

# **Maltese Economic Operators' Share in the EU Cross-Border Public Procurement Market**

Rodianne Cilia Zarb

Master of Science in Public Policy and Strategic Management

Department of Public Policy  
Faculty of Economics, Management and Accountancy  
University of Malta

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## **Abstract**

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In the Single Market Act, public procurement has been recognised as a significant instrument in ensuring growth and competitiveness across the common market. In this regard, the Public Procurement Directives were reformed in 2014 to facilitate competition in the EU cross-border public procurement market by introducing flexible, transparent and efficient measures. Despite these efforts, studies record an overall low share of cross-border public procurement contracts and indicate disparities between countries penetration in the EU cross-border market. However, up to this date, studies were not carried out in the context of the 2014 Public Procurement Directives to explore which factors affect businesses participation in cross-border public procurement.

In order to identify Malta's share in the EU cross-border public procurement market and to explore key factors influencing economic operators' penetration in such market, the study analysed contract award notices over the period of 2006-2018 and carried out interviews with stakeholders and economic operators. The statistical analysis highlight Malta's insignificant share in the EU cross-border public procurement. Furthermore, the results from the thematic analysis indicate that the Public Procurement Directives, the contract characteristics, the availability of financial and human resources as well as the different business characteristics influence the propensity of Maltese economic operators to penetrate the EU cross-border public procurement market. The findings imply that cross-border public procurement is still an area where substantial improvement is necessary both at national and supranational level.

Keywords: Single Market, 2014 Public Procurement Directives, EU cross-border public procurement market, Maltese economic operators

To Amy and Ana

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## List of Acronyms

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<b>BPQR</b>	Best Price-Quality Ratio
<b>CANs</b>	Contract Award Notices
<b>ECJ</b>	European Court of Justice
<b>EEA</b>	European Economic Area
<b>ESPD</b>	European Single Procurement Document
<b>EU</b>	European Union
<b>MBB</b>	Malta Business Bureau
<b>MEAT</b>	Most Economically Advantageous Tender
<b>MEUSAC</b>	Malta-EU Steering & Action Committee
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>SME</b>	Small and Medium Enterprises
<b>TED</b>	Tender Electronic Daily
<b>TFEU</b>	Treaty on the Functioning of the European Union

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# **Chapter 1**

## **Introduction**

## 1.1 Background to the Study

The European Union (EU) has evolved from a community of six Member States to a Union of twenty-eight Member States with Malta joining in 2004 (European Union, 2019). All EU actions are founded on EU Treaties, also known as primary law, which serve as guidelines to the objectives and rules by which EU institutions and Member States need to abide (Davies, 2002). Each treaty is a binding agreement approved voluntarily and democratically by the EU institutions and all Member States. The EU was set-up to bring together European states on political, economic and social terms (Pinder, 2001). The principles which unite Europeans include peace, democracy, solidarity, freedom, prosperity, opportunity, equality, sustainability, and diversity (European Political Strategy Centre, 2017). The value of unity is highlighted in the Europe 2020 Strategy, which states that “Europe can succeed if it acts collectively, as a Union” (European Commission, 2010 p. 3). The concept of collectively can be traced in various dimensions such as the creation of the Single Market and of the single currency. (Harbour, 2012; Bieñkowska, 2018).

Throughout the years, several developments were carried out in order to build the Single Market and to strengthen trade on a European level (Pinder, 2001; Bretherton and Vogler, 2005). The Single Market is founded on four freedoms which enable goods, services, capital, and citizens to move freely from one Member State to another (Pinder, 2001). The Single Market Act, presented by the Commission on April 2011, suggested changes to the EU legislative framework in order to encourage sustainable growth, modernisation, innovation, increased economic confidence, and long-term competitiveness. The Single Market Act and the digital Single Market strategy have both been designed to eliminate the barriers that hinder companies from exploiting the maximum potential of the EU Single Market (Egan and Guimarães, 2017; Bieñkowska, 2018).

The Single Market is considered as the EU's most significant economic engine generating both competitiveness and future prosperity (Harbour, 2012; European Commission, 2017a; Bieñkowska, 2018; Sánchez, 2018). During an event on the Future of the EU's Single Market,

held in November, 2018, Mr Joe Tanti, CEO of the Malta Business Bureau (MBB), highlighted that although not everyone shares the same opinion "the vast majority of Europeans can certainly unite and declare that the EU has been as successful as it is because of the creation of the Single Market" (European Commission, 2018 p. 1). Nowadays, EU companies, thanks to the Single Market, have the opportunity to offer their services and products to 500 million potential customers (Bieńkowska, 2018). Malta alone has 113,256 registered business units<sup>1</sup> which can benefit from the Single Market and consequently reach aforementioned 500 million potential customers.

In literature it is widely thought that public procurement is one of the key instruments which can boost benefits brought about by the Single Market (European Commission, 2011; Bovis, 2012, 2013, and 2019; Harbour, 2012; Milosavljević et al., 2016). Public procurement is a highly fragmented process whereby contracting authorities award public contracts related to the supplies, works and services sectors to economic operators. The term 'contracting authorities' refers to "organisations that fall within the remit of the State, central or local Government and also bodies which are governed by public law" (Bovis, 2012 p. 59). On the other hand, the term 'economic operators' is explained in Council Directive 2014/24/EU as:

"any persons and/or entities which offer the execution of works, the supply of products or the provision of services on the market, irrespective of the legal form under which they have chosen to operate. Thus, firms, branches, subsidiaries, partnerships, cooperative societies, limited companies, universities, public or private, and other forms of entities than natural persons should all fall within the notion of economic operator, whether or not they are 'legal persons' in all circumstances" (Directive 2014/24/EU, 2014 p. 66).

The European Commission recognises the significance of public procurement and introduced a regime of EU Directives. The latest EU public procurement Directives, introduced in 2014, had to be transposed to national law by all Member States by April of 2016. Public procurement regulations mainly focus on eliminating barriers and on ensuring equal treatment across the Single Market, in order to increase competitiveness as well as participation in cross-border tenders (Bovis, 2012). A liberalised, competitive, and transparent public procurement market

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<sup>1</sup> Please refer to Appendix 1.



increases cross-border trade of services and products (Bovis, 2019). Nonetheless, regardless of the EU efforts on liberalizing and regulating the public procurement market through measures such as the Single Market Act and the public procurement acquis, one can still notice low share of cross-border public procurement taking place (PwC et al., 2011; Ramboll and HTW, 2011; Pîrvu and Bâldan, 2013; Dimitrova and Lakatos, 2016; European Commission, 2017b; Becker et al., 2019). Literature established the existence of disparities between countries and found the phenomenon of lower shares of cross-border public procurement in small EU countries (Pîrvu and Bâldan, 2013; Dimitrova and Lakatos, 2016; European Commission, 2017b). A study commissioned by the European Commission covering the period between 2009 to 2015 shows that Malta's penetration in the EU cross-border public procurement market is significantly low (European Commission, 2017b).

## **1.2 Research Scope**

Although literature shows existing differences between countries, research lacks in examining the reasons why small countries such as Malta are facing difficulties in competing with other countries in the EU cross-border public procurement market. Previous studies identified determinants that are related to the share of cross-border public procurement across the EU in general with no specific reference to the peculiarities of the different EU Member States (PwC, et al., 2011; Ramboll and HTW, 2011; Pîrvu and Bâldan, 2013; Kutlina Dimitrova and Lakatos, 2016; European Commission, 2017b). It was also noted that literature fails to examine determinants and factors of the EU cross-border public procurement market, especially after the new EU Directives were adopted by Member States. Accordingly, this study aims to enrich the research stream in the context of the latest EU public procurement Directives.

This study, via statistical analysis, identifies the Maltese share of cross-border contracts in the period between 2006 and 2018. It also highlights the trends as well as the correlation between different contract characteristics and awards of cross-border contracts to Malta. In addition, via interviews with stakeholders and economic operators, it explores the factors which influence the propensity of Maltese economic operators in penetrating the EU cross-border public

procurement market. This study is also useful as it highlights, according to the interviewees' point of view, how the latest EU public procurement legislation facilitated access to the EU public procurement market. Furthermore, this study helps in determining any existing gaps in the EU regulations that are influencing the EU cross-border public procurement market.

### **1.3 Research Aims and Objectives**

Accordingly, this study aims to determine the Maltese share as well as explore the factors which affect Maltese economic operators' participation in the EU cross-border public procurement market. The study intends to accomplish the following two objectives:

- to discover the Maltese share in the EU cross-border public procurement market; and
- to explore the factors which affect the probability of a Maltese economic operator to participate and win a cross-border public contract.

Achieving the above-mentioned objectives, will also help in fulfilling the third objective:

- to determine what measures can be introduced to aid Maltese economic operators in penetrating the EU cross-border public procurement market.

### **1.4 Research Questions**

The study aims to answer the following research questions, in the context of the latest EU public procurement Directives:

- i. What is the Maltese share in the EU cross-border public procurement market?
- ii. Which factors affect Maltese economic operators in participating in the EU cross-border public procurement market and how?

### **1.5 Overview of the Study**

This study kicks-off with the introductory chapter which provides a general overview of the research context and outlines the purpose as well as the scope of the study. The subsequent chapter, the literature review, presents a critical review of the relevant existing key studies on

the research topic. The following part, the methodology chapter discusses the rationale behind the research method used and delineates the research process adopted to satisfy the research questions. The fourth chapter, basing on contract award notices published on TED and semi-structured interviews with stakeholders as well as economic operators, presents and discusses the results of the statistical and thematic analysis on economic operators' penetration in EU cross-border public procurement. The final chapter summarises the results, provides recommendations and presents concluding remarks. Supporting material is also provided in the Appendices.

# **Chapter 2**

## **Literature Review**

## **2.1 Introduction**

The following literature review commences with the overarching concept of the Single Market and offers a general overview of EU public procurement. This chapter also identifies the advantages and limitations of the respective EU Directives and then moves to discuss the EU cross-border public procurement. Subsequently, a critical review of the key studies on the cross-border public procurement market is presented highlighting the determinants hindering the market.

## **2.2 The Single Market**

At an EU level, several initiatives are being carried out to strengthen the Single Market by reinforcing its four freedoms (European Commission, 2014, 2015a, 2017a). In the white paper on the future of Europe, the Single Market was considered as “the main ‘raison d’être’ of the EU27” (European Commission, 2017a). The Single Market Act provides a plan for the EU and its Member States to make the Single Market function better and identified twelve ‘levers’ including consumer empowerment, access to finance for SMEs, and public procurement (European Commission, 2011). Efficient public procurement plays a strategic role in the Single Market because it directly contributes to integrating EU firms and impacts economic growth (Harbour, 2012; Bovis, 2013, 2019; European Commission, 2015a, 2017a, 2017c; Becker et al., 2019).

A liberalised, competitive, and transparent public procurement market increases cross-border trade of services and products which will achieve significant public savings due to price convergence and transparency (Bovis, 2019). Cross-border public procurement contributes in strengthening the Single Market scope and is also considered as one of the indicators measuring the effectiveness of the Single Market (Harbour, 2012; Bovis, 2013, 2019; Becker et al., 2019). Monti (2010) in the report to the President of the European Commission on the Single Market highlighted that EU public procurement law is fundamental in supporting and maintaining the function of the Single Market.

## 2.3 EU Public Procurement

Public procurement refers to the purchasing process of: services, works, and supplies by contracting authorities from economic operators (Council Directive 2014/24/EU, 2014). Public procurement amounts to around 14% of the annual EU GDP (European Commission, 2017d) and 12% of the annual GDP in OECD countries (OECD, 2017). This highlights the fact that the public procurement process is a significant contributor to both economic growth and job creation. Consequently, public procurement makes a substantial contribution to achieving the Europe 2020 Strategy objectives for smart, sustainable, competitive and inclusive growth (European Commission, 2010).

The EU public procurement is propelled by EU-wide Directives (also known as secondary law) which ensure the following EU Treaty principles of equal treatment, proportionality, non-discrimination as well as transparency. The 'equality principle' ensures that all economic operators are treated in the same manner throughout the procurement process regardless of any existing differences between potential operators (Gelderman et al., 2006; Georgieva, 2017; SIGMA, 2018). The principle of 'proportionality' refers to the well-chosen non-excessive requirements in the tender specifications and the appropriate award criteria in line with the procurement objectives (Pîrvu and Bâldan, 2013; SIGMA, 2018).

The principle of 'non-discrimination' provide that economic operators are not discriminated on grounds of nationality. Even conditions such as the requirement for foreign firms to employ local labour or to reserve part of the awarded contract to sub-contractors from the Contracting Authority of the Member State are considered as discriminatory (Georgieva, 2017; SIGMA, 2018). This leads to the principle of 'transparency', which refers to the amount of information and promotion during all stages of the procurement process, to confirm its legitimacy and fairness (Georgieva, 2017; Šostar and Marukić, 2017; SIGMA, 2018). In the context of public procurement legislation, the principle of 'transparency' is perceived as an anti-corruption measure (Pîrvu and Tolea, 2014; Georgieva, 2017).

## 2.4 The EU Public Procurement Directives

### 2.4.1 The Evolution of the EU Public Procurement Directives

In line with EU Treaties, the public procurement Directives evolved to establish and maintain a level playing field supporting fair and open competition amongst EU Member States. Way back in the 1970s, the first set of Directives focused on the economic spectrum and considered public procurement as tools to increase competition and reduce costs to both contracting authorities and taxpayers (Calleja, 2016; Vajda, 2018). Despite this, it was argued that the Directives were limited in scope and largely ignored (Cox, 1995). The 2004 Public Procurement Directives continued to enhance competition and increase value for money by simplifying procedures; reducing barriers; increasing publicity opportunities and by promoting the use of electronic procurement mechanisms. It also introduced the competitive dialogue procedure, the dynamic purchasing system and the Most Economically Advantageous Tender (MEAT) award criterion (SIGMA, 2011; Bovis, 2012b).

Despite the various enhancements, the 2004 Public Procurement Directives received criticism from various scholars in the field of public procurement. Arrowsmith (2006) concerns on the poor drafting of the legislation, the intricacies, and the uncertainties created by the new provisions, such as the dynamic purchasing system. Similarly, Bovis (2012b) concluded that the introduced provisions of the competitive dialogue procedure are subject to manipulation. The 2004 public procurement legislation may not have offered the best simplification measures or legal certainty; however, it was a step forward in the use of electronic mechanisms. Furthermore, the 2004 public procurement legislation introduced the Tender Electronic Daily (TED) database, which entails the publishing of public procurement notices including Contract Award Notices (CANs). TED also facilitates the publicity of procurement tenders and data collection (Rees, 2006).

In December of 2012, the European Commission proposed a reform of procurement law to address several criticisms of the 2004 public procurement legislation such as: inflexibility, complexity, and uncertainty (Snider and Rendon, 2008; Sanchez-Graells, 2014; Bovis, 2019). In

addition, practitioners argued that the need for reform was brought about by economic, social, political and budgetary changes registered in recent years which called for simplified procurement process and efficiency in the use of public funds (Telles, 2013; Pîrvu and Tolea, 2014; Popescu et al., 2016; Šostar and Marukić, 2017).

#### 2.4.2 The Latest EU Public Procurement Directives

The latest legislative package on public procurement was adopted by the European Parliament and the European Council in February of 2014. The package comprised of the following Directives:

- Directive 2014/23/EU on the award of concession contracts (Directive-2014/23/EU, 2014);
- Directive 2014/24/EU which repeals Directive 2004/18/EC on public works, supply and service contracts (Directive 2014/24/EU, 2014); and
- Directive 2014/25/EU which repeals Directive 2004/17/EC on procurement by entities operating in the water, energy, transport, and postal services sectors (Directive-2014/25/EU, 2014).

The EU Directives set the procedures for the procurement process of tenders which have an estimated value of not less than the specific thresholds (net of VAT) listed in Tables 2.1, 2.2, and 2.3.



