company. The contract tasked the supplier with the management and dissemination of the OJEU-S through online and DVD routes. The use of a third party supplier moves the responsibility for this crucial market instrument into the private sector and depoliticises it even further from the already 'technocratic' model of operation. Operation of the website therefore becomes a 'contract management' issue, rather than politically debatable policy implementation model. The contract documents that were obtained for this thesis, and used for this section, reveal much about the way the TED was seen by the Commission, the intentions of the system, and by extension the market as a whole. This conclusion is not due to a restriction of searches to 'technical' or procedural areas. Searches were undertaken by this researcher of the minutes of the Council and of the Parliament. Neither dealt directly with the purpose or implications of the SIMAP programme, IDA, or TED outside of agreeing budgets for those operations.

Fourthly, the current (2014 to 2015) institutional and operational structures that support the Tenders Electronic Daily (TED) are detailed. This section includes the structure of the NICE and CPV coding systems that are used to provide a more restricted vocabulary with which to discuss supply requirements and industrial sectors.

Fifth, in order to fully explain the process of public procurement and the precise role that the TED and OJEU-S have in the operation of the market, an example project has been detailed. This is a large procurement project to appoint suppliers to a framework agreement for the North Eastern Universities Purchasing Consortium and includes primary research from purchasing officers, contract managers, and the suppliers that tendered for the project.

Finally, some reflections on the operation of the TED as a market instrument are offered in 5.6. These preliminary conclusions relate to the efficacy of this policy

instrument when compared to the ‘intentions of the market’ detailed in the first section of this chapter. Transparency and accuracy of information are particularly highlighted for criticism. The transparency issues with the TED include; linguistic barriers (advertisements are placed in only the language of the buyer and not translated); information regarding the variety of legislative structures present in each member state, and regulatory oversight that focuses only on one half of the market (the buyers by the suppliers – no oversight of the suppliers is made). Along with these defects, there is an unbalanced knowledge of the rules of the market’s operation in favour of public buyers borne of the fact that they are operating the procurement process. Optionality of implementation of the market through discretion for Contracting Authorities allows weak regulation to continue, and relying on audit offices may have contributed to the low levels of advertisement, and therefore competition for individual contracts.

4.2 The Principles of The TED

The EU’s Public Procurement market is commonly analysed in terms of the institutions, and legal structures that govern it (Arrowsmith, 2012; Armstrong and Bulmer, 1998; Bovis, 1997). This thesis focuses on the social construction of the market and as a result, the information and understanding of the participants is of crucial importance. The previous chapter concerned the discourse used by the EU to formulate and perpetuate a particular market paradigm. This chapter is a case study of a specific market instrument that addresses the politics of information between participants. The Tenders Electronic Daily (TED) website is the portal through which contracting opportunities are communicated as an access point for the Official Journal of the European Union (OJEU) Supplementary Series. It is “the one-stop official source of information for timely information on public procurement opportunities in the European Union.” (Publications Office of the European Union, 2014b p3) through which “...up to 1000 new contract notices [are] published daily.” (ibid p4). These contract opportunities may be searched in a “...timely and cost effective manner.” (Publications Office of the European Union,

2014b p5) ostensibly leading to an expansion of the opportunity horizon for all businesses.

The EEC used the latest communication systems available throughout its history. The TED website was born of one of these programmes, the Information for Data Administration (IDA) program in the early 1990s that sought to leverage new internet based developments for the improvement of the internal market. The system has been under constant development since this point. Since inception in 1994 it has expanded from a portal for publishing notices; a

“... tool for preparing public procurement notices and sending them for publication in the OJ S.” (Publications Office of the European Union, 2014b p2),

to the dominant source of market information for both market participants and policy makers. It is

“...a complete social system which is also free of charge... [between] the directives, and directives of the member states there is at least a layer of administration between directives and the Citizen but here what we’re doing here is directly used by the citizen....this is really the part where the system is the closest to the citizen, to the practitioner.” (Interviewee_7, 2014 P11).

This is the point at which the citizen ‘touches the market’.

As such it is a core component of the e-Procurement agenda in the EU. E-Procurement

“...refers to the use of electronic communications and transaction processing by government institutions and other public sector organisations

when buying supplies and services or tendering public works.” (Cattaneo, 2011 p24).

The policy goals of this agenda are to fully integrate electronic methods of communication within public supply chains, increase participation of all levels of business (including SMEs), and enable cross border procurement (Cattaneo, 2011 p7). Other aspects of the e-Procurement agenda include electronic invoicing, document management, and professional accreditation. The Commission’s stated drivers for the introduction of these systems is to reduce prices, increase transparency, improve relative efficiency of process, and increase choice to buyers (Cattaneo, 2011 p15). These issues are framed as being key in rectifying the market failures of a diversity of systems, and thus engagement at the macro level by the Commission required for their resolution. The diversity is not only at a technical system levels. The public procurement market is

”... highly fragmented and complex, accounting for a high number of different procedures, IT technologies, certification requirements, using practices that do not fully exploit the opportunities offered by IT technologies.” (Commission of the European Union, 2013. P7).

These technical issues are further compounded by the diversity of Contracting Authorities, and institutional structures in the Member States with varying applications of the principles of the market.

4.2.1 Policy and Market Instruments

The TED is a particular form of Market Instrument that performs a hybrid of functions and as such is analysed in this chapter as both a broad acting Policy Instrument, and a more focused Market Instrument. Policy Instruments are any device used to lever social outputs by government including “taxation, regulation, expenditures, public ownership and moral suasion” (Woodside, 1986 p775) and the

study of 'policy instruments' is closely related to the performance of the economy. While it may be argued that there

"is no efficiency reason for a government to be involved [in the economy] except to help enforce property rights" (Coase 1960 in Eskeland and Jimenez, 1992 p147)

a wide range of externalities resulting from the use of markets in the public sphere need a multitude of solutions. The information transaction role of the TED, through allowing more market participants access to market knowledge, therefore fulfils an awareness role that straddles both the broad policy realm (as it deals with the transparent enactment of procurement policy) and the technical realisation preconditions of market participation.

This use of the TED is not a politically neutral act, but previous studies approached it in such a manner. While there have been in-depth political discussions within the EU about the emphasis of the procurement directives, less attention has been paid to the implementation of the market, and the market instruments therein. Implementation modes moreover, can have pernicious ideational and constitutive impact on policy outcomes. The study therefore of the implementation mode through the delivery of market transparency information systems is of crucial importance in understanding the realisation of the market, and the social construction described in this thesis.

Instead, the market's main instrument has been designed as part of a broader technical standardisation of internal market information approaches. This has led to the institutionalisation of a technocratic paradigm of decision-making. While there may be 'better' solutions available in the private market, the mandated use of the TED has led to an absolutist approach to the use of an outmoded method of communication, and a sunk cost in supporting it.

4.2.2 Advertisement

The primary manner in which the market is operated is through the transparent exposure of opportunities to supply the public sector to competition from companies across the Union. This is through advertisement of contract opportunities in the Official Journal of the European Union Supplementary Series (OJEU-S). This advertisement requirement therefore forms the principle market instrument and the website that facilitates this, a key instrument.

Transparency is about access to information. In governance context, this means access to information regarding the working of civil servants and politicians. In the context of a market, it refers to an equality of information access for all participants so actors may make informed economic decisions. This is so that, if nothing else, 'accurate pricing' may be provided (Stigler, 1961 p214). The accuracy of pricing furthermore allows for adequate assessment of transaction costs when making decisions, without which classical models fail due to opacity (Williamson, 1979). It may further be argued that as an actors' activities are defined not by the possibilities open to them, but by what other actors do, then equal knowledge of other actors' intentions (expressed in the market paradigm as prices) is a prerequisite for an effectively operating social market;

"I insist that what a firm does in a market is to watch the competition in terms of observables" (White, 1981, p518).

The determinant factor affecting the markets from this perspective then is the observable action of others in a market. The level of transparency and information available about that market and the participants then (according to this hypothesis) determines the market's efficacy. From this perspective, the suggestion that supply and demand rule market behaviour is thrown aside in favour of "tangible cliques of producers observing each other" (White, 1981p543) to determine their next move. In Public Procurement, a lack of transparency would lead to market failure and

therefore the requirement is for an open ‘consumer market’ where trades are done in a manner that allows for scrutiny by all market participants, for better or worse (Trent, 2013).

4.2.3 The Role of TED in the Procurement Market

There are four assumptions made by the Tenders Electronic Daily website. Firstly is that increased participation, market success, and integration is assumed to be a ‘positive’ outcome. Participation by CAs in the advertisement process is necessary in order to facilitate a transparency agenda (outlined in Chapter 4 and as part of the governance perspective from Chapter 2). Advertisement of public contract opportunities will allow private companies to see what contracts are available, and the result of previously advertised projects that they have been involved with. Furthermore, due to the principle of aggregation of demand by the Contracting Authorities and consolidation of demand streams, all contracts *should or could* be included in the market, even though those over the financial threshold are the ones mandated for inclusion. Those contracts beneath the thresholds may, through demand aggregation, be included as well. So the entire available demand that is outsourced by government should, in principle, be transparently available through the market’s mechanisms in order to ensure that the market is being applied correctly. In the case of the United Kingdom, this principle has been followed to its logical conclusion with the ‘Contracts Finder’ website launch on 26th February 2015. This website is the de facto contracting portal for all UK government and government supported organisations. The requirement is that any contracts valued at £10,000 or above should be advertised openly in this manner, with the higher European threshold of £172,514 (goods and services) and £4,322,012 (construction) being applied (as of 1 January 2014). The UK website makes no distinctions on the form of contract or the type of supply required.

While there is a requirement for the rules of the market (including advertisement) to be applied for both above and below the OJEU thresholds, this is obviously not

the case. Estimates place the 'value' of the market as being around 17% of EU GDP, but only around 5% is advertised (London Economics and PWC, 2013 p7 also see chapter 5 of this thesis). It is interesting to note, that this was not the assumption made by some of the interviewees during my research. The presumption was that there were different strata of contracts. In some cases, the OJEU process was applicable and some not. The distinction was however difficult to make, and the principle of aggregation not considered (Interviewee_1, 2014 in particular).

Secondly, the development of the transparency agenda is an effective regulatory instrument that leads to the constraining of actor preference and a framing of choice. Available choices are instead funnelled into the prevailing paradigm of the sponsoring body (the EU institutions in this case). This is both an effective and cheap manner of operating in a classic regulatory state form (Majone, 1994; Caporaso, 1996; Scharpf, 2001). Furthermore, it can be seen as the inculcation of an institutional form of capitalism that is sponsored by the European Union, again emblematic of the previous chapter's vision of a liberal market paradigm being supported by the EU as a realisation not of the European Social Model (ESM) but a variety of capitalism more commonly recognised as 'Anglo-Saxon' (Hall et al., 2001) or neoliberal (Bohle and Greskovits, 2007; Schmidt et al., 2013). While there could be an argument for the market to be seen as part of a 'new regulatory paradigm' (Busch et al., 2005 p147) there is a conflicting case to be made regarding the autonomy allowed by the EU for the member state's own implementation of the regulatory regime. The diversity of institutional structures within the members speaks to this phenomenon. In 2014, there were more than 15 variants of institutional structures around the centralisation, and governance regimes within the member states (based on figures in OCED, 2000 and London Economics and PWC, 2013 referenced further in Chapter 5). However, the market level communication dynamic is still retained between the CA, the suppliers, and the TED rather than the state level dynamic.

Thirdly, the TED serves a multiple audiences in terms of private actors, public bodies, policy makers, analysts, and other interested parties. Policy and market instruments are defined by the political and practical possibilities of their realization within a democracy.

“Few policy makers act alone, or operate in an environment without constraints that limit their range of choice” (McDonnell and Elmore, 1987 p146).

The institutional context, capacity, fiscal resources and political support all have parts to play. Therefore addressing and serving the interests of such a broad cross section of society and state functions, the TED has to operate within huge constraints. The manner in which policy instruments are designed may be determined to some degree by the information used to create and control that instrument. Political intelligence, strategic information, and analytical information (McDonnell and Elmore, 1987 p148) all have their role. Therefore the manner in which information is understood is as political an act as any other element of the policy process. The audience and the framing of such information needs to be coherent in each case for it to be effective. Moreover, the information about the policy (or market) has a constitutive effect, it is

“not politically innocent, and may... become the subject of analysis...” (Diez, 1999 p599)

by the audience. In as much as there is an intended projection of discourse, in just the same way there is a multiplicity of understanding once a text is received. It would take an exceptionally finely balanced instrument to address the nexus of so many interests without first having the preconditions in place for acceptance of the overall paradigm – or to create that paradigm for the participants.

Fourthly, policy and market instruments may be typified and analysed with regards to their power relationship to those impacted by the policies. While many policy instruments are placed on a scale between 'coercive' to 'mandatory' (Woodside, 1986; McDonnell and Elmore, 1987), policy in this context can be understood as categorisable by the 'directness of control' whether

“The coercion associated with the policy is remote or immediate, and whether the policy seeks to control individual behaviour directly or through the environment.” (Woodside, 1986 p777).

The market paradigm may be one of the less invasive of the policy implementation frameworks (Linder and Peters, 1989 and Jordan et al., 2005) As a general principle,

“governments, in order to maximize their popularity, seek to avoid unnecessarily coercive policies whenever they can” (Woodside, 1986 p781).

The policy maker will then

“move over time from least coercive to most coercive in any given policy area” (Linder and Peters, 1989 p47)

as appropriate to realize the required return with a consequent acceptance in this context of being of variable control over policy outcomes.

In this market however, and for clarity it may be more appropriate to look at the underlying mechanisms employed. Using this dichotomy is very reductive, and portrays policy as a blunt instrument. The ideational power of information control is far more insidious in its ability to permeate the understanding of the paradigm and perpetuate a beneficial construction through the less observable and discursive elements of the power relationship (Lukes, 1974 p24). This approach works

“when A devotes his energies to creating or reinforcing social and political values and institutional practices that limit the scope of the political process to public consideration of only those issues which are comparatively innocuous to A... either by suffocating them before they are voiced; by keeping them covert; by preventing them from gaining access to the decision making system, or at the final stage by insuring they are not implemented” (Robinson, 2009 p116).

The power of the TED then, within the supportive discursive environment of the EUPP, is *performative* in seeking to create an alternative social reality for the participants involved; The provision of a framing of the understanding of the market ahead of the participant’s own perception. Questions of power in this context then are both suasive and ‘structural’ –associated with mandatory regulatory functions, but also the contextualization of the debate around a particular course of action. The role of the economic discourse within the market construction therefore represents a particularly focused paradigm. One that seeks the definition of the social around an imposed economic vision of society, rather than an organic and socially embedded one.

4.3 Development of the SIMAP system and Tenders Electronic Daily (TED)

As discussed in Chapter 3, the Official Journal of the European Community (OJEC) has a long history. For more than 40 years, the Publications Office has included the records of the activity of the European Institutions in the OJEC, and then the successor Official Journal of the European Union (OJEU). Throughout this period, it has been based in Offices in the capital of Luxembourg, although the precise location has changed. In 1978, the Supplementary Series was launched which is issued every working day of the EU and carries contract opportunity information advertised by Contracting Authorities. For much of this period, the publication

mode of the OJEC S remained static. Hardcopies issued every (working) day to the relevant European Document Centers (EDC) and subscribed parties, and some information published on Microfiche. This was completely overhauled in with the introduction of the Tenders Electronic Daily (TED) website in 1997.

The EU programme that bore the TED was the Interchange of Data for Administration (IDA). Overall, the IDA represents one aspect of the efforts of the EU to create hegemony in the standardization of technical details of information exchange during a critical point of the Internet's development. The EU, pursuing a policy of encouraging the 'information economy' was seeking to counter balance influence of 'American industry' (Norris, 2001 p30) and impose de facto standards, pump primed by Government administrations.

The rationale behind the capture of Data interoperability as a policy area by the Commission was that the;

“...objectives of the proposed action cannot be sufficiently achieved by the member states and can therefore, by reason of the scale or effects of the proposed action, [should] be achieved by the Community... if there were no such community contribution exchanges on information between the different administrative systems concerned ... [they] would likely not to be satisfactorily carried out.” (Council of the European Union, 1995 p23).

Understanding how the IDA programme developed is of importance when then approaching the second section of this chapter; the development of the SIMAP and TED. The fundamental principles of the IDA carry over into the implementation of efficiencies in the application of works relating to public procurement in the EU.

4.3.1 Early policy formation in the 1980s

There were a range of services, programmes and innovations in the 1980s that developed electronic data links between the member states. TEDIS (concerning Trade data), INSIS (Interinstitutional Administration exchange) and CADDIA were innovative solutions to the problem of a diversity of information systems and growing governance challenges. From 82/869/EEC onwards a stream of funding was devoted to such developments.

The Commission issued a green paper for discussion regarding a potential programme to develop IDA solutions. COM (1993) 69 – Proposal for a Council Decision adopting a multiannual community programme to support the implementation of trans-European networks for the interchange of data between administrations (IDA) was submitted by the Commission on 12 March 1993.

The existing programme utilizing Caddia Data (CD) for “agriculture, customs and statistics” (Communities, 1993b p12) had run from 1985 to 1992, and facilitated a shift in the management of data in this field. The IDA initiative sought new funding and support for this stream of institutional development. Basis for this decision was in Article 235 of the treaty (Communities, 1993b p13). This decision defined the new IDA programme as a wide reaching umbrella for future systems development. Two ‘closely linked parts’ (Communities, 1993b p14) were identified. Those projects concerned with the administration and institutional developments, and those concerned with broader technical and infrastructure harmonization of telecommunications systems.

The feasibility studies mentioned in the annex to the Green Paper (Communities, 1993b) focus largely on the technical (legal, infrastructure and standardisation) processes that were to be analysed by the project. One concerned

“...examination of the problems of methodology and coordination...”
(Communities, 1993b p15)

but further than this, the main emphasis was on establishing the practical possibility for a data system to be developed in this vein to include the infrastructure and software required. The criteria for assessment of success did focus more broadly on the institutional benefits that may be accrued operationally (Communities, 1993b p16). Com(93)69 was augmented by a pair of proposals from Commission President Jacques Delors, and Britain, that the national parliaments be granted further inclusion and oversight of the IDA project (Commission of the European Communities, 1995). This concerned the budgetary allocation (and the likely consequent power this would afford the Commission). Missing however is a sense of the linking of these developments to the broader political economy and citizenry. There is no record in the supporting European Council or European Commission papers regarding it. Instead, the detailed proposals were concerned with the technocratic and financial implementation.

The IDA allocated monies towards the SIMAP project and through this programme to the *Système d'Information sur les Marchés Publics* Project, commonly abbreviated to SIMAP. This proposed system was intended to improve the public access to contract information, and

“...reduce, though the [increased] contacts with contracting entities, the number of unpublished compulsory invitations to tender.” (Commission of the European Union, 1994 article v4).

There were a number of aims for the SIMAP project that would hopefully modernize a range of aspects of market governance. By 1993, a pilot selection of countries with the relevant technical infrastructure was chosen to soft launch the system along with additional ‘data entry points’ (information aggregation services) which would assist in a simplified roll out (Commission of the European

Communities, 1994 p86). By 1995, despite the direct development of the TED and SIMAP as 'access points' to the OJEU, there were 48 licenses granted across Europe for direct access to the TED. These were for re-publication aggregators (such as Achilles.co.uk in the UK) that would then republish the site as part of a private offering or advice service (Publications Office, 1996, p34). This was indicative of a wish by the Commission to partner with private providers where possible. Debates around the formats that should be supported litter the work of the Commission at this time along with an aspiration to avoid proprietary solutions when there may be market based ones available.

“Purchase services from the marketplace, avoid investment in infrastructure, specific technologies, and the development of proprietary solutions” (Commission of the European Union, 1997p12).

This practical and pragmatic implementation of technical standards is quite different to the overall discursive aspects of the market discourse. It appears that the SIMAP programme at this point is concerned with exactly these issues. Rather than large-scale macro elements, it becomes focused on micro issues. The implementation of these technical details is disconnected from the broader discourses. In addition, there was a duplication of effort by the EU in both working to develop a direct link from the market to the TED as a system, and also rely upon privately owned companies to facilitate the market instrument.

In 1994, the Commission began investigation into methods of Electronic Data Interchange (EDI) regarding Public Procurement notices. The publication of physical copies of the Official Journal of the European Union (OJEU) and their dissemination to the European Document Centres (EDC)

“...adds considerably to the delays in disseminating information to interested parties.” (Commission of the European Union, 1994 article V3.2).

They were also expensive and becoming impractical from a logistical perspective;

...”They weigh between 450 and 650 grams each day. The S Series of the OJ is becoming increasingly more awkward to handle and particularly to package” (Publications Office, 1996 p62).

The Commission’s feasibility studies had concluded that

“...it was possible to improve the quality and reliability of existing information by using a structure capable of entering validated data into the system and that the coverage of data available on public procurement could be usefully extended by creating a genuine information system” (Commission of the European Union, 1994 article V4).

In brief, the electronic portal would allow quick transference of contract data from the buyers to the Official Journal. This would then be accessible electronically to potential contractors. The OJEU would continue to be published in hard copy as before, but reliance on this method of contract transparency would be diminished over time.

“In the first pilot project, 75 contracting entities designated by the member states will use electronic mail to send notices of tender opportunities and contracts awarded for publication to the Official Journal of the EU and in its on-line equivalent TED (Commission of the European Union, 1996b p52).

The use of electronic communication in the tendering process was adopted through the addition of certain provisions in the main procurement directives. The Commission issued COM(95) 107 in 1995 which included the capacity for tenders to be submitted via ‘electronic means’. If tenders are returned by an alternative avenue (for example facsimile) then they must be confirmed via postal service. Electronic communication was therefore given de facto preference over and above

the alternative communication devices. These changes were not communicated widely at the time, and the changes to national legal requirements were left for transposition debates.

Table 5 shows the increasing number of advertisements that were placed in the printed version of the OJEU up until the point at which it began to move into an electronic format in 1995. The granularity of the data made available by the publications office regarding the advertisement numbers increased dramatically in the 1990s. While computerization of records was developed in the 1980s, it wasn't until the 92 onwards that one may see the extra depth of information being utilized.

During the period 1975 to 1994, there were 303,332 advertisements placed in the OJEC-S across the Works and Supplies categories. This is a huge number of procurements, and the exponential increase year on year of the number of the advertisements far outstrips the relative level of growth within each economy. There are some mitigating factors to do with the expansion of the directives, increasing membership of the EU, re-integration of East Germany etc. that may have had an impact in the expansion of the use of the OJEU-S. It is difficult to directly ascribe particular actions, treaties or agendas to the expansion of the use of the OJEU. This is partly due to the time lag in publication (particularly in the case of building projects that may be conducted over several years) but two things become apparent. Firstly that the use of the advertisement route increases as a general trend. Secondly, that there are consistent trends in the manner that certain states use the advertisement process. Namely that even some large economies (Italy for example) take a significant period to engage with the process.

It is unfortunate however that a greater level of depth may not be found in the annual reports as a data source. They fail to capture the detail of the mode, mean, and important trends relating to the types of advertisements placed per annum which may have allowed a more nuanced analysis. Of course, this omission speaks

to the purpose of the reports as a mechanism for audible action within the Commissions' operations, and not a detailed academic or policy generation tool.

Figure 5 below shows the overall rise in the number of public procurements carried out per annum. This is an exponential growth in the quantity of procurements, although it is quite apparent that the rise in numbers is linked to the increasing integration of the European Economies after the Single Market agenda was launched.

The rate of growth of the use of the OJEU-S to advertise procurement projects was consistently high through the 1975 to 1994 period. Figure 6 shows the percentage change in procurement advertisements per annum year on year. The peak change comes in 1993 with a 50% increase in the volume of advertisements placed. 1994 consequently still had an increase of 8% but this was over the previous annum's 50% increase. Again, while reasons for the increases are hypothesisable, the trends are toward consistent increases year on year.

4.3.2 The Core Concern

In addition to the core mission, the IDA was an important funding stream. There was wide spread support in Council and Commission of the need to invest in new technologies. The IDA therefore became important as a fund to address some of the shortcomings of the Internal Market

“By way of example, the information system for public procurement (SIMAP) and several applications in support of administrative cooperation in customs and agriculture received Community funding under IDA in 1994” (Commission of the European Communities, 1995 p25).

The investment for a broad programme of investment would otherwise be difficult to achieve through other means. These projects were stated to be for the improvement of transparency of process in the EU but also the engagement of sectors of the economy that might otherwise suffer from a lack of engagement by governments (Commission of the European Communities, 1995). As a result, promotion of elements of the IDA focused on the inclusion of SMEs (Commission of the European Communities, 1995 p70) as a source of politically positive support.

On the 6th November 1995, the Council passed a decision (Council of the European Union, 1995) that allowed for an extension of funds to support the development of the IDA programme on behalf of the community for 1995, 1996 and 1997. This 60 Million ECU fund was to develop a range of standardising products including ‘telematic exchange’ and ‘electronic mail’ for the IDA recipient schemes. This included SIMAP along with various more statistically based systems (such as SOSENET for social security, and VIES/SITES for customs and taxation data). The core function of the majority of these systems being the measurement and harmonisation of the policy information process (ibid preamble).

SIMAP was launched online in October 1997 and was the first public procurement portal and the record of the Supplementary OJEU series. This led to, a year later, the discontinuation of the paper based copies of the Official Journal Supplementary series in July 1998 (Commission of the European Union, 2001a p30). The shift to electronic methods of communication assisted in the reduction of the operating budget of the Office of Publications but revenue was affected as the publication of free access information on the internet reduced sales by 3% per 1997). By 1999, 2 years from launch of the TED this equated to a loss of 5million EUR (Office of Publications of the European Union, 2000 p12). Although the investment required to facilitate this reduction in cost was offset by the additional capital investment from the IDA project. The Office of Publications continued to issue the OJEU S on CD and DVD rom to the European Document Centres (EDCs) in public libraries around the union. The edition in which a contracting authorities' advertisement is made is also sent on DVD to that Contracting Authority for their records.

The number of contracts advertised in this period increased at a rapid rate throughout the 1990s from 34,232 in 1990 to 163,395 in 1998 following the shift to electronic methods of publication (Office of Publications of the European Union, 1999 p16)⁶. While the total output of the Union was increasing at a rapid rate, the other publications made by the institutions attracted a fee for the publication office to publish them. There is then revenue available at the point of sales. This is not the case with the OJEU-S which fails to attract a publication fee, and is freely available through the TED (Office of Publications of the European Union, 1998 p95). The OJEU-S therefore constitutes a significant overhead. In order to challenge the growth in costs associated from their activities, the Office of Publications outsourced a great number of contracts through the OJEU. The initial cost reduction in the issue of the S series through CD-ROM and TED was 11.7% after only a year of working in this mode (Office of Publications, 1999 p12). The compound savings

⁶ Exact data per annum could not be established for this period hence the lack of a data table and graph showing changes. The figures were instead established from the published annual reports issued by the Publications Office as referenced.

increased as the capacity and use of the system increased with the ease of access afforded by the web interface and electronic communication.

4.3.3 Politically Contentious Budgets and the IDA Programme

On 12th July 1999, the Parliament and Council issued two joint decisions, with regards to the opinions of the Commission and Committees. Decision 1719/1999/EC concerned

“A series of guidelines, including the identification of projects of common interest, for Trans-European networks for the electronic interchange of data between administrations” Council of the European Union, 1999 preamble).

Decision 1720/1999/EC related to the adoption of a programme titled ‘Information for Data Administration’ (IDA) that constituted;

“a series of actions and measures in order to ensure interoperability of, and access to trans-European networks for the electronic interchange of data between administrations.” (European Parliament and Council of the European Union, 1999)

Both of these decisions enacted the IDA programme at both the infrastructure and administrative level to further the electronic strategy and had a direct impact on the future allocation of funds for development of the TED.

This provided a ‘series of guidelines’ for further development of data networks under the IDA moniker. The purpose was to support the existing IDA development, but also bolster those systems that were of use in the

“... establishment of integrated telematics networks for the facilitation of communication between the Community institutions and in support of the

community decision making processes.” (Council of the European Union, 1999 p3).

These guidelines reasserted a political emphasis over the process of deciding which IDA projects should be implemented and the parameters of the same. Moreover, it established the working parameters for the medium term development of the IDA, SIMAP, and TED. The budget allocated for the period of development 1998 to 2000 was 38.5m EUR that was a significant reduction from the previous allocation.

Regarding the specific projects that were identified in the decision for support; there are two themes of note. Firstly, the highlighting of projects that can be seen as relating to transparency of governance and EU processes. Items 3 (regional cohesion), 5 (statistics), and 6 (official publications) in particular relate to the improvement in accessibility for civil society to EU documentation. They seek to develop improved, and less costly, access to electronic sources for the advancement of the Union, and the citizenry’s understanding of the Union’s processes. Secondly, there is reference to the need to improve access to these sources of information as a way to assist with the democratisation of access to information for Small and Medium Enterprises. Item 4 mentions the need to fund

“... an interface to existing Commission databases in order to facilitate the access of European Organizations, and particularly SMEs, to Community sources of funding.” (Council of the European Union, 1999 p7).

There are two further elements of note included in this decision. Firstly, that by 1999 the amount of data that could be, and would be, exchanged had become apparent. Even in such a short time as 1993 to 1999, there was a ‘feverish’ growth in development of the internet traffic (Coffman and Odlyzko, 2002 p30). The development of usage in the EU15 members between 1996 and 1999 for example (broader population) was an increase of 15% of the population from 5% in 1996 to 20% in spring of 1999 (Norris, 2001 p74). This explosion even within the broader

population exceeding the usage of government officials. Secondly, there was a focus on the implementation of IDA projects onto the required systems for the practical introduction of Economic and Monetary Union. Article 4 of specifically mentions priority to be given to those projects that assist in the integration of governance regimes and

“...facilitate the preparation for the enlargement of the European Union”
(Council of the European Union, 1999 p3).

