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Articles

Experience with the E.C. directives on public procurement: a survey of Dutch municipalities

Jan Telgen\(^1\) and Luitzen de Boer\(^2\)

In this article we present the findings of a 1995 national survey on Dutch municipalities’ compliance and experiences with the E.C. directives for public procurement.

Findings from a previous survey include the widespread lack of a municipal purchasing plan, a lack of a strategic view of the purchasing function as well as a clear undervaluation of purchasing’s importance. The results of this survey clearly indicate that compliance with the E.C. directives on public procurement is far from common practice. We estimate that some 80% of public purchases have erroneously been made without compliance with the E.C. directives. Summarising, we conclude that, despite purchasing’s importance and saving-potential, in general, Dutch municipalities still lack the necessary professional attitude towards their purchasing function.

Introduction

The purchasing function is of great importance for the business community as well as for governmental organisations. In industrial companies purchasing already accounts for 60 to 90 per cent of total turnover, and this share is expected to grow even further as companies tend increasingly to outsource their non-core activities.\(^3\)

In governmental organisations too, the role of purchasing is increasingly significant, especially in the light of the continuous pressure to cut public spending, both by central and local organisations. The Dutch General Auditor’s Office\(^4\) concluded in 1991 that the Dutch government in general lacks sufficient price awareness and does not pay enough attention to quality in its purchasing practices. In addition, the E.C. directives on public procurement play a significant role.

In 1995 a national survey was conducted\(^5\) to gain insight into the purchasing practices of Dutch municipalities, especially with regard to compliance with the E.C. directives.

\(^1\) NEV1 Chair of Purchasing Management and Professor of Management Science, University of Twente, Enschede, Netherlands; partner, Coopers & Lybrand.
\(^2\) PhD candidate, University of Twente.
\(^3\) J. Telgen, “Inzicht en overzicht: de uitdagingen van Beslisskunde en Inkoopmanagement”, Academical address at the University of Twente, Enschede, The Netherlands, 1994.
Research methodology

A previous survey\(^6\) was carried out in 1994 and focused on the financial magnitude of purchasing expenditures, the status of purchasing and perceived importance and organisational issues. Out of a total of 636 municipalities, 83 municipalities were involved in the 1994 survey. In order to obtain a more detailed picture of compliance with the E.C. directives, a follow-up survey took place in 1995. A number of questions from the 1994 survey were used again in 1995 and were supplemented by specific questions concerning compliance with E.C. directives. In the 1995 survey, 211 municipalities in The Netherlands were involved. More detailed information on the survey population can be found in Table 1, below.

<table>
<thead>
<tr>
<th>Municipalities</th>
<th>Total number</th>
<th>Number of municipalities that participated in the 1994 survey</th>
<th>Number of municipalities that participated in the 1995 survey</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt; 100,000 inhabitants</td>
<td>20</td>
<td>12</td>
<td>15</td>
</tr>
<tr>
<td>50,000–100,000</td>
<td>35</td>
<td>24</td>
<td>32</td>
</tr>
<tr>
<td>20,000–50,000</td>
<td>134</td>
<td>22</td>
<td>123</td>
</tr>
<tr>
<td>&lt; 20,000</td>
<td>447</td>
<td>25</td>
<td>41</td>
</tr>
<tr>
<td>Total</td>
<td>636</td>
<td>83</td>
<td>211</td>
</tr>
</tbody>
</table>

Both surveys were conducted by telephone. Every interview started by asking for the head of purchasing. In some cases, the head of purchasing referred to one or more additional officials who were subsequently interviewed. In the 1995 survey, in particular, it was necessary to interview officials other than heads of purchasing as in many cases the former were hardly aware of the E.C. directives. In general, heads of purchasing were only slightly familiar with the directives and their insight into the number of "E.C. purchases" in their municipality was very limited. The officials who actually had most knowledge of the directives in general and the specific situation in their municipality were officials working in the departments more frequently involved in E.C. purchases, such as Departments of Public Works.