Table 2.1: The Directive 2014/23/EU thresholds

	<b>Supply, Services and Design Contracts</b>	<b>Works Contracts</b>	<b>Social and other specific services</b>
<b>Defence and Security authorities</b>	€443,000	€5,548,000	n/a

Source: The Official Journal of the European Union

Table 2.2: The Directive 2014/24/EU thresholds

	<b>Supply, Services and Design Contracts (except for services specified under Article 13, 14 and 74)</b>	<b>Works Contracts (except for works contracts specified under Article 13)</b>	<b>Social and other Specific Services</b>
<b>Central Government</b>	€144,000	€5,548,000	€750,000
<b>Other Contracting Authorities</b>	€221,000	€5,548,000	€750,000
<b>Small Lots</b>	€80,000	€1,000,000	n/a

Source: The Official Journal of the European Union

Table 2.3: The Directive 2014/25/EU thresholds

	<b>Supply, Services and Design Contracts</b>	<b>Works Contracts</b>	<b>Social and other Specific Services</b>
<b>Utility Authorities</b>	€443,000	€5,548,000	€1,000,000

Source: The Official Journal of the European Union

Member States were requested to transpose the above-mentioned Directives into national legislation by April of 2016. The new legislative package on EU public procurement codified some areas of case law to increase certainty and comfort to contracting authorities. Researchers acknowledged the fact that the new legislative package introduced aspects to boost flexibility, competition, and simplification (Pîrvu and Tolea, 2014; SIGMA, 2018; Bovis, 2019) as well as social and environmental considerations (Vajda, 2018).

The reform of the EU public procurement Directives established measures to promote efficient procurement systems such as the mandatory usage of e-procurement and the reduction in minimum time-frames for tender's submission. The new Directives stipulate that all Member States shall provide free electronic access to all procurement documents by April of 2018 (Pîrvu and Tolea, 2014; European Commission, 2016). The use of e-procurement is set to reduce costs and increase efficiency, transparency, and competition (European Commission, 2015d; Fernandes and Vieira, 2015; Saastamoinen et al., 2018; SIGMA, 2018).

Two core measures to simplify the procurement process are the introduction of the European Single Procurement Document (ESPD) and the mandatory use of the eCertis online database. Both procedures are aimed to: reduce the administrative burden on bidders, encourage SMEs' participation and to simplify access to cross-border procurement (SIGMA, 2018; Bovis, 2019). On the one hand, through ESPD, economic operators are not required to provide certificates at the bidding stage. They are solely required to fill in the ESPD as a form of self-declaration of fulfilling the exclusion and selection criteria. The bidder will be requested to supply the certificates only when he is officially recognised as the awarded bidder (Pîrvu and Tolea, 2014; European Commission, 2016). On the other hand, the eCertis database facilitates cross-border procurement as it allows each contracting authority in the European Economic Area (EEA) to list down documents and eligibility criteria which they deem as acceptable from bidders. This measure facilitates access to cross-border procurement by allowing companies to know at an early stage which certificates need to be submitted when bidding in an EU Member State (Petrișor and Badia, 2013; Pîrvu and Tolea, 2014; European Commission, 2016).

In order to increase competition and create a level playing field for all economic operators, contracting authorities are also encouraged to split tenders into lots (Pîrvu and Tolea, 2014; European Commission, 2016; Bovis, 2019). Those contracting authorities that do not split a tender into lots are requested to provide a justification for not doing so (Bovis, 2019). This approach was adopted to facilitate SMEs participation in the procurement process since studies indicate that the size of the tender highly impacts the probability of it being awarded to an SME (Grimm et al., 2009; PwC et al., 2014; Flynn, 2017; Loader, 2018; Bovis, 2019). Anchustegui (2016) explained that dividing tenders into lots bolsters the chances and leads to "SMEs to get a slice of the procurement pie" (p. 14)

## **2.5 The Limitations of the EU Public Procurement Directives**

Despite the notable enhancements introduced by the 2014 Public Procurement Directives, scholars highlight limitations varying from lack of harmonisation, corruption to home bias.

### 2.5.1 Lack of Harmonisation of the EU Public Procurement Directives

Bovis (2019) highlights that the prevailing “deficiency of the Public Procurement Directives is their porosity which is caused by non-exhaustive harmonisation” (p. 15). This porosity is undermining their effectiveness and is consequently restricting the extension of their provisions. Amongst other areas, the Public Procurement Directives exclude from their scope: public contracts below certain thresholds; public contracts based on exclusive rights; secret contracts and contracts related to the protection of Member States’ vital interests (Bovis 2019). Interestingly, these contracts represent around 80% of public procurement expenditure by Member States (Telles, 2013; Bovis, 2019).

The European Court of Justice (ECJ) case law has made it abundantly clear that when contracts are excluded from the scope of the Public Procurement Directives but still hold ‘cross-border interest’, contracting authorities are nonetheless required to conform to the fundamental principles derived from EU Treaties (Bovis, 2012b, 2019; Telles, 2013; SIGMA, 2014; Court of Justice of the European Union, 2018). For example, in the *Medipac-Kazantzidis* case law (C-6/05), the court concluded that contracting authorities need to abide by principles of transparency and non-discrimination whenever it comes to awarding contracts below the stipulated thresholds of the Directives (SIGMA, 2014). Similarly, in *Correos* case law (C-542/02), the court concluded that contracting authorities need to abide by the principle of equal treatment (SIGMA, 2014).

One should note that the prerogative to determine whether a contract has ‘cross-border interest’ or not lies in the hands of the contracting authorities. However, such an assessment is still subject to judicial review (Telles, 2013; Bovis, 2019). The issue lies in the fact that there is no one legal definition as to what leads to ‘cross-border interest’ which in turn creates legal uncertainty. Telles (2013) highlights four reasons why this approach is ambiguous: past interest from foreign economic operators does not necessarily mean future interest or lack thereof; newly based contracting authorities will have no basis for comparison; it is difficult for contracting authorities to gauge hypothetical interests from foreign economic operators if the

former are unfamiliar with the broader EU market; and finally, this approach leaves contracting authorities with the risk that their assessment of no 'cross-border interest' is later found erroneous by the ECJ.

The fact that the Public Procurement Directives exclude certain contracts from their scope is only one of the factors leading to a lack of harmonisation. As per Article 288 of the Treaty on the Functioning of the European Union (TFEU), "a Directive shall be binding as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods" (TFEU, 2012 p. 174). Although the Public Procurement Directives lay down the concepts and principles of the public procurement regime, they give a certain degree of discretion and flexibility to Member States and contracting authorities. This discretion manifests itself in the choice of procurement concepts such as the procurement procedure and the award criteria (Trybus and Andrecka, 2017; Bovis, 2019). Critics argue that the 2014 Public Procurement Directives leave Member States with considerable legislative discretion which results in a low level of harmonisation (Trybus and Andrecka, 2017; Bovis, 2019). To some extent, this is understandable given the different legal traditions and competing interests of each EU Member State (Elsner and Kromer, 2001; Roberto and Dacian, 2012).

### 2.5.2 Corruption in Public Procurement

Another limitation of the Public Procurement Directives is their inability to eradicate or limit corruption. As indicated by the European Commission (2015c), the public procurement market "is frequently perceived as a corruption hotspot from which no EU country is immune". Several scholars argue that in public procurement, the complexity of the process, the amounts involved and the high level of discretion in the hands of contracting authorities, leave room for possible corruption (Ferwerda et al., 2017; Georgieva, 2017; Šostar and Marukić, 2017). This also leads to a tempting opportunity for public officials and economic operators to take advantage from the re-distribution of public funds during any stage of the procurement life-cycle (Søreide, 2002; OECD, 2005; Lindskog et al., 2010; Ferwerda et al., 2017; Georgieva, 2017; Šostar and

Marukić, 2017). Some academics argue that the most frequent episodes of corruption occur during the tender evaluation stage particularly, when the MEAT criterion is used (De Vries and Yehoue, 2013; Georgieva, 2017). In Georgieva's words:

“The contracting authority is always interested, in its capacity as bribe-taker, to motivate the evaluation of candidates in such a way that the ‘impartially chosen’ winner would appear, beyond all doubt, to be the candidate who has presented the most economically advantageous tender. Where the procurement award criteria are the lowest price, corrupt practices regarding candidate qualification are naturally somewhat more sophisticated” (Georgieva 2017, p 61)

Participating in a procurement procedure is equally time-consuming and expensive. This encourages many tenderers to engage in corrupt practices with a view to enhance their probability of winning the tender. The perception that everyone else is also already involved in corrupt practices is another reason which contributes to corruption (Søreide, 2002; Georgieva, 2017).

Corruption in public procurement presents various direct and indirect costs. Companies involved in corruption tend to recover their money by inflating their prices and/or by providing sub-standard work. Unfortunately, the dark figure of corruption makes it difficult to measure the exact cost (OECD, 2015, 2016). Studies undertaken on construction projects indicate that the value lost through corruption is estimated to be in the region between 20-30% of project value (Stansbury, 2005; Wells, 2013). Similarly, a study undertaken by PwC and Ecorys (2013) on 190 public procurement cases found that the direct public loss due to corruption amounted to 13% of the budgets involved. With regard to indirect costs, corruption in public procurement may distort competition and limit the participation of foreign investors (OECD, 2016).

### 2.5.3 Home Biased Public Procurement

Some researchers opine that corruption is the main determinant of home biased procurement (Burguet and Che, 2004; Compte et al., 2005; Burguet and Perry, 2007). Home biased public procurement is a pervasive phenomenon that is well documented in both theoretical and empirical literature, which jointly outline the occurrence, effects, and determinants of home biased procurement. Since the 1970s, the contributions by Baldwin (1972) and Lowinger (1976)

provided theoretical evidence of home biased procurement in the United States and in the European Union. Lowinger (1976) found that discrimination against foreign bidders is the main reason for home biased procurement whilst other factors such as the provision of auxiliary services and familiarity with Government's operations are also influential. McAfee and McMillan (1989) provided further theoretical arguments that Governments tend to favour domestic firms in order to stimulate domestic growth and help disadvantaged sectors in their economy. A clear example of this is when contracting authorities tend to split-up large contracts so that they fall below the EU thresholds and are consequently excluded from the scope of the Public Procurement Directives (Rickard and Kono, 2013).

The subsequent contributions by Trionfetti (2000) and Shingal (2015) provided proof on the presence and consequences of home bias in public procurement. The former investigated the import shares of 22 industrialised countries whilst the latter analyses the public purchasing process by the Japanese and Swiss Governments respectively. These studies found that Governments tend to import significantly less than the private sector and that their purchases are home biased. In addition, they found out that home bias procurement has adverse effects on trade flows and international specialisation predominantly in monopolistic competitive segments and in sectors dominated by a large share of public expenditure (Trionfetti, 2000; Shingal, 2015).

The theoretical and empirical evidence of home bias in public procurement led to another set of researchers to study the level, determinants, and factors affecting cross-border public procurement in the EU. In this regard, the introduction of TED<sup>2</sup> presents a breakthrough in research on EU public procurement as it provides harmonised microdata on awarded contracts within the EU Member States (EU Open Data Portal, 2019). For example, the TED enables researchers to identify the country awarding the contract and the country winning the said contract (EU Open Data Portal, 2019). The work of PwC et al. (2011); Ramboll and HTW (2011); Pîrvu and Bâldan (2013); Dimitrova and Lakatos (2016); European Commission

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<sup>2</sup> TED database was introduced in the 2004 Public Procurement Directives and is available on <https://data.europa.eu/euodp/en/data/dataset/ted-csv>

(2017b); and Becker et al. (2019) will be examined below. All these researchers made primarily use of the TED database to examine EU cross-border wins within different time-frames, albeit some of them covered the same period of years. However, before proceeding to this analysis, it is imperative to distinguish between direct and in-direct cross-border procurement.

## **2.6 EU Cross-Border Public Procurement**

Direct cross-border procurement is quite straight-forward as it refers to public contracts won by foreign companies which are not established in the domestic market. Indirect cross-border procurement is more complex as it occurs when the contractor is either: a locally established subsidiary of a foreign firm; or a domestic firm but is making use of a foreign subcontractor during the implementation of the contract; or a domestic firm involved in a joint venture/consortium with a foreign partner; or even a domestic firm importing supplies to perform the awarded contract (Kommerskollegium, 2011; Ramboll and HTW, 2011).

The work of PwC et al. (2011) covered the 2006-2010 period by analysing a sample of 540,000 CANs. The study of Ramboll and HTW (2011) analysed three years (2007, 2008 and 2009) within the same timeframe but took a relatively smaller sample of 30,000 CANs. The study conducted by Pîrvu and Bâldan (2013) covered an additional two years as they analysed the period of 2007-2011. However, the sampling size was much smaller than the previous two studies as it only covered 5,064 CANs. More comprehensive studies were subsequently carried out by Dimitrova and Lakatos (2016) and by the European Commission (2017b). The former analysed CANs<sup>3</sup> published during the period of 2008-2012 whilst the latter analysed CANs<sup>4</sup> published during the period of 2009-2015. More recently, the study conducted by Becker et al.

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<sup>3</sup> The CANs published in the 2008-2012 period were processed to remove reporting errors due to non-compliance (around 30% of the contracts) and CANs with values below EUR 1,000 and above EUR 200 million. A total of 1,223,731 CANs were analysed in this study.

<sup>4</sup> The CANs published in the period between 2009-2015 were processed to remove any contract values which is less than €1,000 and more than €200,000,000. However, contracts with no values were not excluded when calculating the total number of contracts. A total of 3,084,096 CANs were analysed in this study.

(2019) seeks to give quantifiable insights regarding the effectiveness of the 2014 Public Procurement Directives by analysing CANs<sup>5</sup> during the period between 2009 and 2017.

Despite differences in the sampling methodologies and the periods covered, all the above-mentioned studies concluded that the share of direct cross-border procurement is significantly low both in terms of quantity and value of awarded contracts. With regards to the quantity of contracts, averages ranged from 1.4% (Dimitrova and Lakatos, 2016) to 5.2% (Pîrvu and Bâldan, 2013). In terms of contract values, the results were slightly higher with averages ranging from 3.5% (European Commission, 2017b) to 5.5% (Pîrvu and Bâldan, 2013). The reviewed studies concluded that no single trend could be established as the figures remained relatively stable throughout the years under review (PwC et al., 2011; Ramboll and HTW, 2011; Pîrvu and Bâldan, 2013; Dimitrova and Lakatos, 2016; European Commission, 2017b). Interestingly, Becker et al. (2019) found that the number and value of cross-border procurement took a decreasing trend during the period between 2015 and 2017. This is quite surprising considering the adoption of the new Public Procurement Directives, wherein one of the declared objectives is “increasing access to procurement markets” (Becker et al., 2019 p. 37).

From the studies under review, the study conducted by Ramboll and HTW in 2011 and subsequently by the European Commission (2017b), were the only two studies which analysed indirect<sup>6</sup> cross-border procurement in the EU. The former used Dun and Bradstreet professional services and the latter used the Orbis database to check any corporate linkages of the firms identified in the TED database. The picture for indirect cross-border procurement is more encouraging. In fact, in the Ramboll and HTW (2011) study, the number and value of cross-border contracts reached 11.4% and 12.4% respectively. In contrast, in the subsequent study by the European Commission, (2017b), the quantity and value of cross-border contracts reached 19.9% and 18.6% respectively.

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<sup>5</sup> The amount of 4,630,484 contract notices were published during the period between 2009 and 2017. However, Becker et al. (2019) adopted Dimitrova and Lakatos (2016) cleaning method as they eliminated CANs with no specified value and award notices with values below EUR 1,000 and above EUR 200 million. A total of 2,480,780 CANs were analysed in this study.

<sup>6</sup> Due to the complexity in determining whether the winning bidder imported any of his supplies to perform the awarded contract or whether the contract was awarded through subcontracting or consortia, both studies analysed indirect cross-border procurement through foreign affiliation only.



## **2.7 Determinants of Cross-Border Public Procurement**

Whilst the reviewed studies agree that the level of cross-border public procurement in the EU has been low, particularly in direct contracts, there are some contrasting results in what determines the propensity of cross-border wins. This may be attributed to the differences in the sampling methodology and the different periods covered by these studies. In addition, not all studies examined the same determinants. The similarities and differences in the determinants of EU cross-border, which emerged from these studies will be discussed below.

