

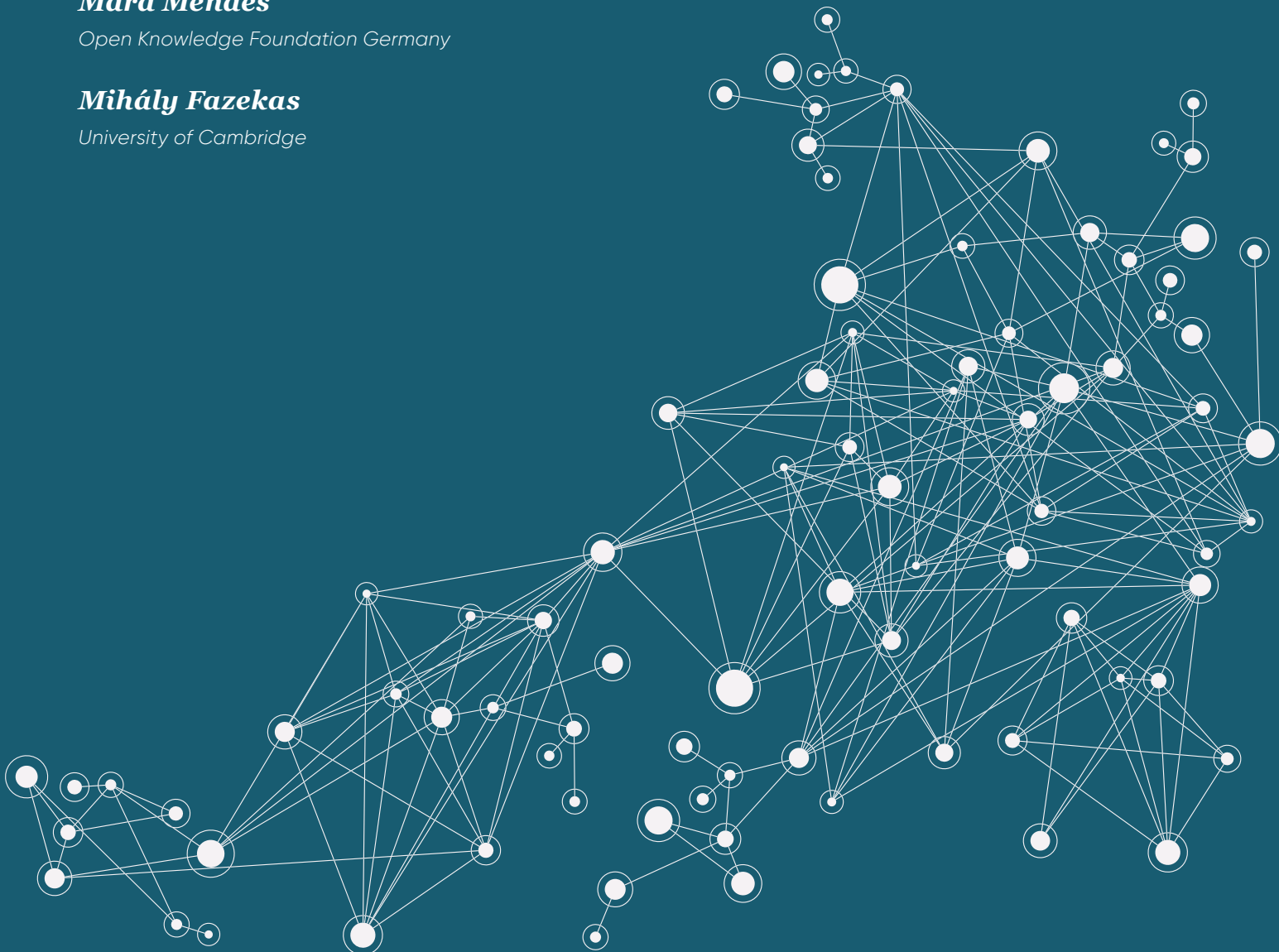
Towards More Transparent and Efficient Contracting – Public Procurement in the European Union

Mara Mendes

Open Knowledge Foundation Germany

Mihály Fazekas

University of Cambridge



THE ISSUE

BACKGROUND

Approximately 15% of the EU's Gross Domestic Product is spent every year on procuring goods and services, and some estimates indicate that corruption increases the cost of government contracts by 20 - 25%. It is even more worrying that corruption in public procurement compromises widely supported public goals, such as building safe highways, high quality school buildings, or delivering medicine in time. These are a few of the main reasons why more research needs to be done on how to make public procurement more efficient and transparent. Addressing this gap is what the EU-funded, large-scale project **DIGIWHIST** does. This policy paper presents key data challenges in public procurement and proposes recommendations to improve the state of data and data use for better outcomes.