Compliance with E.C. directives by Dutch municipalities

An indicator of the current low level of purchasing professionalism in Dutch municipalities is the difficulty many municipalities apparently have with following the E.C. directives on public procurement. The main objective of the 1995 survey was to arrive at a fair estimate of the compliance with E.C. directives. To this end we estimated the total number of municipal purchases in 1994 that,


\(^7\) We use the term "E.C. purchase" to refer to a purchase that exceeds the threshold sum that is applicable and therefore is or should be dealt with according to the specific E.C. directive.

either mistakenly or wrongfully, were not carried out according to the E.C. directives. We will refer to these purchases as "concealed E.C. purchases". Contrary to the municipal E.C. purchases which are published in official E.C. media (and thus easily traced), these concealed E.C. purchases are difficult to trace and have to be estimated from circumstantial evidence.

Published E.C. purchases

According to the E.U. databases, 82 out of the 636 Dutch municipalities reported at least one E.C. purchase in 1994. The figures in Table 2 show that E.C. purchases occur relatively often in larger municipalities, whereas they apparently hardly ever occur in smaller municipalities. In total 220 E.C. purchases were reported in 1994, of which 96 cases fall under the category of services, 105 under the category of supplies and 19 under the category of works. Services cover, among others, transport, garbage collection, insurance and cleaning services. Supplies include such items as computers, wheelchairs, means of transport, telecommunications hardware and office supplies. Works mainly consist of construction, buildings, installations and road networks.

Table 2. E.C. purchases in 1994

<table>
<thead>
<tr>
<th>Group</th>
<th>Number</th>
<th>Municipalities with E.C. purchases</th>
<th>Maximum number of E.C. purchases/municipality</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Number</td>
<td>Percentage</td>
</tr>
<tr>
<td>&gt; 100,000 inhabitants</td>
<td>20</td>
<td>20</td>
<td>100</td>
</tr>
<tr>
<td>50,000–100,000</td>
<td>35</td>
<td>23</td>
<td>66</td>
</tr>
<tr>
<td>30,000–50,000</td>
<td>59</td>
<td>15</td>
<td>25</td>
</tr>
<tr>
<td>20,000–30,000</td>
<td>75</td>
<td>10</td>
<td>13</td>
</tr>
<tr>
<td>&lt; 20,000</td>
<td>447</td>
<td>14</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>636</td>
<td>82</td>
<td></td>
</tr>
</tbody>
</table>

Concealed E.C. purchases

The respondents of the 221 municipalities that participated in the 1995 survey spontaneously mentioned 29 cases of concealed E.C. purchases, i.e. purchases that required public procurement according to the E.C. directives but in fact were not treated as such. The typical explanation for this was that municipalities at the time of the purchase were not aware of their obligation to follow the directives. However, in addition to this explanation, the survey revealed cases in which municipalities did indeed consciously refrain from using E.C. directives. Some of the situations in which justifications were offered for not using the directives were as follows:

- Some municipalities split purchases into several parts in such a way that the individual amount of each of these partial purchases did not exceed the threshold sum.
- Some municipalities did not consider renewal of a contract as a purchase.
- Some municipalities arranged for a private company to build a new building. Subsequently, the municipality would rent this building from this company and use the building for municipal purposes.
— A number of municipalities withdrew from co-operating with other municipalities in municipal purchasing co-operatives in order to make sure that the combined purchases would not exceed the thresholds.

— Knowing the thresholds, a number of municipalities consciously made sure that purchases would not exceed these thresholds.

Estimation of concealed E.C. purchases

In order to arrive at a fair estimate of the number of concealed E.C. purchases, we assumed that municipalities of comparable size would also carry out approximately the same number of E.C. purchases. Taking this assumption as a starting point, municipalities with the highest number of E.C. purchases in a given size-bracket can be used as benchmarks for the other municipalities of approximately the same size.