In 2001, the Commission proposed an amendment to the IDA programme to the Parliament and Council (Commission of the European Union, 2001b). This allowed for a degree of more flexibility for the projects under the IDA and improved governance (limits on the budgetary increases that were possible under a single project under article 3, approved work programmes, clearer reporting). More interestingly is the focus on the ‘economic viability’ of the administrations in the member states. The suggestion that the cost of governance in some states was exceeding what may be seen as reasonable was implicit. Emphasis was given at this time for the need to ‘benefit... citizens and enterprises’ (Commission of the European Union, 2001b p3) within the broader political economy rather than purely the single emphasis on state structures; There being a recognition of the damage potential to innovation by an overactive government – particularly in a burgeoning economic arena.

Following this phase of development, IDA 2 replaced the IDA in 2001 with increased governance emphasis. The further development of the infrastructure was the main focus, and the SIMAP and TED were largely transferred to the responsibility of the Office of publications. However in 2002, the pair of decisions processes in the 1999 decisions were revisited and updated. Decision 2045/2002/EC in October 2002 amended the proposals in 1720/1999/EC adopting a programme to improve the interoperability of administration systems to include aspirations for a paperless submission and opening procedure to be prepared prior to the issue of the new

Public Procurement Directives the following year. There was recognition that this may prove to be legally difficult in terms of the member states' own requirements (Commission of the European Union, 2001a p30) and that the paper process may need to be continued. Certainly this seems to have been the net result. The emphasis in this document was on these governance improvements, but also included the aspiration for these programmes to specifically target

“...citizens and enterprises of the Community” where possible (article 2 preamble).

In both these revisions, the project governance and implied democratic emphasis of the decision combine to re-emphasise the political nature of the policy area and its potential importance, but the technocratic framing of the decision undermines the effective communication of the article.

The manner in which the IDA 1 and 2 developed is of crucial importance. At this point in the development of the Procurement Market's information transmission process, the EU was proactive in generating solutions. The IDA actively controlled the manner in which the modes of communication operated. While it referenced the principle of using third party private solutions where possible, the level of control over the outcomes was very high. The Publications Office directly controlled the printing contracts and dissemination of published materials used for the OJEU prior to the IDA. The IDA then allowed them to move into the same role of dissemination and control, while additionally directly managing the new electronic solutions.

IDA was superseded by the IDABC in 2005. The IDABC stands for Interoperable Delivery of European eGovernment Services to public administrations, businesses, and citizens. This programme held similar development aims to the core of IDA. With regards to SIMAP however, this was no longer developed as an in-house concern. The SIMAP project was outsourced to ARHS Group in 2000 according to

the tender documentation sourced during this research and more thoroughly covered below in section 4.4. The management therefore of the website was shifted to a mode of operation that was more static than the previous phase of rapid development when it was under direct control of the Commission officers. The IDABC programme finished in 2009 with completion of the major technical, infrastructure, and operational standardisation elements of the initiative. The cost of implementing the programmes and processes from that point onward were to be absorbed in the normal operating processes of the EU directorates and the member state administrations. The outsourcing operation of SIMAP and TED however persisted, and does so to the time of this thesis being completed.

The successor programme to the IDABC has been the 'Interoperability Solutions' programme known as 'ISA'. Certain new developments were to be included in the ISA 'interoperability solutions for European public administrations' in 2008. The ISA in 2014 had a large budget of 160 million Euros. The budget allocation demonstrating the commitment by the EU to the advantages and advances that the use of integrated administrative systems could offer.

4.4 The Development of TED from 2004 to 2015.

The Commission, as the executive and civil service of the European Union, are the top level institutional home for the SIMAP and TED. There are two directorates that are concerned with the running of the system. On one hand there is the central Commission Directorate that is concerned with the specification of the system, and on the other the Publications Office that undertakes the exercise of issuing the OJEU-S.

DG Markt was the home of the Procurement unit until November 2014 and the reorganisation of the commission by Jean-Claude Juncker. At this point, Markt was split into Competition (DG COMP) and Internal Market, Industry, Entrepreneurship

and SMEs (DG GROW). The procurement unit at this point moved to Unit G4: Innovative and eProcurement under a new leadership (Nikita Stampa).

The day to day running of the TED is, however, solely the preserve of the Publications Office. Throughout the publication of the OJEU-S, there have always been external printing companies involved. The TED, during the earliest development, was similarly managed using external contractors, but from 2004 onwards, the size of the service meant that the provision of the website required advertisement through the official journal itself. Thus, the complete distribution of the OJEU-S through the TED, and on DVD was outsourced. The following section details the development of this service.

The outsourcing of the service to provide the TED links with the perspective of the hegemonic market paradigm being projected into the operation of the market by the commission. The group operating this most important of functions is itself outsourced, framed in a competitive market perspective, and operated for profit by a private contractor. Therefore the capacity for the operator, which may otherwise be a public servant, to be objective regarding operation of the TED is impinged. The operator, and the Publications Office are themselves subject to the same hegemonic conditioning as the broader political economic actors within the Member States.

The following development of the TED is presented in the contract periods that were used by the publications office. This is for two reasons. Firstly, that the documentation relating to the development of the TED is captured in the tender documentation, and contract documents that the office used to outsource the service. This has led to a re-statement of intention and purpose periodically which specifically relates to the website's functions. Secondly, the act of outsourcing the very function that is then used to outsource the activities of so many other state functions is incredibly instructive when looking at the process of how procurement is realized in other contexts. There are formalized invitation, offer, and acceptance

processes that occur in each procurement project. The Publications Office contracting out the operation of the TED is a microcosm of these processes. As this is at the heart of the market, it speaks to the argument of this thesis that the idea of a particular form of economic integration is hegemonic throughout the policy implementation of the EU.

4.4.1 First Contract Term

In 2004, the first contract for a third party supplier to provide

“...services in relation to the collection, production and dissemination of electronic publications, in particular the ‘Supplement to the Official Journal of the European Union (EU)’” (Publications, 2004).

was released. This was the first of three contracts advertised that related to the supply of such services to the Publications Office.

Contract AO – 6019 was initiated on 1 November 2005 for a period of no more than 4 years in compliance with the directives. Part of this four-year period would include an implementation period where the services would be closely defined. At the point of advertisement, the issued documents contained an ‘output’ specification wherein the desired outcome is described, and the supplier requested to provide service suggestions that result in that output. This is a common method of sourcing complex service solutions (Dixon et al., 2005 also clarified by Interviewee_11, 2015). The competitive dialogue technique (issued after this contract) was specifically focused on procurements of this type.

The core of this contract was the development of the new outsourced service and the consequent move from internally provided options to a third party supply arrangement. This would include the management of the TED, distribution of CD-

ROMS to European Document Centres, and the back office provision of data to the Publications Office.

While the contract package is a significant 16 documents in length, the main document of the tender package of interest is the specification. This outlines the main deliverable conditions of the contract. The form of the contract is a Framework Agreement. This type of appointment is an 'agreement to agree' where the CA 'calls off' individual commissions against an overarching agreement with the supplier. Effectively this allows the quantity of supply to be varied throughout the contract period without sanction to the commissioner. For example, the DVD distribution of the OJEU-S may require variation over the period of the contract due to fluctuations in demand. A framework agreement allows for expansion or contraction as appropriate (Arrowsmith, 2010 p58).

The specification stated a three-stage process to the implementation of the service. While there was already an established format and process to the delivery of the website, the tender requests a process of development to the service to optimise the website and transfer its management to the new supplier.

The supplier may have had some scope for innovation in this type of agreement and is indeed encouraged to be so in the tender documentation. The supplier therefore has accepted de facto control over the design and future development of the system from this point (The contract managers of the system at this time, were not available for interview for this thesis) with the delivery of the system becoming a technical issue to be resolved against a series of Key Performance Indicators (KPIs).

An example of how the implementation of the system deviated from the original specified intention of the service can be found in the archival features. 'Migration of the TED archive' (Office of Publications, 2004 p5) is mentioned in the tender documentation, but has not become available as part of the live service. The practical implications of managing such a large database no doubt becoming

prohibitive. Instead a reduced 5-year frame of reference is offered under an archive search on the TED. Unfortunately, this compromises (to a degree which is debateable) the utility of the TED as a system for market information outside of medium term analysis. The Commission's studies on the subject consequently refer to this temporal frame in their reports leading to a somewhat myopic view of the market.

Using the Internet Archive (Archive.org) 'Wayback Machine', it is possible to access archived versions of many internet webpages. The earliest captured image of the TED was from 20 May 2006 (see figure 7 below). At this point the site has a 'traditional' web look to it. Very text driven with little in the way of images or exposition.

Figure 8 shows the earliest main menu page for the TED available on archive.org. (rather than the landing page shown in Figure 7) This is from 17 July 2006 and shows the core of the service. The emphasis at this point was on 'browsing' the main categories and geographical areas from whence advertisements came. Little was made of keyword searching and a freer range of access. Instead, walls of categorization and generic search terms forces the user down predestined routes of enquiry. This limits the cognitive capacity that the user can generate of the market.

The CD-ROMS that were issued during this period are shown in Figure 9. The version change came in 2008 with the use of the 'Golfer' logo by the OJEU. The images shown are of advertisement issues that were sent to me during my previous employment at Leeds Metropolitan University. Figure 10 shows the 'recognition letter' sent with each submission to the TED and accompanying the CDROMs. The reverse packaging of the CDROMs is shown in Figure 11.

Each of these CD-ROMS was sent with an accompanying letter shown in Figure 10. The intention was to allow those contracting authorities with limited online access

to be able to record the advertisement process in accordance with older paper based systems. Article 35 of 2004/18/EC contains the requirement that;

“As far as possible, the means and technology chosen should be compatible with the technologies used in the member states” (European Commission, 2004b p119)

Due to the variable implementation of digital technology, therefore the use of CD-ROMS was deemed necessary. The formats used for data storage on the CD-ROMS were also held in as broadly accessible a format as possible. Figure 11 shows the reverse of the CD-ROM packages that details the computer formats that may be used to access the data. These were in line with the Commission’s aspirations to support existing computer and data systems. Unfortunately when accessed the specific formats used for the databases containing the information is more esoteric. So despite superficial access being facilitated, there were still restrictions on access to the raw data for more considered analysis.

The presentation of this information matters in the context of the market for several reasons. There are presumptions regarding the manner in which it may be accessed that speak to the purpose of the TED. The purpose was to create a transparent and accessible forum for buyers and suppliers to meet and transact. Therefore the presentation of that information matters as it acts as a framing device for the discourse of the market. As the mode in which language is used matters in the transmission of information from one party to another, so the look, presentation, and technocratic discourses shown in the website at this point contribute to the overall creation of the social construction of the public procurement market.

The issue of CDROMs meant that indicates the fragility of the online experience, and the wish for many Contracting Authorities to have physical records associated with procurements. Online sources were seen at this point as being transient in nature

(although the fact that I have been able to access them counters this perception). Moreover the use of CD / DVD Roms during the 1990s and 2000s spoke to the institutional inertia relating to the use of libraries and older networks of information dissemination. The European Document Centres (EDC) were a significant investment by the Publications Office that were maintained to share information publicly. They were up to the 1990s the main resource for European Journal advertisements and would have been one manner in which transparency of opportunity for contracting awareness was realised. The use of the 'hard copy' issue by the PO therefore speaks to their unwillingness to move away from a mode of operation that had been successful to a point.

4.4.2 Second Contract Term 2009 to 2014

The second contract was advertised in 2008 as contract number AO10186 against OJEU advertisement 2008/S218-289842. This was to run from May 2009 for a period of no more than four years in accordance with the directives. There are derogations available for an extended contract term to be agreed under the OJEU procedures to exceed 4 years. It was obviously not felt that this contract warranted the application of this derogation.

The tender package is very similar to the original 2004/5 versions for contract 6019. There are a series of extra amendments to the service provisions that the contractor must adhere to in order to meet the key performance indicators of the contract. The technical detail of the system is scant, therefore a further 'pre-tender' meeting is proposed in the tender documentation. In addition, there were a large number of clarifications issued to the tenderers; largely relating to the technical delivery of the system.

The contract was awarded to a joint venture of Diaedis (now called Numen) and ARHS Developments both of who were based in Luxembourg. While Numen were a specific government outsourcing group (see <http://www.numeneurope.com/en>), ARHS are a web publishing solutions group of independent companies that have joined together for the purposes of undertaking larger contracts such as these. As a result, in the contract award notice, the company recognised that it would be outsourcing 36% of the contract to third parties to realise the contract.

The total value of the contract advertised was at this point €350,000 per annum with a contract total expected of €1, 498, 907 Euros in total. This was later increased by OJEU notice 263021-2011 which was issued on 12 August 2011 to a total contract value of €3.1m Euros, an effective doubling of the required delivery level.

During this period, the website design was refreshed. Figure 12 shows the Archive.org image from 23 December 2009 that is the first time that the new design is shown, the previous version been live until at least 9 September 2009 according to the Archive.org captures. This redesign was under the new contract term, although no specific mention of a website redesign was requested in the tender documentation, this was done in the early months of the new contract.

The format of the website at this point has been kept. Figure 13 shows the main menu system (which now has the addition of the ECAS login service added in 2011). This system has a greater emphasis on searching keyword fields as part of the process of using it. The generic terms and boundaries are still placed on the system, but overall it is a friendlier interface that exists today. Anecdotally, the TED office staff believe that the use of keywords is the dominant form of searching the system (Interviewee_10, 2015). This is notable as it undermines the value of the presentation of information that the system is built around. Furthermore, free text fields lead to a greater level of complexity, and a reliance on the use of CPV codes in order for the TED to be accurate.

4.4.3 Third Contract Term (AO- 10548)

The most recent publications office contract for the supply of the TED was advertised in the OJEU-S, TED and on the Publications Office website at <http://publications.europa.eu/en/web/about-us/procurement> in 2014. This was to be let from May 2015 for a period of 4 years.

Present contract is with ARHS-Group who had previously worked with ancillary companies to facilitate the TED contract. Following my approach, the company were not willing to agree to a full-recorded interview. They did, however agree to an instant messenger service interview and exchange of information (via Skype)

between myself and the delivery manager for the TED system. Subsequent clarification was sought via email regarding the topics.

There were no management reports relating directly to the ARHS contract available. The operation of the contract is formally recorded by the Publications Office annual report, which is submitted to the governance board of the publications office and the Commission's oversight programmes.

The management day to day is therefore dealt with in a contractual manner by the staff in the PO. They also have monthly meetings with ARHS to discuss the operation of the contract. The operation of the service is based on a series deliverables outlined in the contract specification (Office of Publications, 2014).

For each of the contracts, a specification was issued that detailed the intended working of the contract, the existing services, and the deliverables required by the Office of Publications for the delivery of the contract.

One of the elements that were of potential concern to this researcher were the latitude given to the contractor regarding the depth and format of the solutions that were proposed by them for the delivery of the service. ARHS stated in this regard that they

“...stick to what is asked in the call for tender specifications”
(Interviewee_11, 2015).

When pressed, their overall attitude was that such conceptual issues were the preserve of the Publications Office. Their role was to be a neutral arbiter in delivery of the service. The Publications Office opinion of the same question revolved around a similar perception that

“...there was a tender launched at the time where we asked for offers from contractors. Of course then during the implementation of any contract you may have suggestions or input. And even for the further developments of the system of course the contractor, as the one providing the service, can suggest ways of doing. The final word is of course from the office as the one buying the service.” (Interviewee_10, 2015).

The Publications Office is the determinant and final arbiter of the service specification. However, the contractor is given leeway in determining the manner in which they achieve this

“...once we define what we want, and how we want it, and we come to a common understanding of the need it is up to the contractor to perform the job in an appropriate way. It’s like when you do works in your place [Home] you get someone to do the works, you discuss it, but you are not going to check all the plumbing and you have to trust that things are done correctly.” (Interviewee_10, 2015).

The tender documentation for this version of the contract is significantly more involved than previous versions. It appears that for this version of the contract, the main elements of not only the output specification (deliverables) were outlined, but the method of achieving those outputs. This advanced technical specification appears to be necessary due to the increasing interoperability that is required of the TED system. The ‘European Commission Authentication Service’ (ECAS) provides the login and data tracking service for services under SIMAP including access to TED. ECAS aims to provide a slick secure access route to the online services run by the Commission. This is a major improvement for the end user, allowing a single username password combination to be utilised for a variety of EU services.

The deliverable output of the TED system did not alter between the two contract periods. The Publications Office confirmed that the system’s essential task and

deliverables did not change in a major way between the tendering periods (Interviewee_10, 2015). Furthermore, their opinion was that the output for the delivery of the contract was set by the Office, and then delivered. Their opinion was uncritical in their assessment of the role of the project delivery agent ARHS Ltd. This is quite different to the aspirations outlined by the Commission in seeking to partner with private companies in the delivery of digital services to the citizenry, and the use of aggregator re-publishing companies in the dissemination of the information. Therefore the Publications Office is guilty of underestimating the extent to which the implementation mode of public policy (in this case the major market instrument) has on outcomes whether they be real or potential due to the nature of hegemonic power within liberal capitalist democracies.

One major element that was included in the 2005 initial contract was the inclusion of a project delivery period of 2 years that would allow for the contractor to bring their delivery up to an acceptable level. This was not included in the subsequent iterations. Documentation regarding the specifics of the methodology that was developed at this time was not available. ARHS and the PO have stated that no such records exist. Therefore the knowledge regarding the delivery of the contract resides with these two organisations, making critique of the contract, or indeed open competition, difficult without a 'handover period' between contract iterations. That only one bid was received by the Publications Office for contract AO-10548 speaks to the issue.

While there has been some variation in the formal framing of the implementation of the contracts over time, the core relationship has been that between the Publications Office and a version of ARHS Ltd. Further investigation into this relationship would be of benefit to any future research. This researcher indeed believes that there may be some reciprocal symbiosis between the operational approaches used by the Office and the Contractor due to their close and consistent working relationship. Prior to May 2015, the contracts that were managed by the Publications Office were undertaken by a separate unit that had contractual

oversight but was separate from the core business of the day to day functioning of the service. From this point onwards the contract management unit was brought into the operation of the office and integrated more closely. Throughout the entire contracting period however the day-to-day management and implementation of the TED and the OJEU-S has been dealt with by the same teams. It is of course useful to retain such relationships, certainly where there is a joint understanding institutionally and without a written detailed contract 'users manual', but the potential is for efficiency to overrule democratic and governance interests (Boyce, 1993 p460). Getting the job done, is not the 'be all and end all' of a government department and a lack of critical engagement with the effects of a single supplier relationship may undermine the conceptual goals of the service.

4.5 Using the Tenders Electronic Daily (TED) and OJEU-S

In order to generate a picture of the operation of the TED, the researcher has drawn upon personal operational experience, published sources available from the Commission, and with direct input from the Publications Office regarding the manner in which the advertisement process functions.

The reason for mapping the operation of the TED is based in the nature of the argument made by this thesis. That the modes of operation and implementation of a policy, in particular a market, have as much impact as the original agenda setting, and therefore capture of the implementation modes of the policy process can bestow an opportunity for the EU to influence the realisation of policy within the member states.

Figure 14 shows the information flow of the Advertisement process and demonstrates the role of the TED as the main information nexus. There are three main stages highlighted. The first is the Data Input stage. The Contracting Authority places the advertisement for a contract through either the Tenders Electronic Daily direct website directly, or through a third party 'eSender'. These are companies that

offer a range of advice and checking services for the accuracy and coherency of the contract advertisement. They often have a more developed web interface for the CA to utilise. At present there are 43 eSenders licenced by the Office of Publications.

The TED website itself is hosted by ARHS externally to the Office. At the end of each working day, ARHS and the eSenders both submit via secure ISDN, that day's advertisements to the Publication Office's servers. A sample (the size of which is unascertained) are checked for coherency and accuracy again by the publications office staff. The PO server therefore then acts as the core repository for the information contained in the OJEU-S. ARHS refer directly to this server for the publication of the DVDs that they issue of each day's notices. The server itself stores the data in four formats; an XML enabled database format, UTF-8 Rich Text Format (which is the closest to formatted data available and is readable in Microsoft Word etc.), Adobe PDF format, and the Commission's own database format (a proprietary system). Until March 2014, all access to this information at the bulk data level was considered to be subject to a licence fee charged by the Publications Office. This licence fee has now been waived under the Commission's transparency agenda which was initiated by COM/2011/882 regarding Open Data 'An engine for innovation, growth, and transparent governance' (European Commission, 2011f). As of mid 2014, FTP access was available to interested parties, and on 7 July 2015, DG Grow issued a 5 year database of advertisements in CSV format. This researcher has obtained a full copy of these advertisements in a variety of formats (mainly UTF-8 RTF format and the main CSV tables). As a data source for transparent understanding of the market, they are woefully inadequate as they require significant computing resources and expertise to be effectively manipulated.

The final level is the 'Data Queries' stage. This is the phase at which interrogation of the contract advertisement database occurs. At this point there are three main access routes to the information stored on the Publications Office Servers; the TED, Open Data Portal, and 3rd Party Aggregators. The Tenders Electronic Daily (TED)

offers comprehensive but somewhat cryptic access to the information available in the server.

It is apparent when the advertisement process is mapped in this way that the nexus of information exchange within the market resides with the operation of the Tenders Electronic Daily (TED). The contracting authorities place advertisements into the database of the TED through one of two ways – either directly through the TED website, or through a third party ‘eSender’ company that has a license to act as a portal in such an operation. Whichever route is used the information has to be formatted in a manner that is compatible with the core database in the Publications Office Servers. This is based on the ‘OJEU forms’ detailed in section 4.5.2 below. The three data query routes, and their consequent audiences then have their information framed by this database.

Thus, for procurements over the relevant threshold level, the TED acts as the central point at which procurement information is framed and presented to the market in line with the practices described in this thesis (namely sections 4.5 onwards). The TED process therefore acts as the nexus of the entire communication and transaction process that the market is based upon.

As described in section 4.3, the website is reviewed periodically (roughly correlating with each contract renewal and consequent period of attention). Despite these revisions the Publications Office themselves admit that few people use the TED as a direct portal through which to access procurement data (Interviewee_10, 2015). This is somewhat contradictory to both the opinion of my main source in the Commission in 2014 (Interviewee_7, 2014) and the stated intention at the outset of the IDA project. The point at which one ‘touches the market’ in an informational access sense is undermined through the complexity and opacity of the unfettered market access and lack of capacity to interrogate the information from the website. Contracting Authorities certainly have cause to monitor and check the information contained herein is correct, as it is an expression of the advertisement that they

placed. In addition, there are a proportion of CAs that use the TED directly to post advertisements (using the system instead of an e-Sender), which would lead to their use of the system (Interviewee_10, 2015).

The Open Data Portal is an innovation that has lead from the Commission's Open Data agenda. This website available at open-data.europa.eu (soon to be '.gov' to match the member state's URLs). Specific intention is to allow for the capture of the potential for data to augment

“...citizens, business and society, and for the governments themselves” through data that “...should be easily accessible, with low entry barriers, widely available and in shareable formats...” (European Union, 2015 p8).

The ODP is now the host for data set access on a variety of sources, most recently the TED (accessible from <https://open-data.europa.eu/en/data/dataset/ted-csv>). The target audiences for this route are aligned with the ODP's aims and derived from the wish to maximize return on these sources of data (European Commission, 2011f and European Commission, 2015).

The use of information in the realm of policy making is of key importance at both the EU and national government levels. This information replaces the higher level indices that were previously supported by Eurostat (for example European Commission, 2010b). As a result, rather than the periodic review of data, which by the point of publication would already be out of date (for example the 2011 review by PWC using 2009 data sources), the policy review process is compressed into a shorter time frame. Policy can therefore become more flexible and attuned to the requirements of the day. Certainly, while policy review processes will still require significant negotiation in any EU policy context, the data will have greater relevance. Both the EU policy community, and the national governments will benefit from access to this data source. An additional community is the independent civic 'Transparency Community'. This is a movement that seeks to

utilize public data in a civic context. Journalists etc. would therefore gain the capacity to critique policy decisions through direct access to this information. This process is sometimes associated with the ‘crowdsourcing’ of data analysis, along with more formal organizations such as ODINE (<https://opendataincubator.eu>). As of yet, the opportunity for monetizing this data through a business model has not emerged although such models exist and are being promoted by national governments (Deloitte LLP, 2012).

The final manner in which information is accessed is through the third party ‘private sector’ aggregators. These include large scale reissue and alert services such as ‘TendersDirect.com’, OJEC.com and Achilles. These companies had to pay a licence fee for their XML access to the system prior to 2014 (as previously mentioned). Their service revolves around accessing the data directly and then republishing the data in a format that is pertinent to their customer base. In addition to these formal alert services, there are a number of specialist trade magazines that republish OJEU-S advertisements that have been made in specific CPV code categories. For example, a security services firm that may decide to republish and promote a security systems tender for their readership. Unfortunately, none of these services acquiesced to an interview for this research, and their perspective would have been informative. Additional assistance is then available for such companies to submit a potentially attractive tender for the work.

Of the three routes highlighted in Figure 2, the Publications Office believe that the third party routes to the data to be the dominant manner in which information from the TED is accessed rather than directly through the TED

“I find it a bit hard to believe that there is every day an active visit from Human Beings to the site.” (Interviewee_10, 2015)

instead the use of RSS feeds, and the third party aggregators are more likely. The Publications Office did not consider this aspect of the ‘audience’ of the site, or of

the data. The Open Data Portal (ODP) have identified the audience for the type of data relating to the TED that they produce, but this is a post-hoc agenda to utilise information already in existence, rather than a market facing service.

The lack of manipulability of the released data sources speaks to the issue of confused audiences for the output of the TED. During this research, I collected a large quantity of such information from TED's servers, but found three problems with accessing the information. Firstly, in the initial iteration, there were no guides or keys to the tables being circulated. Appendix 3 contains a short key drawn up by this researcher for the purposes of understanding how the tables were designed. They focused on the short hand abbreviations of the data columns in the server rather than give more complete information. The result is that without specific knowledge to relate the tables to the OJEU forms that were used to compile them, any researcher would struggle to gain useful insight from their structure. Secondly, the format and the sheer size of the database that were available were prohibitively difficult to manipulate on even a powerful home computer. The result is that a third party would be required to assist with the quantitative analysis of the information through specialist software such as SPSS or CAQDAS software (Lewins and Silver, 2007 p134). The Commission was able to undertake such work through Price Waterhouse Coopers in 2011, but a single researcher is hamstrung in terms of resources. Finally, the contracting authorities have responsibility for the issue of the advertisements through the TED. The result is that there is a variety of terms, languages, and as previously mentioned, institutional support systems relating to the understanding of the advertisements that make it difficult to search the TED database comprehensively.

4.5.1 Structure of the Publications Office

At the time of writing, the Publications office is a sizeable organization. In 2013, they had 662 officials and an operating budget of €140M (Publications Office of the European Union, 2014a latest available information). This makes them one of the

major administrative departments of the Commission. Figure 14 shows the organizational structure of the office. The Tenders Electronic Daily is now synonymous with the Official Journal of the European Union S Series, and while the S Series is issued on DVD to the European Documentation Centres weekly, the main focus is on electronic communication and efficiency. The sections administering this aspect are Directorate C: Dissemination and Reuse. Specific responsibility for the TED rests in C.2 EUR-LEX and TED. Contract management of the ARHS contract resides within this section of the organization. The Open Data Portal also sits within Directorate C, but within a different subsection of C1 that has a more general data transparency remit.

It is interesting to note that the mixture of EUR-LEX and TED rest with the same subsection of the organization. This thesis questions the ideational impact and political bias of the information mode of the TED. EUR-LEX however, as the main repository of 'black letter' legal information and documentation in the EU, serves a different role. That the two are organizationally situated together indicates the neutrality with which the Commission sees the projection of information. Of course, the act of sharing and transparency of information may be questioned in the EUR-LEX case as well if one were to extend the ideational analysis further. This indicates therefore a particular mind-set as being present within the Publications Office that reinforces the role of the TED as being administrative, and the procurement market as being a legal regime as opposed to an operation of pivotal impact on the political economy of the member states.

The requirement for the electronic publication of tenders is now embedded in directive 2014/24/EU article 52 (European Council and European Parliament, 2014). This was rapidly followed on 11th March 2014 by directive 2014/55/EU concerning the instigation of an integrated system for invoicing (at the time of writing in April 2015, not specified or launched) which would provide an end to end solution from pre-tender to post-tender contracting.

With each revision of the directives there is a consequent revision to the operation and layout of the SIMAP, and an increased complexity. As a result SIMAP has grown to encompass several portals for information under one umbrella. This 'Gateway to European Public Procurement' covers the TED as the business facing portal, and the eNotices / eSenders pages facing the public administrations. There are additional services associated with these portals that seek to augment their core offering. They are however not seen as friendly and easy to use systems; regarding the use of the CPV codes systems,

“...comparing the search functionality of SIMAP/TED with the search functionalities of other classification systems and with tools for searching for CPV codes offered by third parties shows that the tools provided by SIMAP/TED could be considerably more user-friendly. Other systems offer additional functionalities, i.e. easier navigation, offering suggestions while typing and a more comprehensive presentation of the structure of the CPV and single codes. The search functionality currently provided by SIMAP/TED is complicated to use and not very user-friendly.” (Attstrom et al., 2012 p12).