OPEN DATA AND PUBLIC PROCUREMENT

In the 34 European countries examined by DIGIWHIST¹, public procurement is regulated by national and supranational (EU) legislation. This means procurement processes and their publications are governed by monetary values (thresholds). Those thresholds determine the

ABOUT DIGIWHIST

DIGIWHIST, an EU Horizon 2020 funded project, brings together six European research institutes, with the aim of empowering society to combat public sector corruption. DIGIWHIST's goal is simultaneously to increase trust in governments and improve the efficiency of public spending across Europe.

It will do this through the systematic collection, structuring, analysis, and broad dissemination of information on public procurement and on mechanisms that increase accountability of public officials in all EU and some neighbouring countries (those include 28 EU Member States, the European Union, Armenia, Georgia, Iceland, Norway, Serbia, and Switzerland).

The project will compile and evaluate micro-level data using information from individual public procurement transactions and winning firms' finance and ownership structures. This data will be linked to information on aggregate asset and income declarations data in order to detect potential conflicts of interest in the system of public procurement, and more specifically, to identify systemic vulnerabilities in the respective legislations and their implementation.

1 - Cingolani, L., Fazekas, M., Kukutschka, R. and Tóth, B. (2016). Towards a comprehensive mapping of information on public procurement tendering and its actors across Europe. DIGIWHIST deliverable D1.1, see: <http://digiwhist.eu/publications/towards-a-comprehensive-mapping-of-information-on-a-procurement-tendering-and-its-actors-across-europe/>

way a tender has to be published at the national level and whether it has to be advertised at the European Union level. The latter is done on the European procurement platform Tenders Electronic Daily (TED)².

Procurement procedures involve a variety of stakeholders: procurement officers who design and implement tenders, experts who advise on content (e.g. engineers, medical staff) and bidders who bid on the actual tender. In addition, public procurement procedures are interesting for citizens who may want to find out what progress has been made in the construction of a public building or about who won the contract to supply their school canteen, for example. Linking procurement data with other datasets such as budget data creates even richer information on how money is spent.

Efficient public spending has increasingly become a focus of transparency advocates, with organisations across the globe launching projects aimed at increasing transparency in public procurement. The Open Contracting Partnership has developed a publication standard, and many NGOs have developed risk indicators across Europe. For its focus countries, DIGIWHIST has developed a set of variables under which procurement data for all 34 countries is analysed and published on one generic portal for easy comparison across borders. Indicators measuring transparency, corruption risks, and administrative quality are also applied to the datasets.

THE PROBLEM

Most countries that have been examined in DIGIWHIST research fail to publish their procurement data to an acceptable minimum standard. Many well-governed countries such as Sweden or Germany publish only those tenders which are regulated by EU Directives in a transparent and data-rich manner. Here, TED is the most reliable resource for open public procurement data. This is in striking contrast with Eastern European countries such as Romania or Croatia,

² - Tenders Electronic Daily, see <http://ted.europa.eu/TED/main/HomePage.do>

which have introduced low reporting thresholds of only a couple of thousand euros. This has made their procurement spending not only transparent, but also more competitive. With a few exceptions such as Italy and Estonia, no government publishes information on contract implementation, making it impossible to know what happens after the contract is awarded — for example, did the suppliers deliver on time and budget?

In addition to the lack of publicized information on the whole tender cycle, the sources on which procurement data is published can vary greatly and may even require the payment of a fee, making it very difficult for citizens to find the information they are interested in. Even on TED, some of the required fields are either not filled out or not filled in a standardised way, which makes locating a given tender as well as comparing different tenders sometimes impossible. All these obstacles create an opaque environment in which procurement practitioners, bidders, and citizens find themselves.