Of course this number can vary every year because of all kinds of incidental factors, e.g. additional works, expiry of contracts, etc. To eliminate the possible impact of these factors, the actual norm for each group was lowered to 75 per cent of the highest number of E.C. purchases for that particular group. Subsequently, in order to assess the robustness of the data, a norm of 50 per cent of the highest number of E.C. purchases was used. These analyses result in a number of concealed E.C. purchases that varies between 77 per cent and 83 per cent. Because of the potentially significant impact of the many small municipalities, the analyses were repeated without the data from the 229 municipalities that have less than 10,000 inhabitants. Without these small municipalities, the number of concealed E.C. purchases ranges from 69 per cent to 80 per cent (see also Table 3).

<p>| Table 3. Concealed E.C. purchases in municipalities with over 10,000 inhabitants |
|---------------------------------|-----------------|-----------------|-----------------|</p>
<table>
<thead>
<tr>
<th>Norm</th>
<th>Actual</th>
<th>E.C. purchases calculated</th>
<th>Percentage concealed E.C. purchases</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% of max. number</td>
<td>216</td>
<td>1059</td>
<td>80</td>
</tr>
<tr>
<td>75% of max. number</td>
<td>216</td>
<td>834</td>
<td>74</td>
</tr>
<tr>
<td>50% of max. number</td>
<td>216</td>
<td>708</td>
<td>69</td>
</tr>
</tbody>
</table>

The analyses were also performed using various different classes of municipalities in terms of their size. However, this clearly did not have a significant impact on the range of concealed E.C. purchases.

Finally, it should be noted that all analyses were based on the so-called internal benchmarking concept: the best-in-class sets the norm for the whole group. However, it may very well be the case that even a best-in-class municipality, i.e. the specific municipality that shows the highest number of E.C. purchases in its class, in fact had concealed E.C. purchases. This implies that the real percentage of concealed E.C. purchases may be even higher than our estimates suggest.

Regional differences

The Netherlands consist of 12 provinces. Again, using the internal benchmarking concept, the number of E.C. purchases that may be expected in each province has been determined. This number follows from multiplying the number of municipalities by the class-norm and subsequently adding up the results of the classes. The total number of expected E.C. purchases in each province less the actual
number of E.C. purchases that was reported then yields the total number of concealed E.C. purchases for that province. From all the provinces, Friesland ranks the highest in terms of concealed E.C. purchases (97.7 per cent). The province of Limburg shows the lowest percentage of concealed E.C. purchases. However, a score of 66.7 per cent concealed E.C. purchases still is a very high figure for a best-in-class province. Professionalisation of the municipal purchasing function therefore seems necessary in all Dutch provinces.

Preference for local suppliers

The 1995 survey showed that for a majority (57 per cent) of the participating municipalities, local suppliers were (to varying degrees) preferred over non-local suppliers. In practice this often means that in case of equal performance on price and quality, the local supplier is offered the deal and/or that below some kind of threshold only local suppliers are approached. In over a quarter of the municipalities that expressed preference for local suppliers, this preference was formally confirmed by the local council and laid down in an official council order. Naturally, such quasi-protectionistic actions are in clear conflict with one of the basic ideas behind the E.C. directives: improving the effectiveness of the market mechanism within the European Union.

Some 23 per cent of the municipalities indicated having done business with foreign suppliers at least once. For municipalities with more than 100,000 inhabitants the figure is 40 per cent. In only six cases (two per cent) did an E.C. purchase actually result in a contract with a foreign supplier. In some cases a foreign supplier asked for the specifications. However, afterwards it appeared that this was merely done out of curiosity; very rarely did a foreign supplier send in a quotation.

Normally, Dutch municipalities do not do business directly with foreign suppliers. In general, an intermediate (Dutch) supplier or representative is used. The results obtained in this survey indicate that this has changed little as a result of the E.C. public procurement rules, and that there is still a long way to go towards an open European market for municipal procurement.