### **2.7.1 Historical, Cultural and Geographic Proximity**

Studies indicate that factors such as geographical location, historical, and cultural links have an important influence on the likelihood of cross-border awarded contracts (PwC et al., 2011; Ramboll and HTW, 2011; Pîrvu and Bâldan, 2013; European Commission, 2017b). For example, Ramboll and HTW (2011) noted that 84% of direct cross-border contracts awarded by Austria were won by economic operators in Germany whilst 37% of direct cross-border contracts awarded by Malta were won by firms in the UK. Similarly, the study by the European Commission, (2017) found that Austria awarded 54% of direct cross-border contracts to firms in Germany whilst Malta awarded 37% of direct cross-border contracts to UK firms. Similar historical, cultural and geographic relationships were even noticed in indirect cross-border procurement (Ramboll and HTW, 2011; European Commission, 2017b).

### **2.7.2 Country Characteristics**

Apart from geographic, historical and cultural factors, research shows that population size is correlated with the propensity of cross-border wins. On the one hand, Pîrvu and Bâldan (2013) discovered the low involvement in cross-border public procurement by economic operators from small EU States such as Cyprus, Malta, and Luxembourg. On the other hand, other studies concluded that direct cross-border contracts are more likely to be awarded by smaller States rather than larger ones (Ramboll and HTW, 2011; PwC et al., 2011; Pîrvu and Bâldan, 2013; Dimitrova and Lakatos, 2016; European Commission, 2017b). Nonetheless, no trend was

recorded between the size of the country and the level of indirect cross-border procurements (Ramboll and HTW, 2011; European Commission, 2017b). The studies conducted by PwC et al. (2011) and Dimitrova and Lakatos (2016) highlight that countries with a high GDP per capita tend to award more direct cross-border contracts. In contrast, the studies by Ramboll and HTW, (2011) and the European Commission, (2017b) did not find any correlation between the country's GDP and the propensity to award direct and indirect cross-border contracts.

### 2.7.3 Procurement Procedures and Award Criteria

Whilst most studies examined concur that certain determinants of cross-border wins are beyond the control of contracting authorities, there are other determinants which depend on the choices of the contracting authorities. The use of the negotiated procedures was predominantly found to increase the probability of both direct and indirect cross-border public procurement Ramboll and HTW, 2011; PwC et al., 2011; Dimitrova and Lakatos, 2016; European Commission, 2017b).

As regards the award criteria, studies noted different correlations between the award criteria and cross-border public procurement. Ramboll and HTW (2011) concluded that the award criteria were only found to have a significant influence on the share of indirect cross-border procurement. They found that the MEAT criterion is more likely to lead to cross-border wins than the lowest price criterion. In contrast, the recent study conducted by the European Commission (2017b) explained that the propensity of direct cross-border wins increases with the use of the MEAT criterion whilst the propensity of indirect cross-border wins increases with the use of the lowest price criterion. It is important to note that the 2014 Public Procurement Directives introduced a new terminology, the Best Price-Quality Ratio (BPQR) criterion, to substitute the previously used MEAT criterion.

### 2.7.4 Contract Characteristics

Another determinant which seems to impact the incidence of cross-border contracts is the contract category, irrespective of whether it is for services, supplies or works. In the studies being examined, there is a consensus that the share of cross-border is higher in the case of

supplies rather than for services or works (Ramboll and HTW, 2011; Dimitrova and Lakatos, 2016; European Commission, 2017b). Interestingly though, in the study conducted by Becker et al. (2019), this was only the case in terms of values as services were recorded to have the highest share in terms of numbers.

Some of the studies also noted that the propensity of cross-border wins increases when the contract is financed by EU Funds (PwC et al., 2011; Dimitrova and Lakatos, 2016; Becker et al., 2019) and when the value of the contract is high (Ramboll and HTW, 2011; Dimitrova and Lakatos 2016; Becker et al., 2019). For the latter, this may imply that companies are less attracted to participate in low-value cross-border tenders due to higher costs in fulfilling the contract specifications in another country (PwC et al., 2011; Dimitrova and Lakatos, 2016; Becker et al., 2019). Interestingly, the propensity of winning cross-border contracts seems to decrease if a lot of bids are submitted for the same contract (Dimitrova and Lakatos, 2016; European Commission, 2017b). This finding may imply that contracting authorities are more likely to award cross-border contracts when there is less competition from domestic firms (Dimitrova and Lakatos, 2016; European Commission, 2017b) or when the nature of the work requires expertise which domestic firms may not possess (European Commission, 2017b).

### 2.7.5 Company Size

Whilst research shows that contract characteristics have an impact on the incidence of cross-border awards, the size of the company is another determinant that should not be neglected. Studies show that the share of SMEs in value terms is low when compared to large companies. Amongst the SMEs, micro-enterprises were found to occupy the lowest share in cross-border wins (Ramboll and HTW, 2011; European Commission, 2017b; Becker et al., 2019). This is predictable given the existing literature on SMEs' disadvantages in bidding and winning public contracts (GHK and Technopolis, 2010; Flynn and Davis, 2015; Becker et al., 2019; Muñoz-Garcia and Vila, 2019). For example, Flynn and Davis (2015) noted that the higher the number of employees the more likely it is for a company to tender and win domestic public contracts. Similarly, another study on Spanish SMEs shows that such companies find it difficult to compete

concurrently in both domestic and cross-border public procurement. They achieve much better results when they focus their efforts to tap into either domestic or cross-border contracts (Muñoz-Garcia and Villa, 2019).

## **2.8 Factors Hindering Cross-Border Public Procurement**

The studies conducted by Ramboll and HTW (2011) and the European Commission (2017b) were the only two, from the studies being reviewed, which conducted surveys with economic operators to examine the factors hindering cross-border public procurement. Both studies confirmed that one of the major factors perceived by businesses as hindering cross-border public procurement in the EU is the element of home bias, with percentages reaching as high as 46% (Ramboll and HTW, 2011) and 39% (European Commission, 2017b). This finding is unsurprising, since, as discussed earlier in this chapter, home biased public procurement has been a persistent phenomenon (Baldwin, 1972; Lowinger, 1976; McAfee and McMillan, 1989; Trionfetti, 2000; Rickard and Kono, 2013; Shingal, 2015).

Both studies also highlight that other factors such as a high level of competition from national companies and unfamiliar legal context were highly considered as obstacles. The former finding supports the study of Dimitrova and Lakatos (2016), wherein the propensity of winning cross-border contracts was recorded to decrease when there is a large number of bids. As regards the legal context, it should be noted that both surveys were carried out before the new public procurement legislation came into force. Hence, that is why the mandatory use of the eCertis database to provide more legal clarity to companies interested in cross-border bidding came into force (Petrișor and Badia, 2013; Pîrvu and Tolea, 2014; European Commission, 2016).

Apart from the factors mentioned above, obstacles such as language barriers and inexperience in conducting foreign business were also considered as highly relevant in the survey conducted by Ramboll and HTW (2011). On the other hand, the costs incurred due to geographical distance were more prominently found in the survey undertaken by the European Commission (2017b). These results confirm that language, geographical distance and lack of international

experience are 'natural' barriers in cross-border procurement (Smith and Lilico, 2014; Carboni, et al., 2018). Finally, other barriers such as the risk imposed by currency fluctuations; unfamiliar technical specifications; and differences in tax or social insurances were also mentioned by respondents, albeit both surveys concluded that these obstacles have a lower impact on cross-border public procurement (Ramboll and HTW, 2011; European Commission, 2017b).

## **2.9 Conclusion**

This chapter offered a critical review of the empirical research on EU public procurement with particular reference to EU cross-border public procurement. Previous literature provides an overview of the level and determinants of cross-border public procurement and paid little attention to the peculiarities of different Member States. It was also noted that only one study examined the level of cross-border contracts after the adoption of the 2014 Public Procurement Directives. Furthermore, studies have not yet been conducted to observe the factors which affect the cross-border public procurement market following the 2014 public procurement Directives. Hence, this gap in literature led to the conception of this study, which aims to determine the Maltese share in EU cross-border market public procurement and to explore the factors which influence the penetration of Maltese economic operators' in this market. The next chapter will discuss what research methods will be adopted to accomplish the main aim of this study.

# **Chapter 3**

## **Research Methodology**

### **3.1 Introduction**

The methodology chapter outlines the research approach used to answer the research questions. This chapter represents the rationale behind the choice of data collection and analysis methods. It also gives an outline of the research process whilst highlighting the advantages and limitations encountered during the study.

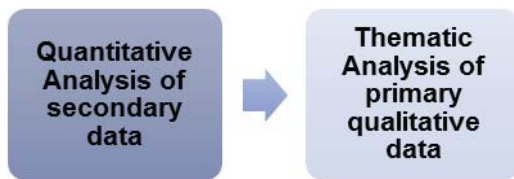
### **3.2 Research Purpose**

The study is designed to fulfil both an explanatory and an exploratory purpose. The purpose of this research is explanatory as it intends to discover trends and relationships between contract characteristics and the share of cross-border public procurement. It is also exploratory as the researcher needs to understand “what is happening; to seek new insights; to ask questions and to assess phenomena in a new light” (Robson, 2002 p. 59). In this case, the ‘phenomena’ refers to the EU cross-border public procurement market and the ‘new light’ refers to the new measures introduced in the latest Public Procurement Directives. Hence, this research needs to discover whether any factors are influencing the propensity of cross-border contracts since the introduction of the new legislation.

### **3.3 Selection of Methodology**

To achieve the research purpose, a sequential mixed-method research design was adopted as per Figure 3.1. A sequential mixed-method is where “one phase subsequently informs and directs the next phase of data collection and analysis” (Saunders et al., 2016 p.198). The initial phase of this study involves analysing the raw secondary data. Subsequently, the second phase elaborates on the initial data results and aims to explore new findings through the primary qualitative data.

Figure 3.1: Sequential mixed-method



Source: Author's compilation

The first phase gives an overview of the Maltese economic operators' level of participation in the EU cross-border public procurement market and identifies trends, but it does not ascertain the nature of the research problem. In this case, the use of the second method is highly beneficial as the initial method reveals unexplainable results (Saunders et al., 2016). The second phase of this dissertation consists of semi-structured interviews in order to explore factors which affect the participation of economic operators in the EU cross-border public procurement market.

## 3.4 Secondary Data

### 3.4.1 The Rationale

Following an in-depth literature review, the researcher was able to identify raw secondary data sources that are substantially relevant to the study. The existing raw data is representative as it covers all EU countries over a long-term period (2006-2018) and its availability permits the analyses of data that would not have otherwise been possible to collect. Additionally, the analysis of secondary data provides evidence of trends and a direction in identifying the right participants for the qualitative phase of this research (Saunders et al., 2016). In addition, using existing data is much less time consuming and hence leaves more room for analysing and interpreting data (Doolan and Froelicher, 2009; Vartanian, 2011).

The raw data used for the secondary data analysis is provided by the TED database. The level of credibility is satisfactory given that the source, TED, is the online version of the EU Official Journal of EU public procurement. TED publishes circa 500,000 CANs a year (Muñoz-García and Vila, 2019). Contracting authorities are obliged to issue CANs on the TED database when the estimated contract value (excluding VAT) is equal or more than a certain monetary



threshold<sup>7</sup> (Directive 2014/24/EU). CANs are a means of publishing the procurement procedure results by not later than 30 days following the award of a contract (Directive 2014/24/EU). The procurement notices, including the CANs, are required to be issued in full in one of the official languages whilst a summary of the main important details of the notice is to be published in English. The raw data gathered in the CANs is suitable for this research as it contains valuable information including the country of the contracting authority, the award criteria, the number of offers received, the type of procedure, the contract value as well as the country of the awarded contractor.

### 3.4.2 Data Collection

Establishing the availability of the CANs in a report, which is compatible with the researcher software, was a lengthy process. Nonetheless, after various attempts, the relevant raw secondary data was extracted in excel format from the TED archives, which are available on the EU Open Data Portal<sup>8</sup>. The raw dataset extracted to be used in this study consists of 6,359,453 CANs published in the TED database from Q1 2006 to Q4 2018. This period is representative since it captures the number of CANs issued under the previous and current procurement legislative framework.

The raw dataset was filtered to select only Malta as the winning country. In the case where CANs included lots or shared contracts with other companies, they were considered as a case of cross-border whereby at least one winner was a Maltese company. Then the next step involved eliminating any tenders issued by Maltese Contracting Authority to remove domestic procurement (3491 CANs) and to focus only on cross-border procurement (48 CANs). The data was checked to ensure that the successful companies were registered as Maltese companies within the Malta Business Registry. In addition, Jobsplus was also consulted to determine the size of the companies.

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<sup>7</sup> The sector thresholds were discussed in the literature review of this study.

<sup>8</sup> EU Open Data Portal, 2019 available at: <http://data.europa.eu/euodp/en/data/dataset?tags=contract+award+notice>

### 3.4.3 Data Analysis

Once the data, in its raw form, was processed and organised, the data was ready to be analysed. The researcher did not apply any sampling method but analysed all 48 CANs where Malta is the awarded country. Quantitative analysis techniques including tables and graphs were used to present data and to examine trends (Saunders et al., 2016). The data was analysed and interpreted to quantify the actual number of foreign contracts awarded to Malta and to determine whether changes were recorded as a result of the reform in the public procurement legislation.

Furthermore, correlations between contract characteristics and the award of cross-border contracts were also analysed by using the Statistical Package for the Social Sciences (SPSS). Chi-square ( $X^2$ ) tests were utilised in order to assess the probability of relationships between any two categorical variables (Saunders et al., 2016). The null hypothesis stipulates that no correlation exists between the two categorical variables, and this is recognised once the p value is higher than the 0.05 level of significance. Whilst the alternative hypothesis stipulates that there is a significant association between the two categorical variables, and this is determined if the p value is lesser than the 0.05 criterion.

## 3.5 Semi-structured Interviews

### 3.5.1 The Rationale

The second phase of this study involved qualitative research to better understand the complexity of how people experience and interpret a research issue in their natural social world (Mack et al., 2005; Saunders et al., 2016). Structured methods such as questionnaires and surveys are not the right method for this study because participants will only tick the appropriate box and will not divulge their “experiences and feelings in their own words” (Veal, 2006 p. 163).

One-to-one semi-structured interviews were carried out to investigate the context, to find out participants' different perceptions, to comprehend their responses and to identify any possible links (Harrell and Bradley, 2009; Saunders et al., 2016). This was the chosen option as opposed

to conducting a focus groups to ensure that participants are at ease to honestly divulge their opinions and experiences on a one-to-one basis. Through the interviewees, factors which influence the participation of Maltese firms were explored whilst participants were also encouraged to share their successful traits in participating in the EU public procurement market. This approach helps in identifying the measures which need to be promoted and introduced with a view to increase the propensity of cross-border contracts awarded to Malta. Hence, this choice of methodology is ideal because it permits alternative views to be extrapolated in the research course.

The semi-structured interviews were based on two types of interview guides<sup>9</sup>. The interview guides included a set of questions which were formulated on the previous studies and on the findings from the quantitative secondary data analysis. The interview also included probe questions to pursue “depth, detail, vividness, richness, and nuance” (Owen, 2014). Although interview guides were used to ensure that certain themes are covered, the interviewer was flexible in adding or omitting questions to ensure a good flow of conversation and to prompt participants to share their different experiences ‘in their own words’ (Saunders et al., 2016).

### 3.5.2 Data Collection

The initial phase of the qualitative method included interviewing five stakeholders from the public sector as well as the public service. The chosen participants were well experienced in the public procurement process, were close to economic operators and some were also partners in the Enterprise Europe Network. The interviewees had different roles ranging from supporting cross-border business and internationalisation to representing Maltese business’ interests and liaising with European institutions. These interviews were followed by eight semi-structured interviews with economic operators who won public cross-border contracts and others who did not win public cross-border contracts. The interviewees were classified in 3 different categories. The interviewee names were replaced by codes to ensure anonymity as per Table 3.1.

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<sup>9</sup> Please refer to Appendix 2 for the interview guide used with the stakeholders and Appendix 3 for the interview guide used with economic operators.