OPPORTUNITIES AND BENEFITS

Publishing procurement data in an open data format opens a wide range of opportunities. It empowers governments to produce better analytics, which creates vast learning opportunities across authorities. Better and more accessible data can also be used by potential and actual bidders to assess opportunities and evaluate their own performance internally. This would ultimately lead to more competition and ideally better outcomes.

The availability of procurement spending statistics is also a challenge at the EU level, in spite of extensive EU-wide regulations. Such data would enable civil societies to better understand government performance and enable civil society to hold governments more accountable.



Figure 1.

Coverage of the full tender cycle

Only a few countries publish information on contract implementation (full coverage was only available until 2012 in case of Hungary)

RECOMMENDATIONS

1. GOVERNMENTS SHOULD SET UP A COMPREHENSIVE CENTRAL PUBLIC PROCUREMENT PLATFORM

Providing comprehensive public procurement information free of charge in an easy-to-use format to all interested parties is expected to increase market transparency, decrease transaction costs, and facilitate government accountability. Hence, a well-functioning central public procurement platform should contribute to achieving value for money in public procurement as well as increase integrity throughout the public sector. The DIGIWHIST portal opentender.eu, featuring all of the above, is in development and will be launched at the beginning of 2018.

2. GOVERNMENTS SHOULD COMMIT TO PUBLISHING PROCUREMENT DATA BY DEFAULT IN AN OPEN DATA FORMAT

Publishing public procurement data in a timely, simple, and easy-to-understand format and publishing information as machine readable data are essential for lowering the barriers to data use and reuse by all stakeholders. As recommended by international civil society organisations like the Open Knowledge Foundation, the Sunlight Foundation, or the Open Contracting Partnership, governments must adhere with machine-readable file formats such as CSV, JSON and XML to ensure usability. Users should be also able to download data in bulk either as .csv or through an API. The number of data publication forms should be kept to the very minimum in order to minimize complexity facilitating stakeholder engagement with the data.

3. GOVERNMENTS SHOULD PRESCRIBE LOW REPORTING THRESHOLDS WITH THE SAME REGULATORY FRAMEWORK FOR ALL PUBLIC BODIES AND SPENDING AREAS

Governments should implement low monetary publication thresholds and apply public procurement rules to all public bodies and spending areas. Ideally, monetary thresholds should close to 0€ so that most public spending through public procurement systems is transparently published. In order to carefully balance the demand for transparency and the associated administrative burden, lighter procedural regime should be applied to the smallest value contracts, with full procedural and transparency rules required for higher value contracts starting from about 30-40,000€.

4. GOVERNMENTS SHOULD INCREASE THE DEPTH OF PROCUREMENT DATA PUBLISHED

This should include:

- publish public procurement data relating to the whole procurement cycle on existing public procurement platforms including at a minimum call for tenders, contract awards and contract completion/implementation announcements.
- publish information on amendments, modifications, and failed tenders in a structured and reliable format so that up-to-date information is available on all tenders.
- publish at least a minimum set of variables essential for government accountability and transparency of bidding, such as the description of the purchase, information on bidders and subcontractors, final payments, contract performance, and unique organisational identifiers.

5. GOVERNMENTS SHOULD FACILITATE THE LINK BETWEEN PUBLIC PROCUREMENT DATA AND FURTHER DATASETS

We recommend that governments establish the link between public procurement data and related datasets describing organisational behavior and performance using common organisational and contract IDs throughout different data systems, such as public procurement, payments, company registry, and court rulings.

6. GOVERNMENTS SHOULD LINK PUBLIC PROCUREMENT ANNOUNCEMENTS TO ORIGINAL PROCUREMENT DOCUMENTS BY DEFAULT

Those should include the full tender documentation and maps, plans, etc. Ideally, signed contracts should also be linked and easily available. Here, information on sub-contractors as well as contract amendments, invoices, and completion reports submitted should be linked to the dataset. Submitted bids or at least parts of them may be exempt from these stringent transparency rules for protecting commercially sensitive information or privacy of individuals.