This was the subject of discussion with a Interviewee 7, a Commission Official for this thesis:

“I don't have to tell you that TED is not always working ideally and it is not a very user-friendly instrument and they're also technical problems” (Interviewee_7, 2014 p10).

“At the moment we have these technical obstacles because the system is quite old and is working at the end of it's life.” (Interviewee_7, 2014 p16).

While there has been some investment in the system post establishment, it seems this has not been enough to rival the development of competing Internet

paradigms. The three contracts undertaken for the running of the system with a private supplier have themselves failed to provide adequate innovation within the contract relationship to keep the implementation of the system abreast with broader market and social progress.

In the 2014 directives, several innovations that were introduced in the preceding directives were revised to become more powerful with relation to the operation of the TED. Each of these inclusions has the benefit of not only improving the market communication between the supplier and buyer, but also the policy information being gathered by the Commission. During the consultation process for the directives, it was considered a priority that all access to tender documents was to become available from the website of either the contracting authority, or their agents. Furthermore aspects of communication during the tender period must also be available electronically (Commission of the European Union, 2011a p49). These caveats were included in the eventually agreed directives. Furthermore, mandated use of electronic communications to reduce costs and facilitate effective and timely communication (53) were included. Deviation from these stipulations is allowed only in exceptional circumstances. Central purchasing bodies were identified in particular (72) as organizations for which this should be compulsory following transposition, and then a subsequent grace period for other contracting authorities of 30 months. Under article 25, the use of CPV codes for the classification of supplies was made a mandatory advertisement element. The buyers would be required to complete the field of the OJEU advertisement that contains the CPV coding. As previously mentioned, this is one of criticized areas of the system. One commission official specifically mentioned the TED as having been based on old technology (Interviewee_7, 2014) and it would seem that the requirements for greater use of these systems was made without congruent consideration of the infrastructure or user impact.

The market has 'room for improvement' regarding market information. There is to be more careful monitoring of the market and the manner in which it is operated with a view to remediation where required:

“...it is essential to get a good overview on possible structural problems and general patterns in national procurement policies, in order to address possible problems in a more targeted way. That overview should be gained through appropriate monitoring, the results of which should be regularly published,” (European Council and European Parliament, 2014 article 121).

The specific requirements of this clause were that the member states should be responsible for further monitoring of the procurements, and be transparent about how that was undertaken, and the results shared openly. Direct monitoring then by the Commission would be replaced. Certainly it appears that this suggestion has come to pass, as in August 2014, the Commission ceased to require Eurostat to publish information on public procurement through their website. (European Council and European Parliament, 2014 p25).

While there is direct monitoring of the advertisement process, there are also third parties involved with the advertisements. The use of third party aggregators add another level in between the procuring CA and the market instrument

“...only around 50% of the advertisers are placed directly through the E sending electronic function... and of course this makes it makes it more difficult to reform the whole system because all these... sites have to be integrated into the procedure” (Interviewee_7, 2014 p11).

As Interviewee 10 (within the Publications Office) found it difficult to ascertain the users of the system, then the true impact of a system wide overhaul is unknowable. Thus we see a microcosm of the implications of private and public policy implementation matrices; the diversity of actors makes for effective dissemination

through social strata, but effectively reforming the organic construction is daunting in scale and alternative influencing modes of operation need to be found.

There are an increasing number of third party portals available for suppliers and buyers to utilize. They range from simplistic tracking of procurement documentation (for audit purposes) to a more involved pre-evaluation role to assist with sifting through budgets to seek demand streams and consolidation of demand. Achilles (www.achilles.com) would be one such organization. There are also other national central procurement office sites that also serve this purpose to the extent that the Commission has developed eCertis to address the cross comparability of these systems (<https://ec.europa.eu/growth/tools-databases/ecertis/>).

4.5.2 Advertisement Forms

As of August 2014, there are 19 forms (21 including the specialist requirements for transport contracts) (Commission of the European Union, 2014) available for completion by the Contracting Authorities that serve to define the communication of the contract opportunities. These are largely web-based forms, either directly communicated through the TED, or through third party web based aggregators. A small proportion are still Faxed or emailed (as scanned documents) directly to the Office of Publications. In each of the forms, certain mandated fields are present, the completion of which is necessary before publication. The third party solutions frequently have an algorithm that checks that these elements have been completed. In addition, the TED unit in the Office of Publications seeks to ensure that mandated fields are complete.

The quality of the advertisements placed in the OJEU has been identified as an area of concern in the transparency of the market. In particular, some CAs have been lax in completing the forms properly (Commission of the European Union, 1996a p10). This has led to confusion in the formulation of bids and with the TED's reliance on

fields such as CPV rather than Keyword searching. The TED unit do seek to ensure data quality;

“There is a verification done through the publication process so we make sure there are no mandatory fields which are blank, or if there are fields that look contradictory, or wrong, there is a contact made to the buyer asking is it really what you want?” (Interviewee_10, 2015).

With 1800 notices issued per day there is some acceptance that it will never be 100% correct.

The revision in 2014 in particular has led to some changes in the forms being required. There is a problem with the forms as a result of the process of negotiation on some of the criteria and technical elements as a result of the 2011 to 2014 directives. Some ambiguity was left regarding the way that you could achieve a lowest price only bid without including any social criteria, but there are other ways to achieve this through alternative weightings. To accentuate this fact, the manner in which weightings are applied and decided upon is set completely by the CA;

“...the whole thing has just been phrased little bit differently but I mean now I am really having difficulty with the forms” (Interviewee_7, 2014 p10).

This ambiguity is to some degree the result of the reliance upon ‘free-text’ fields in the forms where lengthy descriptions may be cut and pasted by buyers. The TED office, and the Open Data Portal both recognise that this is an issue in terms of data quality and ease of reporting,

“...free-text, and free-input it makes it a bit more complicated to check on the one hand, to make automatic checks, and to report thoroughly at the end of the day.” (Interviewee_10, 2015).

There is little in the way of realistic solution proposed by any agency in this regard. The suggestion of a common vocabulary in this regard proposed by the ODP (Interviewee 11) does not assist in the social translatability of understanding what may be highly contestable discursive and descriptive elements.

The commission has focused on the use of certain criteria weighting as an indicator of the 'quality' of the procurement processes undertaken. In their most recent reports (at the time of writing) on the issue, this is highlighted:

“While the choice of criteria depends on what is being purchased, over-reliance on price suggests better criteria could have been used – and thus a better purchase made. The "Award Criteria" indicator measures the proportion of procedures which were awarded only on the basis of lowest price.” (European Commission, 2016).

This position makes a normative statement relating to the relative value of one element of a decision making process (the 'price') as opposed to other 'quality' evaluation criteria. Price being stated as of a lower order than that of the quality of what is purchased. This is an attempt to shift the relative value towards 'value for money' rather than an absolute price for a purchase. This is unfortunately a coarse evaluation that fails to take into account the value elements that may be found within the specification for a purchase, the ancillary market engagement, or indeed the relative commodification of a market. For example, the purchase of stationery is a commodity that may be described tightly in the specification and purchased almost exclusively on a price basis.

The manner in which the forms are used ensures that the data presented for storage in the Publications Office servers that house the TED, is consistent in format. Therefore framing the grounds upon which each purchase that a contracting authority seeks to make.

4.5.3 Procurement Techniques

When undertaking a purchase, the Contracting Authority may choose from seven procedures detailed in the public procurement directives. These are commonly called 'techniques' (PWC et al., 2011 p10). The choice of 'techniques' is not mandated, although it is recommended that 'Open' be used where possible. It is the responsibility of the Contracting Authority to determine the technique they desire, and they satisfy any oversight in their particular circumstances. The only caveat to this freedom is that negotiation with a single supplier is only allowed if no other supply source is available to engage in competition (for example when purchasing particularly patented goods).

'Open' procedure is arguably the most transparent. The CA issues an advertisement in the OJEU with full details of their requirements, and usually a web link, or postal address from which a specification may be sought. The supplier, following examination of the documents may then submit a tender for that supply. The CA is required to examine all submissions and consider all equitably. The 'Open' procedure has increased in use through the 2000s with a consequent decrease in the use of the 'Restricted' technique by an annualized amount of 10% except in UK Denmark and Ireland (PWC et al., 2011 P33).

The 'older' EU members use the Open procedure relatively more often, with an 8% increase in probability (PWC et al., 2011 P35). This allows for the unfettered public access to tender documents by prospective suppliers.

Second most common is the 'Restricted' procedure. The CA may set a Prequalification Questionnaire (PQQ) for would be participants. A set number of suppliers will then be asked to submit a full tender on the basis of their success in the PQQ stage. The restricted procedure is more expensive than 'Open' for firms but not for authorities. Instead they pay for the increased complexity of the procedure through the amount of time required to undertake the purchase. PWC et

al., 2011 P79). The more onerous qualitative assessment required in the restricted procedure leads to the suppliers having to spend more money and resources on providing information.

There are further techniques that involve closer working with prospective suppliers. The 'Competitive Dialogue' is one such example. It is a structured process of working with a prequalified selection of suppliers to develop innovative solutions for the CA. The benefit of the method is a greater tailoring of a solution to meet the demand and it is therefore particularly useful for complex IT tenders, or service requirements. The highest mean value per contract was placed through the Competitive Dialogue technique in the period 2006 to 2010 (the most recent figures) (PWC et al., 2011 p25). A negative aspect is the relative paucity of case law on the use of the Competitive Dialogue. This has resulted in ambiguity regarding the practical application of the process (PWC et al., 2011 P30).

Regarding what motivates the choice of technique; the Commission's 2011 review found

“...the fear of litigation and complaints is an important factor when choosing the procurement procedure. ... we found further indications that fear of complaints and litigation may be important for driving costs. This hints at indirect costs of litigation and complaints though their effects on behaviour in the earlier phases of the purchasing process. This may include some procedural “gold-plating” to minimize the risks of litigation.” (PWC et al., 2011 p80).

Proof of litigation being a primary concern to CAs when making a choice of technique may however be difficult to conclusively establish. A CA is unlikely to acknowledge the weakness of their position in this regard.

One of the most under utilized facilities of the procurement market has been the opportunity for joint, cross border purchasing. There are some macro level agreements that have been operated by the member states operating collaboratively. The 'Joint Procurement Agreement for Pandemic Vaccines and other Medical Countermeasures' agreed under Joint Decision of the Council and Parliament 1082/2013/EU (European Parliament and Council of the European Union, 2013 article 13) is one such procurement. The degree of Contracting Authority cross border operation has however been lower than nominally envisaged. This deficit has been highlighted by the 2011 Commission review and Green Paper process (Sylvest et al., 2011). Unfortunately a deficit should be no surprise as there is an ad-hoc approach by the member states, and no mandatory legislative driver for cross border collaboration in those states that lack a centralised public procurement regime (such as Great Britain. Parliament. House of Commons. Committee of Public Accounts. and Hodge, 2011). The e-Procurement agenda does allow for some innovative new tools to engage with the issue of poor propensity to collaborate. The Internal Market Information (IMI) System offers a toolset for collaboration on verifying a tenderer's qualifications and accreditations (European Commission, 2014b) . This is aimed at the CA level and assists in identification of the information needed for accurate appraisal of the demand streams from across contracting authorities (Communities, 2015). The opposite side of the process is the 'e-Certis' system that highlights the statutory requirements for each member state to facilitate supplier tendering (Commission, 2012.) These systems aim to resolve certain problems that are perceived as hindering further cross border collaboration, but it is uncertain as to their success thus far.

4.5.4 NICE and CPV

The descriptors used for different categories of economic activity have an important role in the OJEU and the TED. Between 1961 and 1963, the Nomenclature of Industries in the European Communities (NICE) was developed in order to define

scope of markets in Europe. The use of the NICE in this context was the first multinational attempt to comprehensively define the range and scope of a variety of industries. This early classification developed into the 'Nomenclature generale des Activities economiques dans les Communautés europeennes' or NACE definitions in 1970 (Eurostat, 2008). The extent to which a definition of the elements that constitute markets serves to define their reach in a real sense (Commission of the European Union, 2011b) is debateable (as discussed below). But in the context in which it was intended, the system operates to offer an effective framework for the advertisement of contracts.

The adoption of this system was not unique to Europe however, and at the global level, the OECD's International Standard Industrial Classification (ISIC) definitions also exist. The purpose of these classification techniques is to allow for a coherent measurement and reporting of economic activities in their respective spheres. In doing so, they attempt to allow for adequate transparency of information for policy makers. ISIC was used by the EC prior to the 1971 procurement directive's mandate regarding use of the NICE (Commission of the European Union, 1971). This inclusion of NICE in the text of the directive serves to reinforce the position as a de facto form of classification.

Their adoption in the context of the procurement directives was through the mapping of NICE codes to the Common Procurement Vocabulary (CPV) to classify as accurately as possible, exactly what was being advertised for tender. CPV codes come under the general headings of the NACE/NICE codes, but have a greater level of detail associated with them. A Contracting Authority has been mandatorily required to categorize their purchase against one or more CPV codes since 2006 but their use was wide spread prior to that date.

The CPV is intended to increase transparency, and cross border understanding of what a contract may constitute. The codes are translated into all 48 languages of the Union and therefore should allow for greater cross border trade. However, four

potential issues are raised by the mandated use of the CPV coding system. One on each side of the core contracting relationship. Firstly, consideration should be paid to the potential for the CPV to framing the manner in which Contracting Authorities approach the analysis of their own demand. The wishes of the CA would in this instance be categorized by that organization as according to the externally imposed CPV and apportioned into contractual packages accordingly. Research (by Attstrom et al., 2012 p23) suggest otherwise. CAs in that study were found to not have been influenced by the technical demands of the CPV. Instead, contract descriptions were loosely fitted to the nearest high level coding area allowing some ambiguity regarding the technical description. A consequent impact to this practice may be found in the accuracy of reporting from the TED and understanding the activities that were purchased by Contracting Authorities.

Secondly, the CPV as a key organizational tool determines the way that suppliers search for particular contracts. The suppliers are looking for a particular set of CPV codes that align with their perception of their own supplies. This could therefore in time frame the manner in which the market presents to the buyer. The extent to which this is testable as a hypothesis is however difficult to discern due to the opacity of the market structure. There may be a great number of suppliers that focus on public sector contracts. The extent to which these are specific companies, or Public Relations and Marketing exercises to rebrand particular supply streams is hard to discern. The CPV's ambiguity has the potential to contribute to this issue. For example, a company may decide to set up a specific branch to deal with government contracts, or take over a recognised public sector supplier. This would obscure the true nature of the source of public supply, and thus the structural power influencing the implementation of public policy.

Thirdly, a particular criticism of the CPV was that it was too difficult and unwieldy (Attstrom et al., 2012) particularly in the context of the TED website's own implementation. This criticism should however be mitigated by the way that the research for this thesis raises the question of whether the TED is a direct portal to

the OJEU-S for the majority of users. Rather than keep the granularity afforded by the system, a proposal for simplification was proposed. Instead there is some evidence that despite knowledge of the CPV's existence, suppliers more commonly utilize keyword searching. Recognizing this propensity towards using keyword searching, the Publications Office commissioned a report (not publicly available at the time of writing) into the development of a single vocabulary for the free text elements of the OJEU-S notices (PwC EU Services, 2015). The recommendations regarding the imposition of a structured vocabulary have not (at the time of writing this thesis) been implemented due to the potentially large amount of work that would be required and the impact on historical searches in the TED database. Moving some information to a common description vocabulary would necessarily entail having some information indexed using the new system, and some on the old standard. Meshing between the two would be difficult (Makx Dekkers, 2014 and confirmed by Interviewee_9, 2015).

4.5.5 Oversight of the TED and SIMAP

There are three modes of oversight for the SIMAP programme and TED. Firstly, the traditional oversight of the publications office. This is achieved through the management reporting process and the publication of the Annual Management Reports (Publications Office, 2014). While there are the usual management communication processes proceeding through the year, the coalescence of the management activities in this report are the basis for the transparency of operations (Interviewee_10, 2015). This report is openly available, and communicated to the appropriate Commission bodies in accordance with 2009/496/EC. The management of the contractor is similarly handled (as detailed above) by regular meetings, and major decisions / information presented in the Annual report.

Regarding the decisions to outsource elements of the provisions of the OJEU, the Publications Office does not have any information available that outlines the

business case. The possibility that there may be further internal documents available from alternative sources in this regard was tabled during the research for this thesis. Their response was that that the PO were not being obstructive, but that no documents existed in this regard (Interviewee_9, 2015 and Interviewee_10, 2015). The PO were questioned regarding when the decision was made to use external contractors, and the response was that there had always been contractors used for the provision of the TED. It was not until the early 2000s that the contract value exceeded the OJEU threshold and a formal EU tender was required (Interviewee_10, 2015). The Commission intentionally move officials around the institutions which means that questioning staff further in the organization would likely not yield benefit without a permanent 'institutional memory' being present.

It may be concluded therefore that regarding the internal management of the TED and the strategy relating to the OJEU, there are deficiencies. Management reports relating to the operation of a series of major contracts such as the TED would be expected by this author. That more comprehensive information is not passed upwards institutionally, or expected, is surprising.

Secondly, as with any of the EU's institutional activity, the European Court of Auditors (ECA) is the independent body that monitors (among other things) the contracts awarded by the European Union institutions. Their role is in ensuring the financial regulations of the institutions are adhered to, and value for money is being sought. The role of management auditors is traditionally to assess areas of risk within the organization. The ECA is no different, with a model that seeks to assess the areas for concern within an organization. The DAS assurance model outlines the manner in which this has been assessed from the instigation of the new financial oversight rules in the Maastricht treaty and implemented in the ECA from 1994 onwards.

The ECA were contacted by this researcher and asked about the TED, and the contracts used for its publication. They responded that the ECA has not audited any

of the contracts awarded by the Publications Office. They have not audited the three TED contracts and no intention has been made public to do so (Fiser, 2015). This issue has not been raised in the Council, Committee, or Parliamentary records as an area of concern. The ECA looks at the substantive audit of contracts from time to time to illustrate the risk assessment that they have of the organization overall (European Court of Auditors, 2014 p15/16). The extent to which they have capacity to investigate the policy decisions regarding the rationale for outsourcing, in cases such as the TED, is questionable. It would seem plausible in this instance; the fundamental principles of the enactment of a policy area may not be criticized without political ramifications. That the Publications Office has not been audited by the ECA is however puzzling. They have a large number of outsourced contracts. The office managed 475 individual contracts in 2013 (Publications Office, 2014p43), with 131.7M EUR worth of contracts awarded in 2014. Whether the ECA's lack of investigation of the PO and the TED is an intentional oversight or not, undersells the potential impact of the system and how it is viewed in the context of the realization of the market.

The third method of oversight is through the formal review process in the run up to each directive change. In the preparation for the 2014 directive changes, the 2011 reports on the efficacy of the system, and the development of the market were published (as referenced in Chapter 4). But these reviews were not critical appraisals of the fundamental use of the TED as a market instrument. This has not been questioned. Indeed, this appears to be a major oversight in terms of the policy implementation mode. Instead, the reviews focus on 'more of the same' with the benefits highlighted above any critical considerations (London Economics and PWC, 2013; Walker and Brammer, 2012; Cattaneo, 2011). As highlighted in section 6.4.2, the closing of the window in which data is published, may serve to increase transparent governance and oversight of the market as a whole.

As an addendum, the eProcurement and electronic purchasing strategy has been reviewed as part of the overall look at the manner in which the system operates

(these reviews are highlighted in this chapter as part of the IDA and eProcurement strategies). It is a missed opportunity on the behalf of the academic community, that this has additionally been under theorised. As mentioned in Chapter 2, there is a dearth of literature that deals with the mode of operation and principles of governance of the market, but a paucity concerning the improvement to governance (for example Khorana et al., 2015).

The core question of whether contracting out the TED is a reasonable solution is not addressed in these modes of oversight. Neither has the issue of transferring the initial responsibility of the development of the system and the design against an output specification rather than under direct control. Although the Publications Office have stated that there is no conflict in this instance, evidence exists to support the suggestion that any integration of a contractor within the generation of outcome against output specification leads to a differing outcome (see Humphrey, 2005 Latham, 1994).

Within the purview of the Publications Office, there is little scope to change the format of the implementation of the OJEU-S or the TED as these are mandated in the directives. This is a significant constraint on the development of the system over time when it needs to be responsive to the changing market at a tempo which is higher than that provided by the EU's policy process. As a result, it may seem that oversight may be determined on the basis of the review and policy cycle process (third oversight mode). But these debates are as situated in a marketised paradigm as any other.

The switch to electronic communication appears to have resulted in real cost savings for the delivery of the OJEU as seen in their management reports (Office of Publications of the European Union, 1998; Office of Publications of the European Union, 1999; Office of Publications of the European Union, 2000; Publications Office, 2014 in particular note these savings). Tendering to a third party supplier is assumed to have resulted in positive sum gains; the 'private' supplier's market

savvy emphasis will result in an improved service which outweighs further costs incurred by paying a supplier a profit margin etc. Furthermore, the use of contractors will be neutral in emphasis. When one is handling the output of an economic system, whether this is the most appropriate method of achieving a desirable outcome has not been tested.

4.6 Market Information

As shown above, the SIMAP and TED web portals have grown from a technically focused programme of standardisation. The resulting system has three main facets that will be discussed in this section. There is little evidence that these aspects were considered in great depth as to their overall impact on the social construction of the market. Instead each one serves a different audience and purpose. Figure 14 is useful for reference here to view the many groups that access the information (page 223 of this thesis).

Many of the innovations in the 2014 directives were to do with the improvement of systems for the reporting of information. Information quality is a key aspect highlighted for improvement in most reports on the TED (Commission of the European Communities, 1994 p86; Teo and Lai, 2009; Cattaneo, 2011). For example

“This is our principle source of data” (PWC et al., 2011 p10).

Associated national databases are also referenced where possible although these are not mandated in law to be utilised in the comprehensive manner that the TED is. This situation has led to a paucity of objective reporting on the efficacy of the system. The methodology for example in the Cattaneo, 2011 was to look at a sample, and then extrapolate from that sample. This is due to the member state’s failure to capture or track the manner in which their CA’s operate, and issue raised in interviews for this thesis (Interviewee_7, 2014 in particular). As mentioned

above, the Commission was responsible for data reporting within the procurement market, and did so through the interrogation of the TED sources. But these sources have proven so unreliable, that the Commission ceased to publish these data sets; instead preferring now through the ODP to make access to the TED publicly available. Some of the 'blame' for the inaccuracy is placed by the Commission during the 2014 consultations, at the door of the Contracting Authorities that have neglected to complete elements of the TED that are not mandated, hence the increased requirements in the subsequent directive. It may be the case that there are areas of the OJEU forms that are mandated on the TED / eSenders websites, that are not mandated by the national journals thus creating a disparity in reporting (this is certainly the case when looking at SMEs – the eSenders website mandates the field be completed that reports on whether a company awarded a contract is an SME while this is not mandated in the UK's Public Contracting Regulations 2015 or Contracts Finder website).

The major way in which the TED is used by the Commission, is to establish the overall value of the market. Market flows, and sectoral changes are established at a reasonably frequent level, although this process tends to coincide with the review of the EU directives due to the complexity of the exercise. This fact in itself does question the ease and confidence in which the TED may be used as a significant amount of work is required to validate and cleanse the data. For a period during the research for this thesis, the reporting on the value of the Market was suspended. This coincided with both the development of the Open Data Portal, the revision of the Directives and (anecdotally from Interviewee 7) the refocusing of resources onto dealing with the Financial Crash and the Euro Crisis.

There is variability around what the definition of 'Market Value' is. It may be that this variable definition in common international economic discourse is useful. While it undermines the coherency of the concept, it presents an opportunity for a single translatable hegemonic meme. In having a contested base, the term 'value of the market' may bend to the situation in which it is utilised. This thesis would argue

that such a case is demonstrated in the procurement market and that having this variability assists in the translatability of a single concept across State borders, and the promulgation of ideational hegemony.

There are two ways in which this variability is displayed:

Firstly, to some degree, the manner in which the 'Market Value' is understood is dependant on the context. To the Commission, 'Market Value' is the total value advertised through the OJEU; to the OECD, the total value of potential government outsourcing. To the Member States, 'Market Value' is the amount they have spent on outsourced contracts allocated through the OJEU process. Therefore the method of calculation differs and we may expect to see some difference. More importantly for this thesis however, the method of calculation betrays an ontological perspective held by the EU on the meaning of procurement that differs to other calculations. In the EU, procurement is defined by that which is transacted according to the procurement directives through the TED. For the World Bank and OECD, procurement is any transaction that occurs with private companies. The second model expresses a greater linkage with the 'real' market relationship between the state and society than the constructed model espoused by the EU.

Table 6 shows the World Bank estimates against Commission and Member state returns to demonstrate the difference in the calculations. World bank estimates are derived from a multiplicity of sources, but are reasonably rigorous and independent in nature. This data on the use of the market was taken during a year when consistent data across sources was available (2012 / 2013). The lack of data availability in recent periods (particularly relating to the value of public purchasing) restricts a more contemporaneous review of the situation. Such an updating of the information is in part difficult due to the lack of resources dedicated in the Commission to evaluating procurement in the wake of the financial crisis.

What other difficulties may be found in the methodology used by the Commission to calculate procurement expenditure. Primarily, they have relied on the value of advertisements placed in the TED per annum. However, Procurements frequently occur over several reporting years (especially in the case of construction contracts or repeat framework agreement purchases). Thus large capital investment across a period of several years may seem instead weighted towards one particular year in which the contracts were advertised.

The level of the 'contract value' figure from the OJEU advertisement is also questionable. At the point of advertisement, the value of the contract is estimated by the Contracting Authority. They may not have an accurate assumption of what the value is likely to be in the future if they are using budget costs or historical data. Indeed, until they actually contract from the market, there is no really accurate 'contract value' available.

At the point of 'contract award' a 'contract award notice' is published in the TED. This is potentially a more accurate value of the likely expenditure by the Contracting Authority but suffers from other variables. There may be additional costs and value added as a result of the additional factors and services that are offered by a contractor. These could constitute a large amount (Kelman, 1990 p76) and may be seen as either gains or losses to the public sector organization as a result of the 'tyranny of the proposal' and the dynamic of defining a tight enough specification to allow for publication in a tender document. Furthermore, where a 'framework agreement' is established, the contract value advertised and contract award advertised shall inherently be estimations of likely, but not guaranteed demand from the Contracting Authority.

A good example of the inaccuracies described may be found in the Commission figures for Estonia, which seem to indicate that they are advertising and awarding greater contract values than their entire government consumes (the figures represented in column J). In either case, the number of caveats to the statistical

validity of this data undermines its fundamental utility at providing a picture of the directives in action. In total, the Commission's estimate places the procurement market at €127,240,000,000 higher for the year in question than the member states have reported.

Finally, the statistics do not account for varying models of capitalism in each State, or the degree of maturity of the directive's implementation, thus demonstrating a deficit in policy analysis arena that the TED suffers from – it cannot make linkages back to the broader political economy by itself, and the model of procurement in a State, and moreover the model of the State, needs to be addressed. A lack of critical engagement with the structure of the economies when looking at the raw data hampers understanding, rather than an understanding being present following a view of the data. The figure of total percentage of GDP that the advertised procurements constitute is of course very persuasive as an indicator on paper. It should enable comparison of activity across a number of states. However, it is more likely utilised bluntly and therefore a deeper understanding of the activity of procurement is more difficult to ascertain.

4.7 Conclusions

This chapter has presented a detailed overview of the development of the Tenders Electronic Daily (TED), the functional operation, and the role in the market as a key instrument that controls the discourse of the social interaction in the market, and finally some observations on the use of the information derived from the TED.

Much effort has been placed in maintaining and refining the use of the TED by the Commission, and it has gained dominance as the premier source of market knowledge. Indeed, it had been considered initially that this thesis would utilise the information within the TED for an econometric analysis to gain insight into the operations and political forces within it. That process would have unfortunately missed an opportunity to consider the conceptual issues around the use of

performative discourses within the social construction of markets, and the mechanisms that support the propagation of said discourses. What this study has shown, is that the TED is a powerful tool for the perpetuation of the discourses of procurement as well as being considered objectively representative of the market. The TED operates to 'make' the market as a method of communication, and to perpetuate market making discourses alongside those processes.

The forces displayed in the development of the TED are situated within an incrementalist paradigm of policy generation. The evidence indicates that there is no explicit 'political' (as in member state or interest group actor) pressure to develop the TED in a particular manner, there is a strong institutional bias towards information control, and markets as an instrument of political integration. In the context of this analysis, one may see this as displaying, and projecting ideational control through the establishment of particular forms of discursive interaction.

It is through the control of discourse that the ideational emphasis of the EU institutions is performed. The ideational power expressed through the changing discourses of the single market being expressed here as both a development of the 'modern', an economic imperative (a perfect and transparent information exchange to create a functioning market), and the capture of economic activity through the discourses shared by the market participants. Parsing across the information presented in Chapter 3 regarding the construction of the Procurement Market, it can be seen that the developments in the TED reflect the changing emphases of the use of the procurement market through the integration of (during this time period) economic, social, sustainability, and broader societal goals. This is achieved through the framing of decision making processes (the 'award criteria' and CPV codes), the particular inclusion of social and sustainability requirements on the advertisement forms, the embeddedness of geography as a function within the advertisement (binding the activity to the 'state as geographical entity' ala Weber through the NUTS codes), and the democratisation of access to the market information through the internet.