Table 3.1: Semi-structured interview participants

<b>Interviewee type</b>	<b>Interviewee codes<sup>10</sup></b>	<b>Company size<sup>11</sup></b>
<b>Stakeholder 1</b>	St 1	N/A
<b>Stakeholder 2</b>	St 2	N/A
<b>Stakeholder 3</b>	St 3	N/A
<b>Stakeholder 4</b>	St 4	N/A
<b>Stakeholder 5</b>	St 5	N/A
<b>Supply economic operator who won cross-border contracts</b>	SY 1	Small
<b>Supply economic operator who won cross-border contracts</b>	SY 2	Small
<b>Service economic operator who won cross-border contracts</b>	UY 1	Small
<b>Service economic operator who won cross-border contracts</b>	UY 2	Small
<b>Supply economic operator who did not win cross-border contracts</b>	UN 1	Small
<b>Service economic operator who did not win cross-border contracts</b>	SN 1	Micro
<b>Works economic operator who did not win cross-border contracts</b>	WN 1	Large
<b>Works economic operator who did not win cross-border contracts</b>	WN 2	Large

Source: Author's compilation

Purposive sampling strategy, also known as theoretical sampling, was adopted to discover concepts in depth (Corbin and Strauss, 2012; Saunders et al., 2016). Interviewees were selected according to a pre-set criterion. The sample size was determined on the objectives of the study, available resources and theoretical saturation (Mack et al., 2005; Saunders et al., 2016). The companies which had won a public cross-border contract were identified via the analysis of the TED secondary data. Out of this list of companies, the researcher contacted companies from each sector (services, supply, and works) for an interview. Unfortunately, the only two companies in the works sector which had won a cross-border contract are currently listed as inactive in the Malta Business Registry and hence are unreachable. The process started by first contacting the most recent companies which were awarded cross-border contracts in 2018 and going back to previous years. This procedure was adopted because the researcher wanted to understand the economic operators' experience vis-à-vis the current

<sup>10</sup> These codes will be used in Chapter 4 as acronym for the interviewees.

<sup>11</sup> The company size was determined by the number of employees through JobsPlus and in line with the User guide to the SME definition (European Commission, 2015e)

public procurement legislation and the factors influencing the participation level in EU cross-border public procurement market.

Companies which were not awarded a cross-border contract were selected through the list of registered companies in the local tendering database. This list was purposely used to limit the sample to companies which although did not win cross-border public contracts are at least familiar with domestic public procurement. This approach was adopted due to the complex nature of the subject. Before identifying the interview participants, the list of registered companies was filtered to eliminate foreign companies and Maltese companies which were awarded cross-border contracts.

The interviews were conducted between July and August of 2019. Interviews were conducted until theoretical saturation was reached. This occurred once interviews were not adding new insights to the research questions and themes were being understood and verified (Mack et al., 2005; Corbin and Strauss, 2012; Saunders et al., 2016). The interviews were recorded and subsequently transcribed verbatim to facilitate the analysis of the data collected.

### 3.5.3 Data Analysis

To answer the research questions and find meaning in the collected qualitative data, the researcher conducted a thematic analysis in line with the Braun and Clarke's (2006) 6-step framework as per Figure 3.2. Thematic analysis offers a systematic yet flexible way to identify patterns and differences across the different transcripts (Braun and Clarke, 2006; Saunders et al., 2016; Guest et al., 2012a).

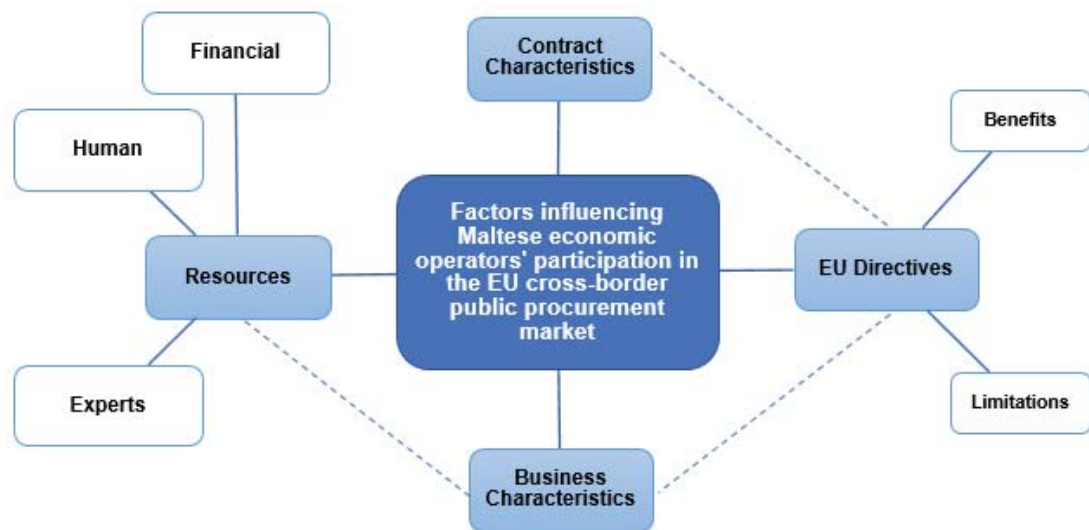
Figure 3.2: Braun and Clarke's (2006) 6-step framework



Source: Braun and Clarke (2006)

The initial phase of the analysis process involved the reading and re-reading of transcripts, jotting down notes and organising data. In the next step, an open-coding approach was taken as each piece of data sharing similar meaning was labelled with a data-driven code. There were also instances where some units of data were coded with more than one code. In the third step, the different codes were examined and collated into potential themes<sup>12</sup>. The fourth phase of the analysis entailed examining the extracts collated under each theme as well as modifying or eliminating certain themes. This process was required "to ascertain whether the themes work in relation to the data set" and to code any data which was not captured in the previous coding stages (Braun and Clarke, 2006 p. 91). In this step, themes and codes were accurately refined<sup>13</sup>. In the fifth step, "the essence of what each theme is about" (Braun and Clarke, 2006 p. 92) was established. In addition, patterns and relationships between the different themes were also identified as shown in the below thematic map in Figure 3.3.

Figure 3.3: Thematic Map



Source: Author's compilation

The final step, which will be analysed and presented in the following chapter, includes a discussion of the data findings as well as some data extracts to demonstrate evidence of the themes. This analysis technique allowed the researcher to comprehend better the nature of the

<sup>12</sup> Please refer to Appendix 4 for a table of preliminary themes and codes.

<sup>13</sup> Please refer to Appendix 5 for a table of refined themes, sub-themes and codes.

issues encountered by local companies in the EU public procurement market. The analysis led to the formulation of relationships between the level of participation of Maltese companies and a number of factors.

### **3.6 Data Validity and Reliability**

Different measures to limit the likelihood of validity and reliability threats were adopted throughout the research process. Concepts of validity and reliability include notions of truth, credibility, authenticity, accuracy, consistency and stability of the research findings (Pope and Mays, 2006; Corbin and Strauss, 2012; Guest et al., 2012b; Saunders et al., 2016). In this study, triangulation was used to add depth, confidence, accuracy and confirmation to the research findings as the quantitative data is attested by the qualitative data (Gibbs, 2007; Saunders et al., 2016).

In order to assure the credibility of the data analysis, this dissertation provides adequate information on both research procedures adopted. Although availability and transparency of information do not guarantee validity, they provide the required information for others to assess and judge the credibility of the research analysis (Pope and Mays, 2006; Creswell and Plano, 2011; Guest et al., 2012b). Additionally, sufficient detail on the research process allows other researchers to replicate the study and find out whether the same findings hold (Saunders et al., 2016).

To eliminate other validity and reliability threats during data collection, interviewees were assured anonymity and confidentiality (Creswell, 2014). Furthermore, during the interviews an informal conversational approach was adopted to develop rapport and to establish trust. These measures helped to facilitate the progression of the interview and to collect genuine responses (Saunders et al., 2016). In addition, in maintaining confidentiality, increased the willingness of interviewees to participate and share their main concerns.

All interviews were recorded to eliminate the risk of recalling imprecise information and to ensure reliable data analysis. As suggested by Gibbs (2007), transcripts were also checked repeatedly to avoid mistakes and data was constantly compared with the established codes to avoid inconsistency due to a 'definitional drift'.

### **3.7 Ethical Considerations**

Besides ensuring reliability and validity, the researcher made sure to work ethically throughout the course of the research. The practices adopted in this study are all approved by the University of Malta Research Ethics Committee. The researcher was also cautious about the ethical issues of the secondary data even though such data is accessible to the public. In order to protect the confidentiality of the interviewees, during the analysis of the secondary data, company names which had won cross-border contracts were not exposed. This is due to the fact that such information could easily lead to the identification of the interviewees.

In order to ensure that each interviewee is participating on the basis of an informed consent, they were all provided with a consent form<sup>14</sup> together with an invitation letter<sup>15</sup> and an information letter<sup>16</sup> (Saunders et al., 2016; Creswell, 2014). The consent form explains that participation is voluntary, and one can freely withdraw from the interview at any time they deemed appropriate without justification and without any penalty or loss of benefit. It also stated that interviews are recorded, and that data collected is to be stored securely. Moreover, in the beginning of each interview, the researcher introduced herself, provided information on the dissertation and interviewees were assured anonymity and confidentiality.

### **3.8 Research Limitations**

All research methods have limitations but through meticulous preparations and measures ensuring reliability, validity, and ethical principles, the researcher confined such limitations. Nonetheless, some restrictions were still encountered throughout this study. The biggest

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<sup>14</sup> Please refer to Appendix 6 for consent form.

<sup>15</sup> Please refer to Appendix 7 for invitation letter.

<sup>16</sup> Please refer to Appendix 8 for information letter.



constrain of this dissertation is related to the availability of time, especially due to the adopted qualitative data collection and analysis process, which is both labour-intensive and time-consuming (Burnard et al., 2008).

Another issue was that the raw secondary data does not record contracts below the thresholds won by Maltese firms. Hence, this study is specific to contracts above the EU thresholds. Furthermore, the lack of control over the quality of the secondary data was another challenge in the process. In this regard, the data was cross-checked and evaluated carefully. Another drawback is the fact that no data is available on the number of companies bidding for EU cross-border public procurement and only data showing the number of awarded contracts in the EU public procurement market exists. The fact that the p value of the Chi-square test is heavily dependent on the sample size, it was very unlikely to get statistical significance given that the number of CANs being studied is small (less than 50) unless the percentage differences are considerable.

One of the limitations of this study is that companies in the works sector which won EU public cross-border contracts closed their operations and could not be interviewed. This restriction was tackled by carrying out additional interviews with companies in the works sector which never won EU public cross-border contracts.

### **3.9 Conclusion**

The methodology chapter outlined the data collection and analysis process adopted in this research. The following chapter presents the results and the main discussions acquired from the comprehensive analysis of the secondary and primary data.

# **Chapter 4**

## **Results and Discussion**

## 4.1 Introduction

This chapter presents the findings which were attained through the quantitative analysis and the thematic analysis of the raw secondary data and the primary data collected via semi-structured interviews, respectively. The initial phase of the chapter discusses results which help in answering the first research question and then proceeds with the results related to the second research question.

## 4.2 Quantitative Results and Discussion

This section highlights the main findings and addresses the results concerning the first research question, namely; what is the Maltese share in the EU cross-border public procurement market?

The study analysed the number of public contracts awarded to Malta out of the total number of contracts awarded in the EU between 2006 and 2018. As shown in Table 4.1, Malta was awarded a total of 48 cross-border contracts out of 6,359,453. This translates into an insignificant percentage<sup>17</sup>, which is well below the EU percentage (PwC et al., 2011; Ramboll and HTW, 2011; Pîrvu and Bâldan, 2013; Dimitrova and Lakatos, 2016; European Commission, 2017b; Becker et al. , 2019).

Table 4.1 depicts that Malta's low level of penetration in the EU cross-border public procurement market is consistent throughout the years with mild peaks occurring in 2014, 2016 and 2017. One can also notice that although the new Public Procurement Directives introduced measures to facilitate cross-border procurement<sup>18</sup>; the number of contracts awarded to Malta between 2016-2018 did not increase drastically. Additionally, even though during 2017 and 2018 the number of EU awarded contracts increased radically, Malta in 2018 experienced a significant drop in the number of cross-border contracts.

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<sup>17</sup> Maltese share of cross-border contracts is 0.0008%.

<sup>18</sup> EU Member States had to adopt the new EU Directives by 2016.

Table 4.1: Maltese share of cross-border public contracts

Year	Cross-border contracts awarded to Malta	Total number of contracts
2006	1	241,280
2007	1	315,804
2008	1	361,168
2009	2	398,527
2010	2	444,009
2011	4	476,733
2012	4	499,032
2013	6	500,221
2014	7	522,344
2015	3	542,597
2016	7	538,181
2017	7	708,840
2018	3	810,717
<b>Total</b>	<b>48</b>	<b>6,359,453</b>

Source: data from TED database, Author's compilation

This low share of cross-border contracts may be attributed to the fact that in Malta 99.9% of all firms are SMEs (National Statistics Office, 2019a). As indicated in the literature review SMEs face a significant number of disadvantages ((GHK-and-Technopolis, 2010; Flynn and Davis, 2015; Muñoz-Garcia and Vila, 2019) and consequently their share in the market is lower than that of larger companies (Ramboll and HTW, 2011; European Commission, 2017b).

As depicted in Table 4.2, the majority of contracts were won by micro-enterprises followed by small companies. Interestingly, this differs from previous research, wherein, the share of cross-border wins had always been the lowest amongst micro-enterprises (Ramboll and HTW, 2011; European Commission, 2017b; Becker et al., 2019). However, the high share of Maltese micro-enterprises in cross-border procurement may be due to the fact that micro-enterprises occupy 97.26% of all Maltese firms (National Statistics Office, 2019a)

Table 4.2: The company size of the awarded cross-border contracts

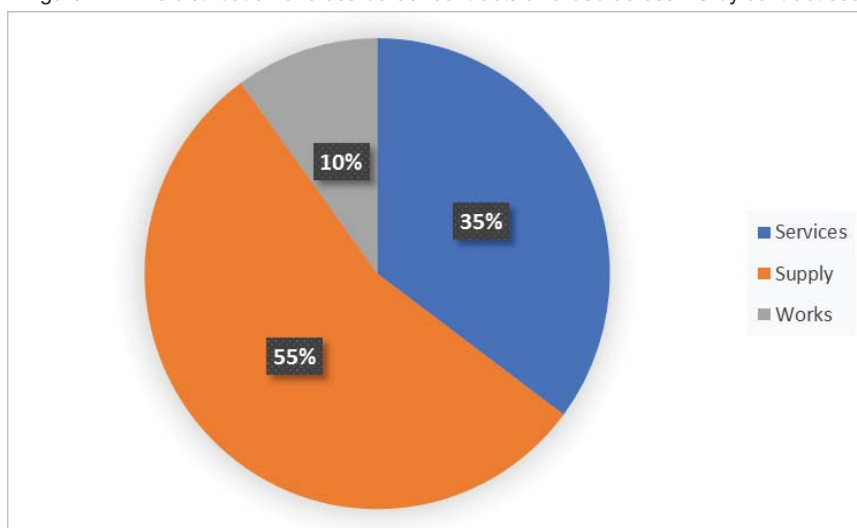
Year	Awarded companies' size in terms of employment <sup>19</sup>			
	0-9	10-49	50-249	250+
	Micro	Small	Medium	Large
2006	-	-	-	-
2007	-	-	1	-
2008	-	-	1	-
2009	-	1	1	-
2010	-	-		2
2011	2	-	1	-
2012	1	-	1	-
2013	3	2	1	-
2014	5	-	-	1
2015	1	-	-	1
2016	1	4	1	-
2017	3	2	-	1
2018	1	1	-	1
<b>Total</b>	<b>17</b>	<b>10</b>	<b>7</b>	<b>6</b>

Source: data from TED database and JobsPlus, Author's compilation

<sup>19</sup> The company size was determined by the number of employees through JobsPlus and in line with the User guide to the SME definition (European Commission, 2015e). Please note that the size of the awarded companies of 8 contracts could not be determined.

In the TED database, the different types of contracts are categorised in: supplies, services, and works. Figure 4.1 shows the percentage of cross-border contracts awarded across EU according to these three contract types. It depicts that the highest share of cross-border contracts is 55% for supply and the lowest share accounts to 10% for works contracts.