7. GOVERNMENTS SHOULD INTRODUCE CONTROL MECHANISMS TO ENSURE DATA QUALITY IS MAINTAINED

We recommend that existing data reporting requirements are adequately enforced and data quality is increased to the legally mandated minimum throughout Europe. To ensure that all required data fields are filled out with truthful information, governments should consider introducing centralised control mechanisms and penalties for non-compliance.

8. GOVERNMENTS SHOULD LOWER BUREAUCRATIC BURDEN BY LINKING PUBLICATION SYSTEMS TO TENDER, CONTRACT AND PAYMENT MANAGEMENT SYSTEMS

If administrative datasets are linked, the officially verified (and supposedly correct) information should be automatically added to public procurement records to lower public procurement administrators' administrative burden as well as minimize the risk of erroneous data entry.

9. GOVERNMENTS SHOULD ENCOURAGE THE REGULAR USE OF PUBLIC PROCUREMENT DATA BOTH INSIDE AND OUTSIDE GOVERNMENTS

Governments who are the principal data guardians should promote the use of public procurement data within government and facilitate data reuse by non-governmental stakeholders such as civil society watchdogs and data provider firms. The use of public procurement data should be facilitated first by creating direct feedback mechanisms throughout the entire procurement process cycle (i.e. planning, tendering, awarding, implementation) involving all stakeholders from within and outside government.

An in-depth version of these recommendations has been published on the OpenTender website: <https://opentender.eu/blog/2017-03-recommendations-for-implementation/>

RESOURCES AND ADDITIONAL INFORMATION

Cingolani, L., Fazekas, M., Kukutschka, R. and Tóth, B. (2016). Towards a comprehensive mapping of information on public procurement tendering and its actors across Europe. DIGIWHIST deliverable D1.1, see: <http://digiwhist.eu/publications/towards-a-comprehensive-mapping-of-information-on-public-procurement-tendering-and-its-actors-across-europe/>

Coviello, D., & Mariniello, M. (2014). Publicity requirements in public procurement: Evidence from a regression discontinuity design. *Journal of Public Economics*, 109, 76–100.

Czibik, Á., Tóth, B., & Fazekas, M. (2015). How to Construct a Public Procurement Database from Administrative Records? With examples from the Hungarian public procurement system of 2009-2012. Government Transparency Institute: Budapest.

Fazekas, M. and Toth, B. (2016) Assessing the potential for detecting collusion in Swedish public procurement. KKV: Stockholm. Available at: http://www.konkurrens-verket.se/globalassets/publikationer/uppdraagsforskning/forsk_rapport_2016-3.pdf

G20: G20 Principles for promoting integrity in public procurement. Available at: <http://g20.org.tr/wp-content/uploads/2015/11/G20-PRINCIPLES-FOR-PROMOTING-INTEGRITY-IN-PUBLIC-PROCUREMENT.pdf>

International Open Data Charter. Available at: <http://opendatacharter.net/principles/>

OECD/Sigma. (2014). The Principles of Public Administration. Paris: OECD/Sigma.

OECD. (2007). Integrity in Public Procurement. Good Practice from A to Z. Paris: OECD.

OECD (2016) Public Procurement Toolbox. Country case: Stakeholder engagement during the construction of Heathrow Airport Terminal 5. Available at: <https://www.oecd.org/governance/procurement/toolbox/search/stakeholder-engagement-during-construction-heathrow-airport-terminal-5.pdf>