The following chapter (5) analyses the content of this chapter in the context of the overall research questions. This is done by looking at four main areas:

Firstly, the TED is placed within the context of Research Question 2 concerning the mechanisms that 'make the market'. The discourses of the market are important, but without this nexus of data exchange for the participants, such discourses could not be projected into the social construction of the market.

Secondly, the implications of the role of the TED as a market making and policy information tool shall be examined using the research captured in this chapter. There are critical issues relating to the use of data produced by the TED that need further analysis. It is best placed within the following chapter to allow for separation of the critical reflection from the research itself.

Thirdly, the role of the TED as a transparency tool is examined. This is of course similar in vein to the scholarly study of Susan Arrowsmith (Arrowsmith, 2010; Arrowsmith and Anderson, 2011; Arrowsmith, 2012) but in this thesis, the purpose is not solely to expose the workings of the market to all participants to allow for avoidance of corruption etc., but instead to allow for the operation of calculative processes to do with the operation of the political economy.

Lastly, the role of the TED from the perspective of it acting in a 'market making' mould similar to that described as being the position of Michel Callon in Chapter 2; Literature Review. This is present in two main areas; Firstly, the role of market data in the *calculative* process. That is to say, the TED is the mechanism that provides the tools with which to understand the market. Without the information in the TED, then the calculations taken regarding action by participants in the market would not be possible. Secondly, the use of the TED controls the structural relationships between parties thus allowing the projection of the hegemonic ideas into the transaction between the two.

Chapter 5: Public Procurement Market Instruments and Policy Implications

"Today's advances in the world of Information Technology provide the tools to create significant improvements in the supply of relevant information and revolutionize the whole way of doing business with governments and utilities. SIMAP represents a major step in this direction. Although it is starting with two relatively modest pilot projects, I expect it to be extended ultimately to all suppliers and procurement entities in the EU and beyond".

(Commission, 1995)

The procurement market has throughout the development of the European Union, been a cornerstone economic policy. This market has been at the heart of economic integration throughout the history of the Union and will continue to have relevance for the foreseeable future. The context has been a process of increasing governance transparency in the member states for the stated purposes of opening opportunities for trade. This is the 'banner headline' purpose for the use of the procurement market, and the development of the SIMAP and TED projects. Chapter two highlighted the de facto understanding of the market; it provides transparent governance, fights corruption, forms part of a regulatory state approach to the operation of public policy. This thesis, rather than engage with these rational understandings of the market, has discussed the development of the market, and the main policy instrument that 'makes' the market as being an ideational development within the European sphere. Therefore these stated processes of improving governance, increasing transparency, and improving economic performance have instead been serving the broader ideational creation of the notion of the state rather than being an end in themselves. Public Procurement, and the market that supports it may instead be seen as a vehicle for the perpetuation of 'Europe' "...to all suppliers and procurement entities in the EU and beyond" (Commission, 1995).

The first empirical chapter offered a reflection on the development of the Procurement market from a longitudinal perspective and the emergence of specific discourses within the market. These discourses contribute to a picture of an incrementally developing institutional framework that creates the market. The shifting discourse ideational basis appears to change, but at each step services a common goal, the perpetuation of 'more Europe'. The degree of *entanglement* of the state and social spheres is addressed by creating a contestable vision of the modern state.

The second empirical chapter offered a detailed look at the principal market-making instrument within the Procurement Market. Policy implementation is an often-overlooked process that is seen in most other studies of procurement as being a politically agnostic process. Viewed from the perspective of this thesis's theoretical framework that uses a social constructivist perspective, the advertisement process contributes to both the *framing*, and the *calculativeness* of the market.

The intention of this chapter is to draw together the critical discussion around the Procurement market that was highlighted in the theoretical framework in the literature review, and view the empirical study through this veil. In order to do so, the chapter will be organized in the following manner.

Firstly, the research questions are reiterated and answered. This precedes a deeper discussion of the role of the Tenders Electronic Daily (TED) as a public policy instrument in creating the market, and controlling the discursive basis of the market contributing to the answer of research Q2. In doing so, the subject of the discursive basis of the market as a policy instrument is discussed.

Secondly, I present a discussion around the theoretical implications for the performativity of ideational constructivism within this social construction of the market. Mackenzie (MacKenzie and Millo, 2001; MacKenzie, 2006; MacKenzie et al.,

2007b) has used the term 'Performativity of Economics' in his work relating to market instruments. In Mackenzie's work, the processes of the formalized market are impacted by social acts and calculative processes. This is instructive as an approach but this thesis moves beyond the economic market instruments and explores the political and social realities affected by the manipulation of discourse. Here, performativity relates more closely to a direct ideational process and therefore is more aligned with *social* than *economic* processes. The context of the performance here is related rhetorically to economics, but the underlying ideational basis being does not operate within the sphere of economic rationality.

This chapter addresses the two main research questions outlined in chapter 1. The first of which was:

Q1: "In what way does an integrated public procurement market impact the member states of the European Union?"

This is the macro level question of the thesis, and engages with the dominant concern for any policy analysis work, the likely 'impact' of an activity. As stated in Chapter 2, there are views of policy development that engage with the ideological basis rather than the evidentiary. This appears to be the case in this instance. The evidence to support the development and repeated extension of the policy is generated from an ideationally laden process of 'transparency' that both creates the notion of the act of procurement, and then provides empirical information regarding it back to the market. To question the development of the market from an evidentiary policy cycle perspective is somewhat reductive in the light of evidence that while evidence was sought regarding the market development, these evaluations effectively discount the critical appraisal and evaluation of the market as a social constructivist entity. Regardless, the policy has been pursued as part of an ideological drive towards particular policy solutions, rather than engaging objectively with their likely context, impact, and implications.

As we will discuss below, the 'impact' of a policy of ideational performance is difficult to quantify in the terms that policy, and indeed procurement is most commonly addressed. A look at the economic indicators regarding the use of the directives is instructive only in that the OJEU-S / TED is being used, not what for, or indeed what actual impact this has on the relationship between the parties using it. Therefore the 'impact' debated within this thesis must be seen as the theoretical impact on the participants in the social construction of the procurement market, that in turn serves the construction of an understanding of the 'State' and of 'Europe'.

From a traditional 'positivist' perspective, there is a real and perceivable effect to the market. 'Things' are bought and sold and there is a real transaction undertaken. This is represented in the debate relating to Public Procurement in terms of the Economic Impact of the Procurement Market.

There are three ways to approach this by using the data available from the market instruments. Firstly, the economic and financial data that is logged with the commission concerning the value of the trade that occurs within the market. This is riven with problems as outlined in the previous chapter. These include misreporting the date range of a transaction, through to the 'estimated' value of transactions being significantly different to the actual out turn costs, and finally the length of some contracts actually leading to contract value being misreported within one year as opposed to several. These all lead to a skewed picture of what the value of the market is in an on-going basis.

The second method would be to seek the discursive content of the contracts that are let under the market and try and track the emergence of the discourses projected by the market mechanisms into the political economy of the member states. This would be done through looking at a combination of the 'evaluation criteria' and the 'award criteria' on the OJEU advertisements. On the TED database issued by Open Europe (CITE) this would be categories CRIT_CODE, CRIT_CRITERIA,

and CRIT_WEIGHT. Unfortunately for most of the TED's history the full completion of these categories on the advertisement has not been required. Instead, the details have been left aside for the Specification in the Invitation to Tender documents. These documents are not all widely publicly available and researching them would be exceptionally difficult. In addition, the framing of the action of procurement would not necessarily be exposed at this stage, due to their being elements of decision prior to the advertisement phase as to what constitutes engagement with the procurement practices.

A third way to approach it would be to leave aside the economic value of the market, and instead look to the number of advertisements that are placed in the OJEU and the TED. In the context of this thesis, this is a more convincing argument. The levels of uptake and usage of the directives is more convincingly tracked through the OJEU process. The content therein, is less convincingly monitored.

I conclude however that all of these arguments contribute less to the overall impact of the market than the following argument. Through the process of control of the discourse of the market, and the construction of the market instruments within the market, there is a definition of 'procurement' made between the parties involved.

When a Contracting Authority chooses to advertise a purchase requirement through the Official Journal and the TED, they are actively engaging in the practice of 'procurement' as defined by the EU market. They may choose to ignore the EU directives, and certainly they have a low likelihood of being caught doing so, but in that case, the purchase they make is not 'procurement' as defined by the social construction of the market. Therefore both by accepting and acquiescing to the market, or by refuting the authority of the market and the practices within, the process of purchasing is defined itself by the construction of the formal notion of 'procurement'.

So the engagement with the process of 'Procurement' then is the tacit acceptance of the Europeanisation of the legitimate economic sphere of public contracting. Procurement here then is not just the practice of publicly purchasing goods and services, but the active engagement with the process of redefinition of the notion of statehood in the European member states.

The second research question covers a more detailed aspect of the market and assists in generating necessary insights for the above question;

Q2: "From the perspective that markets are social constructions, what are the mechanisms that support this construction and 'make the market'?"

The technical mechanisms used to 'make the market' in this context consist of two parts. The first is the technical market making exercise of developing the Official Journal of the European Union (OJEU) Supplementary series (S Series) as a resource for advertisements of public contracts both before they are let, and once they have been completed and awarded to a supplier. This mechanism was later developed into the website 'Tenders Electronic Daily' and provides the market with a nexus of information to draw upon both in terms of signalling opportunity of contracting, but also to transparently advertise a contracting relationship with a private actor by a contracting authority. As discussed in Chapter 4, this website is at the heart of the market's operations, and it is through this point that all contracting is both signalled by contracting authorities in the member States, and then monitored by policy makers across the EU governance structures. This advertisement process is intended to be politically agnostic, and offer a neutral way in which to facilitate the performance of public procurement for the participants.

The second mechanism is that of the discourse of the market. The themes outlined in Chapter 3 represent the emphasis of the market as each point. They track the way in which the market was steered according to particular agendas. This was done through the modulation of the directives, but moreover through capture of

the ideational foundation of the act of public procurement. Through this mechanism of manipulation of the discourse, those engaging in public procurement exercises began to realise the State in a European mould. The hegemonic position of the EU's political and economic integrationist project became embedded within the realisation of Statehood through modern policy implementation modes. The mandatory use of the OJEU process ensured that the discourses would be present in every major procurement undertaken.

Through the use of these two mechanisms, the social construction of the market was created in a particular vein, and the discourses (implicit or explicit) are projected into this construction to realise the overarching integrationist agenda of the European Union.

As mentioned above, the role of the market making instruments specifically engages with the *calculativeness* of operating within a formalized market. The participants are engaging in an act that represents the process of 'procurement'. As a result of the unconscious power of hegemony controlling the potential options presented to the market participants, the process is as much a 'real' exchange as any other because there is no way to conceive of that outside the socially constructed reality. The TED frames the process of advertisement in a manner than controls the opportunity for advancing understanding. The Market in this sense creates not an economic integration of the European Union, but captures and reframes the realization of procurement, and thus the manner in which public policy is realised.

When looking back at the market data, it may be seen that 'calculative' processes control the participants of the market through the way information is presented about the world. As this information is controlled in a ideationally laden manner then perceptions will be modulated, and in turn outcomes change. In having their worldview framed in this manner, the actors are engaged by the hegemonic

discourse of procurement promoted by the European project; they become Europeanised agents of change within the State.

5.1 The TED as a Market and Policy Instrument

The TED, like any communication technology is a temporally bound solution. It has been born of an earlier policy process and developed from the era of print dissemination of procurement advertisements into the web based model that is now being utilised. As each iteration of the OJEU-S is launched, it moves further towards integrating with overall private and social sphere developments in communication. The TED becomes further embedded within the epidermal layer of the market's operation. To wit, as a policy instrument, if it achieves its own ends, then the obsolescence of the service should result.

Viewing the development of the website in the preceding chapter gave us an opportunity to see how this temporal development occurred. Firstly, the site was purely a database, run on early Internet servers in the 1990s. This developed through the early formats of the site until the launch in 1998 of the more broadly accessible and searchable system. The use of private contractors to facilitate the realisation of the system is fascinating as it is an instance where a private contractor ostensibly implements a service for a state body, and in turn the service is modulated through the use of private actors to engage with the broader public.

The outsourcing of certain elements of the provision of the TED is instructive in this manner. Looking at this process allows us to perceive two aspects of the creation of the market. Firstly that the role of the TED and the advertisement was seen as a technical exercise is reinforced. The specifications, technical information relating to the website, and the Invitation to Tender documents that outlined the three contract periods all spoke to the operation of the TED as a technical exercise to deliver the (then) present operation of the TED in a new format. Secondly, that the outsourcing in this manner would have no impact on the operation of the process.

Interviews with a Publications Office official confirmed that they believed there was no impact on the delivery of the actual TED information by outsourcing the website. The operation was intended to be politically agnostic. I argue that any such outsourcing accepts certain precepts associated with the practice of 'public procurement' as a discursive construction.

The outsourcing of the TED is a perfect example of how the process of tendering for an activity may actually in the refinement of the process gain a degree of conditioning of the activity. The identification of the processes that may be perceived and then outsourced to a private company require some work that engages with the principle of procurement prior to the activity of procurement advertisement occurs. This pre-conditioning is mentioned in the context of the advertisement process in section 4.5.2. The processual changes that therefore occur within an organisation in order to facilitate the outsourcing of activities inherently change the organisation. Placing the TED within the context of a privatised industry within the public sphere, one can see that the debate around whether the TED should have been outsourced gains more importance. The Commission has sought wherever possible to outsource those elements of its operation that it believes to be possible. Thus the belief is that there will be a consequent gain in the operational benefits associated with a professional company undertaking the activity, improvements in service, and savings associated with a fixed public infrastructure.

While this may allow for a level of innovation in the provision of public services, there is the risk that in a pivotal issue such as the implementation of the main instrument that facilitates the public procurement market, the market is itself left aside from an integrated and considered approach by the political levels of governance in the Union. But while the option to use a third party supplier in this case could have lead to further improvements in the system, in reality there was a lack of inertia resulting from the use of the contractors. The contractor innovated to

the degree that they *had* to and then ceased to push any further in terms of the deliverables of the system.

In the classical model of market making (Callon et al., 2007), the TED fulfils a role as a place that buyers and sellers may meet and effect a transaction. Garcia describes the Strawberry Market of Sologne as constituting (as near as practicably possible) the embodiment of a perfect market (article may be found in Chapter 2 of Mackenzie et al., 2007a). The strawberry market's rules allow for the dispassionate evaluation of goods by buyers, then the submission of bids to purchase the goods anonymously. The principle of 'disentangling' the buyer and seller is therefore rigorously applied in this context, and the 'social' is removed as far as possible. The TED attempts to implement a similar process by offering a forum for buyers to advertise opportunities on a standard web based platform, and for suppliers to then evaluate these opportunities before deciding on their course of action. However, this thesis argues that the TED is not effective in this aspiration. There are a series of aspects of a market that the TED fails to develop effectively, and the preconditions of an effective 'classical' market as described in the analytical framework of this thesis (section 2.7), are not met.

Instead of a carefully designed and politically agnostic communication system, there has been a reliance on third parties to disseminate much of the information captured by the TED. The actual processes that create the market are therefore esoteric in nature and the opinion of their operation is obscure even to the officers in the Commission and Publications office that deal with them. The TED still exists, but the confusion regarding its role speaks to the relative irrelevance as a direct contracting tool. Instead, the role as a functional database at the heart of a web of communication services is well established, and private interests have been allowed into the implementation of much of public procurement policy interests. The final outcome is a hybrid of public and private provisions. The intention is to create the most effective policy outcome for the EU that speaks to a multitude of audiences. However, the Publications Office staff intimated that they do not know which

audience they are intending to speak to with this service. So the ultimate end goal of the system is very much a pragmatic 'suck it and see'. They are aware that a service such as theirs is needed, but the policy of running such a service is led by the ideological adherence to this approach rather than an evidentiary assessment of need.

It may therefore be questioned as to why the role of the third party companies was not more investigated in the research for this thesis. While these third parties do indeed operate independently of the Publications Office, they rely on the TED to act as a 'back office' in their systems. As such, the TED operates as the nexus of information storage, and dissemination for all third parties. The role of the TED as the core data storage provision in this context means that the *format* in which the information is controlled is crucially important, and this is a format determined by the Public Procurement Directives. Therefore, there is a framing of the information to be exchanged between market participants (both suppliers and Contracting Authorities) by the TED. This is at a point before the intervention and dissemination of the third party re-advertisers. The TED is still the point at which the information is subject to modulation by hegemonic forces.

On the subject of temporality, there is the question as to whether the TED as a market instrument has facilitated more cross border trade within the development period under research. One may question whether in the light of integrated global supply chains, and the new Internet age, we have arrived at a situation whereby the TED is simply not needed to facilitate the market?

Firstly, What is apparent from reports such as the 'Cross Border' evaluation (Kommerskollegium, 2011) is that there already are integrated supply chains in place between the EU's member states. Supply chains that exist globally. In terms of relationships between these supply chains and public purchasers however, a first tier relationship is far more likely to be with a national supplier, while the rest of the supplies are from global sources. The national supplier in this context is a shell

operation for the supply of goods and services with global reach. The extent, to which the TED has impacted upon the deeper integration with global supply rather than just the formalised relationship between Contracting Authorities working in the public sector, and private suppliers, is questionable. So while there will have been a higher proportion of manufactured goods tradable between European states during the evolution of the Procurement Directives in the late 1950s and 1960s, by 2016 and the writing of this thesis, the EU has shifted to a very different model of production and consumption. The member states now are at the end of a global supply chain and add value to the production and consumption of products rather than the production from raw materials that they once engaged with. The aim for increased global economic interdependence in this context is therefore temporally bound within an industrial model of Europe that no longer exists.

Secondly, the operation of the TED and the OJEU has at each stage sought to provide information to facilitate transparency of operation for the nascent market. The process of posting the forms, faxing the forms, then emailing them has all spoken to this temporality. At each stage, the infrastructure available within civil society facilitated the market within logistical constraints. The move from the print OJEU-S to the CDROM and online versions was framed by the Management Reports of the Publications office in this vein. Concerns raised by Interviewee 10 relating to the age of the TED infrastructure and the need to update it, also speaks to this perspective.

Chapter 4 described the development of the TED website from a technical perspective as the off-shoot of the 1993 Interoperability of Data for Administration agenda (Communities, 1993b). This served to demonstrate the technical origin of the TED website; The inception of the tool was from a technical standardization perspective rather than a considered and critically appraised market instrument development. The IDA was intended to kick start electronic communication between the central administrations of the EU member states. There was therefore little in the way of discussion evident in the policy papers (Green, white, committee

etc.) available to this researcher for the creation of SIMAP and later the TED. What was available related to the technical implementation of the instrument, and the budgetary allocation required to fund the process. Indeed, the Annual Management Reports referenced in chapter 4 make much of the process as being one of cost saving rather than attempting to foster ancillary benefits from the TED.

Recent revisions of the Public Procurement directives began to integrate the use of electronic communications for the purpose of market operation concluding in 2014/24/EU integrating the mandatory use of electronic means of communication. But the political discussions were focused on the budgetary allocation for the services, and cost savings for Contracting Authorities approaching the market, rather than the deeper nature of the role of the TED. Indeed, one of the most pressing forces appears to have been the practical issue of the OJEU for the publication office.

Putting aside these issues, from the perspective of this thesis, the core concern of the TED is to embed certain ideational principles within the operation of the market. This includes the operation of cross border trade, electronic interchange, and transparency. Without the TED as the nexus point for the control and formatting of information within the market, there would be no opportunity for the EU to bake into the operation of the market the principles that it wishes to be found within that market. This includes the long list of discursive themes identified in Chapter 3 in the making of the integrated European Public Procurement Market. Therefore, whether the TED is necessary from a practical perspective is of less relevance than its utility from an ideational perspective.

5.1.1 Market Data and Information

One of the aims of the TED is to generate data regarding the operation of the market. So, how are data sets from the TED utilised? Returning again to the use of the TED, once a contract has been agreed, the Contracting Authority must issue a

'Contract Award notice' through the TED. This outlines the winning tenderer's price and contract terms. By doing so, Contracting Authorities are transparent in their relationships with third parties (most often private companies) and what it is they purchase from them. The data presented to the TED at this point regarding the winning tenderer is one source used by the Commission for analysis of the value of the procurement market. This source of information should be a consistent data point for the Commission. While there is a lack of a consistent legal framework across the Union and different reporting standards between devolved authorities and central governments, this should be a common touchstone. This transference of the monitoring of the market is no doubt of practical use to the Member States as it allows for visibility within sometimes labyrinthine governance structures. Particularly difficult will be sectors such as Higher Education (HE) where a mixture of private and public funding makes a straight understanding of expenditure through budgetary visibility difficult.

The TED information is then used by three layers of policy making professional. Firstly, the Commission has relied consistently on measurements of market activity as measured by the throughput of the OJEU process throughout the history of the procurement market. This may be seen in the use of the OJEU data (prior to the foundation of the TED) and the TED itself. The Commission has a past record of wishing to derive power over information in the policy realm as a technical exercise in emphasizing power (Gornitzka and Sverdrup, 2011). In lieu of budgetary capacity to control events in the EU, the Commission uses its capacity for market oversight and information to generate a hegemonic role in the political discourse. This 'specialist' approach makes their role empirically institutionalized as a power relationship with the other institutions in the Union. The formation of the TED from a macro perspective may also be seen in this light, and is indeed borne out by the use of the TED data throughout estimations of the act of procurement. Therefore by capturing the process statistically, the EU gains predominant ownership of the act itself. This was not the explicit intention of the designers of the system; instead we

can see this activity as being emblematic of the underlying hegemonic propensity towards the 'ever closer union of the peoples of Europe'.

Secondly by national policy makers for whom the TED is still a dominant policy making data source. In the documents researched for this thesis, much is made in the UK's House of Commons and Lords reports of the procurement data for information regarding economic activity within the UK. This is in a large part due to the decentralised nature of the economic model of public activity in the UK. As a contrast, Hungary has a much stronger centralised procurement system, and greater granularity of information is available to policy makers directly from that agency without the need for recourse to a third party.

These two levels map across to the 'audiences' of the discursive construction of the market mentioned in chapter 1 section 1.4.3 namely that of 'Political and Governmental' actors. In the generation of policy relating to the public procurement directives then, the dissemination and format of data relates to the creation of the discursive constitution of data produced by the TED.

Finally, the Open Data Portal (ODP) suggests that there is opportunity for the broader policy community to draw upon the TED data for the production of reports information and 'business intelligence' relating to procurement activities. Unfortunately, the sources of the advertisement information are not well suited to this form of research or transparency. Much like the Annual Management Reports of the Publications Office, there is a level of 'lip service' provided within the mandatory fields by the practitioners completing the Official Journal of the European Union (OJEU) advertisements. The individuals completing the advertisements lack a level of self-criticality that might otherwise enhance the reliability of their activities for the research community. Their submissions therefore may appear scant, or be only as detailed as is required to meet mandatory requirements rather than give genuine information of use to policy analysts.

The use of the data from the TED as a market information tool is further hampered by the web portal's inability to report outside of a 5-year time frame back from the point of search. As an analysis tool therefore it is useful for the Contracting Authorities who have to estimate aggregated spend for a contract over a 4 year period. Unfortunately a myopia is possible that undermines the efficacy over a longer frame. It is this longer frame that may allow for greater perspective on the development of a state, and of the EU as a whole. For example, in the present climate post fiscal crisis, we are still struggling in some quarters to understand how the austerity programs followed by certain governments are impacting on the output of government. In this case, an ability to refer to information live in the context of a longer frame pre 2011 would be of exceptional use. Instead, reference must be made to secondary market sources that look back into the maw of the crisis and may apply their epistemic perspectives on the issue. This has indeed been an issue that has plagued the research for this thesis.

To address this issue, during the period of this research project, the availability of the TED data became very much more open. This is through two avenues. The opening of the XML data and direct server linkages, and the publication on the Open Data Portal of the Tenders Electronic Daily CSV subset regarding public procurement notices. The latter of which was partly inspired by this researcher's visit to the Publications Office and was made to my specification following my visit to the Publications office in 2015.

Both of these routes to the information are built upon secondary access to the TED database rather than the principal market creation tool of the TED website. That it has required an additional information access route in order to be effective is a shame, but somewhat predictable. The trend has been to develop a series of solutions across the web strategy, and be incremental in the approach rather than taking a strategic view of the service. In addition, the actual access to the servers is

an onerous task that requires both Information Technology skill, but also the capacity to understand that this information may have relevance in the first place.

In terms of the use of the information, the separation of the implementation mode macro programme (IDA and IDABC) from the policy generation process (the considerations and committee stages that look at the generation of public procurement directives and regime change) will have an impact on the capacity for closing the loop within the policy remit. In fact while there have been changes to the operation of the procurement market as a result of the development of eProcurement solutions (2014/25/EU relating to the use of eProcurement systems and eInvoicing is one such innovation) the greatest focus has been on the rhetoric of the market increasing in intensity combined with changes in the regulatory frameworks periodically. What has been less changed is the core of the activity of the TED outside of some modernisation of the system.

Certain aspects of the SIMAP such as the TED speak to the continuing efforts by the Commission to rectify the failures of the market instruments highlighted above. Should the market be operating effectively, the TED would not be necessary as the market itself should supply solutions where necessary. The EU market then in this frame is not about deregulation of the economic space in order to liberate the participants, but the creation of boundaries and frames for the actors to operate within. Again, the power and control of information being one of the most powerful modes of control.

In some areas the SIMAP system is being replaced wholly by private sector offering. In particular the CPV code system was highlighted as being deficient compared to the 3rd party offerings. For the University (and overall public sector) a more commonly utilized index is PROC-HE coding (Colleges, 2016), or Thomson (Thomson-Reuters, 2016). These coding systems are themselves a difficult issue. At heart they are a technocratic process that is seated in the coding approach required by database systems. They are excellent for reporting back on the elements of

advertisements that may be needed in order to derive policy reports for the commission. Moreover the coding systems fit within a particular 'finance' approach of systems management (for instance the reporting of activities through SAP systems). There are financial coding structures and practices that are used extensively by the management strata of organisations that will be similar to that of the officers working within the commission.

The coding systems were themselves not supposed, according to the Commission, to shape the manner in which supply is delivered to the public sector (Attstrom et al., 2012), but their use nevertheless determines the manner in which approaches to public supply are organized in terms of finding opportunities through the TED in particular. Further, the market engagement processes followed by many public procurement agencies associated with the activity of category management is aligned with seeking demand streams that are facilitated in an existing manner by the market.

As shown above, the SIMAP and TED web portals have grown from a technically focused programme of standardisation. The resulting system has three main facets. There is little evidence that these aspects were considered in great depth as to their overall impact on the social construction of the market. Instead each one serves a different audience and purpose.

Many of the innovations in the 2014 directives were to do with the improvement of systems for the reporting of information. Information quality is a key aspect highlighted for improvement in most reports on the TED (Commission of the European Communities, 1994 p86; Teo and Lai, 2009; Cattaneo, 2011) For example "This is our principle source of data" (Price Waterhouse Coopers et al., 2011 p10). Associated national databases are also referenced where possible although these are not mandated in law to be utilized in the comprehensive manner that the TED is. This has led to a paucity of objective reporting on the efficacy of the system. The methodology for example in the Cattaneo, 2011 report was to look at a sample, and

then extrapolate from that sample. This is due to the member state's failure to capture or track the manner in which their CA's operate, and issue raised in interviews for this thesis (Interviewee_7, 2014 in particular). As mentioned above, the Commission was responsible for data reporting within the procurement market, and did so through the interrogation of the TED sources. But these sources have proven so unreliable, that the Commission has ceased to publish these data sets. Some of the 'blame' for this is placed by the Commission during the 2014 consultations, at the door of the Contracting Authorities that have neglected to complete elements of the TED that are not mandated, hence the increased requirements in the subsequent directive.

5.2 The Public Procurement Market and Performativity

The fundamental perspective within this thesis is that the European Union Public Procurement directives constitute an effort by the EU to create a new market in the European sphere. This market has particular political connotations and directions and like any other market, is supported by a series of institutions and state sponsored structures. As such It is not politically agnostic, and as subjectively political as any other forum of civic life (Fligstein, 2002). In the case study highlighted here, the market's construction is supported and steered explicitly by the performative discourse of public procurement. This is not solely the preserve of the public procurement market, but as this market is so intrinsically linked with the realisation of the state, and the manner in which public policy is undertaken, the consequences for the market being controlled in this manner are significant. In doing so, the EU is reaching beyond the auspices of its traditional role in public governance to a position of ideational hegemony in the manner that the state is realised. This is through the process of defining the ideational principles of the state's implementation and the informational constrictions placed upon the market through the control of the market's primary information mechanism – the Tenders Electronic Daily website (TED).

A precursor to the effective operation of a market is through open market transparency instruments. Symmetry of information for all market participants is important in order to facilitate the effective estimation of value in relation to the other market actors (Beckert, 2009). Relating to the public procurement directives, there is an asymmetry to the information available to the Commission and the Contracting Authorities regarding the suppliers. Suppliers present to the contracting authorities the information regarding their structure that they wish to express. While 'companies house' records are of assistance in a UK national context, there is little in the way of a transnational register of companies that can be effectively operated by buyers. Therefore the market's own information is not as transparent as the format in which the buyers' is intended to be. This is troubling from the perspective of the private sphere being given predominance in the power dynamic between the spheres. This speaks to a perpetual issue regarding taxation and the general avoidance of the eye of the state on the private individual (Brooks, 2013) particularly cogent in 2016 (for instance Apple and Ireland (Garside, 2016)).