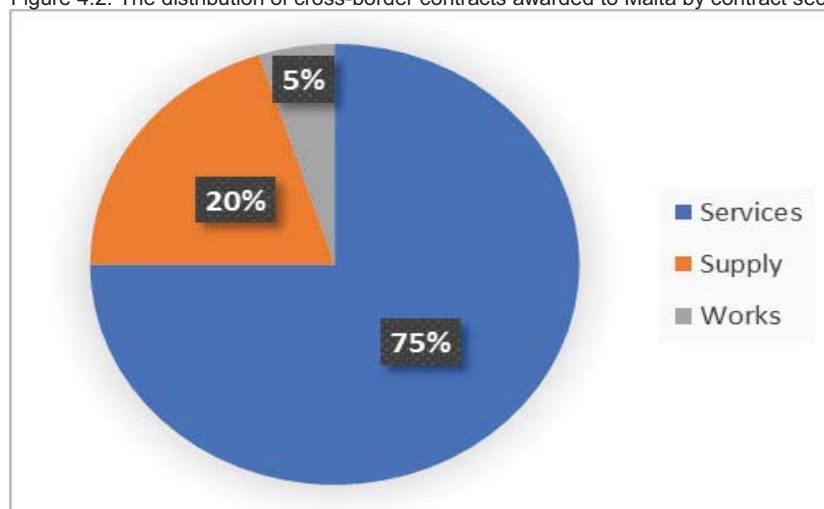
Figure 4.1: The distribution of cross-border contracts awarded across EU by contract sector



Source: data from TED database, Author's compilation

Figure 4.1 is in line with previous studies which suggest that the share of cross-border contracts is relatively larger for supply contracts (Ramboll and HTW, 2011; Pîrvu and Bâldan, 2013; Dimitrova and Lakatos, 2016; European Commission, 2017b). In contrast, as shown in Figure 4.2 in the case of Malta, it is more common to have services cross-border contracts rather than supply contracts. In fact, 75% of cross-border contracts awarded to Malta are in the services sector whilst only 20% and 5% are in the supply and works sectors respectively. The same scenario was found in a study by Muñoz-Garcia and Vila (2019) where Spanish companies won more services contracts rather than supply or works contracts.

Figure 4.2: The distribution of cross-border contracts awarded to Malta by contract sector

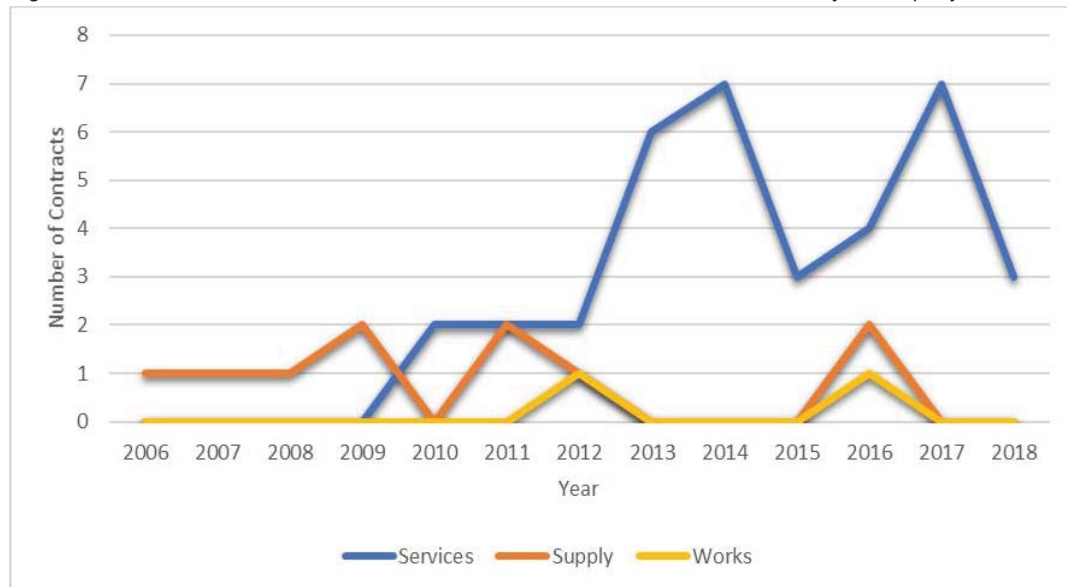


Source: data from TED database, Author's compilation

Researchers explain that cross-border contracts are more common in the supply category because such contracts limit the effect of language barriers and do not entail the mobilisation of equipment and personnel (Ramboll and HTW, 2011; Pîrvu and Bâldan, 2013; European Commission, 2017b). However, with regards to Malta, one can argue that the language barrier, might be less relevant as Maltese people are considered bilingual to differing degrees and the presence of English, as well as Italian, is quite prevalent (Vella, 2013). Furthermore, one can also mention that several services can be delivered virtually (Laga et al., 2013) and will not require the moving of equipment.

Figure 4.3 illustrates the number of cross-border contracts by sector per year. As depicted in Figure 4.3, between the period of 2006 and 2009, Malta was only awarded supply contracts whilst from 2010 onwards, Malta was awarded a number of services contracts yearly. With regards to works, results show that Malta was only awarded works contracts in 2012 and in 2016.

Figure 4.3: The distribution of the number of cross-border contracts awarded to Malta by sector per year

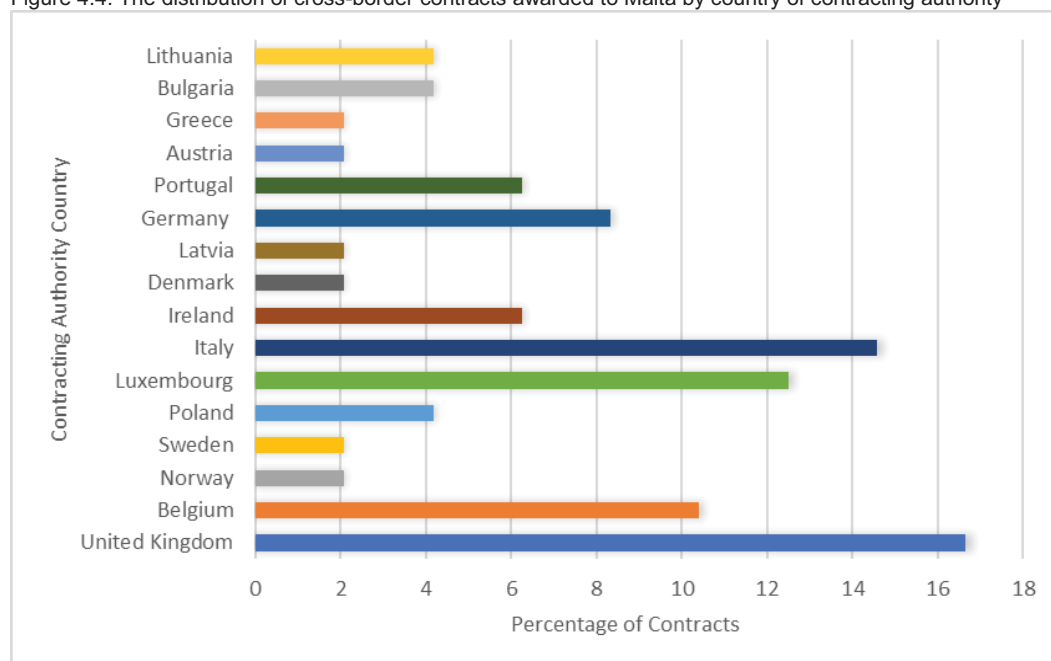


Source: data from TED database, Author's compilation



Figure 4.4 provides an overview of the share of cross-border contracts by the country of the contracting authority. Malta was awarded cross-border public contracts from 15 EU Member States and from 1 non- EU country, but which is still part of the EEA. The percentages in Figure 4.4 show a concentrated picture of the United Kingdom (17%), Italy (15%), Luxembourg (13%) and Belgium (10%). Hence, this study, in line with other studies (PwC et al., 2011; Ramboll and HTW, 2011; Pîrvu and Bâldan, 2013; European Commission, 2017b) shows that historic, culture and geographical relationships are determinants of cross-border public procurement.

Figure 4.4: The distribution of cross-border contracts awarded to Malta by country of contracting authority

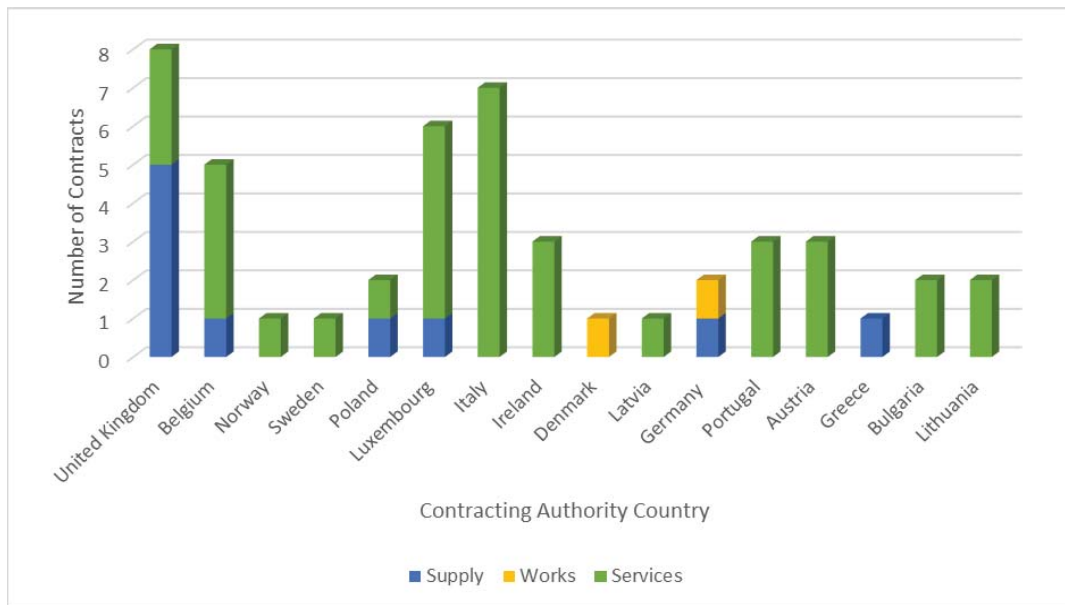


Source: data from TED database, Author's compilation

Figure 4.5 reveals interesting relationships between the distribution of cross-border contracts by sector per country. As shown in the table below, the majority of supply contracts awarded to Malta are from the UK whilst the majority of services contracts are awarded from Italy. In fact, Italy only awarded contracts for the provision of services. Overall, data shows that services contracts were awarded by 16 different countries and the majority were awarded from Italy, Luxembourg, and Belgium respectively.

It is interesting to note that Ramboll and HTW (2011) argues that on average, works contracts are awarded to countries that are in the closest proximity, and supplies contracts are awarded to the furthest countries. Contrary, in the case of Malta, works contracts were only awarded from Denmark and Germany, which are not the nearest countries. Furthermore, the furthest countries, Norway and Sweden, awarded services and not supply contracts to Malta.

Figure 4.5: The distribution of cross-border contracts awarded to Malta by country of contracting authority and by sector



Source: data from TED database, Author's compilation

A breakdown of the share of cross-border contracts by the Common Procurement Vocabulary (CPV) is provided in Table 4.3. The highest levels of cross-border public procurement are in sectors related to market research services, water transport services, repair and maintenance services of aircraft as well as in IT Services. In their study, Pîrvu and Bâldan (2013) state that cross-border contracts are more common in sectors of construction, metrology, military, and ICT services. On the other hand, another study indicates higher penetration of cross-border contracts in areas related to machinery, specialised equipment and materials, IT services and in postal and telecommunications services (European Commission, 2017b). The table below shows that Malta wins contracts in sectors that are considered less popular in other studies such as the water transport services as well as the repair and maintenance services of aircrafts. One can also note that Malta is also winning contracts related to the ICT services sector, which as mentioned above, is a common sector in the EU cross-border public procurement (Pîrvu and Bâldan, 2013; European Commission, 2017b).

Table 4.3: The distribution of cross-border contracts awarded to Malta by the main sector of activity in terms of CPV

<b>CPV Description</b>	<b>Number of awarded cross-border contracts</b>
Market research services	7
Water transport services	7
Repair and maintenance services of aircraft	6
IT Services	5
Printing and related services	3
Translation services	2
Research and development services	2
Real estate services	2
Telecommunications services	2
Materials and Products	2
Technology and Equipment- Agriculture machinery	1
Computer equipment and supplies	1
Laboratory, optical and precision equipment	1
Environment and Sanitation	1
Construction works	1
Agricultural, farming, fishing, forestry, and related products	1
Business services: law, marketing, consulting, recruitment, printing, and security	1
Business and management consultancy and related services	1
Miscellaneous business-related services	1
Health services	1

Source: data from TED database, Author's compilation

As discussed in the literature review, the use of negotiated procedure predominantly increases the incidence of cross-border contracts (PwC et al., 2011; Ramboll and HTW, 2011; Dimitrova and Lakatos, 2016; European Commission, 2017b). However, as depicted in Table 4.4, it was found that 56% of the contracts awarded to Maltese companies were through open procedure whilst only 27% through the negotiated procedure. Table 4.3 shows that both services and supply contracts are awarded more during an open procedure. On the other hand, the two works contracts were awarded by a negotiated procedure. However, there is no direct correlation between the variables because the p-value (0.211) exceeds the 0.05 level of significance.

Table 4.4: The distribution of cross-border contracts awarded to Malta by sector and by procurement procedure

			Sector			Total	
			Works	Services	Supply		
Procurement Procedures <sup>20</sup>	OPE	Count	0	20	7	27	
		Percentage	0.0%	55.6%	70.0%	56.3%	
	COD	Count	0	1	0	1	
		Percentage	0.0%	2.8%	0.0%	2.1%	
	NOC	Count	1	4	0	5	
		Percentage	50.0%	11.1%	0.0%	10.4%	
	NIC	Count	1	5	2	8	
		Percentage	50.0%	13.9%	20.0%	16.7%	
	RES	Count	0	6	0	6	
		Percentage	0.0%	16.7%	0.0%	12.5%	
	AWP	Count	0	0	1	1	
		Percentage	0.0%	0.0%	10.0%	2.1%	
	Total		Count	2	36	10	48
			Percentage	100.0%	100.0%	100.0%	100.0%

$\chi^2(10) = 13.231, p = 0.211$

Source: data from TED database, Author's compilation

<sup>20</sup> Procurement procedures: OPE open procedure; COD competitive dialogue; NOC negotiated procedure without prior publication; NIC negotiated procedure with prior publication; RES restricted procedure; AWP award without prior notice.

As depicted in Table 4.5, all works tenders, 83.3% of services tenders and 70% of supply tenders were awarded using the BPQR criterion. These percentages concur with the findings of the study by Ramboll and HTW (2011) which shows that the BPQR criterion increases the propensity of cross-border contracts. However, when examining the correlation between the different sectors and the award criteria, the percentages are not significant because the p-value 0.498 exceeds the 0.05 level of significance.

Table 4.5: The distribution of cross-border contracts awarded to Malta by sector and by award criteria

			Award Criteria		Total
			BPQR <sup>21</sup>	Lowest price	
Sector	Works	Count	2	0	2
		Percentage	100.0%	0.0%	100.0%
	Services	Count	30	6	36
		Percentage	83.3%	16.7%	100.0%
	Supply	Count	7	3	10
		Percentage	70.0%	30.0%	100.0%
Total		Count	39	9	48
		Percentage	81.3%	18.8%	100.0%

$X^2(2) = 1.395$ ,  $p = 0.498$

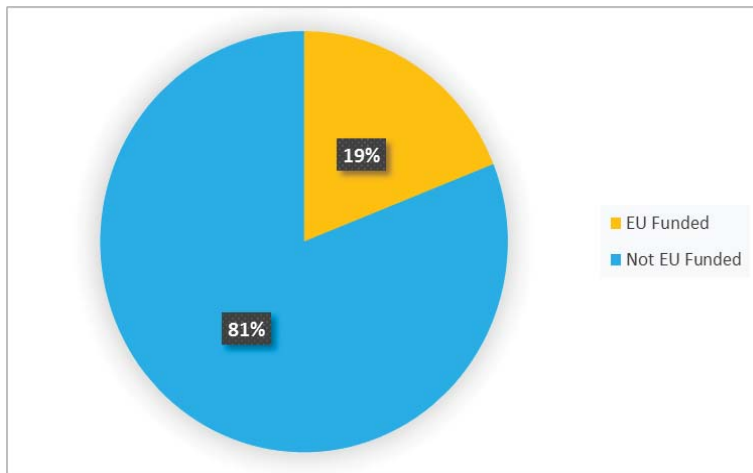
Source: data from TED database, Author's compilation

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<sup>21</sup> The 2014 Public Procurement Directives changed the terminology from MEAT criterion to BPQR criterion.