Some other experiences with E.C. purchases

In this section, some other experiences with E.C. purchases expressed by Dutch municipalities are mentioned:

— In many cases, small municipalities called in external consultancy firms or (bigger) neighbouring municipalities for assistance; many smaller municipalities perceive the E.C. directives as complex, especially when it comes to the interpretation of the terms and definitions in the directives.

— A number of municipalities reported on difficulties with the publication of their E.C. purchases. For example, due to unclear formulations in the original contract notice, some municipalities had to publish an improved version of the notice.

— In some cases, municipalities stated that they had to inform local suppliers direct, as these suppliers were not aware of the public procurement publications.

— Some municipalities explicitly indicated that their policy was to await litigation and the related sanctions.

— Municipalities that had been involved in several E.C. purchases, however, stated that they had not had any problems with incorporating the E.C. directives in their purchasing practice.
Advantages of complying with E.C. directives were mostly reported by those municipalities that had most experience in applying these directives, while the less experienced municipalities focus on the disadvantages. In summary, the perceived advantages of complying with E.C. directives were:

— Suppliers are forced to send in quotations that are based on realistic, competitive prices. In this way, municipalities can often realise significant savings.
— Municipalities are “forced” to formulate clear and explicit specifications.
— The directives appear to be an effective means of avoiding corruption/bribery.
— Municipalities get in contact with new suppliers. These contacts would not normally have been established.

The reported disadvantages are:

— Strict compliance with E.C. directives requires extra time, paperwork and other administrative resources.
— The opportunities for negotiation (on price as well as other issues) are perceived to be rather limited.
— Foreign languages create problems when formulating specifications.
— Some criteria, e.g. architectural creativity, are difficult to formulate in a request for tenders.
— Joint investments with suppliers are difficult to realise because continuity in the relationship cannot be guaranteed on the part of the municipality.
— Some municipalities are opposed to small suppliers being excluded from obtaining a contract because of their inability to meet certain requirements, e.g. criteria concerning their sales volume or experience.
— Allocating business to non-local suppliers will have a negative impact on the local supply of employment.
— Some municipalities indicate that they expect problems when doing business with foreign suppliers because of cultural differences and/or practical difficulties. For example, if a municipality wishes to purchase wheelchairs from a foreign supplier, this will create a problem when the wheelchairs have to be adapted to the specific requirements of the final customers.

Most of these reported disadvantages stem from the municipalities’ mistaken interpretation or incorrect application of the E.C. directives. As such, they are more of an indication of a lack of purchasing professionalism, rather than of the poor quality of the E.C. directives. However, some municipalities argue that purchasing according to E.C. directives is in one respect a waste of resources: municipalities almost always end up with the suppliers they would have chosen anyway!

Conclusions and recommendations

Based on the results of the surveys we can conclude that in general Dutch municipalities clearly lack a professional approach towards their purchasing function.

With respect to the E.C. directives on public procurement, the survey clearly suggests that in Dutch municipalities the (proper)-use of these directives is far from common practice. The estimated percentage of all purchases that should have been treated in accordance with the directives but in fact were not, ranges from 77 per cent to 83 per cent. The main reason for not adopting the directives is not so much ignorance of them, but rather the expected administrative burden of an E.C. purchase. Municipalities fear complicated and time-consuming procedures in combination with a lot of
paperwork. The underlying goal of the directives, i.e. to create a more open and competitive European market for municipal purchases, has therefore not been achieved. Despite the E.C. rules, a majority of the municipalities maintain explicit preferences for local suppliers. In addition, foreign suppliers only rarely do business with Dutch municipalities. It is the authors' view that a stricter and more thorough monitoring of the municipalities' compliance with the directives is not the most effective way to realise the E.U.'s ultimate goals in this respect. We believe that a structural professionalisation of the municipal purchasing function is the key to more transparent (and therefore also more accessible) purchasing practices and ultimately to improved purchasing performance.
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