The analytical framework identifies three aspects of Callon's work (Callon, 1998b; Callon et al., 2007) as having relevance in this analysis; framing, calculativeness, and entanglement. Carrier and Miller (Carrier and Miller, 1998; Miller, 2005) look at an alternative to Callon's view of entanglement that places the abstraction of the economic from the social which allows for the commodification of ones' labour. Of the two perspectives, both are instructive. Callon in terms of the holistic nature of the debate being about the mutually constitutive reality of the state within civic society. He places the series of linguistic tropes, memes, and processes as an organic interchange between the private and public spheres. In the case of the Public Procurement directives, the will to support the projection of discourse is supported by using evidently flawed data as a source for the operation and justification of public policy processes as in the data of % for GDP. Carrier & Miller's contribution allows for us to examine the site of power within the debate. With this situation of power, comes an opportunity to then place a Neogramscian vision of hegemony within the discussion. The next section looks at the three identified

elements where hegemony may be identified and clarifies the position of the procurement market within the analytical framework.

5.2.1 Calculativeness

First, we turn to 'Calculatedness'. In order to calculate, one must first have the tools to calculate with (Callon, 1998b p23), therefore the importance of the manner in which we understand the operation of a market cannot be downplayed. The process of increasing transparency effectively presents a model through which calculation may occur. This is achieved through the process of increasing transparency of opportunity, the language of the process of procurement, and the technical ancillary terminology and definitions utilized therein. The sum of these elements is the imposition of an exogenously imposed discourse on the actors within the market.

Much is made of the need for 'Transparency' within the public procurement market (Evenett and Hoekman, 2004; Chene, 2009; Preuss, 2009; Mateus et al., 2010) but the *purpose* of transparency is often lost. When we view the Procurement Market we can see that the principle mechanism for enacting transparent operation resides within the advertisement process. This process consists of advertisement of opportunity, and contract agreement thus signalling to the market that demand exists, and consequently the terms of agreement that may be achieved under market competition with public contracting authorities. This process, as detailed in Chapter 4, is facilitated through the TED. One may trace the aim back to the development of the structure of the market. In seeking to empower the CAs and also make the market more practicable (leaving responsibility for the enforcement of the directives to the complainants and application to the CAs), there has been a lack of oversight and integration of the message and emphasis of the market agendas within the member states, and the direction of the market ceded to the supranational level.

The ancillary technical aspects of the market also play a role. The advertisement forms, the CPV, and the NICE all contribute to the manner in which the market is realized in two ways. Firstly, they reinforce a language and a mode of communicating that forces a particularly ritualistic communication (Gunnarsson et al., 1997; Gunnarsson, 2009). These technocratic methods of communicating inherently frame the activities undertaken in an abstract manner that disassociates one from the true nature of the activity. They provide a cognitive filter through which the realization of the required activity is seen. Importantly, the procedures / techniques seek to define how the interactions between actors operate. They reinforce key discursive elements and issues to do with the perpetuation of the construct. Secondly, their filter provides a veil of rationality to the activity to be contracted. While there may indeed be pressing need to undertake a public activity for a general good, the framing of the activity in the technical manner couches the terms of engagement within the minds of the participants in a particular form. Decisions are then not made according to the logic of what is most appropriate for the objective realization of policy, but the best interests of those most closely aligned with the hegemonic discourse.

A further way to view this dichotomy is that there may be a lack of coherent view over what procurement, and the TED is supposed to be. Different audiences desire different things from both procurement, and the TED. I argue that this ambiguity is exacerbated and *indeed encouraged* through the manner in which the stated purpose of procurement has changed as is identified in Chapter 3. As a result the ideational basis of the market has a flexible and fluid approach to information and the private tailoring of specific information through data access services, increases against the core utility of the information. This fluidity is difficult to achieve in a more rigid and prescriptive policy environment. The upshot is that, the fundamental discourses of procurement that are utilized in any given context may be seen differently, or in a differing frame. The tools therefore given by the discourse of the market, lead one in a particular route. Where the earliest references in Chapter 3 were to the generation of an integrated political space for the European peoples,

these later shifted to the use of supranational governance to further the economic aims of the member states. In each case, the EU attempts to create the preconditions for the participants to accept a rational basis espoused for the purpose of the market. The changing nature of this rational basis sees the market move through several different modes as it attempts to gain traction, but is also empowered through not having a single definable concept associated with it. The contestable (Sternberg, 2013) nature of procurement is used as a source of power to accelerate the Europeanization of the realisation of the state.

So with these sources of information and control of discourse presented through the market's mechanisms, the situation of calculativeness may be found. It is through the distortion of what is described as being a transparent and 'politically agnostic' process that information that is anything but is presented to the market participants. That this information is information is presented as de facto representing the act of public procurement therefore modulates the activity in the social actions of each of the strata of audience present in civil society.

5.2.2 Disentanglement

The act of purchasing within a market context requires the exchange of a good or service between two parties. As discussed in Chapter 2, this process needs the explicit separation of the embodied capital within said good or service from the producer to then be presented to the buyer. This process is described by Callon (Callon, 1998b) as relating to the 'entanglement' of the two parties. This thesis argues that in the case of public procurement, the separation of goods from the seller, is not possible. This calls into question the possibility of a 'classical' market being possible in this context. In fact, the creation of a market such as this, with the implicit discursive themes found in Chapter 3, would *require* there to be no disentangling of the parties in order for hegemonic ideas to transfer from the created market (the public procurement market) into broader society.

There are two ways to approach this issue. Firstly, we accept that there is a separation possible between the social and the state. That society begat the state, but that the two are separate strata of the political economy. In this case, the seller is part of society, and their attempt to externalize their capital into a saleable commodity is undermined by the longer-term responsibility that selling goods to the state entails. There are many instances where poor practice by a contracted supplier has led to reputational damage for a company (for example the procurement of new railway rolling stock by the UK government (House of Commons Committee of Public Accounts, 2014) to name but one). Such issues are key as they underline that the inability of the seller to separate their responsibility for a good or service from the political context into which they are selling it. For the activity or goods they are selling are in order to facilitate a public service. This is the perspective that Callon tacitly supports in his analysis of markets.

A second perspective would be that the public and private strata are indivisible (Polanyi, 1957; Burawoy, 2003) and that the State and Society are reciprocally and mutually constitutive (Giddens, 1984). Therefore any attempt to separate the responsibilities of one to the other is theoretically impossible. Without the state, there can be no support for a multitude of social goods that at their greatest extension include the provision of property rights.

In both cases there is incapacity to effectively externalize the transaction between the two parties of seller and buyer within the realm of Public Procurement. There is an illusion possible in that the devolution of budgetary responsibility to lower units of the state (local councils, and individual Contracting Authorities) dilutes the responsibility due to a lack of scale of engagement from the firm to the 'state'. In this perspective, the state is not a unitary entity, but one that is constituted from a great many components acting independently. This perspective holds to a great degree when we recall the sheer number of contracting authorities that exist within the EU member states (over 125,000 in France in 2015. Source, TED 2016). The engagement with the TED however affords transparency of contracting relationship

across the public sector. So if one Contracting Authority wishes to gain information on the contract performance of a supplier, they may turn to the TED and find the contracts that have been previously awarded to said supplier. Equally, innovations such as the Open Data Portal (ODP) seek to afford civic actors, academics and researchers access to detailed information on the conduct of governance and transactions with the State.

The research undertaken by Branco et al (Branco, 2002) on Home Bias would contrast with the perspective of Preuss and Walker (Preuss and Walker, 2011) regarding more actor centric models of compliance. In the former, there is a unitary vision of the purpose of the state, and the state's interests. In the latter, a more personal perspective on the relative cognitive value of engaging in open procurement (from a risk perspective would be supported by Kelman, 1990). This thesis posits that the reality lies between the two, and that the interests of both the state and the individual are effectively entangled, and therefore indivisible. So both the State and Actor centric perspectives would be supported under this framework. If this is the case, then the rationales for undertaking adversarial procurement positions are severely compromised, and indeed seeing procurement as being an activity where the State engages with an 'other' (Derrida, 1984) is undermined.

In each case, there is a lack of capacity at a fundamental level for the disentanglement of the commodity from the seller. The relationship carries on throughout the term of the provision as it becomes indelibly a part of realizing the state, and therefore an aspect of the state itself is the 'private' actor undertaking the work, or originating the commodity. This speaks further to the Marxist perspective of the indivisibility of the output of labour into capital accumulation and concentration with a finite elite in society.

5.2.3 Structural Organisation and Hegemony

What has been discussed is that while there has been much emphasis on the use of the procurement market, there has been little on the organisation of that market and the manner in which that organisation will impact on the outcomes. That we have now a model of market which is present today speaks to a position of hegemony within the EU relating to the nascent manner in which policy is implemented. It also represents a knowing model of hegemonic distribution.

There are three levels of 'hegemony' found within the procurement market. Firstly, the ideational propensity towards particular market instruments and models of market organisation that are representative of a particular vision of the EU as a capitalist actor. Capitalism in this context is represented by a series of institutionalised actions (Hay, 2016). The TED is emblematic of these processes in that there is little in the way of deliberate agenda represented here as a political choice, but much in the way of the organisation of the market through 'technical processes' that are themselves a politically laden perspective on the organisation of the state.

Secondly, the projection of ideational factors through the discourse of specific political projects within the European policy space. This is represented in the manner that the EU seeks to utilise procurement for particular remits and co-opt the process within political agendas. Chapter 3's outline of the phases that the development of the market went through is an example of this process. There are specific projects and causes supported through the Procurement market such as sustainability, or the 2020 agenda. The sum of the ideational positions relating to, each of these processes is slotted within the process of the realisation of the state inside the member states. The Contracting Authorities adhering to the procurement market processes are therefore co-opted in to a particular state vision projected by the EU rather than the realisation of the state within which they reside. Multilevel governance (Bache and Flinders, 2004; Pierre and Peters, 2004) describes the linkages made through the gates of the state, but uses a formal institutional linkage.

Here instead the ideational is the vehicle through which Europeanization of the state occurs.

Finally, moving on from the last point relating to the range of projects co-opted by the European Project, the vision of hegemony projected by the EU is not solely linked to the Neogramscian perspective of the nascent exploitation of the value of labour (unless one describes the organisation of the modern state as being a vehicle for such a project). The use of ideational hegemony in this context is instead linked with the perspective of the European project as being a politically expedient, inevitable, and positive perspective on the capture of global governance in the modern world. That modernity is itself a resolved position is a misnomer – modernity is a vehicle in this context for a contestable notion of inevitability and disingenuous release of responsibility for democratic state participation (Rosamond, 1999).

5.3 Conclusion

In conclusion the procurement market provides a vehicle for the delivery of Europeanization within the envelope of the member states. Performatively, the TED constrains the actions of the real world and formats them this is then socially accepted by the market participants as a given series of norms that lead to a particular vision of the process of procurement as being facilitated by certain actions. Those actions outside of the socially constructed norms are in the end what constitutes 'procurement'. Therefore the assertion that there is no reality outside the social is seen as having validity in the context of this market and the manner in which the state is created.

The continued support for the TED can be seen as a function of the wish to generate more 'non-Europe' debates in the application of policy solutions. Savings accrued from free market competition and advertisement of procurement processes support the notion that engaging with the procurement market lends validity to the EU as a political project. While the process of discursive control in the manner

described herein is not explicitly portrayed by the Commission as a market mechanism, the need for cohesiveness relating to the principles of the market as a social construction is alluded to. Early in the development of the IDA programme, the need for a structured approach to the market was seen in order to

“...assist with consistent enforcement. Echoes the need to reinforce the message of the market’s principles over and above the technical reinforcement of the market” (Communities, 1993a p23).

As the State is itself willed into being, the European Project wills into being the ideational basis of support within the social construction of the member states to advance the project.

Research Question 2 is addressed by this thesis in terms of the two discursively situated market-making instruments that facilitate the procurement market. To answer research question 1 then, the impact on the member states of the public procurement market is a process of Europeanization by the back door. The European Project utilising the processes that are emblematic of modern state governance to Europeanise the member states’ policy implementation wherever possible. Therefore, to further answer research question 1 requires the identification of the purpose of the market to view the impact as intended and actualised. In this sense, it is the perpetuation of a hegemonic ideational vision of an integrated European political space. We return therefore to the statement emblematic of the European Project and the wish to;

“...lay the foundations of an ever closer union among the peoples of Europe”
(European Community, 1957)

It is through the foundations of the realisation of the modern state that this aim will be achieved and discursive control provides the vehicle.

Chapter 6: Conclusions, Impacts, and Implications

“Think big, think positive, never show any sign of weakness. Always go for the throat. Buy low, sell high. Fear? That's the other guy's problem. Nothing you have ever experienced will prepare you for the absolute carnage you are about to witness. Super Bowl, World Series - they don't know what pressure is. In this building, it's either kill or be killed. You make no friends in the pits and you take no prisoners. One minute you're up half a million in soybeans and the next, boom, your kids don't go to college and they've repossessed your Bentley.” *Louis Winthorpe III in 'Trading Places' (Landau, 1983)*⁷

Markets are not sterile, neutral environments. They are constructed social spaces, supported by the State for specific purposes. Social norms and interaction are displayed, and govern them (much like the Chicago Derivatives exchange mentioned above). They are political (Fligstein, 1996) and in the context of this thesis, a market has been pressed into service of a grand political enterprise; the expansion of 'Europe' as an idea through the modulation of the realisation of public policy. The novel approach taken in this thesis to looking at the procurement market is the core of the claim made for originality in this thesis.

The Tenders Electronic Daily (TED) is contextualized within this thesis as a market instrument that has a particular role in the realization of making the market, and the nexus of market information exchange. Callon et al (Callon, 1998b; Callon et al., 2007) present a framework for understanding such 'market making' instruments in

⁷ The film 'Trading Places' has, as its subject, a 'scam' conducted in the Chicago Derivatives exchange. This exchange was described in the visceral terms above, but also served as the case study in MacKenzie, D. and Millo, Y. 2001. Negotiating a market, performing theory: The historical sociology of a financial derivatives exchange. *Performing Theory: The Historical Sociology of a Financial Derivatives Exchange (August 1, 2001)*. where the imposition of the Black-Scholes algorithm served to curb the excesses of the activities of the participants.

terms of the role they play in the social construction of the market processes. Neoliberal economic rationality suggests that there should be as little intervention by the State in the economy as is needed to effectively allow for the operation of the market. But the public procurement market relies on several discourses of intervention in order to be justified. These include the strength of the non-Europe discourse in creating a reason for the state to have an increased presence to capture the relative benefits of engagement with Europe. The market highlighted herein then is not the result of efforts by the Commission to rectify the failures of the market. In a classic market failure scenario, should the market be operating effectively, and then transparency tools would not be necessary, as the market itself should supply solutions where necessary. The Procurement Market creates a series of tools not to break down boundaries to free operation of a market but to deliberately engage in the creation of boundaries and frames for the actors to operate within. Within this construction, the power and control of information is exploited as the most powerful mode of control.

The identification of the market discourse, and use of that discourse as a political policy tool has been novel, and instructive in understanding Public Procurement in a fresh manner. As such, one may view the creation of discourses, and control of ideational hegemony as paramount in the perpetuation of the European project. We may view the public procurement market's development in this vein as emblematic of the construction of European Economic Integration as a whole. It is through this avenue that the analytical approach utilised herein may be generalised for use in other contexts.

What is surprising in this thesis is that there is not a coherent approach by the EU, and nor is the EU moving to promote the processes and ideas I have identified herein in an explicit manner. Instead, there is an underpinning paradigm through which policy makers and politicians throughout the EU's history approach the topic of European Integration. This is the structuralist root of hegemony (Anderson, 1976; Simon, 1982; Bieler and Morton, 2001; Bieler, 2004; Jones, 2006; Thomas, 2009)

pushing towards a common goal. This goal may therefore be seen as one that is determined by the hegemonic precepts of the Political Economic model followed by modern capitalism and developed by the EU.

Public procurement practices have a huge scope to influence and affect the implementation of policy of all varieties. There have been references throughout this thesis to the importance of the process due to the huge financial input into the organisation of government and also the scope and pervasiveness of the act of economic interchange expanding beyond the borders of the traditionally defined State. This thesis recognizes that the earlier reviews of the market make judging 'impact' a moot point. Their view of 'impact' is a purely economic evaluation. This thesis highlights a further element; that the manner in which the structure of procurement as enacted through the major technological eProcurement system of the Tenders Electronic Daily (TED) leads to a specific idea of public procurement. It is through this Europeanised idea that hegemonic control of the realisation of the member states is achieved. Impact therefore is not about the raw economic weight exercised through Keynesian economic intervention, but the ideational factors moulding the social construction of modern statehood.

This thesis concludes that there are dominant ways in which one may view the purpose, operation, and impact of the public procurement market. But these views of the market mask the nascent operation of hegemony as expressing a dominant model of capitalism exogenously on the state. The purpose of European Integration in this model is one that may be viewed as an expression of an aspiration towards a social reframing of the European political sphere in the aftermath of the second world war, but the manner in which it has been undertaken, through the integration of the facets of capitalism that make the modern state, have led to a model of integration that is intrinsically bound within the modern state as being defined as capitalist.

One of the clear elements to be drawn out about the TED is that, like the EU Public Procurement market as a whole, it continues to redefine its purpose, and to adopt new utility in the face of a changing landscape and competition from opposing services. This is both indicative of an inability to embed itself in the cultural socio-political framework, but also of the mercurial nature of policy in the EU. Public policies become repurposed in order to achieve new aims, as re-using a policy that already has agreement in the complex supranational negotiations is easier than creating a whole new tool. The EUPP is a great example of a policy built for a particular intent, then repurposed for another, before being co-opted for a further development. This contestation of concepts used within the creation of 'Europe' is one seen as yielding power for the EU (and has been referenced previously throughout but most notably in Rosamond, 1999; Hay and Rosamond, 2002; Parker and Rosamond, 2013).

The purpose of transparency outlined here is quite different to that seen in other conceptualisations of the procurement directives (see Gordon et al., 1998a; Arrowsmith, 2000; Arrowsmith, 2010; Arrowsmith and Anderson, 2011 etal) in that rather than focusing on the process of transparency as a governance tool, transparency serves instead to improve policy making through increasing access to subnational contracting authority information on procurement activity. In those states where there is less direct intervention from a central contracting authority, then this access to information serves to both improve supranational and national levels of information. Transparency here also serves an alternative purpose, by exposing as great a degree of the public procurement to interaction with the Procurement Market, and then a larger proportion of public policy is affected by the discourses of 'European Public Procurement'. Thus the hegemonic ideal is further reinforced and perpetuated.

Generalisability of the Thesis

This thesis uses a novel approach to the study of public procurement, and of the way in which policy in the European Union is realised. There are several areas in which this may be transferred to a more general approach that would speak well across the study of politics.

Firstly, this thesis presents an excellent conceptual basis for examining the corpus (linguistic) construction of the advertisements in the Official Journal of the European Union. This would be a significant data exercise that involving data analysis technical expertise. The analysis of the multilingual basis of the market would be enlightening in particular. The manner in which this could be useful is that now this thesis has established the mechanisms that are present within the market for the enactment of policy, a look at the linguistic construction of the market in the advertisements would be a rich resource for linguistic analysts to exploit. The procurement market could, in this vein, offer an access point for many areas of public policy research from a constructivist perspective across time, and across a variety of contexts. This is a structural perspective on the market and looks at the underpinning linguistic forces within the procurement practice.

A second area would be a more closely refined project of looking at the discourses found within the use of procurement in organisations. This might form a more actor or network based analysis of the topic area that could look at the professional practice itself. Carrying on from the identification of discourses having a framing impact on the procurement process, there exists within an organisation an opportunity to see a budget and policy agenda become a concrete outcome. Where a performative act of bringing a policy into being by discussing it might have outcomes that are perceivable within society, in the case of procurement there are often actual construction outcomes (buildings). Viewing the project outcomes in the context of the discursive actions and interaction with the formal procurement processes that lead to their realisation would be of exceptional interest. This would

link with the notion of a post-project review process (Alzahrani and Emsley, 2013) that is already established within the working practices of the construction industry. Of course, the discourse herein would be as impacted by the hegemonic notions that one is seeking to expose so careful engagement with the exercise would be required.

Thirdly through mapping the processes discussed herein, and looking at how these performative constructions that rely upon constructed policy instruments are replicated in another context, greater insight into the analytical framework discussed in this thesis may be possible. This may be through the delinkage of the processes from the European context, and placing it within an alternative frame. One area for application of this approach considered by this researcher is through an investigation of market creation by the British Empire through the British/East Indian Company from 1601 to 1864. The development of the imperial British trading market between the colonies and the British Empire required a large recording of data and trade information. Much of this is now available in the British library for reference purposes. Importantly this would allow a longitudinal view of the complete life of a constructed market. The principles of discursive control and market making along with an exogenously imposed imperial rationale for undertaking the trading relationships would be pertinent to many of these debates.

A final broader exercise would seek to uncover more regarding the realisation of the state through economic intervention by the government or supranational agencies. In particular contextualising the debate against the actions of Chinese state sponsored industry in the funding of the power infrastructure of the UK would be of exceptional interest. This would link with the debates highlighted throughout this thesis relating to the manner in which the implementation mode of a policy has an impact as it can never be particularly delinkaged from the actors and framing that begat it. In the lexicon of Callon, the externalisation of the commodity is never possible entirely so therefore the provision of the service from a third party outside

of the state, in the realm of a supposedly state sponsored infrastructure development.

6.1 Globalisation and The European Public Procurement Market

One of the principal manners in which the success or otherwise of the market has been framed is in the level of cross border trade. This is used as a proxy for success throughout the history of the directives with Cross Border trade being seen as a measure of integration. The level of procurement from cross border sources is believed to be lower in public contracts than in private contracts (Interviewee_7, 2014 p2; Sylvest et al., 2011; Kommerskollegium, 2011). The Ramboll report (Sylvest et al., 2011) suggests that there is a degree of integration outside of the immediate supply chain layer. Governments may form contracts with national suppliers, but second and third tier suppliers are often from other member states, or global sources. This integration of supply chains embeds the act of procurement within a globalized network. There is then a degree of political 'deniability' about the use of transnational suppliers. The benefits of global suppliers may be accrued without any of the issues regarding the acceptability of this method.

The issue of using cross border trade as a proxy then does not solve the conundrum of whether the market is becoming more bound within the common consciousness of the participants. This would be cogent with the founding political integration discourse. Instead, as a market paradigm is used, it would actual be an indicator of price or productivity advantage of foreign suppliers. Alternatively, it could be an indicator of the success of increased competition from greater advertisement and transparency of opportunity. In both these suggestions, the discourse of political integration is of lower order than a purely economic rationality of the competitive market. The procurement market's aim in this regard then becomes about the perpetuation of the market paradigm rather than the political goals and achievements that may have contributed to its creation.

In this case though, it may be that supply chains and economic integration are happening *outside* of the market's direct influence. The *need* for an integrated procurement market in this context could therefore be questioned. The temporal nature of the need for a policy such as public procurement is exposed in this realisation.

There is recognition that while there are a high number of joint purchases being made (by groups of Contracting Authorities or Contracting Entities), these are less frequently conducted across borders. More commonly, national consortia are assembled to undertake this form of purchasing instead. This researcher has spent the last 4 months of the PhD process actually working in such an organisation contracting for Construction services. The competition and market distortion issues notwithstanding, the Commission identify the legal basis of different states as providing a barrier to this cross border purchasing collaboration:

“Therefore new rules on cross-border joint procurement should be established in order to facilitate cooperation between contracting authorities and enhancing the benefits of the internal market by creating cross-border business opportunities for suppliers and service providers. Those rules should determine the conditions for cross-border utilisation of central purchasing bodies and designate the applicable public procurement legislation, including the applicable legislation on remedies, in cases of cross-border joint procedures, complementing the conflict of law rules of Regulation (EC) No 593/2008 of the European Parliament and the Council(1). In addition, contracting authorities from different Member States should be able to set up joint entities established under national or Union law. Specific rules should be established for such forms of joint procurement. “(European Council and European Parliament, 2014 p14)

The post 2004 structures of the Public Procurement directives do little to move these issues forward unfortunately. As was highlighted in Section 3.6 of this thesis,

there were a huge number of diverse structures that constituted the procurement market. The 2014 directives mandated a single institutional entity that would take responsibility centrally for the administration of the directives, but this still misses the essential core problem: that there are a large number of legal and institutional structures that speak against the integration of contractual foundations across the EU. Without the common mechanisms and discourse of legal establishment being permissible across the region there is no doubt a lack of meeting of minds from an institutional perspective. Most importantly in terms of this thesis, the mechanisms that might otherwise be fermented to construct a coherent institutional network to support a singular procurement approach are undermined. From the perspective of the ideational creation of the procurement market, this is a secondary concern. Instead, these problems, restrictions, and barriers to greater institutional integration speak to the need for, and the opportunity for, the operation of an integration agenda through an alternative, contestable discursive structure.

The manner in which the WTO's Government Procurement Agreement has integrated, been inspired by, and then fed back into the operation of the directives and the market has fundamentally changed the manner in which the current directives have been formulated from a legalistic perspective. The process of engagement with the GPA may be seen as being an example of 'uploading' of EU regulation to an international forum, an oft cited theme regarding multilevel governance and the shift to international governance systems (for example Jordan, 2001; Kohler-Koch, 2003).

"The EU seeks to internationalise its public procurement regime both through expanding membership in the GPA and increasing transparency of procurement practices" (Howarth and Sadeh, 2011 p28). In this instance, this is as a manner of resolving the deficits that may be caused from opening opportunities within the EU's direct sphere (Howarth and Sadeh, 2011 p 27-28).

The black letter agreement of the market constricted through negotiation. Key to the politics behind these negotiations has been the discussion and logic of the subnational economic actor empowerment. Reciprocity is between states and economic spaces is paramount to ensure that there is a reasonable level of integration and reciprocal contracting, and the economic benefits are to be shared through the common access and competition in the procurement contract allocation. The porosity of the state structure risks becoming further unbound from the geographical or citizenry, and further bound within the state as an economic support shell for the operation of economic actors within it.

6.2 Final Conclusions

An aspect of the Literature Review in Chapter two was concerned with models of political economy, how they relate to the act of public procurement, and how one may view public procurement from the perspective of these models. The scales of spend and financial impact that is directly controlled or touched by the public procurement market is significant, but rendered largely moot by this thesis' perspective. The importance is not in the power of the financial impact of procurement policies in themselves, but in the extent to which they reach into a large number of policy areas. The scale of the market has been deliberately sidelined as an issue in this work both as a result of the inability to accurately estimate the scale of the market through the TED, and secondly that the value is secondary to the number of policies that are influenced by the principles of the procurement market. For example, an ERDF funded project would not necessarily be funded in its entirety by the EU, or even to the 50% threshold that is usually required to be considered a publicly funded body under the procurement directives. But the ERDF would still require any procurement that utilised their monies to be conducted in a manner that was commensurate with TED advertisement practices. More important has been the conceptual effort in contextualising the Procurement Market and Practice as being of pivotal importance, and subject to politicisation through hegemonic ideational control.

Regarding the assumptions made by the governance approach, the coordination of competing preferences within the market construction is core to the supposition of the classical market model that the market is founded upon, and the 'governance regime' literature assumes to be effective. The Self-interest of private companies and suppliers will lead to adequate oversight and therefore force increased uptake in the use of the TED. This is an explicitly rational actor model which relies upon self knowledge of the participants, and the assumption that they will be self maximizing in their actions. As discussed, there is an unfortunate asymmetry of market information in both directions. This is an institutionalized assumption on behalf of the framers of the market that the neoclassical market model is effective. In following this path, the framers sought an approach that was coherent with other areas of social regulation rather than approaching it in a vacuum (Searing, 1991 p1241). This form of institutionalized logic is a socially reinforced belief in Economic practices and processes. As such this sociological institutionalized belief in economics is coherent with the aforementioned Performativity approach is found in the rationale behind every commission document, and the existence of the market based approach in EU policy making. In the context of this thesis however, the extent to which the procurement market as an entity is engaged with will project the ideational notion of the hegemonic ideals contained therein, and will therefore have an impact regardless of the formal processes of interaction between participants.

The case study of the TED focuses on the European market instrument; there are other national based transparency eProcurement tools that serve similar functions to the TED. The discussion contained herein speaks to the development of those instruments in the creation of national markets as well. This is particularly cogent in the context of British exit from the EU wherein such market instruments at a national level become more explicitly important. There will no doubt be an effort in the coming years running up to British Exit to capture the ideational foundation of the markets operated within the UK's sphere of influence. The extent to which the

Procurement Market is however inextricably linked to the discourse of Europe remains to be seen.

One of the clear elements to be drawn out about the Tenders Electronic Daily (TED) is that, like the European Public Procurement Market as a whole, it continues to redefine its purpose, and to adopt new utility in the face of a changing landscape and competition from opposing services and forces. This is both indicative of an inability to embed itself in the cultural socio-political cognitive framework, but also of the mercurial nature of policy in the EU. Public policies become repurposed in order to achieve new aims, as re-using a policy that already has agreement in the complex supranational negotiations is easier than creating a whole new tool. The EUPP is a great example of a policy built for a particular intent, then repurposed for another, before being co-opted for a further development.

To sum up, the practice of public procurement becomes defined absolutely by reference to the idea of procurement ideationally embodied by the EU market. The process of interacting with the formalised market *is* public procurement within the operation of the modern European state. Moving forward in the UK towards a world outside of the EU, it will be fascinating to view the manner in which public procurement will develop, and how the new reality facing the public services will be realised.