Figure 4.6 shows that the majority of cross-border contracts awarded to Malta are not EU funded. This differs from previous studies which record that it is more common to have EU funded cross-border contracts (PwC et al., 2011; Dimitrova and Lakatos, 2016; Becker et al., 2019).

Figure 4.6: The distribution of EU and non-EU funded cross-border contracts awarded to Malta



Source: data from TED database, Author's compilation

In terms of contracts value, Table 4.6 illustrates that there was a larger percentage (61.6%) of contracts between 2006-2015 which are of a value of less than €300,000 when compared to the period of 2016-2018 (28.5%). Conversely, there is a larger percentage (71.5%) of contracts in the period of 2016-2018 that exceed the value of €300,000 when compared to the period of 2006-2015 (38.4%). However, the difference in percentages is not significant since the p-value (0.145) exceeds the 0.05 level of significance.

Table 4.6: The distribution of cross-border contracts values across two periods (2006-2015 and 2016-2018 represent the periods prior and after the 2014 EU public procurement Directives respectively)

			Year		Total
			2006-2015	2016-2018	
Contract Value	Less than 200,000 Euro	Count	8	3	11
		Percentage	30.8%	21.4%	27.5%
	Between 200,000 and 300,000 Euro	Count	8	1	9
		Percentage	30.8%	7.1%	22.5%
	Between 300,000 and 2,500,000 Euro	Count	4	6	10
		Percentage	15.4%	42.9%	25.0%
	More than 2,500,000 Euro	Count	6	4	10
		Percentage	23.1%	28.6%	25.0%
Total		Count	26	14	40 <sup>22</sup>
		Percentage	100.0%	100.0%	100.0%

$\chi^2(3) = 5.406, p = 0.145$

Source: data from TED database, Author's compilation

Table 4.7 shows that in Malta there is a higher incidence of cross-border wins when the contract is divided into lots. It is pertinent to note that, in the period of 2016-2018, the percentage of tenders divided into lots exceeded by 25.4% the percentage of tenders divided into lots in the period of 2006-2015. This percentage difference is almost significant because the p-value 0.091 exceeds the 0.05 level of significance by a small margin. This shows that Malta seems to be reaping the benefits of the requirement to divide tenders into lots as stipulated in the latest EU Public Procurement Directives.

Table 4.7: The distribution of cross-border contracts divided into lots by two periods (2006-2015 and 2016-2018 represent the periods prior and after the 2014 EU public procurement Directives respectively)

			Lots	No lots	Total
Year period	2006-2015	Count	14	17	31
		Percentage	45.2%	54.8%	100.0%
	2016-2018	Count	12	5	17
		Percentage	70.6%	29.4%	100.0%
Total		Count	26	22	48
		Percentage	54.2%	45.8%	100.0%

$\chi^2(1) = 2.859, p = 0.091$

Source: data from TED database, Author's compilation

<sup>22</sup> Please note that 8 CANs could not be analysed in terms of value because the information regarding the contact value was missing.

## 4.3 Thematic Analysis Results and Discussion

This section discusses the thematic analysis findings that lead to answering the second research question, namely, which factors affect Maltese economic operators in participating in the EU cross-border public procurement market and how? The results and discussion are presented in alignment with four themes, which are outlined in Table 4.8.

Table 4.8: Summary of thematic analysis

<b>Research question: which factors affect Maltese economic operators in participating in the EU cross-border public procurement market and how?</b>			
<b>Theme: Contract characteristics</b>	<b>Theme: Regulation</b>	<b>Theme: Resources</b>	<b>Theme: Business characteristics</b>
<b>Codes</b>	<b>Sub-theme: Benefits</b>	<b>Sub-theme: Financial resources</b>	<b>Codes</b>
award/ adjudication criteria	<b>Codes</b>	<b>Codes</b>	confidence
contract procedure	more efficient	liquidity problems	mentality
technical requirements	more transparency	high costs	economies of scale
tender divided into lots	<b>Sub-theme: Limitations</b>	<b>Sub-theme: Human resources</b>	home bias
contract value	<b>Codes</b>	<b>Codes</b>	private preference
sector	administrative burden	challenge to employ people	economic situation
language	publication in different languages	forced to recruit internationally	
geographical distance	thresholds	<b>Sub-theme: Expertise</b>	
	lack of harmonisation	<b>Codes</b>	
		lack of knowhow	
		technical resources limited	

Source: Author's compilation

### 4.3.1 Contract Characteristics

During the interviews, different contract characteristics were discussed as factors that influence cross-border public procurement. Interview findings indicate that the type of contract, whether it is supplies, services or works, plays a significant role. In the case of Malta, results show that it is more feasible to participate in the services rather than in the works or supplies. St 3, St 4, and UN 1 explained that in the case of Malta, supply tenders are not attractive given the high-costs involved in importing materials and then exporting goods. Furthermore, some interviewees representing the supplies category also highlighted that certain contractual agreements with manufacturers prohibit the possibility of selling products beyond the Maltese islands.



As regard to the works category, the complications and costs involved in mobilising the equipment were highlighted by St 2, St 3, St 4, WN 1 and WN 2. Some interviewees remarked that “works is more complicated”, “more expensive”, and “difficult to mobilise abroad impinges”. On the other hand, SY 1, SY 2 and SN1, explained that services contracts can be easily managed since most of the work is done remotely and clients are merely a flight away. The interview results support and explain the quantitative findings mentioned earlier in this chapter.

Another characteristic highlighted by several interviewed firms was the contract procedure. The majority of the economic operators explained that they prefer negotiated rather than an open procedure. UY 1 described negotiated procedures as a “win-win situation” whilst similarly UY 2 and SN 1 explained that in negotiated procedures contracting authorities and suppliers can discuss and reduce any misinterpretations or assumptions which can lead to higher tender bids.

Most economic operators also emphasised their preference to tenders which are adjudicated on the BPQR criterion rather than on the lowest price criterion. This finding is in line with the quantitative data presented earlier in this chapter. The interview participants explained that BPQR is the ideal model as it gives weight to both price and quality of expertise. The importance of quality in public procurement was also recognised in the EU Directives which leave it at the discretion of Member States to prohibit or reduce the use of price only criteria (2014/24/EU).

It was further explained by UY 2 that the lowest price criterion place certain Maltese firms at a disadvantage as they cannot lower their prices to compete with foreign companies due to the lack of economies of scale. Hence, the use of lowest price criterion is more likely to yield low-profit margins. UY 2 accentuated

“Definitely ratio between quality and price... definitely, because we are very technical people, we have our overheads, our margins must be at least sustainable to allow us to employ this level of people so when the criteria are just price, we are immediately at a disadvantage”.

These explanations may be one of the reasons why the number of cross-border contracts awarded to Malta is higher when the BPQR criterion is used, as depicted in the statistical analysis. Furthermore, UY1 also disclosed its preference to participate in the cross-border public procurement market rather than in the domestic market, since in Malta most tenders are awarded to the cheapest technically compliant bidder. In fact, recent statistics show that in Malta only 3% of the tenders are awarded through the BPQR criterion (PwC, 2016).

Amongst the majority of interviewees, it was reported that ideally tenders are divided into lots. Participants explained that lots are “highly beneficial for small companies”, “provides more opportunities”, and “help SME participation”. This finding tallies with previous studies, which indicate that the division into lots increases the participation and the probability of awarding contracts to SMEs (Grimm et al., 2009; PwC et al., 2014; Anchustegui, 2016; Flynn, 2017; Loader, 2018; Bovis, 2019). It should be noted that the division into lots is not a measure favouring SMEs but a measure ensuring that “SMEs can participate in addition rather than instead of large companies” (Trybus and Andrecka, 2017 p. 225)

### 4.3.2 EU Public Procurement Directives

In addressing the results concerning the second theme, EU Public Procurement Directives, the findings are categorised into two sub-themes: the benefits and the limitations.

#### 4.3.2.1 The Benefits

All interviewees praised the latest improvement in the public procurement system. It was commonly expressed that participation in public procurement is now easier and more efficient. The transition to electronic procurement was perceived as a step forward in increasing the opportunity to participate in the public procurement process. During the interviews, participants used expressions such as “facilitated the process”, “allows us to reach out opportunities”, “reduced time and cost”, “gave us the possibility to participate”, and “encourages people to participate”, and “increased transparency”.

These findings support other studies (Fernandes and Vieira, 2015; Saastamoinen et al., 2018; SIGMA, 2018) that show the use of e-procurement led to an increase in efficiency, transparency, competition, and savings. Other studies also claim that public authorities which introduced e-procurement are reporting savings of more than 5% due to stronger competition and economic efficiency (Petrișor and Badia, 2013; European Commission, 2015b, 2015d).

Some interviewees also mentioned that the introduction of the ESPD further simplified the process and reduced administrative burden. The participants considered ESPD as a measure that “provides uniformity”, “eliminates a number of chores” and hence encourages participation. This feedback is in line with literature, which argues that ESPD facilitates participation in public procurement (Telles, 2013; Trybus and Andrecka, 2017; SIGMA, 2018; Bovis, 2019).

#### 4.3.2.2 The Limitations

Nevertheless, although all interviewees acknowledge that the public procurement system improved, several limitations in the EU Public Procurement Directives were still highlighted as barriers affecting the participation in the cross-border market. For example, they still argued that the level of bureaucracy and administrative burden is persisting throughout the procurement cycle. Participants shared a common view on the laborious documentation and costs, such as insurance policies, financial guarantees and proof of experience, all of which are often required when it comes to participating in public procurement.

Empirical research shows that due to the bureaucratic and burdensome procedures, companies consider tendering in public procurement as a resource and time-consuming activity (Flynn and Davis, 2014, 2015; Flynn, 2017, 2018; Georgieva, 2017). Respondents explained that they prefer to opt for other sources of opportunities rather than using their limited resources to participate in cross-border public procurement. For example, St 4 stated that companies are “going around other means without the bureaucratic system”.

Different views were expressed regarding the fact that EU Directives allow contracting authorities to publish tenders in their mother-language. Some participants questioned the extent to which the EU regulations are truly encouraging equal opportunities, fair treatment, and open competition. Participants who won cross-border tenders stated that due to language barriers the market is mainly limited to tenders published by UK, Ireland, Italy, Luxembourg, Belgium, and in rare instances to tenders published by Italy, Germany, and France. This is in line with the quantitative analysis mentioned earlier in this chapter.

Some other participants explained that although it is possible to translate tender documents, it will involve extra costs. Besides, as explained by SY 2, there are some instances when after incurring the translation expenses, companies may realise that they cannot meet the requirements and hence cannot participate. The interview findings, as well as previous research, classify language as a barrier hindering companies from participating in the EU cross-border public procurement market (Ramboll and HTW, 2011; Pîrvu and Bâldan, 2013; Smith and Lilico, 2014; European Commission, 2017b; Carboni et al., 2018). Nevertheless, some respondents acknowledged the fact that Maltese companies are at an advantage when compared to their European counterparts due to their fluency in English and to some extent in Italian.

Another factor highlighted by St 2, St 3 and St 4 together with UY 1, UY 2 and SY 2 is home bias in public procurement. Different scholars show that the trait of home bias has been persisting for several years (Baldwin, 1972; Lowinger, 1976; McAfee and McMillan, 1989; Trionfetti, 2000; Ramboll and HTW, 2011; Rickard and Kono, 2013; Shingal, 2015; European Commission, 2017b). Some of the interviewees claimed that certain contracting authorities issue tenders in their mother-language in order to safe-guard their local companies.

Besides using one's native language, there are also other instances where the contracting authorities include certain clauses in the tender documents to reduce cross-border competition and protect the local market. For example, UY 1 and UY 2 mentioned that tenders sometimes

specify that “country presence” is one of the eligible criteria. It is important to note that such clauses will automatically eliminate any cross-border participation. While sharing their experiences, both SY 2 and UY 1 mentioned that these home bias measures are very common in the UK market. As stated by UY 1, the “challenge that we face is specifically in the UK and a little bit in Ireland, there is a huge tendency to work with local suppliers”. On the same lines, SY 2 also gave an example of UK and argued that one of the procedures they use to reduce competition is publishing tenders not divided into lots:

“There would also be some tactics and politics sometimes involved and an example of this is ... they tie those tenders with other engines so it would be one package, so you need to bid on the engines that we work on and other engines as one package. Of course, we cannot participate because we don't have the capability on those other engines, but we know that a particular company in the UK had the capability for both those engines, so you know, politics”

UY 2 further explained the difficulties encountered in trying to eliminate such barrier and still compete in the EU cross-border public procurement market:

“is to work with a local partner, to find someone in the UK, to find someone in Ireland but that reduces your margin, it increases your risk as you are working with someone you don't actually know and so on”.

As explained in the literature review, another limitation of the EU Public Procurement Directives is the exclusion from its scope any contracts that fall below the thresholds<sup>23</sup> (Bovis, 2019). In this regard, contracting authorities are not required to advertise such tenders on the TED database. Consequently, the vast majority of interviewees (St 2, St 3, St 4, St 5 as well as SY 1, SY 2, UN 1, and SN 1) complained that it is difficult to become aware of the tenders issued in the different electronic portals. For example, UY 1 stated “only recently we became aware that there exist several portals”. Similarly, UY 2 argued that “there is a huge lack of awareness... we didn't know about these until a couple of years ago when we could have been participating for a long time”.

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<sup>23</sup> Please refer to the literature review for the EU public procurement Directives thresholds.

### 4.3.3 Resources

The prevailing theme in this study is resources, which during the thematic analysis three sub-themes were developed: financial resources, human resources, and expertise. During the interviews, all interviewees mentioned the problem of limited resources across Maltese companies, Government departments, and other entities.

#### 4.3.3.1 Financial Resources

All economic operators complained about the financial burden of participating in the EU cross-border public procurement process and referred to costs related to insurance policies, guarantees, and translation. The interviewees operating in the service business (SY1, SY2, and SN 1) highlighted costs related to transportation and traveling whilst participants from the works industry (WN 1 and WN 2) mentioned costs related to mobilisation of equipment as well as costs related to bid bonds which leads to liquidity problems. In the case of the supply market, economic operators (UY 1, UY2 and UN 1) complained about the higher costs due to Malta's insularity. This issue was clearly explained by St 4 as follows:

*“Din hija l-problema tagħna that we are in the remote region so we are not considered central Europe, allura anke l-cost biex iġġib ir-raw material jekk sa taħdem fuqu hawn u terġa’ tesportaħ, diġa għandek fattur ta’ spjiza illi ħa tibberdinja aktar il-kompetitivita tiegħek anki bhala prezz biex tikkompeti”.*

"This is our problem, that we are in-the-remote region so we are not considered central Europe, then even the cost to get the raw material if you're working on it here and then you export it, that's already an expense factor which additionally burdens your competitiveness, even as a price to compete".

In addition, stakeholders were concerned that some Maltese firms may have financial difficulties and are not in a position of risking their resources in cross-border procurement. As explained by St 4, most economic operators cannot afford to concentrate on both domestic and cross-border public procurement as they risk losing their competitiveness in the local market. A study conducted on Spanish SMEs found that it is more sustainable when a company focuses its efforts on either the domestic or cross-border market (Muñoz-Garcia and Villa, 2019).

#### 4.3.3.2 Human Resources

Most interviewees also highlighted that lack in human resources is one of the barriers hindering participation in cross-border public procurement. Stakeholders (St 1, St 3, St 4 and St 5) disclosed that they have limited resources and cannot reach out to all business entities. Another stakeholder, St 2 stated that even the public sector is finding it difficult to increase its human resources, *“jien nista’ ngħidlek li anka l-Gvern... igifieri li mhux qed isib nies biex jaħdmu mal-Gvern”* – “I can say that even the Government... is not finding people to work with the public sector”.

The same difficulty in recruiting people is also being experienced by the interviewed economic operators, who state that “it’s a challenge”, and “it’s a big problem... enormous”. UY 2 explained that this might be due to the fact that “our country is on full employment”. Statistics show that over the last years, the unemployment rate has been decreasing, with only 1,616 unemployed people registered as at the end of June, 2019 (National Statistics Office, 2019b).