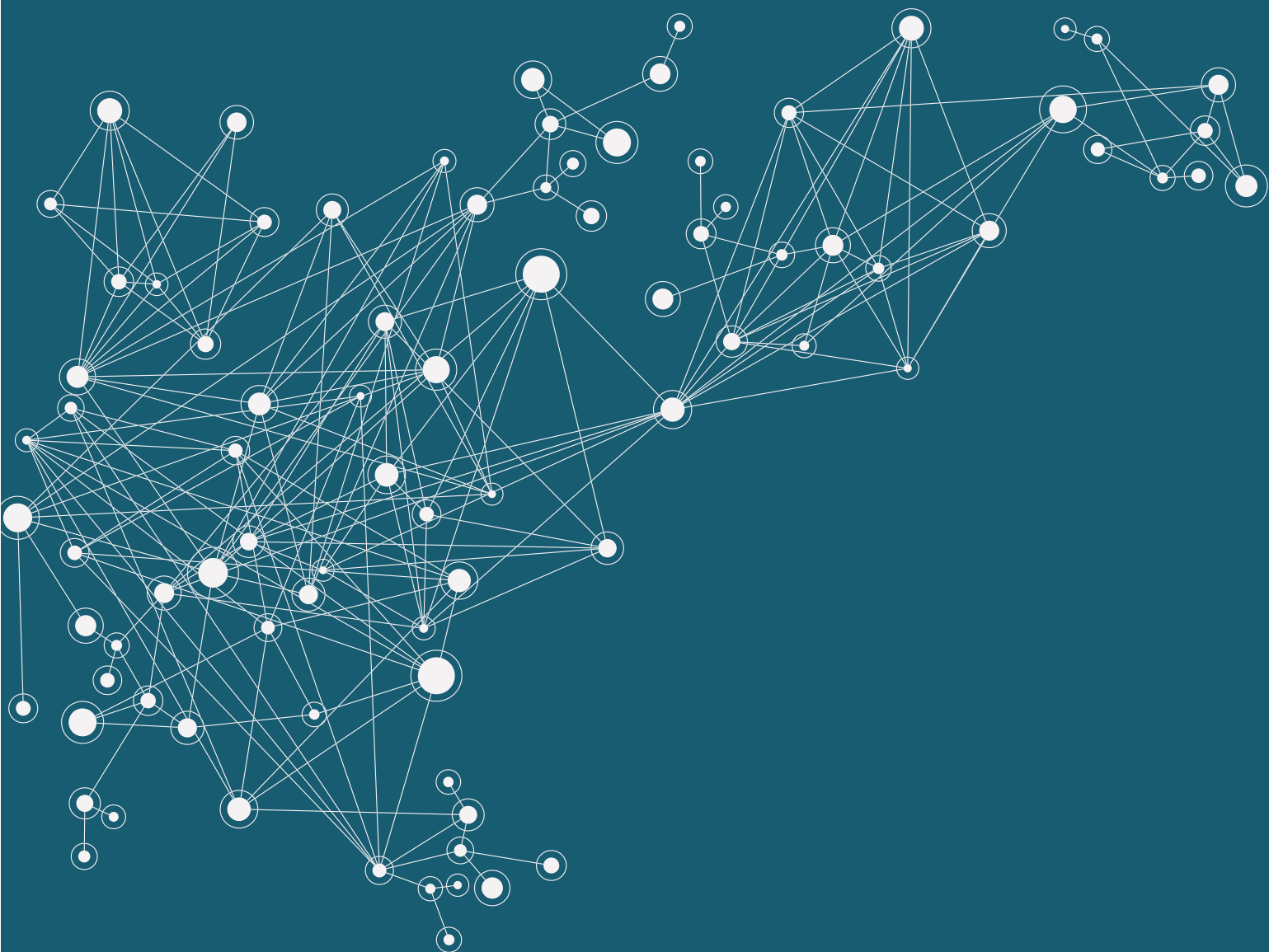
Open Knowledge Foundation Open Data Handbook. Available at: <http://opendatahandbook.org> and the Procurement Open Data Guidelines by the Sunlight Foundation. Available at: <https://sunlightfoundation.com/procurement/opendataguidelines/>.

Open Government Guide. Public Procurement. Disclose key documents and data. Available at: <http://www.opengovguide.com/commitments/publish-key-documents-and-data/>

Open Government Guide. Public Procurement. Link open contracting data with other sources of data. Available at: <http://www.opengovguide.com/commitments/link-open-contracting-data-with-other-sources-of-data/>

Šípoš, G., Samuek, S., & Martin, K. (2015). Not in force until published online. What the radical transparency regime of public contracts achieved in Slovakia. Bratislava: Transparency International Slovakia.

Van Den Heuvel, G. (2006). The Parliamentary Enquiry on Fraud in the Dutch Construction Industry Collusion as Concept Between Corruption and State-Corporate Crime. *Crime, Law and Social Change*, 44(2), 133–151.



WWW.DIGIWHIST.EU

Authors: Mara Mendes, Mihály Fazekas

Design: Bela Seeger, Nadine Stammen

Contact: Mara Mendes - (mara.mendes@okfn.de)