Chapter 7: References

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Appendix 1: Interviewees and Interview Transcriptions

As referenced in the introductory chapter, the below anonymised list of interviewees were approached for this thesis.

Importantly, while the thesis seeks to frame procurement as one of the pivotal ways in which the state is realised, it is at present regarded as being a secondary tier policy by actors within in the Commission unless they have direct connection with its operation. Therefore, while a large number of potential interviewees were approached, there were relatively few that could speak authoritatively about the procurement market from a specialist perspective.

A1.1 Interview Subjects

All interviewees were granted anonymity.

In each interview transcription, initials are used. Greg Barnes (the researcher) is abbreviated to GB. Each of the interviewees has the capital 'I' and then their number. So for Interviewee 4, this would be 'I4'.

Some of the interviewees were concerned about being recorded. Therefore notes were taken from the meeting and points clarified with the individuals later.

Anonymised Name	Position	Date of interview	Organisation	Type of Interview	Format
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Interviewee 1	Parliamentary Aide	18/02/2014	European Parliament	In Person	Notes
Interviewee 2	Member of European Parliament	18/02/2014	European Parliament	In Person	Notes
Interviewee 3	Parliamentary Aide	19/02/2014	European Parliament	In Person	Notes / Email
Interviewee 4	Member of European Parliament	19/02/2014	European Parliament	In Person	Notes
Interviewee 5	Parliamentary Aide	20/02/2014	European Parliament	In Person	Notes
Interviewee 6	Parliamentary Aide	20/02/2014	European Parliament	In Person	Notes
Interviewee 7	Legal Officer	01/03/2014	DG Markt	In Person	Transcription
Interviewee 8	Publications Office official	19/02/2014	Publications Office	Telephone	Notes
Interviewee 9	Head of Unit, Open Data Portal	24/07/2015	Office of Publications	In Person	Notes
Interviewee 10	Commission Official	24/07/2015	Office of Publications	In Person	Transcription
Interviewee 11	Delivery Manager	24/05/2016	ARHS Ltd.	Skype	Notes

Below are two interview transcriptions that have been used extensively in the main body of the research relating to the Tenders Electronic Daily (TED) as the perspectives portrayed were particularly relevant.

A1.2 Interviewee 7

Interview at DG Markt Commission Offices SPA2 with Interviewee 7.

Held between 3pm and 4.30pm on Tuesday 18 February 2014

Attendees:

GB Greg Barnes
I7 Interviewee 7

Glossary:

TED Tenders Electronic Daily
OJEU Official Journal of the European Union

GB I am researching the procurement directives from the perspective of a practitioner. I worked for 10 years buying construction so I have worked out that I have bought a substantial amount across a 10 year period and.. I went to change to an academic career and obviously procurement directives were one area which immediately became obvious.

In terms of the questions [in the letter] I have tried to boil it down to 2 main areas. First of all the rationale for the directives, and the directive changes. And then secondly something about the TED and the OJEU process, because I am going to use the OJEU process as a way of looking more in depth at the whole mechanism whole market. So really from your perspective, id like to really find out what you think what this office would think the purpose of the directives is

I7 Yes, I thought it was quite interesting also your letter, it had clearly two groups of questions the more fundamental ones and the more practical ones so to say. And I mean of course there is always the big discussion about the purpose of the directives because I am also doing some comparative research with government procurement in the United States and I mean what I find fascinating there, is there is a completely different conception in the EU and EU law. These directives have been around for more than 40 years, and the idea was always the single market or the internal market, we have to do something in order to make it to easier for our

economy. The basic idea was to make it easier for our economic operators. For undertakings to make use of the free movement of services of freedom of establishment and want to do cross border deals. This was the classical approach to say this market was not functioning, as it should, I mean there are always logistics. In private procurement you have much more cross border deals. But also when I was a student in Germany all the buses all the trains were made by German firms. In France it was the same. In derby it is no different.

GB We bought some German trains recently [laughs]

I7 But I mean this was the classical approach. I find interesting when I compare with the united states, you don't have the internal market approach. I mean there you have federal procurement, and for the rest it is mainly state procurement and I mean somebody coming from Arizona might get discriminatory treatment in Texas or so but it is not seen as a problem. For us it was for a long time the main problem. There is always a big discussion because if you look at the figures there has not been much of a change especially when it comes to direct cross border deals. There is still a very low percentage; the percentage is still lower than private procurement. I mean never the less, the basic approach is this one, we have to create by these directives a better framework, a more unified framework which allows for undertakings in all member states to act freely in the market compete freely in the market and in the meantime this is also being transposed into the WTO framework where you have the GPA which is based on the same logic and was strongly influenced by the EU. And then if I come now to more recent developments what is a little bit behind this reform approach now is to see the policy goals in a wider context to start with the Europe 2020 strategy. With the internal market act and I mean basically it is picking up something, which is very much in the discussion for a number of years now. That you should use public procurement to further other policy goals. This started with green procurement, now we have social procurement and also the idea that we can use procurement to launch the economy to do something for innovation these are secondary purposes where in

the classical framework for a long time the commission was quite restrictive about this. If you allow such a procurement, let's say for green procurement you will narrow down competition, it might be seen as a kind of discrimination, it is a de facto discrimination against bidders from member states that might have lower standards. In a classical in a real orthodox logic, you have to just open it up, you have to achieve transparency then it should be free for everybody

GB I remember in 2009 I was given a dictat by my employer that I needed to buy locally as much as possible

I7 Yes yes interesting yes

GB I said 'well great idea but we have other things to consider'

I7 I know that in the UK which is more liberal classic inclined I mean you have it very strongly in Scotland where they want to do all kinds of social, local programmes and also in Germany and you have different regional governments and the trend goes towards the left so the local government and the central government has a left component and they are very sure to ensure minimum payments also social standards and of course this is always done in a local optic. I mean this was kind of a challenge when this came up before the commission because I mean I remember even Commissioner Barnier was talking about yeah that when it comes to food or so you have to give preference to local

GB Food miles and that sort of thing

NS

Yes [laughs] and of course the real bare localism we cannot tolerate because this goes against the very idea of an internal market but I mean of course this opening for green, for social conditions there is a kind of localization happening. I mean de facto as you say it starts with food miles of course it is allowed to make CO2

assessment of CO2 production this is not blatant localism, if it is presented, if it is part of a CO2 assessment, then in the end of course it might go in the advantage of a local supplier.

GB

So the next question I had was 'what do you see as the broader implications of the procurement directives'? You've just touched upon them there

NS I think I have yes. I mean maybe we should go back for a moment to the classic objectives as you know certainly in 2010 /11 we made an economic evaluation of the old directives as part of the plan to launch a new directive and I mean it is true, it depends a little bit on this lack of cross border, and of course this concerns mainly direct cross border it is a lot of indirect cross border trade. I mean one can certainly say the market has become more or less homogeneous. And so it is also from this side , from this perspective one cannot say it was a complete failure. Also I would say 20 30 years ago people would have hoped for a much more integrated market than we have today. And but I think the new implications are really this thinking we should use public procurement as a kind of er a motor to put things into movement; To use the power of public procurement.

GB Do you think that is a recognition of the financial crisis as being quite embedded in the economy?

NS yes, I think this is of course a personal opinion; it was also a bit of a tactic of the commission. I mean partially it was directed to rein in the crisis but on the other hand there were more political movements in the direction of localism in procurement and I think it was obvious to the commission they could not stand a pure liberal line for the whole time and more or less I see that it is a political approach a kind of embracing of the new movement.

GB I think you're right

NS It is a case of 'if you cant beat them join them' and to steer it and to use it for your own agenda so to say.

GB sure

I think coming to the review in 2010 11 of the directives erm, obviously I've studied that document and I wasn't sure if it was seen as having an adequate impact. Were the directives seen as having, should the directives in a classical sense have had more of an impact? I think that's what classical liberals would say. What is the current opinion now?

NS

Yes I think what I found most interesting is the same but a certain impact but I mean the most interesting question is 'what is the price we paid for that impact?' and was it worth it, or should we try to draw the line differently lets say I mean after the green paper when we started the drafting of the new directive, there was quite a lot of innovative thinking here in-house and I mean the idea was also would it be possible to have a lighter regime? Which is, because there nevertheless there was a lot of critical voices in the feedback.. [to the green paper] there was a large part of criticism, this is too complicated, 'you have driven the harmonization approach too far by providing too detailed rules'. I mean for this kind of outcome it is not worth it and I mean we were thinking about different models, but the problem was in a way it was too late I mean the first obstacle for us was of course the government procurement agreement [WTO's GPA] which had just been newly negotiated where pretty much the procedural detail was down there it was out of the question to reopen these issues and so already at the moment of drafting we were obliged to fine tuning, improving the existing models and I mean in a way this was wise also as soon as the legislative procedure started and we had all kinds of discussions with member states and with parliament, it was quite obvious that there was no real appetite for ground breaking revolutionary exercise, most people were happy with saying 'ok yeah lets open this up, lets fine tune this, lets try to

improve this' and but I mean yeah , there was nobody asked for new concepts and even those who ask, I mean for instance the British government was one of the most longstanding defenders of simplification. I mean even these understood sooner or later that we could achieve a limited degree of simplification and of course there was also conflict. On the one hand you had the simplification and then came people that wanted to have much more social and so on and I mean as always in council if you have done this exercise once then you look at the older directives with different eyes. There are all kinds of conflicts in council and normally the solution is to find some fudge where you try to find an intermediary solution, which normally will end up in more complication [laughs]

In the end everybody is happy... I remember for instance for there was an article about direct work based on exclusive rights and they said basically we could do without that because anyway you have a possibility to do a negotiated procedure without negotiation if there are exclusive rights. And we proposed to take it out. The member states said 'no we want to have it back', we asked 'if you want to have it back then why? Can you give us some reasons some cases where this would be necessary and this would have some added value and would do something which you could do without'. Nobody wanted to have it back! There is a kind of inherent conservatism in this kind of exercise.

GB I'm sure yes! People got used to things and they want to keep them

NS Yes! I mean when in council is also the point er normally these people are technocrats they are middle to high ranking people from ministries; people who have done this for years who know every detail of rules and who are of course it was very funny when it came to SME measures who have very much a buyer approach. So we were rather reluctant, these people often come from the ministries that are responsible for public purchasing and for them, they see the world through the eyes of a possible buyer. If you would send over people from employment or such things, then it might be completely different.

GB you're right, I am biased as a buyer personally [laughs]

It is very interesting what you're saying about the council and trying to find a middle way. My perception was always that because the rules are so complex, people like myself become experts in them and we have a lot of power at a local level and people do sometimes use the rules to try and get around, use them to obfuscate and confuse people around them.

NS You know there are a lot of specialized lawyers now. Up to the level of barristers who are doing only that more or less I guess this creates a kind of elite people, a whole circle of people who are able to determine how this is done.

GB on that point, I noticed in the current revision there are some notes about making clearer the fundamental principles and the processes and so on in the new directives, and the directives as a whole. How do you see that being taken forward, will that be a series of guidelines from the commission or..

NS This will be done, this will be one of our next tasks. In terms of current tasks, we have of course been pressed very strongly by the British government, but also by our own government, that we want to transpose, implement these directives as early as possible. In the UK we are talking about this autumn, and the forms have to be ready for the new directive which is kind of, which leads to all kinds of practical problems. And especially as we have to work together with the office of publication, that is the TED, this is kind of an old IT infrastructure and so this is the first task is to get through the internal processes. I mean im not... its very ambitious to have the new legislation ready for the autumn. The directives have now been adopted in council and will be formally signed probably beginning of March in parliament they are still at the preference of parliament to sign this formally and we take it might be published something towards the second half of march and so this would be more or less after 6 months it will come out as legislation and we have to get it through parliament.

GB It does take a long time, I saw the first proposals, the green paper I thought 'its going to come out, we will have some more information soon' but its been quite a long process hasn't it in terms of its been a year spent negotiating it.

NS Yep and what I find always funny is that the enormous amount of time that is lost at the end of the negotiation. I mean we had the formal political agreement at the end of June last year [2013] then there were still some more triologue negotiations on some more technical questions but by the end of July it was a fully 100% politically agreed text. With council and parliament. So we needed from august 2013 to march 2014 to get this translated to get this fine tuned by lawyer linguists to have it published

GB Yeah it's a long time, wow

So the next point. One point I wanted to ask you about was erm you know you mentioned the thresholds and the GPA obviously that's locked in. One area that I was quite aware of as a buyer, was that if I were to advertise something in the journal, people then became aware of the fact that I was advertising a contract, and really a complaints procedure didn't necessarily exist unless I advertised the contract in the journal. If I was doing something below threshold then..

NS I see yes,

GB or I just decided to ignore the threshold no one would know what I was doing unless somebody whispered to somebody in authority. And in many ways it looked to me like the process [of advertisement] was shifting the governance of the regime of the directives onto suppliers, onto independent companies. What do you think?

NS hmm that's an interesting idea yes. How do you mean by the governance? So they could decide to make a complaint.

GB the companies themselves would be looking for this issue, and they would decide to make a complaint self interestedly.

NS in a way this is also a controversial discussion in many member states. In Germany this whole thing was a cultural revolution. Because I mean in the past, I don't know how it was in the UK, but in Germany before the directives, government procurement was under budgetary law. So basically it was an obligation for civil servants to spend the money in an economical way but nobody had subjective rights to get into a procedure.

GB same in the UK

NS I think this concept comes from France because in France the subjective rights, also to get the post as a civil servant or something

A1.3 Interviewee 10 Transcription

Before the interview, GB introduces the project, outlines the ethical statement, and the interview process.

Start of interview:

Greg Barnes What is your background?

Interviewee 10 My background? I have been working in the European commission for 23 years now, and I have been through different services. This is the last one until now, and previously I was in the unit dealing contracts and tenders for the office specifically. So now in this unit as you know we manage TED, being the website where the public procurement for the whole of Europe is published.

Whereas in my previous assignment I was dealing with the public procurement of the publications office exclusively.

GB So are you managing a lot of contracts here?

I10 In this unit? There are a few contracts for the management of TED and things that are related to the management of TED so there is the TED website of course. There is a contract for the production of the notices, the TED notices. And there is a third contract that is not managed directly by us because it is an IT contract which deals with the different TED applications. Applications that are needed to process the notices so that they finally end up in TED. So you could say that there are three main types of contract that are used so that public procurement notices are published.

GB That is one thing I am interested in. The way that the TED acts within the market. It is used as a governance tool. It is also used as a way for people to advertise and generate best value for money

I10 TED is an annex, or a supplement I think, to the official journal of the European union. In the old times, the public procurement notices had to be published on the OJS as a supplement to the OJ. And then since 20 years now I think, they started to be published electronically and the paper version of the supplement disappeared basically. So now we have TED which is actually an annex to or a supplement to the Official Journal where public procurement has to be published. It is very similar to what is happening in various member states now where most of them, until recently at least, the contract notices had to be published as a supplement or an annex or something to their official journals. I know that in Portugal it is the same although now they are published electronically only. But there was a special series of the official journal where public procurement was published.

GB It varies from country to country. In the UK it was much more variable and dependent on each contracting authority.

I10 Of course the whole issue is to make public and transparent, the business opportunities that arise throughout Europe.

GB do you think that using these external contractors to facilitate the operation of the TED. Do you think that having these other contractors involved has changed the way the TED works.

I10 I cannot really tell, as far as I know there were always contractors involved.

GB It has always been that way (laugh)

I10 Of course we are providing a service and for providing that service as we do not have the means the capacity the knowledge, the expertise, whatever you want to say it, in house, that means we have to buy the services and of course we have to contract the services to an external companies. I suppose it is the same thing everywhere basically. I don't really know if in the member states the provision of these services is something which is done purely in house or if it is actually externalised as we do it [my emphasis].

GB from what I have seen it appears to be mainly externalised as well. It is quite a common thing yes.

I10 So you buy the service as you buy all kinds of services nowadays. You buy cleaning services, maintenance services, security services, so you buy IT services for dealing with the electronic publication of information. That's the way it goes.

GB In terms of the input that the contractor has into the service, does it have any input into how you work, and how the TED functions? Are they able to suggest things and refine methods?

I10 Lets say if you talk about the TED website then the specifications of the TED website were defined in-house a couple of years ago, I think already 7 or 8 years ago. The new site, the previous site, the new site is not so new as it is already 7 or 8 years old. So the new site was defined according to the functionalities that were agreed upon. And there was a tender launched at the time where we asked for offers from contractors. Of course then during the implementation of any contract you may have suggestions or input. And even for the further developments of the system of course the contractor, as the one providing the service, can suggest ways of doing. The final word is of course from the office as the one buying the service. So I don't know if the meaning of your question was 'do we impose something and it has to be like that?' what ever, or whether there is, as with any implementation of any activity, a discussion and a definition of how things can be done.

GB Yes that's the thing. In some contracts I have come across, the buyer leaves a great deal of leeway to the supplier to be able to determine however they do it. It is like an output specification, they leave it up to the supplier and almost leave them to it as a way of offsetting risk. It sounds like it is not the case here.

I10 What has been defined is what has to be published at what frequency and how, and how things can be searched for. In a way the way that the contractor implements it is their own business. So we do not look into the technicalities or the thing, and we do not impose that he acts like this or like that. We define a result, this is what we want. We define the functionalities that we wish to see in the site, and of course we have to discuss with the contractor, if some functionalities are not feasible or not possible or too costly, then we do expect the contractor to tell us that we are moving in the wrong direction. But from that point, once we define what we want, and how we want it, and we come to a common understanding of

the need it is up to the contractor to perform the job in an appropriate way. Its like when you do works in your place [Home] you get someone to do the works, you discuss it, but you are not going to check all the plumbing and you have to trust that things are done correctly.

GB Some administrations take a very different attitude. In terms of amount of interest in these contracts for the TED, was there a lot of bids put in for them?

I10 I cannot tell you with regards to the contract for the development of the new site, because I wasn't here. I can take note if you require and can send it to you later.

GB Brilliant thank you

I10 With regards to the current contract there was only one bid only.

GB That was ARHS.

I10 yes

GB I spoke to [Redacted], he was very helpful and gave me some details about their company and how they work.

So how do you work with that company then? How does that contract function?

I10 Well there are regular meetings, there is one meeting every month where there is a sort of follow up of things that have been implemented and what are the plans for the immediate future and so on. Er and then there is a regular contact with them, I cannot tell you if it is on a daily basis, but there is regular contact with them for issues that have to be discussed or checked or corrected. So there is, formally speaking, at least one meeting per month, that is part of the specification in the contract, and then there are regular contacts usually by email or by phone.

GB They, [Redacted] said they provide, they host the database on their servers and then they provide access or a daily dump back to your servers so you have information very quickly at hand from the TED servers.

I10 There is information available through the website so if you want to consult anything you can just search. And every day there is, as you say, some bulk information, which corresponds to the notices being published on that day which is being made available in XML format for the ones that want to use it. So if you happen that there are national entities, companies which are public which actually pick up this data and use it and transform it for the needs of their own clients. So this information is made available every day.

GB I have downloaded it as well, it is very big! On of the comments that came up last year when I was talking to the commission was that the quality of data that has been put into the TED by the contracting authorities, wasn't always that great, so that it meant that it was quite difficult at times to get a report from TED and fully rely on every single aspect to give you an accurate picture of what was being purchased. Is that a fair criticism?

I10 I'm not sure it is a fair assumption or even a complete assumption. Its true that each contracting authority – each buyer – is responsible for the data that they publish. There is a verification done through the publication process so we make sure there are no mandatory fields which are blank, or if there are fields that look contradictory, or wrong, there is a contact made to the buyer asking is it really what you want? Haven't you forgotten anything but it is true that we publish 1800 notices per day. There is a thorough check, I know that there is, I cannot guarantee that it works 100% given the huge amount of things, and given that the notices have to be published within very strict deadlines. So I wouldn't go as far as to say that the data is poor quality and isn't reliable I think that there may be some situations that it is not as complete or as thorough as it should be. In terms of reporting, of course,

if we have a system where the data would be completely controlled where you would only be able to put data into predefined fields with predefined choices you can make, it would be much easier to control first, and to report on. Not being the case at least nowadays and many information being available on the basis of free-text, and free-input it makes it a bit more complicated to check on the one hand, to make automatic checks, and to report thoroughly at the end of the day.

GB From a buyer's perspective, the free-text is quite a lot easier though, as it allows you to put in a description of what you are buying and know that it is roughly accurate. I used to use the CPV codes as well, but even then it is nice to describe what exactly you want to do and then communicate with people.

I10 That is one way of making, of ensuring transparency but it is certainly not the only one. There is an obligation to publish, and this obligation is at least formally followed by the buyers. But of course if what you want is to publicise your call for tender and to get a significant number of serious offers of course you will not restrain to TED. You will not simply put an ad on TED and expect that you will get all the providers coming to you. But its obvious that TED is a way of ensuring transparency, but it cannot be the only one and that's why I do believe that the information that is published in TED is reused or has to be reused by other that can translate it into something that can be more user friendly and more effective. I don't really know if there are that many people that go to TED every day to find contract notices.

GB you and I must do (joke)

I10 There must be other more efficient ways for someone in Portugal to try and find the notices that may be of interest to them and decide if they want to apply or not. So TED is definitely something that is needed, you need it to publish, but it cannot be considered as the only source of transparency, or the place where once

you have published everything is fine and you ensure that you will have all kinds of tenders coming.

GB That has been my perception as well, I have got bids back in through the TED but it has not been the sole method of advertising. Are there any plans in future to change the situation and change the whole way you provide this service? I know you have had several different iterations of the TED itself, it has changed quite a lot in the past. Are there any plans in the future to change the model?

I10 There is no immediate plan for the immediate future. There are reflections on how to do things better that is for sure. I cannot tell you that we are thinking of a way of reshuffling TED so that it becomes a completely different thing. TED is and has to remain the central point for publishing contract notices. That's contract notices and the other types of notices of course. Because that is what derives from the directives and from the financial regulations that is clear. In the sense TED has to ensure that function for publicity and transparency. Whether it can ensure it in a more user friendly and efficient way that is something that has to be exploited. But no, there are no complete plans or immediate plans to change anything but it will come that's part of the evolution of things.

GB One of the questions I did think about was that at the moment the TED is a free service to use for suppliers and buyers. Would you ever think of a subscription model or a fee?

I10 No. Until recently there was a fee for the ones that wanted to reuse the bulk data from the TED. That's what we called the Licence holders. So there were people who got the data in a specific way and who could use it then, and they had to pay a fee, which was not extraordinary. The commissions policy, the unions policy but in particular the commissions policy, is that public data should be made available for reuse for free. The principle being that if it is public data it has been paid for by public money already so the production of the information which has been made

available in TED has been paid for already so there is no reason to have it paid for again by the ones that have contributed with their taxes and so on. So the idea is that if it is public data it should be made publicly available, no constraints and no fees. So as we stopped the fees last year, I do not think that we would bring them back. And even if there are services that go beyond the simple publication of data and so on, even then there should be no fees applied for this kind of service.

GB I am meeting [redacted], which [redacted] setup for me.

I10 So I am pretty sure that [redacted] will say that public data is available... (trails off). We have a number of licences and a number of fees being paid for the TED and for EURLEX as well. EURLEX is the EU law, which is where we have all the legislation etc. And for many there is there was information available for users who paid a fee. The idea being the same. It is publicly available and people don't have to explain why they wanted it.

GB One of the core questions I am asking is ' what impact has the public procurement directives, and the TED had on how the market operates'. So if people can transparently see how others are bidding it will impact on how the market operates. I was wondering about your opinion of how the TED factors into this?

I10 That is a very interesting question. Considering that the directives are there for many years now, I don't know if anyone has actually made any kind of impact study of the impact of the directives in procurement. I don't even know if it is possible to consider its evolution. Because public procurement and rules on public procurement are not new and therefore you cannot for instance just consider the impact of the most recent directives, because somehow the publication of this kind of data was already taking place before the current directives or the previous directives and so on. On the other hand, the world has changed dramatically since the 1960s and 1970s so when the supplement to the OJ started, the number of public procurement notices that were published was relatively few. And nowadays

it is huge. Is it because now there are the directives and all of a sudden people need to start publishing them or not? That I cannot really reply. Maybe people from DG GROW or they probably have this more this analysis in mind.

GB Thank you. Its difficult to make a counter factual argument when this situation has been on going for so long. Yes. That is one of the reasons that I thought the TED was an interesting case study because there is a point at which the market was well established and then TED was introduced. And the internet became important, and you saw very rapid growth for instance between the use of the TED between 1997 and 2000 when it became on the web. And 2004 when the directives changed again.

I10 It is difficult to make a direct link between the directives and all of a sudden you have more traffic. I don't know if you can actually.

GB I will see what I come up with!

In terms of the audience of the TED, who do you believe the audience to be? Who do you think regularly looks at this?

I10 That is a very interesting question to which I have no answer. You are trying to figure out who are actually the users? We assume, but it is assumptions- we don't really know who are the ones using the TED directly, we judge that possibly most of the traffic is created by third parties. So traffic that link to TED to things that are published in TED. But I find it a bit hard to believe that there is every day an active visit from Human Beings to the site. I suppose that what happens but that it something that we are trying to figure out. So on the one hand you have systems that go and fetch the information, process it, and make it available through third party websites. There are certainly people who get information through RSS feeds and web services and so on. In terms of concrete human beings going behind their screen and looking for stuff, I have really no clue whether this is actually what is happening. I would be more tempted to say that the information is made available

there and there are certainly other ways for people to get the information but not necessarily going and consulting it directly. But again that is a feeling and, ok I have been responsible for the system for 4 months, so whether the feeling is a real feeling or it is just a wrong impression I don't want to tell you.

GB As some feedback to you, I would say that the suppliers I have worked with generally get the information from third parties, they do not consult the TED. They would sign up with mailing lists or industry bodies that republish the advertisements from the TED.

In terms of the rationale for moving towards putting the OJEU-S online, obviously this is before your tenure, the annual management report of that year stated that it was going to reduce costs due to the huge tonnage of paper being moved physically out of the offices everyday. Does that scan with what you believe to be the case as well?

I10 Yes, I suppose the decision to move to an online service exclusively without paper printing. Well first of all it is part of the time, in the spirit of the time. No more paper, lets go electronic.

GB It hasn't worked for us! (Surveys paper piles).

I10 I tend to print everything! Yes there are all these ecological concerns that we have to save paper and so on, and it is true that we have to save paper, paper costs money. The fact that you don't have to print any more it definitely can have an impact in terms of decisions of whether to go online or to use paper. Paper also takes longer to be distributed, if I make a parallel with the OJ legislation series which I know a bit better, in the previous years we saw a trend which was really diminishing in terms of the paper subscriptions. If you have the same information available online on the day of publication, why would you bother waiting three days to get a paper copy of something which is basically the same as you would get

online. So in a way for TED it is the same or even more for public procurement on top of that you have limited deadlines for replying for preparing and so on, so you wouldn't really be waiting for any kind of paper version to come to start considering whether it is worth considering making an offer or a bid or not. In a way it is logical that the move was towards pure electronic publication.

GB [Maastricht treaty anecdote].

I10 And it was already out of date. Because there were changes being done almost immediately so. That was the thing. The problem with paper doesn't change, paper is there, but the content may change and the impact on the paper version may only be made later on. Whereas if you have an electronic version you have an update instantly, there is no need to wait.

GB In terms of communications coming into this building as well, I know that the OJEU advertisements used to be sent in by fax. I remember having to fax forms into this office when I started working. Obviously things have changed a great deal since then.

I10 Yes, most of it comes via electronic means. So most of the documents that are published come through what we call eSenders by electronic means in an xml format so they get in. There is still a little margin which comes in via email, with an advertisement attached which requires some extra treatment. And there is very little, but some that arrive by Fax or by mail. This will disappear as from 2016 because of the requirement of using exclusively electronic means. But anyway these are also very limited numbers nowadays. Most of them come through electronic means and via XML

GB One question there then is that you don't believe it will disadvantage small businesses then if, hypothetically, they were still based on paper etc.

I10 I don't really think so. Nowadays everyone is using electronic means. And even going to the post office to send something requires extra effort than filling a form in on your computer as you do on a regular basis. So in terms of cost, even if the cost of sending an envelope is not much, there is a cost attached, and the effort requires to take the extra step to deposit something in a post box. So no, maybe 10 years ago, the question could still be put because 10 years ago, 15 years ago, the use of electronic devices and means was not that disseminated. Nowadays im not so sure.

GB In the UK at the moment there has been a new govt website launched which in some ways the advertisements on the thresholds are significantly different circa €15,000. Different to the OJEU requirements. DO you think that these national level databases are a positive thing? Do they interface positively? Or is it a negative thing? Do they take 'business' away? Should the TED bring the threshold down to be the same as these national databases.

I10 TED cannot bring the threshold down or up because it is defined. It is defined by the directives. It is not the question of taking business away from TED because it is not a business as such. I think it is all part of the principle of applying the transparency whether at European level or at national level. I also understand that having higher thresholds for publishing in TED makes sense because we are talking about markets, which can have a European impact. It can very well be found that for national markets you have smaller thresholds. When you think about European level, you can have higher thresholds, because it has to do with the effort that has to be made by any company which wants to apply at international level. Maybe this effort is not really compensated for contracts where the thresholds for bidding are really very low.

GB In terms of the TED, this is one of the things that creates a multinational market, one of the instruments that helps create the procurement market. Are there any deficiencies you can see in the way that the TED helps create that? Things

like the fact that the contracting authority determines the language that the advertisement is placed in.