Although it is very positive that Malta has managed to keep a low unemployment rate, one needs to understand that a shortage of manpower creates various problems for the different businesses. For example, St 1, St 3 and St 4 explained that companies find it difficult to internationalise and participate in the EU cross-border public procurement market due to the limited human resources. A recent survey carried out by Trade Malta (2015), identified the lack of human resources as one of the major barriers faced by Maltese firms in internationalisation. A problem that seems to be persistent in different EU Member States (Susman, 2007; European Commission, 2015b; Dominguez et al., 2018).

#### 4.3.3.3 Expertise

Apart from the lack of human resources, all economic operators interviewed accentuated the problem in finding the right expertise. SY 1 recounts that it’s a

“struggle to recruit local talent because there’s a shortage of experienced people who are available on the market ... and those who are available are pitching themselves at an unreasonable price and not necessarily having the best skills and the best experience.”

Statistics show that Malta has a high percentage (26%) of under-qualified adults (European Commission, 2019a). Recent surveys conducted in Malta found that the lack of qualified adults is leading to a number of unfilled vacancies as it is difficult to find people with adequate skills (Malta Gaming Authority, 2016; NCFHE et al., 2017). Companies reported that this is mainly resulting in an increased workload on other staff (NCFHE et al., 2017). Some interviewees (UY 1, SN 1 and WN 1) explained that due to unfilled vacancies work related to public procurement is being carried out by one individual. As recounted by WN 1, it is a “one-man show”.

Given this challenge in finding people with the right skillset, UY 2 and SY 2 also argued that they are now employing people with lack of expertise and providing them with training to enhance their knowledge and skills. On the other hand, UY 1 and UY 2 are resorting to recruiting foreign workers. For example, UY 1 explained that they had a vacancy which was promoted on different portals and the responses included “2 candidates from Malta and over 150 from other markets, 80% of that was from India”. UY 2 also explained that due to the “huge shortage of expertise... we are forced to recruit internationally which has its own challenges”. One of the disadvantages which was also highlighted in the 2014 National Employment Policy, is the fact that foreigners are very mobile and will lead to extra expenses due to a high turnover (Ministry for Education and Employment, 2014).

The stakeholders interviewed commented that the lack of expertise is inhibiting Maltese companies from participating in EU cross-border public procurement. St 3 debated that “few Maltese companies are procurement ready” and emphasised the need for more technical expertise. Due to the lack of technical resources, St 4 stated that Maltese companies are resorting to a foreign “strategic partner when they bid cross-border”. WN 1 also accentuated that sometimes even to participate in local tenders they will need a foreign sub-contractor or foreign partner to fulfil the tender requirements.



Although all stakeholders agree that there is lack of technical expertise on cross-border public procurement, they are still lacking in prioritising their efforts to help companies participate in the EU market. For example, St 2 pointed out that although companies have a point of reference when it comes to domestic public procurement, it is not the case for cross-border. In Malta, there is no department focused on assisting and encouraging companies to participate in the EU cross-border public procurement market.

#### 4.3.4 Business Characteristics

Besides the lack of resources, the diverse characteristics of Maltese businesses can also influence their participation in the EU cross-border public procurement market. Maltese economic operators seem to experience a lack of confidence in cross-border procurement. According to St 2, St 3 and UY 2, this is due to the mentality and perception of some Maltese firms, who think that they “can never win or even dream of competing on an EU level”. UY 2 accentuated that the mentality of Maltese companies needs to shift from “a Maltese player to an EU player”.

The perception that Malta cannot compete with other EU companies prevails amongst the interviewees who never won a cross-border public contract. Such participants confirmed that their companies are holding back from participating in the EU market due to lack of confidence. For example, SN 1 explained that “competition is greater so confidence in oneself is definitely lower”. Whilst UN 1 was more convinced that “*għalina l-Maltin, jgħidu li jridu... jien ma nemminx li aħna nistaw noħorġu naħdmu barra*” – “For us as Maltese, regardless of what they say... I do not believe we can go out there to work”.

In contrast, St 4 argues that Maltese companies do not lack confidence, but they lack economies of scale which leads them to start at a disadvantage when competing for large EU tenders. Due to Malta’s small size and limited market, it is very difficult for Maltese companies to reap the benefits of economies of scale. This concern, in fact, was shared by the other

stakeholders and economic operators interviewed. The problem of economies of scale seems to be a problem for small states as their limited market size leads to higher costs per unit of production (Briguglio and Buttigieg, 2003; The Malta Chamber of Commerce Enterprise and Industry, 2014; Malta Hotels and Restaurants Association, 2016). The lack of economies of scale may also explain the fact that the majority of respondents prefer the BPQR criterion rather than the lowest price criterion when bidding for cross-border contracts.

The propensity of participating in cross-border public procurement is also influenced by the availability of opportunities. Economic operators prefer to opt for an opportunity in the private sector rather than in the domestic or cross-border public procurement. This preference was also highlighted in other previous studies (Roodhooft and Van den Abbeele, 2006; Lindskog *et al.*, 2010). Although the private and public purchasing processes share similarities, only the latter is regulated by the rigorous procedures stipulated in the EU public procurement Directives (Lindskog *et al.*, 2010). Interviewees stated that one of the reasons behind the private preference is due to the administrative burden of the public procurement process. For example, SN 1 explained the opportunity cost concept in easy terms:

“if I don’t apply for the public, I might be applying for a private one, so I have the private one where it is nice and easy to participate. If the financial games are the same, then I prefer to go for the private cause the public one is just like a headache”.

Furthermore, UY 1 and UY 2 explained that they prefer the private sector because the technical requirements included in public tender documents cannot be discussed unless it is a negotiated procedure. Other economic operators also highlighted that working with the private sector will open the possibility for further opportunities. One of the interviewees, UY 1, clearly defined their reasoning by stating that:

“in the public sector... you might grow your relationship to have a smoother process but it won’t necessarily yield more business whereas in the private sector, if you strike a good relationship, you can prove yourself to the customer by doing small jobs here and there, and then eventually they will trust you with large project which could lead you to another large project”.

Besides private opportunities, economic operators also have other opportunities in the domestic public procurement sector. Interviewees from the works industry explained that currently there are a lot of local public opportunities. WN 1 argued that "the local economy is strong enough, that's one of the reasons why we never look abroad". As explained by St 2, works tenders are registering fewer bids but higher prices due to the high demand generated by the current economic situation. In fact, statistics show that Malta has been registering high growth rates in recent years, with real GDP growth rate of 6.6% in 2018 (European Commission, 2019b).

## **4.4 Conclusion**

In this chapter, the main findings were presented, interpreted and supported with empirical research. The following chapter summarises the results and provides recommendations with some concluding remarks.

# **Chapter 5**

## **Conclusion and Recommendations**

## **5.1 Introduction**

This chapter provides a summary of the research context and the main findings. It also highlights the study's contribution to the industry and puts forward a set of recommendations for stakeholders as well as recommendations for further studies.

## **5.2 Research Context**

Literature has shown that throughout the years, the share of cross-border contracts in the EU public procurement market has been undeniably low. Amongst other objectives, the 2014 Public Procurement Directives were introduced to facilitate cross-border public procurement in the EU; but a recent study shows that the share has decreased during the 2015-2017 period (Becker et al., 2019). Albeit studies were conducted to examine the determinants of the EU cross-border public procurement market (PWC et al., 2011; Ramboll and HTW, 2011; Pîrvu and Bâldan, 2013; Kutlina-Dimitrova and Lakatos, 2016; European Commission, 2017b), literature fails to examine the peculiarities of the different EU Member States. Besides, no studies were carried out to explore the factors that influence economic operators' participation in the EU cross-border public procurement after the 2014 public procurement Directives came into force.

In this context, the study aimed to enhance the research stream by examining the share of Maltese economic operators in the EU cross-border public procurement and the factors which influence their participation therein. This research used microdata from the TED database to determine the share of Maltese economic operators and to identify any trends during the period under analysis. The results from the quantitative analysis provided the necessary information for the subsequent phase of the study, which included semi-structured interviews with stakeholders and Maltese firms, to explore the factors which affect the participation of economic operators in the EU cross-border public procurement.

### 5.3 Summary of Main Findings

This study highlighted that Malta's share in the EU cross-border public procurement market is insignificant. Between 2006 and 2018, only 0.0008% of all EU cross-border contracts were awarded to Malta. No particular trend could be established as the low level of penetration remained relatively consistent throughout the years under review. Hence, statistically, the new public procurement Directives does not seem to have impacted on the share of cross-border contracts. However, the qualitative analysis revealed that the latest legislation did increase efficiency and transparency in the public procurement process, albeit a certain level of home bias, bureaucracy, and administrative burden persists. These factors are leading respondents to opt for other sources of opportunities, particularly in the private sector.

The statistical analysis revealed that Malta was predominantly awarded the highest number of cross-border contracts in the service sector. In addition, UK, Luxembourg, and Italy were the three countries which awarded the highest number of cross-border contracts to Malta. During the interviews some respondents acknowledged that their fluency in English and Italian puts them at an advantage compared to their European peers, but they still consider language as a barrier since they incur translation costs in order to be able to participate in certain markets. This impinges on their competitiveness and exposes them to various risks such as legal and technical risks.

When statistically analysing the share of cross-border awards in terms of contract characteristics, it emerged that the share was considerably higher in contracts: not financed from EU Funds; contracts issued via open procedure; contracts awarded through the BPQR criterion. The share of cross-border contracts was also found to be higher when the contract was divided into lots, especially between 2016 and 2018. This result indicates that the new Directives urge to divide tenders into lots is facilitating access for Maltese SMEs. In line with these findings, interviewees accentuated their preference for tenders divided into lots and for the BPQR criteria. It was argued that due to economies of scale it is difficult for Maltese economic operators to compete on price only whilst the use of BPQR gives weight to quality as

well. In contrast to the statistic results, the interviewed economic operators explained their preference for the negotiated procedure as it offers greater flexibility than other procurement procedures.

Results also show that companies face difficulties due to the limited financial and human resources, which are both essential requisites to compete in the EU cross-border public procurement. For example, the costs incurred for financial guarantees and insurance requirements are impinging on their competitiveness which is already hampered by the islands' insularity, by their lack of confidence and lack of economies of scale. The recent phenomenon of the low unemployment rate is presenting another stumbling block for local firms who are finding it difficult to employ people with the right skillset. As a result, they are reverting to the engagement of foreign employees which in turn, is challenging and leads to additional costs.

## **5.4 Recommendations for Stakeholders**

In light of the above results, it is suggested that different stakeholders adopt measures to assist Maltese economic operators to participate in EU cross-border public procurement market. The recommendations are targeted to three main stakeholders, namely the European Commission, the Government of Malta and economic operators.

### **5.4.1 European Commission**

The European Commission should establish a single procurement portal wherein all contracting authorities across all Member States could publish their tenders, irrespective of their values. Furthermore, the tenders should be published both in the native language and in English. The mandatory use of this portal should also be one of the pillars enshrined in the future amendments to the public procurement legislation. This portal would reduce language barriers and enhance the efficiency and transparency of the procurement process. It would also increase participation in cross-border procurement and boost competition.

## 5.4.2 Government of Malta

The below-proposed actions are of specific interest to the Ministry for the Economy, Investment and Small Businesses as well as the Ministry for Education and Employment.

One major concern of the stakeholders and economic operators was related to a lack of human expertise. In this regard, it is being recommended that actions to address the inadequate human capital are introduced. The Government may pursue a nation-wide gap analysis study to take stock of the current needs and gaps concerning public procurement. This study would, in turn, act as the springboard for the introduction of an action plan to mitigate the existing as well as future gaps. There should be more investment and initiatives to support the current workforce in upgrading their skills and educational level. Furthermore, youths should be provided with educational opportunities to reduce the skills gap and raise the bar in the level of qualifications.

It is also being recommended that a fully-fledged campaign is organised to raise awareness and interest in the EU cross-border public procurement market. Furthermore, the campaign would inevitably instil a change in the culture and mentality of Maltese firms to help them build confidence in participating in the EU market. The campaign could be channelled through various entities including the University of Malta, the Institute for Education, the Malta College of Arts, Science and Technology, the Malta Business Bureau, the Malta Enterprise, the Malta Chamber of Commerce as well as other related entities.

In addition, it is suggested that a Public Institutional Support System is set up to facilitate coordination between the different entities and to offer a range of services to all economic operators who are interested in participating in the EU cross-border public procurement market. This Support System should provide coaching, mentoring and training services about the whole procurement process. It should not adopt a 'one-size fits all approach' but the services offered should be tailored according to companies' needs. In addition, due to the complexity of the subject, there should be advisory services focused on tendering procedures, financial



assistance, and legal issues. The Public Institutional Support System should also organise events such as one-to-one sessions and group meetings to build a good rapport and relationship with the economic operators. Furthermore, it should encourage and facilitate the exchange of information and good practice between economic operators.

It is also recommended that the Government embarks on a project to facilitate clustering. Through clustering, Maltese companies can join forces to strengthen their capacity and be in a better position to compete with other EU companies. Research shows that clustering facilitates businesses to engage in joint purchasing, bulk negotiation and combined production to benefit from economies of scale and higher profit margins (Delgado, Michael and Stern, 2010; Kowalski, 2014; Kaabinezhad, Allah Boroon and Dakhely Parast, 2016; Fornahl and Hassink, 2017). Furthermore, joining forces shall improve economic operators' confidence to participate in large EU tenders.

#### **5.4.3 Economic Operators**

It is important to comprehend that an initiative to facilitate clustering will not be successful unless it is supported by Maltese economic operators. To support this process, companies should be more open to sharing their technical knowledge and experience with other fellow companies. Furthermore, to increase their level of participation in the EU public procurement market, economic operators need to become more familiar with the TED database and to register with the different procurement websites. In addition, it is being proposed that companies adopt a selection procedure based on a set of criteria to identify which tenders fit in their portfolio and which tenders are worth participating in. This approach reduces the risks associated with cross-border procurement and optimises the use of the companies' resources.

### **5.5 Recommendations for Further Research**

This study has been instrumental in exploring the factors Maltese economic operators are facing in EU cross-border public procurement. Future studies should test these factors through quantitative methods (such as surveys) amongst a larger number of Maltese economic

operators to determine any cause and effect relationships. It is recommended that additional studies should be carried out to examine the share and factors affecting economic operators in other small EU Member States such as Cyprus and Luxembourg. Combining the findings of these studies will determine the similarities of small states and will provide the necessary information on what measures should be adopted at a supranational level to assist small states in participating in cross-border public procurement. It is also being recommended that studies should be carried out to examine the share and factors of cross-border contracts in different sectors such as the Market Research Services sector or the IT Services sector. These specialised studies will determine whether there are any similarities and/or differences between sectors.

## **5.6 Contribution to the Industry**

This research offers useful data on Malta's share in the EU public procurement market as well as insights on the factors influencing Maltese economic operators' participation in such a market. As explained above, this study should guide Maltese policymakers, economic operators and other stakeholders on enhancing Malta's competitive edge in the EU cross-border public procurement market. The study shall also support MEUSAC and MBB endeavour to influence proposed EU legislations in ensuring a favourable outcome for Maltese Businesses.

In fact, the researcher was informed that this dissertation will be used to complement MBB's current study on the value of the European Single Market for Maltese businesses. The findings of this study should assist the MBB in identifying and addressing any existing barriers and gaps in legislation, that are affecting Maltese businesses' participation in the single market. Hence, this dissertation should provide a valuable contribution in the area of cross-border public procurement which is one of the key instruments of the single market.

## **5.7 Conclusion**

Malta's low share in the EU cross-border public procurement coupled with the difficulties being encountered by Maltese firms imply that there is room for improvement. The findings and recommendations proposed in this study should facilitate and encourage different stakeholders to join forces in introducing measures to assist Maltese economic operators in increasing their share in the EU cross-border public procurement market. Accordingly, Malta should be in a better position to reap more benefits from the EU Single Market.

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## Appendices

### Appendix 1: Maltese business units by employment size and classified by economic activity according to the NACE (Nomenclature Statistique des Activités Économiques dans la Communauté Européenne).