Appendix 2: Sources Used for Chapter 3

Below is a complete list of sources considered for this chapter's discussion of the discursive construction of the European Public Procurement Market from 2010 to 2014. This table is provided along with a traditional bibliography in order to document the range of sources consulted. The documents represent the 'market facing' documents that create the discourse of the market.

A2.1 Sources Relating to the 2010 to 2014 'Modernisation' of the Market

No	Date	Originating Body	Reference	Title	Category of Document
1	03-Mar-10	European Commission	COM (2010) 2020 final	Communication from the Commission: EUROPE 2020. A strategy for smart, sustainable and inclusive growth.	Commission Communication
2	06-Oct-10	European Commission	COM (2010) 546 final	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Europe 2020 Flagship Initiative, Innovation Union (SEC(2010) 1161)	Commission Communication

3	13-Apr-11	European Commission	COM (2011) 206 final	Single Market Act, Twelve Levers to boost growth and strengthen confidence "Working together to create new growth" - SEC(2011) 467 final	Commission Communication
4	03-Oct-12	European Commission	COM (2012) 573 final	Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions. Single Market Act II: Together for new growth	Commission Communication
5	26-Jun-13	European Commission	COM(2013) 453 final	Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions: End-to-End e-Procurement to modernise public administration.	Commission Communication
6	27-Jan-11	European Commission	COM(2011) 15 final	Green Paper on the modernisation of EU Public Procurement policy. Towards a more efficient European Procurement Market	Commission Green Paper
7	01-Dec-11	European Commission	NA	Green Paper on the modernisation of EU public procurement; towards a more efficient European Procurement Market: Synthesis of replies	Commission Green Paper

8	21-Mar-12	European Commission	COM(2012) 124 final	Proposal for a Regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries.	Commission Green Paper
9	02-Jul-10	European Commission	MARKT/2010/02/C	Strategic Use of Public Procurement in Europe: MARKT/2010/02/C Final Report	Press Release
10	27-Jan-11	European Commission	IP/11/79	Public Procurement: Commission announces the closure of investigation into extension of Malta's Delimara Power Plant	Press Release
11	27-Jan-11	European Commission	IP/11/83	Public Procurement: Portugal to apply EU rules to notebook computer contracts following Commission's intervention.	Press Release
12	27-Jan-11	European Commission	IP/11/84	Public Procurement: Commission requests Greece to ensure fair access to public contracts for supply of school bus services and electricity cables.	Press Release
13	27-Jan-11	European Commission	MEMO/11/48	Modernising the European Public Procurement market - Frequently Asked Questions	Press Release

14	14-Mar-11	European Commission	IP/11/287	Public Procurement: Commission seeks Germany's compliance with Court judgement on pension schemes for local authority employees.	Press Release
15	14-Mar-11	European Commission	IP/11/289	Public Procurement: The Commission asks France to open to competition public procurement for the purchase of certain geographical information	Press Release
16	06-Apr-11	European Commission	IP/11/430	Public Procurement: Spain amends its legislation on public sector contracts following infringement procedure.	Press Release
17	13-Apr-11	European Commission	IP/11/469	Twelve projects for 2012 Single Market: together for new growth	Press Release
18	19-May-11	European Commission	IP/11/600	Public Procurement: The Netherlands agrees to apply EU rules for land development projects in Ede and for public contracts for fire insurance.	Press Release
19	29-Sep-11	European Commission	IP/11/1116	Public Procurement: Commission requests Germany to ensure fair access to waste disposal contract in Sachsen-Anhalt	Press Release
20	29-Sep-11	European Commission	IP/11/1119	Public Procurement: Commission acts to ensure fair access to information technology services in Italy.	Press Release

21	29-Sep-11	European Commission	IP/11/1120	Public Procurement: Commission requests The Netherlands to open up used paper processing and transport contracts.	Press Release
22	27-Oct-11	European Commission	IP/11/1263	Public Procurement: Commission requests Greece to ensure fair access to public contracts for Software Services.	Press Release
23	24-Nov-11	European Commission	IP/11/1440	Public Procurement: Commission closes its investigations concerning the purchase of military transport aircraft by the Czech Republic.	Press Release
24	24-Nov-11	European Commission	IP/11/1441	Public Procurement: Commission acts to ensure that Greece and Malta comply with EU rules	Press Release
25	20-Dec-11	European Commission	MEMO/11/931	Commission proposals to modernise the European Procurement Market - Frequently Asked Questions	Press Release
26	20-Dec-11	European Commission	MEMO/11/932	Proposal for a Directive of the European Parliament and of the Council on the award of Concession Contracts - Frequently Asked Questions	Press Release
27	20-Dec-11	European Commission	IP/11/1580	Modernising European Public procurement to support growth and employment	Press Release

28	26-Jan-12	European Commission	IP/12/76	Internal Market: Commission acts to ensure implementation of EU rules in the area of defence procurement	Press Release
29	26-Jan-12	European Commission	IP/12/73	Public Procurement: the Commission acts to safeguard procedural transparency and ensure equal treatment of applicants in connection with a public works contract for the modernisation of road infrastructure in Bucharest.	Press Release
30	22-Mar-12	European Commission	IP/12/290	Public Procurement: Commission acts to ensure implementation of EU rules in the area of defence procurement	Press Release
31	26-Apr-12	European Commission	IP/12/416	Internal Market: Commission requests the United Kingdom to implement EU rules in the area of defence procurement in Gibraltar.	Press Release
32	31-May-12	European Commission	IP/12/533	Internal Market: Commission requests Austria and Poland to fully transpose EU rules in the area of defence procurement.	Press Release
33	21-Jul-12	European Commission	IP/12/664	Public Procurement: Commission requests Slovenia to implement EU defence procurement rules.	Press Release

34	01-Sep-13	European Commission	NA	Transatlantic Trade and Investment Partnership (TTIP) The Regulatory Part	Press Release
35	20-Nov-13		MEMO/13/1005	November Infringements package: main decisions	Press Release
36	28-Feb-14	European Commission	IP/14/205	Single Market Scoreboard: Member States slower to transpose single market rules; number of infringements remains stable.	Press Release
37	27-Apr-10	European Commission	NA	Public Procurement Indicators 2008	Report
38	01-Oct-10	European Commission	SEC(2010) 1143 final	Commission Staff Working Document. Situation in the Different Sectors. Accompanying Document to the Report from the Commission 27th Annual Report on Monitoring the Application of EU Law (2009)	Report
39	01-Oct-10	European Commission	SEC(2010) 1258 final (BASED ON THIS)	Buying Social: A guide to taking account of social considerations in Public Procurement	Report
40	07-Dec-10	European Commission	SEC(2010) 1545 final	Commission Staff Working Document: Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest and in particular to social services of general	Report

				interest.	
41	11-Feb-11	Europe Economics / European Commission	NA	Taking Stock of Utilities Procurement: A report for DG Internal Market	Report
42	01-Mar-11	European Commission	NA	Final Report. Cross-Border Procurement Above EU thresholds	Report
43	13-Apr-11	European Commission	SEC(2011) 467 final	Overview of Responses to the Public Consultation on the Communication 'Towards the Single Market Act'	Report
44	13-May-11	Europe Economics / European Commission	NA	Estimating the Benefits from the Procurement Directives: A Report for DG Internal Market	Report
45	01-Jun-11	European Commission	SEC(2011) 671	Impact Assessment for Regulation of the European Parliament and of the Council on European Standardisation amending Council Directives 89/686/EEC, 93/15/EEC, 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/105/EC, 2009/23/EC	Report

46	01-Jun-11	European Commission	NA	Understanding Enlargement: The European Union's Enlargement Policy	Report
47	27-Jun-11	European Commission	SEC(2011) 853 final	Commission Staff Working Paper. Evaluation Report Impact and Effectiveness of EU Public Procurement Legislation PT1	Report
48	27-Jun-11	European Commission	SEC(2011) 853 final 2	Commission Staff Working Paper. Evaluation Report. Impact and Effectiveness of EU Public Procurement Legislation PT2	Report
49	20-Dec-11	European Commission	SEC(2011) 1586	Executive Summary of the Impact Assessment of Proposal for a Directive of the European Parliament and of the Council on Public Procurement (COM2011 896 final)	Report
50	29/12/11	European Commission	NA	EU Public Procurement Legislation: Delivering Results. Summary of Evaluation Report	Report
51	01-Jan-12	European Commission	COM(2012) 18	General Report on the Activities of the European Union 2011	Report
52	01-Sep-12	European Commission	NA	Internal Market Scoreboard 25: September 2012	Report
53	01-Mar-13	Centre for Economic Policy Research, London; Joseph	TRADE10/A2/A16	Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment - Final Project Report.	Report

		Francois			
54	01-Apr-13	London Economics & PWC / European Commission	NA	Study on 'The cost of non-Europe: the untapped potential of the European Single Market'. Final Report.	Report
55	Oct-13	European Commission	NA	A Recovery on the Horizon? Annual Report on European SMEs 2012/13	Report
56	Dec-13	Eurostat	Flash Eurobarometer 381	SMEs, Resource Efficiency and Green Markets	Report
57	01-Apr-14	European Commission	NA	Internal Market Directives adopted as at 01.04.2014 sorted by transposition deadline	Report
58	Jul-14	European Commission	NA	A Partial and Fragile Recovery. Annual Report on European SMEs 2013/14	Report
59	Apr-15	Europe Economics and Milieu / European Commission	MARKT/2013/072/C	Economic efficiency and legal effectiveness of review and remedies procedures for public contracts: Final Study Executive Summary	Report
60	06-Oct-15	European Commission	NA	Single Market Scoreboard: Internal Market Information System (IMI) 01/2014 to 12/2014	Report

61	20-Dec-11	European Commission	COM(2011) 896 final	Proposal for a Directive of the European Parliament and of the Council on Public Procurement	Commission White Paper
62	20-Dec-11	European Commission	COM(2011) 895 final	Proposal for a Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors	Commission White Paper
63	20-Dec-11	European Commission	COM(2011) 897 final	Proposal for a Directive of the European Parliament and of the Council on the award of concession contracts	Commission White Paper
64	26-Jul-14	European Commission	COM(2014) 367 final	Proposal for a Decision of the European Parliament and of the Council establishing a programme on interoperability solutions for European Public Administrations, business and citizens (ISA2). Interoperability as a means for modernizing the public sector.	Commission White Paper
65	22-Oct-13	Council of the European Union	1082/2013/EU	Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC	Council and Parliament Joint Decision

66	17-Jun-15	Council of the European Union	NA	Employment, Social Policy, Health and Consumer Affairs Council. Thursday 18 and Friday 19 June [2015] in Luxembourg	Press Release
67	11-Feb-14	Council of the European Union	6337/14	Council Adopts directives for the reform of public procurement	Council Press Release
68	17-Feb-14	Council of the European Union	2011/0439 (COD)	Legislative Acts and Other Instruments: Corrigendum / Rectificatif. Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC	Directive
69	13-May-13		2013/16/EU	Directive relating to public procurement by reason of accession of the Republic of Croatia.	Directive
70	26-Feb-14		2014/25/EU	Directive on Procurement by entities operating in the water, energy, transport, and postal services sectors.	Directive
71	26-Feb-14	European Council and Parliament	2014/25/EU	Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC	Directive

72	28-Mar-14	European Council and Parliament	2014/24/EU	Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC	Directive
73	22-Jun-12	Economic and Social Committee	2012/C 143/04	Opinion of the European Economic and Social Committee on 'Developing a people-orientated grassroots approach to internal market policy' (Own initiative opinion).	ECSC Published Opinion
74	23-Jul-11	Economic and Social Committee	2011/C 218/06	Opinion of the European Economic and Social Committee on 'Third Country state enterprises in EU Public Procurement Markets' (Own initiative Opinion)	ECSC Published Opinion
75	29-Oct-11	Economic and Social Committee	2011/C 318/19	Opinion of the European Economic and Social Committee on the 'Green Paper on the Modernization of EU Public Procurement Policy - Towards a more efficient European Procurement Market'	ECSC Published Opinion

76	28-Jan-12	Economic and Social Committee	2012/C 24/22	Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Single Market Act - Twelve Levers to boost growth and strengthen confidence - "Working together to create new growth"	ECSC Published Opinion
78	29-Jul-12	Economic and Social Committee	2012/C 191/16	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors'; the 'Proposal for a Directive of the European Parliament and of the Council on Public Procurement'; and the 'Proposal for a Directive of the European Parliament and of the Council on the award of concession contracts'.	ECSC Published Opinion

79	06-Mar-14	Economic and Social Committee	2014/C 67/19	Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on End-to-end e-Procurement to modernise public administration'	ECSC Published Opinion
80	05-Mar-13	EPSU	EPSU/9353	EPSU recommendations for trilogues on public procurement directives	Press Release
81	06-Jun-14	Karel De Gucht	Speech/14/439	TTIP: Strengthening our Values. Speech delivered at the Wroclaw Global Forum 2014, 6 June 2014	Speech
82	18-Nov-14	Elzbieta Bienkowska	Speech/14/2349	Let's Get Europe Working: Driving a New Phase of Growth and Competitiveness'	Speech

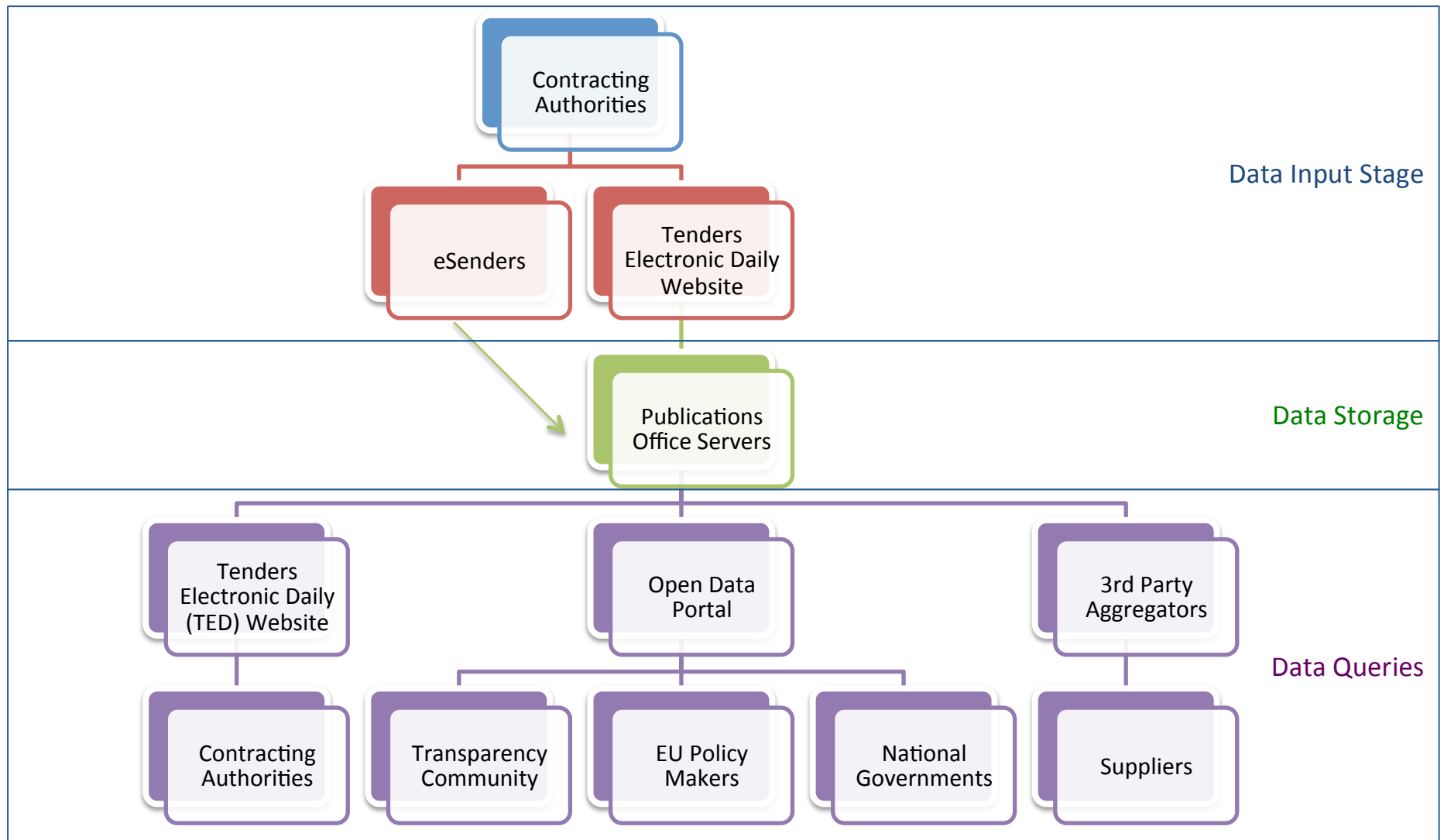


Figure 14: Information Flow within the Tenders Electronic Daily Advertisement Process

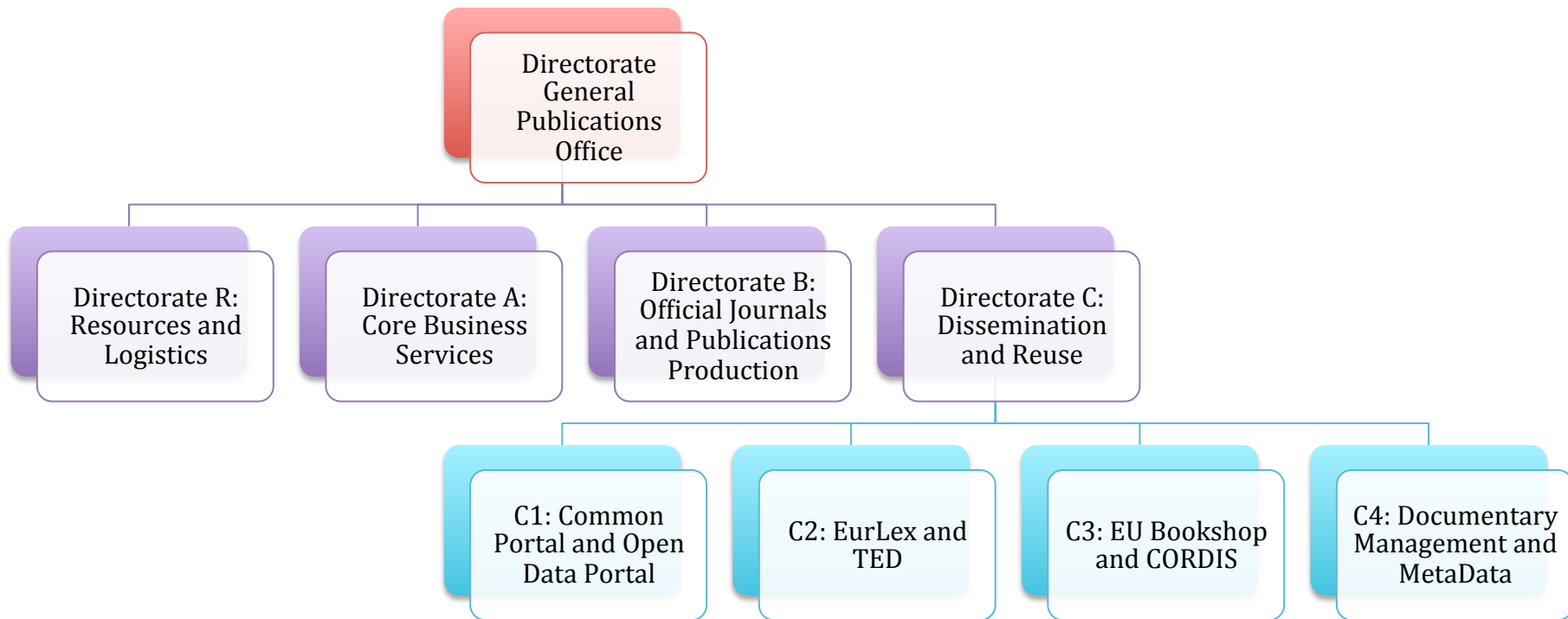


Figure 15: Organisational Structure of the Publications Office areas that pertain to the Public Procurement Market 2015.

geo\time	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Belgium	0.81	0.86	0.97	1.09	1.53	1.94	2.26	2.26	2.73	2.34	2.59	2.52	2.30	2.40	3.20	3.60	4.00	3.10
Bulgaria	:	:	:	:	:	:	:	:	:	:	:	:	:	:	8.00	8.40	11.90	6.40
Czech Republic	:	:	:	:	:	:	:	:	:	:	:	0.36	2.70	5.20	4.10	5.30	5.20	5.60
Denmark	1.90	2.42	2.64	2.16	2.19	2.27	2.46	3.60	2.88	2.71	2.35	2.73	2.20	3.00	3.20	3.00	4.00	4.40
Germany	0.54	0.76	0.89	0.99	1.07	1.10	0.87	0.94	0.94	1.26	1.81	1.17	1.60	1.70	1.10	1.20	1.40	1.30
Estonia	:	:	:	:	:	:	:	:	:	:	:	2.68	7.10	7.20	7.00	8.10	8.30	10.60
Ireland	:	:	1.53	2.08	2.31	1.90	2.01	2.57	2.50	2.37	2.31	3.32	2.60	3.20	3.40	2.50	2.20	2.30
Greece	:	:	4.15	4.35	4.86	5.24	4.52	3.85	4.10	5.21	4.41	3.72	4.90	5.60	3.50	2.80	3.70	2.40
Spain	1.03	1.03	1.15	1.39	1.43	1.46	2.12	3.13	2.85	2.91	3.41	2.98	4.30	4.20	4.10	3.60	3.40	3.20
France	0.75	0.78	0.93	1.17	1.43	1.79	1.90	2.37	2.71	3.12	3.71	2.76	3.00	3.40	4.40	5.40	6.40	7.40
Italy	0.90	1.06	1.09	1.16	1.33	1.28	1.59	2.12	1.89	2.19	2.67	2.35	2.70	3.00	2.30	2.30	2.50	3.40
Cyprus	:	:	:	:	:	:	:	:	:	:	:	1.26	3.50	4.40	5.10	4.70	8.30	5.20
Latvia	:	:	:	:	:	:	:	:	:	:	:	1.79	9.80	13.90	12.40	9.70	8.60	11.50
Lithuania	:	:	:	:	:	:	:	:	:	:	:	2.42	3.50	4.80	4.20	3.60	4.90	4.90
Luxembourg	1.05	0.67	0.70	0.99	1.29	2.01	1.77	1.56	1.48	1.92	2.07	3.10	2.40	1.40	1.20	1.30	1.50	1.50
Hungary	:	:	:	:	:	:	:	:	:	:	:	1.27	6.80	6.80	4.50	5.10	6.30	5.60
Malta	:	:	:	:	:	:	:	:	:	:	:	0.22	1.00	1.80	2.00	1.20	6.90	4.20
Netherlands	0.81	0.97	0.98	1.03	1.10	1.02	1.15	2.10	2.47	1.82	1.71	1.75	1.60	2.30	1.80	1.90	2.00	1.90
Austria	0.03	0.34	0.82	1.35	1.32	1.46	1.24	2.30	2.36	2.52	2.68	3.33	2.00	1.70	1.70	2.40	2.30	2.30
Poland	:	:	:	:	:	:	:	:	:	:	:	2.57	7.60	5.20	5.80	7.10	8.20	8.70
Portugal	:	:	2.02	2.38	2.02	1.97	1.90	1.91	2.26	2.38	2.25	2.41	2.10	1.90	1.70	2.50	3.40	4.10
Romania	:	:	:	:	:	:	:	:	:	:	:	:	:	:	7.30	7.40	6.40	6.20
Slovenia	:	:	:	:	:	:	:	:	:	:	:	1.58	3.20	5.00	6.50	5.10	6.00	4.60
Slovakia	:	:	:	:	:	:	:	:	:	:	:	2.71	6.30	3.10	3.60	3.70	6.80	11.60
Finland	0.03	0.92	1.29	1.54	1.36	1.46	1.54	2.01	2.31	2.22	2.53	2.90	3.30	3.10	3.60	3.90	4.80	4.60
Sweden	0.12	1.84	2.28	2.19	2.25	2.32	2.47	3.38	4.51	3.78	3.54	3.29	3.20	3.00	3.00	3.50	4.30	4.90
United Kingdom	2.20	2.90	3.19	3.13	3.19	2.94	2.63	3.65	3.73	3.78	7.18	4.56	3.50	4.60	4.00	4.40	6.20	6.50
Mean																		
Average	0.85	1.21	1.64	1.80	1.91	2.01	2.03	2.52	2.65	2.70	3.01	2.39	3.73	4.08	4.17	4.21	5.18	5.13

Table 8: Estimated Value of the of the public procurement market 1993 to 2010 as % of GDP. Source Eurostat

Table 3: Discourse themes in the market

Date Range	Discursive Title	Description
1962 - 1964	Political Integration	Procurement to drive forward greater political integration by 'Pump Priming' economic integration.
	Liberalisation	Europe as an economic entity 'freed from restrictions'.
	Opportunity	Procurement framed as <i>opportunity</i> for the creation of trans-national links, not the links themselves.
	Quantitative Basis	Market as having a quantifiable economic basis along with political.
	Diversity	Respect for national diversity of implementation and practices.
1964 - 1971	Economic Rationale	Effective government based on economic rationale rather than purely political. Includes the dominance of economic rationale (Price) as award criteria.
	Administrative	Administrative efficacy and efficiency of operation of government.
	Non-Discrimination	Common Market principles embedded in the underpinning rationale behind the award criteria.
	Liberalisation	In this phase 'Removing the barriers' to the market's effective operation.
1971 - 1982	Implementation Gap	Europe's stagnation as a result of both international economic conditions and lack of member state government implementation of the directives.
	Harmonizing	Achieving consistency across the market through agreement of common principles of operation. Opposed to directed / imposed legislative principles.
	Advertisements	The advertisement process as being a key principle of the market's operation. Transparency as a 'policy instrument'.
	Globalization	GATT and the overarching economic conditions representing a mutually constitutive factor in the development

		of international supply chain linkages.
1983 - 1993	'Non-Europe'	All encompassing argument regarding expansion of the European project and 'othering' rejections. Linkages to the distribution of wealth encapsulated as 'social good'.
	Economic Growth	Increased trade and procurement leading to increase in economic growth.
	De-politicisation	Removing the political imperatives from the expansion of the market and using technocratic and global trade imperatives.
	Imposition	Moving away from Harmonization to 'top-down' need for increasing 'Europe' while linking to the broader economic benefits for society.
1994 - 2003	Transparency	Focus on transparency of opportunity as important. Additional benefits of 'governance'.
	Clarity of Message	Focus on the power of the discourse of the market as having importance in creating an effective market. There are additional linkages here with the 'Best Practice' move to create a coherent discourse of market involvement.
	Data	Large amount of investment during this period leading to the development of the TED website.
	Transposition Gap	Significant problems with the transposition into national legislatures of the Market's directives.
2004 to 2010	Modernisation	The regime was rationalised after a number of ancillary directives, ECJ /CJEU rulings, and guidelines led to ever increasing complexity. Additionally, the concept of 'modernisation' links the practice of procurement explicitly with a contemporary vision of state operation. Those forces against 'modernisation' are portrayed as regressive.
	Transparency	Normatively laden perspective on the

		manner in which the state should operate. Links to debates on democracy, accountability, governance, and the above 'Modernisation' agendas.
	Award Criteria and Techniques	Inclusion explicitly of qualitative criteria and considerations in the award of contracts. Further extends the purpose of the market into ancillary activities outside of core economic exchange.