NACE Section	Economic activity according to the NACE description	Business units by employment size: 2018				
		0-9 Micro	10-49 Small	50-249 Medium	250+ Large	Total
A	Agriculture, forestry and fishing	3,247	c	c	c	3,258
B	Mining and quarrying	136	7	-	-	143
C	Manufacturing	3,869	238	54	15	4,176
D	Electricity, gas, steam and air conditioning supply	73	4	-	-	77
E	Water supply, sewerage, waste management and remediation activities	241	9	c	c	252
F	Construction	7,902	128	20	6	8,056
G	Wholesale and retail trade; repair of motor vehicles and motorcycles	18,588	559	92	3	19,242
H	Transportation and storage	4,503	118	16	9	4,646
I	Accommodation and food service activities	4,955	335	56	8	5,354
J	Information and communication	4,885	128	23	7	5,043
K	Financial and insurance activities	17,476	125	22	6	17,629
L	Real estate activities	5,487	36	4	-	5,527
M	Professional, scientific and technical activities	13,765	277	37	4	14,083
N	Administrative and support service activities	9,031	174	44	23	9,272
O	Public administration and defence; compulsory social security	100	27	33	18	178
P	Education	2,679	77	38	9	2,803
Q	Human health and social work activities	1,710	80	26	12	1,828
R	Arts, entertainment and recreation	4,774	104	30	8	4,916
S	Other service activities	6,663	38	c	c	6,707
T	Activities of households as employers; undifferentiated goods- and services-producing activities of households for own use	c	c	-	-	c
U	Activities of extraterritorial organisations and bodies	c	-	-	-	c
		<b>110,149</b>	<b>2,471</b>	<b>505</b>	<b>131</b>	<b>113,256</b>

Source: National Statistics Office, 2019a  
c- confidential

## Appendix 2: Interview guide used with the stakeholders

1. Could you please explain how the [name of stakeholder] assists Maltese economic operators?  

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2. What is your role as part of the Enterprise Europe Network?  

---

3. As [name of stakeholder], do you offer any services to Maltese companies which are interested to participate in international tenders?  

---

4. Do you offer information sessions and training to companies interested in participating in the EU cross border public procurement market?  

---

If yes, how frequent are these meetings/training? What is the average turnout?  

---

5. Do you communicate with Maltese economic operators to understand their difficulties?  

---

6. Have you ever received queries from Maltese companies which are interested to participate in EU cross border tenders?  

---

7. In February 2014 the European Parliament and the EU Council adopted a new legislative package on public procurement and Member States were requested to transpose the Directives into National Law by April 2016. The directives were designed to simplify the procurement process and secure competitiveness.

Are you familiar with public procurement directives?

Yes

No

- a) If yes, do you think the EU legislative package is reaching its goal in facilitating SMEs participation in cross border procurement?  

---

- b) If yes, do you see any limitations in the EU public procurement directives? Could you please elaborate?  

---

8. As published by the EU Commission in the Summer 2019 Economic Forecast, Malta's economy grew by 6.7% in 2018. However, as per statistical data from TED database, Malta have a low share of awarded cross border contracts.

Do you believe that there is a relationship between the current local economic situation in Malta and the lack of participation in the EU cross-border public procurement market?

---

9. From your experience, what are the main factors that affect economic operators to participate in the EU public procurement market?

---

10. In your opinion, is access to information regarding cross-border public procurement tenders, limiting Maltese companies' participation in the market?

---

11. Do you think that there is a higher probability of cross-border public award, if tenders are divided into lots?

---

12. Do you think Malta holds a strategic geographical location in Europe? From your experience, do Maltese companies use this factor to their own advantage or do they feel disadvantaged?

---

13. Based on your experience, could you please assess the relevance of the following factors in cross-border public procurement? Please tell me whether the factor is not relevant, of low relevance, of medium relevance or of high relevance in Malta.

Factors	Not relevant	Low relevance	Medium relevance	High relevance
Lack of awareness about the opportunity of participating in the EU market				
Language differences				
Administrative burden				
Lack of interest				
Lack of confidence				
High competition from national bidders				
Additional costs due to geographical distance				
Lack of expertise				
Lack of financial resources				
Lack of human resources				
Legislative obstacles				
Lack of harmonisation				

14. From your experience, could you please indicate whether there are any good practices, which are adopted by other member states and if adopted by Malta will result in an improvement vis-à-vis the participation in cross-border public procurement?

---

15. In your opinion, how can the Maltese government encourage and assist companies to participate in the EU public procurement market? What is missing? What can be done at a national level?

---

16. At a supranational level, what measures do you recommend being included in the EU public procurement directives?

---

17. Do you have any additional information or comments you would like to share?

---

Thank you for participating in this research.

### Appendix 3: Interview guide used with economic operators

1. Which sector does your company operate in?

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2. How many people are employed with the company?

1-9

10-49

50-249

250 and more

3. Do you have a particular unit focused on procurement?

---

4. Does the company participate in domestic public procurement market?

Yes

No

If yes, what is your success rate?

---

5. In the last three years, did the company participate in cross border public procurement tenders?

Yes

No

If yes, how many times did the company bid? How many times did the company win?

---

6. If you won cross border public procurement, can you give more details about what type of tenders you won and how was your experience?

---

7. In February 2014 the European Parliament and the EU Council adopted a new legislative package on public procurement and Member States were requested to transpose the Directives into National Law by April 2016. The directives were designed to simplify the procurement process and secure competitiveness.

Are you familiar with public procurement Directives?

Yes

No

a) If yes, from your experience, do you think the EU legislative package is reaching its goal in facilitating participation in cross border procurement?

---

b) If yes, do you see any limitations in the EU public procurement directives? Could you please elaborate?

---

8. As published by the EU Commission in the Summer 2019 Economic Forecast, Malta's economy grew by 6.7% in 2018. However, as per statistical data from TED database, Malta have a low share of awarded cross border contracts.

Do you believe that there is a relationship between the current local economic situation in Malta and the lack of participation in the EU cross-border public procurement market?

---

9. From your experience, what are the main factors that affect economic operators to participate in the EU public procurement market?

---

10. In your opinion, is access to information regarding cross-border public procurement tenders, limiting Maltese companies' participation in the market?

---

11. Do you think that bidding for cross-border public procurement tenders is more expensive than bidding for a domestic tender?

---

a) If yes, could you please specify to what extend is bidding for cross-border tenders more expensive than bidding for domestic tender?

---

12. Do you consider the time limit for participating in a procurement procedure as long enough for companies to draw up tenders and set up partnerships with other companies, if needed?

---

13. Do you consider tenders below the value of €144,000 as still attractive for Maltese companies to bid for cross-border procurement?

---

14. Do you think procurement procedures have an influence on the success rate of cross-border contracts?

Yes   
No

If yes, could you please specify which procedure have low and which procedure have high influence when bidding cross-border?

Open procedure   
Restricted procedure   
Negotiated procedure (with or without a call for competition)   
Accelerated procedure (restricted or negotiated procedure)   
Competitive dialogue



15. Do you think that there is a higher probability of cross-border public award, if tenders are divided into lots?

---

16. Do you think Malta holds a strategic geographical location in Europe? From your experience, do Maltese companies use this factor to their own advantage or do they feel disadvantaged?

---

17. From your experience, could you please indicate whether there are any good practices adopted by your company vis-à-vis the participation in cross-border public procurement?

---

18. Based on your experience, could you please assess the relevance of the following factors in cross-border public procurement? Please tell me whether the factor is not relevant, of low relevance, of medium relevance or of high relevance in Malta.

Factors	Not relevant	Low relevance	Medium relevance	High relevance
Lack of awareness about the opportunity of participating in the EU market				
Language differences				
Administrative burden				
Lack of interest				
Lack of confidence				
High competition from national bidders				
Additional costs due to geographical distance				
Lack of expertise				
Lack of financial resources				
Lack of human resources				
Legislative obstacles				
Lack of harmonisation				

19. In your opinion, how can the Maltese government encourage and assist companies to participate in the EU public procurement market? What is missing? What can be done at a national level?

---

20. Do you have any additional information or comments you would like to share?

---

Thank you for participating in this research.

#### Appendix 4: Table of preliminary themes and codes.

Theme: Confidence	Theme: Culture	Theme: Location	Theme: Opportunity Cost	Theme: Contract characteristics	Theme: Adjudication procedure	Language
<b>Codes</b>	<b>Codes</b>	<b>Codes</b>	<b>Codes</b>	<b>Codes</b>	<b>Codes</b>	<b>Codes</b>
mentality	mentality	geographical distance	private preference	award/ adjudication criteria	award criteria	language barrier
high competition	home bias	logistically feasible	economies of scale	contract procedure	ratio between quality & price	translation
safer to bid locally	protect local market	sector	logistically feasible	tender divided into lots	cheapest not ideal	publish in different mother languages
Malta can never win or even compete on an EU level	preference to locally based companies		economic situation	contract value		Difficult to understand
	not ready to work abroad		company size	sector		we speak a number of languages
				language		our English is quite good
				geographical distance		big advantages, EU tenders are in English.
Theme: Human resources	Theme: Expertise	Theme: Financial	Theme: Administrative burden	Theme: Lack of information/ assistance	Theme: Available assistance	Theme: Regulation
<b>Codes</b>	<b>Codes</b>	<b>Codes</b>	<b>Codes</b>	<b>Codes</b>	<b>Codes</b>	<b>Codes</b>
Difficult in employing people	lack of knowhow	high costs	bureaucracy	not aware of regulations	Enterprise Europe Network	e-procurement
one man show	technical resources limited	liquidity problems	lot of documentation	limited information	Business Advisory Scheme	ESPD
not enough resources	lack of expertise	expensive	use of a lot of resources	unfamiliar legal context	HORIZON 2020	more efficient
challenge to employ people	not procurement ready	financial requirements	a lot of administrative requirements	unknown	EU funds	administrative burden improved
country is on full employment impose difficulties	the need for partners	expenses	administrative burden is expensive	no legal advice	National Funds	more transparency
forced to recruit internationally	no background in the field	additional costs		no training	Training	reduced time & cost
the dynamics for getting human resources	difficulty in finding the right expertise	insurance costs		under represented	help to scale up	facilitated the process
	level of work dropped	logistically feasible		only recently we came aware	help to expand at an EU level	cuts of a number of chores
	more education				help to internalise	good initiative
	key experts not available				close to the business	allows publication of tenders in different languages
	capable workforce					thresholds
	forced to recruit internationally					lack of harmonisation

**Appendix 5: Table of refined themes, sub-themes and codes.**

<b>Research question: which factors affect Maltese economic operators in participating in the EU cross-border public procurement market and how?</b>			
<b>Theme: Contract characteristics</b>	<b>Theme: Regulation</b>	<b>Theme: Resources</b>	<b>Theme: Business characteristics</b>
<b>Codes</b>	<b>Sub-theme: Benefits</b>	<b>Sub-theme: Financial resources</b>	<b>Codes</b>
award/ adjudication criteria	<b>Codes</b>	<b>Codes</b>	confidence
contract procedure	more efficient	liquidity problems	mentality
technical requirements	more transparency	high costs	economies of scale
tender divided into lots	<b>Sub-theme: Limitations</b>	<b>Sub-theme: Human resources</b>	home bias
contract value	<b>Codes</b>	<b>Codes</b>	private preference
sector	administrative burden	challenge to employ people	economic situation
language	publication in different languages	forced to recruit internationally	
geographical distance	thresholds	<b>Sub-theme: Expertise</b>	
	lack of harmonisation	<b>Codes</b>	
		lack of knowhow	
		technical resources limited	

## Appendix 6: Consent form

**Name of Researcher:** Rodianne Zarb

**Title of research project:** Maltese Economic Operators' Share in the EU Cross-border Public Procurement Market

### Declaration by Participant:

- I confirm that I have been given a copy of the information sheet and consent form for the above-mentioned study. I have had the opportunity to read and consider the information provided, and to ask questions; any questions have been answered in a satisfactory manner.
- I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason and without any penalty or loss of benefit to which I am otherwise entitled.
- I understand that the data collected will be securely stored and accessible only to the researcher, and potentially to his/her supervisor/s, examiner/s, and/or reviewer/s. I have been informed that data will be erased/destroyed within two years of completion of the study.
- I understand that the data collected will be anonymised and that I will not be identifiable in any publications, reports, or presentations arising from this research.
- I understand that under the General Data Protection Regulation, I have the right to access, rectify and where applicable erase any data concerning me.

### Please tick as appropriate:

- I agree to be interviewed and recorded for purposes of this study.  
 YES                       NO
- I agree to be contacted for a follow-up meeting/interview at a later date.  
 YES                       NO
- I consent to participate in the study.  
 YES                       NO

Name of Participant: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Researcher: Ms Rodianne Zarb  
UM Email address: rodianne.zarb.06@um.edu.mt

Name of Supervisor: Mr Robert Micallef  
UM Email address: robert.micallef@um.edu.mt

## **Appendix 7: Letter of introduction and Invitation to participate in research**

Rodianne Zarb

M.Sc. Public Policy and Strategic Management final year student, Department of Public Policy

Dear Sir / Madam,

This is to introduce Rodianne Zarb, an M.Sc. student at the Faculty of Economics, Management and Accountancy at the University of Malta.

This said student is undertaking research under my supervision leading to the submission of a dissertation currently entitled: "Maltese Economic Operators' Share in the EU Cross-border Public Procurement Market".

In this regard, the said student would like to invite you to contribute to this research project, by participating in an interview / survey / focus group / etc. covering aspects of this topic – at your convenience. Full details about the study are available in the attached information sheet.

This research is important and valuable in enhancing understanding, as well as informing policy and support initiatives. I understand that the said student would be happy to share with you general findings ensuing from this research, if you wish to have access to such findings.

The student is to ensure that any information provided will be treated in confidence, also in line with general Faculty research requirements, ethical obligations and the separately provided information sheet and consent form. As indicated therein, you are, of course, entirely free to discontinue your participation at any time or to decline to answer particular questions, without penalty.

While I thank you beforehand for your consideration as well as your possible kind support and involvement in this important research, should you have any queries on this research please feel free to contact me via email at [robert.micallef@um.edu.mt](mailto:robert.micallef@um.edu.mt).

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Yours sincerely,

Mr Robert Micallef

*Department of Public Policy, Faculty of Economics, Management and Accountancy*

## Appendix 8: Information letter

**Name of Researcher:** Rodianne Zarb

**Title of research project:** Maltese Economic Operators' Share in the EU Cross-border Public Procurement Market

**Study description:** The research aim is to analyse the barriers faced by local firms in cross-border public procurement market and to identify whether the latest EU public procurement legislation facilitated the access to EU public procurement. The researcher will carry out interviews / surveys / focus group with different economic operators and other stakeholders. Semi-structured in-depth interviews will be used to be more flexible in adding or omitting questions in order to have a better flow of conversation and to explore different experiences of economic operators. Through analysing the results of this study, the researcher aims to establish the necessary information and data on Malta's share in the EU procurement market in order to provide guidance to Maltese policy makers and economic operators to enhance Malta's competitive edge in the EU public procurement market.

The information obtained from this study will be used for the following purpose/s (*tick as appropriate*):

- ✓ Dissertation
- ✓ Publication

### Participation

- Your participation is entirely voluntary, and you can withdraw from the study at any point without consequences and without any need to provide a reason.
- Refusal to participate, or withdrawal from all or part of the research, shall carry no penalty or loss of benefit to which you are otherwise entitled.
- In the event that you withdraw from the study, all records and information pertaining to your participation will be destroyed.
- A copy of the information sheet and consent form will be provided to you.
- A copy of the research findings shall be provided to you should you request it.

### Confidentiality and Anonymity

- Your name and/or that of your organisation will not be revealed in any publications, reports or presentations arising from this research.
- The data collected will be anonymised. Names will be replaced with codes and then deleted so that individuals will not be identified or identifiable in any way.
- The data will be treated as confidential and access will be primarily limited to the researcher; however, access to the data collected may also be provided to the supervisor/s, examiner/s and reviewer/s if necessary, for verification purposes. These will also abide by the conditions and requirements established in this information sheet.

- The data collected (recordings, transcripts, etc.) will be erased/destroyed within two years of completion of the study.
- Under the General Data Protection Regulation, you have the right to access, rectify and where applicable ask for the data concerning you to be erased.

Name of Researcher: Ms Rodianne Zarb  
UM Email address: [rodianne.zarb.06@um.edu.mt](mailto:rodianne.zarb.06@um.edu.mt)

Name of Supervisor: Mr Robert Micallef  
UM Email address: [robert.micallef@um.edu.mt](mailto:robert.micallef@um.edu.mt)