	1960	1967	1973	1980	1981	1982
EEC	32.1%	37.5%	39.9%	47.1%	49.8%	50.8%
France	34.6%	39%	38.5%	46.2%	50.8%	51.9%
West Germany	32%	38.2%	40.5%	46.9%	49.3%	49.7%
UK	32.6%	38.5%	41.1%	44.3%	45.3%	46.2%
Italy	30.1%	33.7%	37.8%	45.6%	53%	54.9%

Table 4: Value of Public Sector Spending (Source: Albert and Ball, 1984 p20)

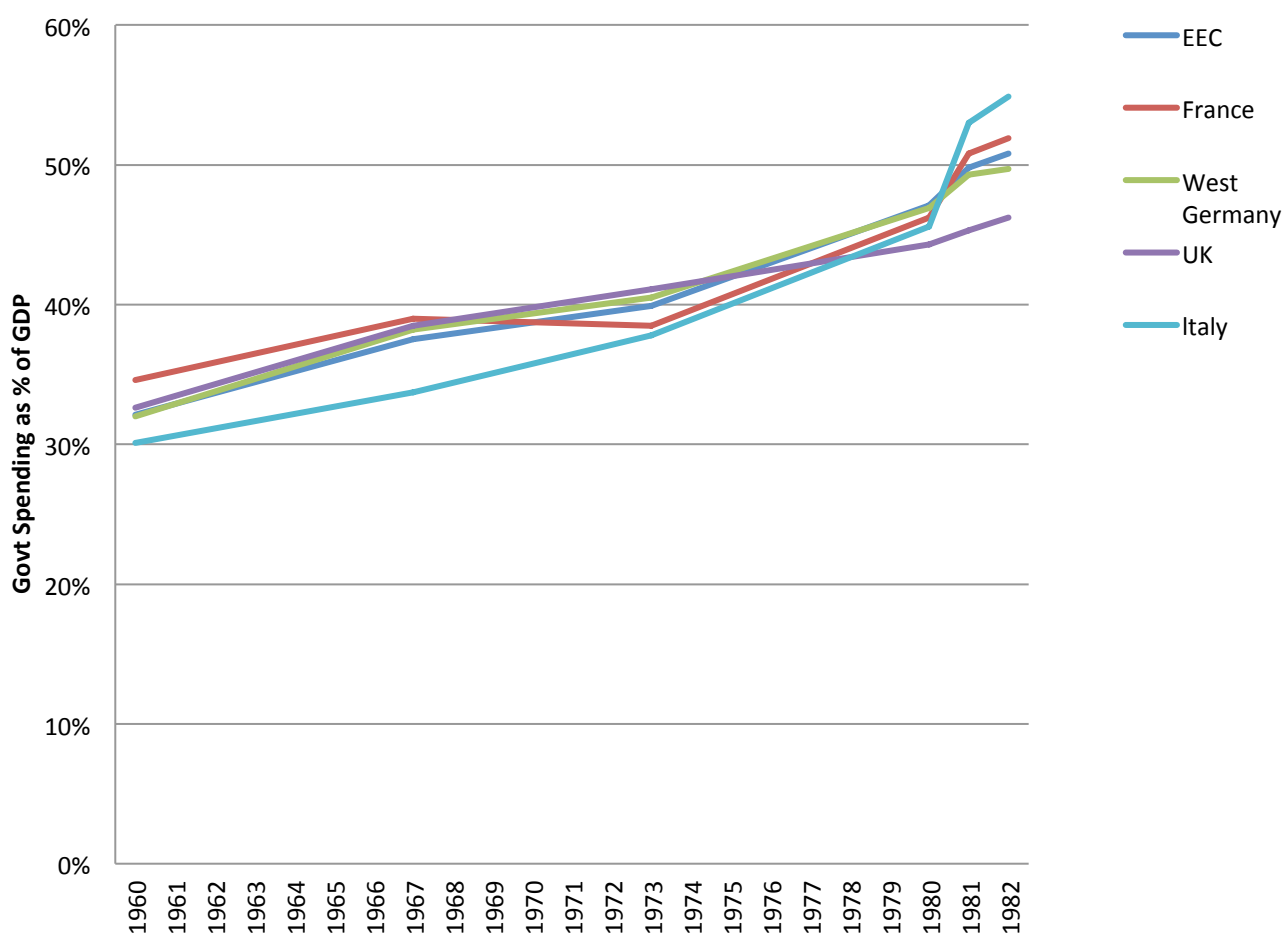


Figure 2: Government Spending as % of GDP 1960 to 1982 (Source: Albert and Ball 1984 p20)

MODEL NOTICES OF CONTRACTS

A Open Procedures

1. Name and address of the authority awarding the contract (Article 16e)¹:
 2. The award procedure chosen (Article 16b):
 3. (a) The site (Article 16e):
 - (b) The nature and extent of the services to be provided and the general nature of the work (Article 16c):
 - (c) If the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several, or for all of the lots (Article 16c):
 - (d) Information relating to the purpose of the contract if the contract entails the drawing up of projects (Article 16c):
 4. Any time limit for the completion of the works (Article 16d):
 5. (a) Name and address of the service from which the contract documents and additional documents may be requested (Article 16f):
 - (b) The final date for making such request (Article 16f):
 - (c) Where applicable, the amount and terms of payment of any sum payable for such documents (Article 16f):
 6. (a) The final date for receipt of tenders (Article 16g):
 - (b) The address to which they must be sent (Article 16g):
 - (c) The language or languages in which they must be drawn up (Article 16g):
 7. (a) The persons authorized to be present at the opening of tenders (Article 16h):
 - (b) The date, time and place of this opening (Article 16h):
 8. Any deposits and guarantees required (Article 16i):
 9. The main procedure for financing and payment and/or references to the instruments regulating these (Article 16j):
-
- ¹ The Articles in brackets refer to Council Directive No 71/305/EEC of 26.7.1971 (OJ No L 185, 16.8.1971, p. 5).
10. Where applicable, the specific legal form which must be assumed by the group of contractors to whom the contract is awarded (Article 16k)¹:
 11. The minimum economic and technical standards required of the contractors (Article 16):
 12. Period during which the tenderer is bound to keep open his tender (Article 16m):
 13. Criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned if they do not appear in the contract documents (Article 29):
 14. Other information:
 15. The date of dispatch of the notice (Article 16a):

Figure 1: Model Notice of Contract from Annex 1 of 72/277/EEC (Council of the European Communities, 1972 p823)



Figure 4: The Publications Office, 2 Rue De Mercier, Luxembourg, April 2015

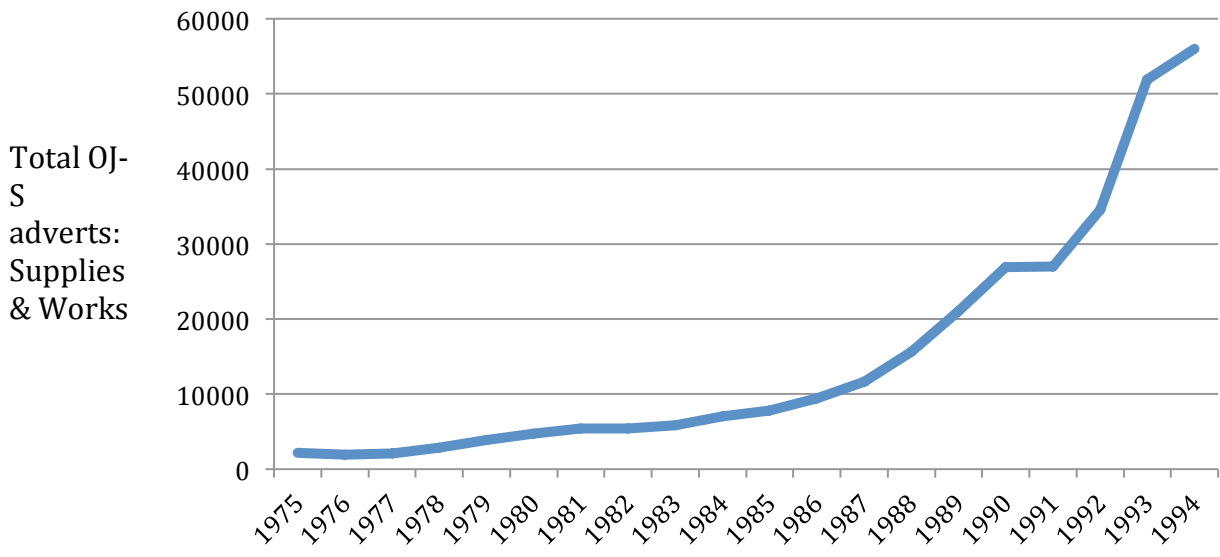


Figure 5: Total number of Official Journal Advertisements placed per annum 1975 to 1994

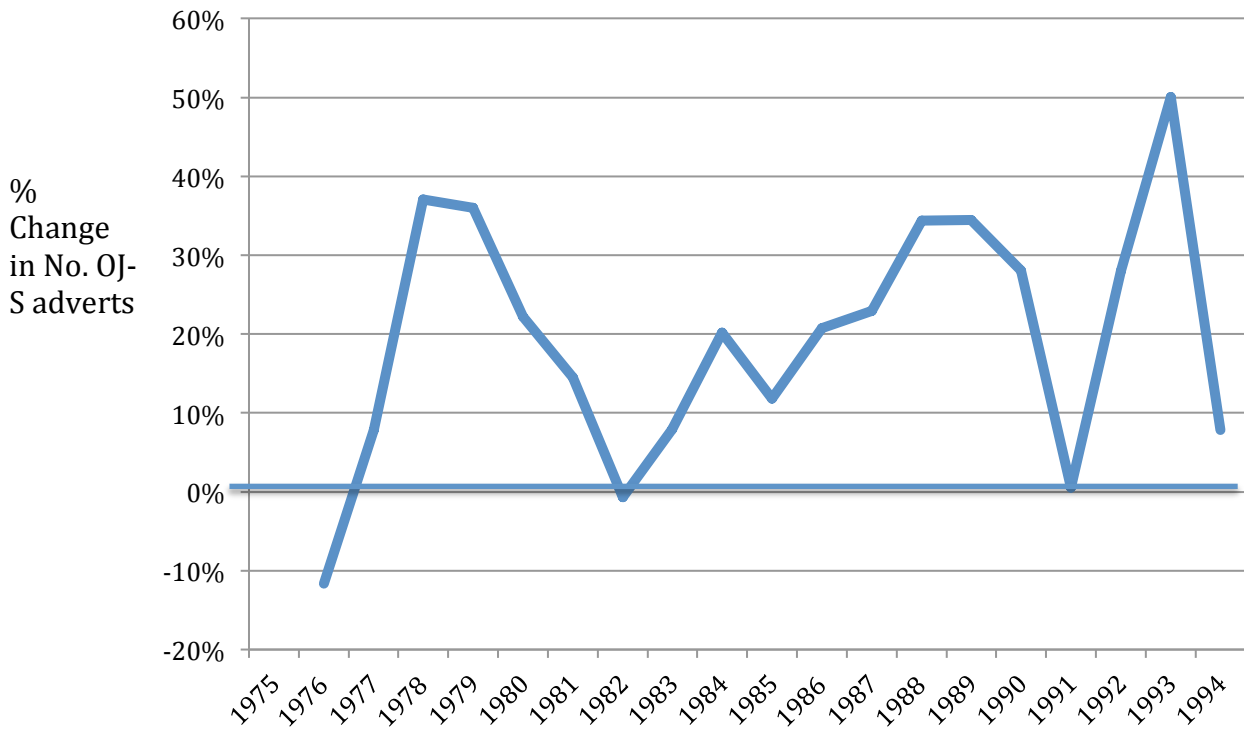


Figure 6: Percentage change in advertisements placed per annum year on year.

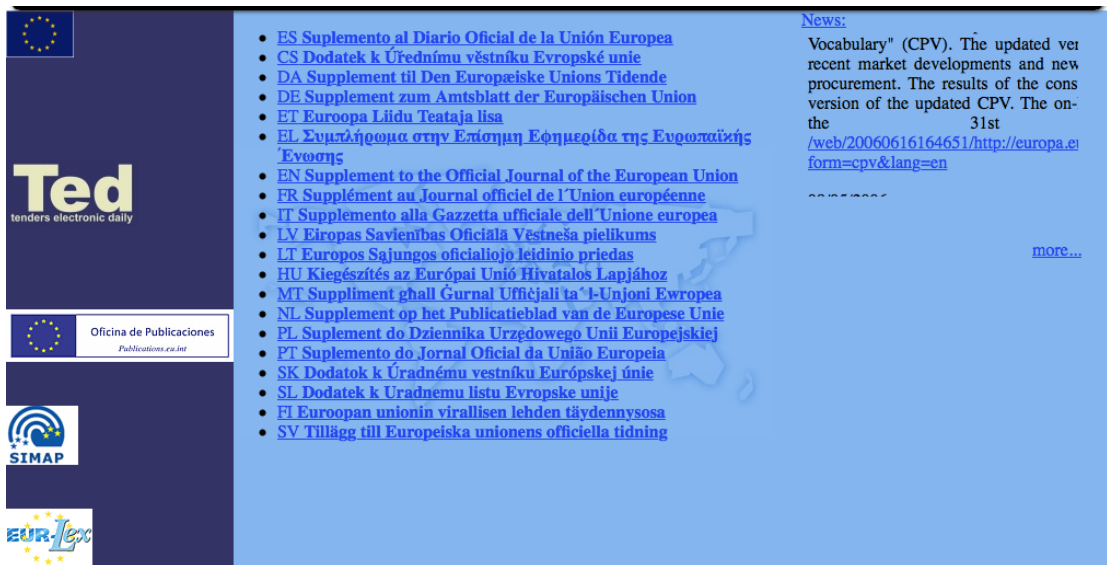


Figure 7: Front page of the TED 20 May 2006.



Figure 8: Main menu page of the TED 17 July 2006



Figure 9: OJEU advertisement CD-Roms 2007 and 2008



Figure 12: TED landing page post 2009 redesign dated 23 December 2009.

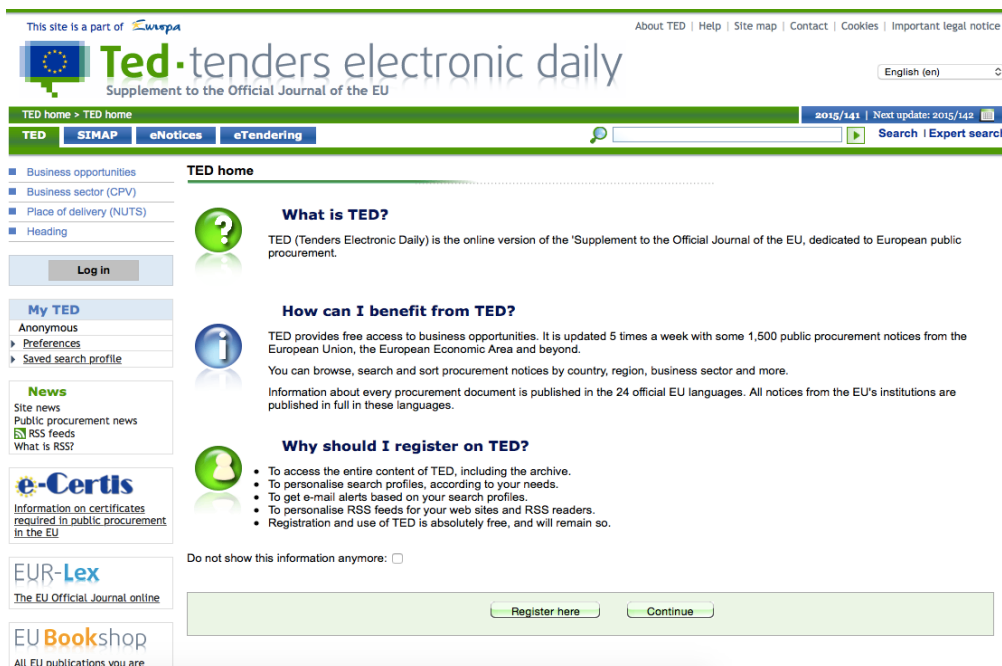


Figure 13: TED main menu page from 2009. Image taken 21 July 2015.



Publications Office

Publications.europa.eu

SELET0001XXX_010106

Publications and Dissemination Directorate
Supplement to the Official Journal of the European Union

Publication confirmation

As proof of publication, please find herewith, a CD-ROM containing one or more notices coming from your administration to the *Supplement of the Official Journal of the European Union* (OJ S), in respect of the European public procurement directives.

Despite the care taken, data entry errors of your notice sent for publication to the Publications Office could have escaped our attention at the proof-reading stage. It is your responsibility to check the conformity of all of your texts published by us.

The Publications Office reminds you that in the event of mistakes, a corrigendum can be published.

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OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES

2, rue Mercier, L-2985 Luxembourg — Tel. (+352) 29 29-42777 Fax (+352) 29 29-42700

Figure 10: Standard (English) OJEU Advertisement recognition letter 2008

Цена без ДДС • Cena bez DPH • Pris moms ikke medregnet • ohne MwSt. • Hind
ei sisalda käibemaksu • Τιμή χωρίς ΦΠΑ • Price excluding VAT • Precio IVA exclu-
ido • Prix TVA exclue • Pragas gan CBL san áireamh • Preço IVA esclusa • Cena
bez PVN • Kaina be PVM • Ára áfa nélkül • Prezz minghajr l'IM • Prijs exclusief BTW
• Cena bez VAT • Preço IVA excluído • Preț fără TVA • Hinta ei sis. alv:a • Cena bez
DPH • Cena brez DDV • Pris exkl. moms

1
EUR 6,-

2 x 52
EUR 360,-



Publications Office
Publications.eu.int

L-2985 Luxembourg

SYSTEM REQUIREMENTS

Operating

system: **PC:** Windows 98/ME/NT4/2000/XP or higher
Linux: distributions Red Hat 8.0 or higher and SuSE 8.0 or higher
Mac: MacOS X or higher

Browser: MS Internet Explorer 5.0 or higher; Netscape 7.0 or higher,
FireFox 1.0 or higher

FOR MORE INFORMATION AND INSTALLATION:

Please see the file **readme.txt** in the main directory of the CD-ROM

Help-Desk e-mail: ojs-cdrom@publications.europa.eu - fax: (+352) 2929 42700

V 01/08

Figure 11: Standard Packaging for OJEU Advertisement CD-ROM 2008. Shows Format information

This notice in TED website: <http://ted.europa.eu/udl?uri=TED:NOTICE:409129-2015:TEXT:EN:HTML>

**United Kingdom-Leeds: Audio-visual equipment
2015/S 225-409129**

Contract notice

Supplies

Directive 2004/18/EC

Section I: Contracting authority

- I.1) **Name, addresses and contact point(s)**
North Eastern Universities Purchasing Consortium
The Innovation Centre, 103 Clarendon Road
Contact point(s): <https://in-tendhost.co.uk/neupc/>
For the attention of: Mark Hayter
LS2 9DF Leeds
UNITED KINGDOM
Internet address(es):
General address of the contracting authority: <http://www.neupc.ac.uk/>
Address of the buyer profile: <https://in-tendhost.co.uk/neupc/>
Further information can be obtained from: The above mentioned contact point(s)
Specifications and additional documents (including documents for competitive dialogue and a dynamic purchasing system) can be obtained from: The above mentioned contact point(s)
Tenders or requests to participate must be sent to: The above mentioned contact point(s)
- I.2) **Type of the contracting authority**
Body governed by public law
- I.3) **Main activity**
Education
- I.4) **Contract award on behalf of other contracting authorities**
The contracting authority is purchasing on behalf of other contracting authorities: yes
The framework agreement will be made available for use by the NEUPC members, and by the University of Lincoln. Membership of this community may be subject to change due to strategic realignment or the inclusion of new members. A complete listing of the current NEUPC member institutions can be viewed at: <http://www.neupc.ac.uk/our-members>, and the University of Lincoln web address is: <http://www.lincoln.ac.uk/home/>

Section II: Object of the contract

- II.1) **Description**
- II.1.1) **Title attributed to the contract by the contracting authority:**
Audio Visual Supply and System Design, Integration and Maintenance.
- II.1.2) **Type of contract and location of works, place of delivery or of performance**
Supplies
A combination of these
NUTS code UK
- II.1.3) **Information about a public contract, a framework agreement or a dynamic purchasing system (DPS)**
- | | | | |
|-----------------------------------------------------------------|------|----------------------------------------------------------|-------|
| 20/11/2015 | S225 | - - Supplies - Contract notice - Open procedure | 1 / 8 |
| http://ted.europa.eu/TED | | Supplement to the Official Journal of the European Union | |
| OJ/S S225 | | | |
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| 409129-2015-EN | | | |

- The notice involves the establishment of a framework agreement
- II.1.4) **Information on framework agreement**
Framework agreement with several operators
maximum number of participants to the framework agreement envisaged: 20
Duration of the framework agreement
Duration in years: 4
Estimated total value of purchases for the entire duration of the framework agreement
Estimated value excluding VAT:
Range: between 20 000 000 and 25 000 000 GBP
- II.1.5) **Short description of the contract or purchase(s)**
NEUPCs existing AV equipment agreement has been consistently supported by institutions, and is expected to have delivered expenditure of approximately GBP 20 000 000 over its four year duration by the time the agreement expires on 5.2.2016.
NEUPC is looking to establish a new framework agreement for audio visual equipment supply and the design, supply, installation and support of integrated AV systems, delivering improved pricing and service, with demonstrable savings against those arrangements currently in place.
The intended outcome will be a framework in two lots. Lot 1 will provide institutions with a route to market for audio visual equipment on a supply only basis. Lot 2 will provide institutions with access to Audio Visual Integrators, those suppliers that provide AV equipment and install AV systems. Lot 2 also provides for Audio visual equipment and services on a hire basis
There is no opportunity for tenderers to bid for segments of the scope in either lot, however lot 2 tenderers will be required to identify which of the agreement users they do not seek to form contracts with.
Suppliers will be awarded to either lot 1 or to lot 2 therefore tenderers may only bid for Lot 1 or Lot 2, and not both lots.
- II.1.6) **Common procurement vocabulary (CPV)**
32321200, 50340000, 32321300

Figure 3: Example Contract advertisement for a Framework Agreement (Source: TED accessed 20 June 2016)

Country	Type of Structure (OCED categorisation)		Type of Review body
		System of review	
Bulgaria	Centralised	Single System	Specialised Body
Latvia	Centralised	Single System	Specialised Body
Malta	Centralised	Single System	Specialised Body
Romania	Centralised	Single System	Specialised Body
Slovakia	Centralised	Single System	Specialised Body
Lithuania	Centralised	Single System	Ordinary Courts
Cyprus	Centralised	Dual System	Specialised Body
Czech Republic	Centralised	Dual System	Specialised Body
Estonia	Centralised	Dual System	Specialised Body
Hungary	Centralised	Dual System	Specialised Body
Poland	Centralised	Dual System	Specialised Body
Finland	Decentralised	Dual System	Specialised Body
Portugal	Decentralised	Single System	Ordinary Courts
Ireland	Semi Centralised	Single System	Ordinary Courts
United Kingdom	Semi Centralised	Single System	Ordinary Courts
France	Semi Centralised	Dual System	Ordinary Courts
Sweden	Semi Centralised	Dual System	Ordinary Courts
Austria	Semi Centralised	Dual System	Specialised Body
Germany	Semi Centralised	Dual System	Specialised Body
Luxembourg	Semi Centralised	Dual System	Specialised Body
Slovenia	Semi Centralised	Dual System	Specialised Body
Italy	Semi Centralised	-	-
Netherlands	-	Single System	Ordinary Courts
Belgium	-	Dual System	Ordinary Courts
Denmark	-	Dual System	Specialised Body
Greece	-	-	-
Spain	-	-	-

Table 5: Public Procurement Institutional Structures. Sources: Commission., 2011 and We, 2007, OCED, 2007a, OECD, 2013a

	Belgium	Denmark	Germany	Spain	Greece	France	Ireland	Italy	Luxembourg	Netherlands	Portugal	United Kingdom	TOTAL
1975	190	40	472			313	43	4	4	97		1,024	2,187
1976	202	32	393			265	34	4	1	78		923	1,932
1977	239	43	432			330	34	34	5	91		875	2,083
1978	350	57	534			341	61	318	5	100		1,089	2,855
1979	448	63	799			762	57	491	12	117		1,133	3,882
1980	505	94	1,056			1,013	65	893	22	226		871	4,745
1981	519	94	998		28	1,164	60	1,031	23	290		1,226	5,433
1982	440	113	1,113		27	1,239	117	412	14	298		1,625	5,398
1983	354	104	1,104		89	1,273	118	676	9	348		1,749	5,824
1984	375	94	1,153		126	1,455	90	1,662	8	324		1,712	6,999
1985	346	121	1,180		202	1,685	105	1,927	11	315		1,932	7,824
1986	272	136	1,381	534	132	1,946	91	2,303	18	312	86	2,237	9,448
1987	318	127	1,435	1,228	173	2,767	56	2,656	23	252	115	2,467	11,617
1988	388	154	1,819	4,242	255	1,709	71	3,541	24	297	237	2,878	15,615
1989	540	299	2,326	2,340	470	6,677	94	3,212	54	308	334	4,345	20,999
1990	799	579	2,866	3,049	663	8,876	133	3,784	121	381	492	5,143	26,886
1991	833	688	4,598	1,645	1,218	7,415	115	3,297	182	377	603	6,069	27,040
1992	820	953	9,087	1,457	1,058	7,915	227	4,016	199	495	484	7,903	34,614
1993	1,103	1,605	13,009	2,065	1,080	9,491	446	7,501	280	1,155	605	13,601	51,941
1994	1,124	1,518	15,137	1,924	1,135	9,769	445	8,361	243	1,228	710	14,416	56,010

Table 6: Official Journal Supplementary Series advertisements 1975 to 1994. Source: Publications Office Annual Reports numbers 8 to 25.

Sources: Commission Procurement KPI 2012, World Bank 2013 Published Data, Eurostat

Country	Size of Procurement as % of GDP				E	F	G	H	I	J
	A	B	C	D						
	Member State Reported EUPD Value (2010)	Commission Estimate EUPD Value (2010)	World Bank Estimate of Total Gov Consumption (2010)	GDP (2010) (Eurostat NAMA_Gdp)	Gov Consumption from GDP (2010) (size of Govt procurement market potential)	Member State Reported EUPD Figure (2010) as % of GDP	Commission Estimate EUPD Value (2010) as % of GDP	Commission Estimate EUPD as % of Gov Consumption	Difference between size of Gov Consumption and Member States Reported	Difference between size of Gov Consumption and Commission Estimate
Austria	€ 6,200,000,000	€ 6,590,000,000	€ 54,181,407,000	€ 285,165,300,000	19%	2.2%	2.3%	12.2%	17%	17%
Belgium	€ 4,850,000,000	€ 10,960,000,000	€ 85,456,560,000	€ 356,069,000,000	24%	1.4%	3.1%	12.8%	23%	21%
Bulgaria	€ 1,240,000,000	€ 2,300,000,000	€ 5,768,384,000	€ 36,052,400,000	16%	3.4%	6.4%	39.9%	13%	10%
Cyprus	€ 430,000,000	€ 900,000,000	€ 3,481,200,000	€ 17,406,000,000	20%	2.5%	5.2%	25.9%	18%	15%
Czech Republic	€ 6,570,000,000	€ 8,070,000,000	€ 31,485,720,000	€ 149,932,000,000	21%	4.4%	5.4%	25.6%	17%	16%
Denmark	€ 8,590,000,000	€ 10,280,000,000	€ 68,578,359,000	€ 236,477,100,000	29%	3.6%	4.3%	15.0%	25%	25%
Estonia	€ 760,000,000	€ 3,650,000,000	€ 3,007,767,000	€ 14,322,700,000	21%	5.3%	25.5%	121.4%	16%	-4%
Finland	€ 5,610,000,000	€ 8,250,000,000	€ 44,681,000,000	€ 178,724,000,000	25%	3.1%	4.6%	18.5%	22%	20%
France	€ 53,030,000,000	€ 66,710,000,000	€ 484,179,925,000	€ 1,936,719,700,000	25%	2.7%	3.4%	13.8%	22%	22%
Germany	€ 16,690,000,000	€ 32,850,000,000	€ 499,240,000,000	€ 2,496,200,000,000	20%	0.7%	1.3%	6.6%	19%	19%
Greece	€ 2,460,000,000	€ 5,470,000,000	€ 39,987,270,000	€ 222,151,500,000	18%	1.1%	2.5%	13.7%	17%	16%
Hungary	€ 3,950,000,000	€ 5,520,000,000	€ 21,248,788,000	€ 96,585,400,000	22%	4.1%	5.7%	26.0%	18%	16%
Ireland	€ 7,640,000,000	€ 3,650,000,000	€ 41,105,142,000	€ 158,096,700,000	26%	4.8%	2.3%	8.9%	21%	24%
Italy	€ 30,770,000,000	€ 53,120,000,000	€ 325,895,976,000	€ 1,551,885,600,000	21%	2.0%	3.4%	16.3%	19%	18%
Latvia	€ 1,520,000,000	€ 2,060,000,000	€ 3,065,253,000	€ 18,030,900,000	17%	8.4%	11.4%	67.2%	9%	6%
Lithuania	€ 1,350,000,000	€ 1,330,000,000	€ 5,521,500,000	€ 27,607,500,000	20%	4.9%	4.8%	24.1%	15%	15%
Luxembourg	€ 350,000,000	€ 610,000,000	€ 6,784,088,000	€ 39,906,400,000	17%	0.9%	1.5%	9.0%	16%	15%
Malta	€ 360,000,000	€ 260,000,000	€ 1,327,956,000	€ 6,323,600,000	21%	5.7%	4.1%	19.6%	15%	17%
Netherlands	€ 20,340,000,000	€ 10,920,000,000	€ 164,300,920,000	€ 586,789,000,000	28%	3.5%	1.9%	6.6%	25%	26%
Poland	€ 22,210,000,000	€ 30,900,000,000	€ 67,377,059,000	€ 354,616,100,000	19%	6.3%	8.7%	45.9%	13%	10%
Portugal	€ 3,570,000,000	€ 7,080,000,000	€ 38,029,090,000	€ 172,859,500,000	22%	2.1%	4.1%	18.6%	20%	18%
Romania	€ 6,090,000,000	€ 7,600,000,000	€ 19,892,432,000	€ 124,327,700,000	16%	4.9%	6.1%	38.2%	11%	10%
Slovakia	€ 3,410,000,000	€ 7,620,000,000	€ 13,173,900,000	€ 65,869,500,000	20%	5.2%	11.6%	57.8%	15%	8%
Slovenia	No Return	€ 1,630,000,000	€ 7,477,470,000	€ 35,607,000,000	21%	No Estimate	4.6%	21.8%	No Estimate	16%
Spain	€ 29,550,000,000	€ 34,060,000,000	€ 220,265,430,000	€ 1,048,883,000,000	21%	2.8%	3.2%	15.5%	18%	18%
Sweden	€ 22,360,000,000	€ 16,880,000,000	€ 94,485,177,000	€ 349,945,100,000	27%	6.4%	4.8%	17.9%	21%	22%
United Kingdom	€ 80,550,000,000	€ 109,880,000,000	€ 398,316,070,000	€ 1,731,809,000,000	23%	4.7%	6.3%	27.6%	18%	17%
Mean Averages								18%	16%	

Table 7: Size of public procurement estimates – commission, TED, Member states, World Bank estimates compared. Sources: Commission., 2012 Bank, 2013 Eurostat, 2013a; Eurostat, 2013c; Eurostat, 2013b)